

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 8th May, 1996

The House met at 9.00 a.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

ORAL ANSWERS TO QUESTIONS

Question No.175

REGISTRATION OF DEVELOPMENT FUND

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

- (a) whether he is aware that Kimilili Development Fund applied for registration under the Non-Governmental Organisation (NGO) Act more than two years ago; and
- (b) what has held the registration of this grassroots development Non-Governmental Organisation.

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

(a) What I am aware of is that the Kimilili Development Fund applied for registration on the 2nd of March, 1995 and not 2 years ago as alleged.

(b) The NGO will be registered as soon as the necessary processes have been completed.

Dr. Kituyi: Mr. Deputy Speaker, Sir, it is unfortunate that the Assistant Minister has been given false information. The application for the registration of Kimilili Development Fund was done in 1994, and there is acknowledgement of the application from the Registrar of NGOs. Mr. Deputy Speaker, Sir, I hope the Assistant Minister can give a clear undertaking about what time frame there is to this, since it has been a very long time since the people started this initiative.

Mr. Sunkuli: Mr. Deputy Speaker, Sir, first of all my information is that, Wekesa and Company Advocates applied on behalf of Kimilili Development Fund on 2nd of March, 1995. We received the application on the 13th of March, 1995. I understand the hon. Member's anxiety because it is now over a year and I wish to indicate to him that within three weeks he will have an answer either way.

Mr. Murungi: Mr. Deputy Speaker, Sir, the NGO Registration Bureau is clearly discriminating against---

Mr. Deputy Speaker: Mr. Murungi, please just ask the question. I am going to be very strict, five minutes per Question and no more! We have 11 Questions.

Mr. Murungi: Is the Assistant Minister aware that the NGO Registration Bureau is discriminating against NGOs from Opposition areas because we presented an application for registration of the South Imenti Development Corporation way back in 1993 and the Bureau rejected the application without giving any reasons at all? Is the Assistant Minister aware that there is a policy to discriminate against NGOs for development from Opposition areas?

Mr. Sunkuli: Mr. Deputy Speaker, Sir, the hon. Member, for sure, is not serious because the Government has no policy to discriminate the registration of NGOs from Opposition areas. At any rate, the majority of the so-called Opposition areas have so many registered NGOs. I am even tempted to believe that they are the majority NGOs registered. But as for the South Imenti Development Corporation, if the hon. Member is satisfied that they had applied and the rejection was not fair, he should have advised them to make an appeal to the Minister and it would have been considered.

Mr. Deputy Speaker: Next Question!

Question No.059

EVICTON OF FARM WORKERS

Mr. Deputy Speaker: Mr. Njenga Mungai, not here? We will pass the Question for the moment! Next Question!

Question No.225

OPERATION OF NCPB STORES

Mr. Deputy Speaker: Mr. Munyasia, also not here? We will pass the Question for the moment! Next Question!

Question No.054

PROVISION OF MATERNITY SERVICES

Mr. Nthenge asked the Minister for Health, what action the Ministry is taking to provide maternity services at Kaviani Health Centre in order to alleviate the problems wananchi around Iveti Hills are currently facing.

Mr. Deputy Speaker: Minister for Health not here? Question stood over for the moment! Next Question!

Question No.216

PROVISION OF DRUGS TO HEALTH CENTRE

Mr. Deputy Speaker: Bishop Njeru, not here? Question stood over for the moment! Next Question!

Question No.220

ISSUANCE OF PSV LICENCES

Prof. Mzee asked the Minister for Transport and Communications:-

- (a) why Public Service Vehicle licences are issued in Nairobi only; and,
- (b) since holders of Public Service Vehicles licences are required to renew their licences every two (2) years, whether he could consider decentralizing the processing and issuing of these licences

The Minister for Transport and Communications (Mr. Ayah): Mr. Deputy Speaker, Sir, I beg to reply.

(a) It is not true that these licences are still centralised. The issuance of these licences has now been decentralised and can be issued from all district headquarters.

(b) The processing of these licences will continue to be done in Nairobi, because of the fact that we have to go through records of drivers and registration books of vehicles to ensure that, there is no manipulation of these records.

Prof. Mzee: Mr. Deputy Speaker, Sir, I am not satisfied with the answer. I think the hon. Minister is misleading this House by saying that they have decentralised this exercise and that the licences are being issued at the district headquarters. Still every applicant of PSV has to come to Nairobi, his fingerprints have to be taken and he has to do a lot of other things. This is not decentralization. If the people have to come here for finger printing and for character assessment, you cannot say the exercise has been decentralised.

Mr. Ayah: Mr. Deputy Speaker, Sir, what the hon. Member is saying is true, that applicants still have to come to Nairobi. But what I am saying is that, the processing itself continues to be done in Nairobi for the reason I have just stated, that we have to ensure that these records which are with the CID are looked at. The conduct of the drivers and the records of the vehicles themselves are centralised here to ensure that nobody manipulates or interferes with these records in the districts. With a little initiative, it is quite possible that these

records can be manipulated. That is why we are keeping them at a central place in Nairobi, but the issuing of the licences themselves is done at the district level. In other words, they come to Nairobi, they get these records from the CID headquarters, they are processed and then, the licences themselves can be issued at the district level.

Prof. Mzee: Mr. Deputy Speaker, Sir, the applicants for PSV are in thousands. Not only the drivers for these vehicles have to get licensed, also the conductors and others who do not have any idea what driving is. It is costing a lot of money to get this PSV. I think, the fact that it is in Nairobi, is typical of autocratic Government which wants to control everything. They do not trust anybody. The Minister and the PS, want to control everything from a central place.

Mr. Deputy Speaker: You are not debating!

Prof. Mzee: Mr. Deputy Speaker, Sir, I know, but this is very serious. This is very touching to wananchi.

Mr. Deputy Speaker: If you want a debate you can bring a Motion, but now ask the question.

Prof. Mzee: Mr. Deputy Speaker, Sir, will the Minister consider seriously decentralising the issuing, and processing of PSV? Can you seriously consider decentralising this?

Mr. Ayah: Mr. Deputy Speaker, Sir, I will definitely consider the question which is being raised by the hon. Member. All I am saying is that, as of now, because these licences are being issued under the Traffic Act, chapter 403, as the law exists now, it has to be done the way I have indicated. But I am certainly going to consider what the hon. Member is raising because, this Government is determined to ensure that anything that inconveniences wananchi should be looked into.

Question No.037

PAYMENT OF MR. KAMAU'S NSSF DUES

Dr. Lwali-Oyondi asked the Minister for Labour and Manpower Development:-

(a) how much money was due to Mr. Njenga Kamau, National Social Security Fund (NSSF) No.200833413, Personal Number 00314X, former employee of the Ministry of Environment and Natural Resources, who retired in 1990; and,

(b) When he will receive the balance of his dues, if any.

The Assistant Minister for Labour and Manpower Development (Mr. Komen): Mr. Deputy Speaker, Sir, I beg to reply.

Mr. Njenga Kamau was paid all his NSSF dues totalling to Kshs34,873.

Dr. Lwali-Oyondi: Mr. Deputy Speaker, Sir, the money that was paid is Kshs28,000, together with the interest of Kshs6,000. However, is the Assistant Minister aware that although this man started working way back in 1967, according to the NSSF print-outs, he has been earning a nil salary? He never made any NSSF contributions in 1971-74, 1984 and so on. Could the Assistant Minister explain why no NSSF contributions were made on behalf of Mr. Kamau during those years while he has been continuously in employment since 1967?

Mr. Komen: Mr. Deputy Speaker, Sir, according to the records that we have, this man was employed from 1967 to 1973 and for this, he was paid Kshs6,827. For the years 1974 to 1990, he was paid Kshs28,036. This is inclusive of all other arrears. That is what he has been paid.

Dr. Lwali-Oyondi: Mr. Deputy Speaker, Sir, what I asked is this: Could the Assistant Minister explain why the computer print-out is showing zero? We are not asking this only with regard to this man, but also for many workers who contribute to this NSSF but the amount is never recorded. As a result, they end up losing it at the time of retirement.

Mr. Komen: Mr. Deputy Speaker, Sir, if there is any query, the man can bring evidence of all the deductions and we can follow it up. However, as far as Mr. Kamau is concerned, he has been paid all his dues.

Mr. Nthenge: Thank you, Mr. Deputy Speaker, Sir. Since Dr. Lwali-Oyondi says that it is not true that this man has been paid all his dues, can the Assistant Minister produce proof that Mr. Kamau has been paid all that is due to him?

Mr. Komen: Mr. Deputy Speaker, Sir, if the House feels that I should bring such proof, then I will.

Mr. Deputy Speaker: Very good! Bring the document and lay it on the Table. Next Question!

Mr. Gatabaki: On a point of order, Mr. Deputy Speaker, Sir!

Mr. Deputy Speaker: What is your point of order? I have called for the next Question.

Mr. Gatabaki: Mr. Deputy Speaker, Sir, my point of order is about today's Papers---

Mr. Deputy Speaker: Order! You are out of order, Mr. Gatabaki. Next Question! Question No.031,

Mr. Mwaura.

Question No.031

NUMBER OF TOURISTS' VISITS

Mr. Mwaura asked the Minister for Tourism and Wildlife:-

- (a) how many tourists visited this country between 1991 and 1995; and,
- (b) what the breakdown for each year is, and how much foreign exchange was earned during the same period.

The Assistant Minister for Tourism and Wildlife (Mr. Kisiero): Mr. Deputy Speaker, Sir, I beg to reply.

(a) A total of 3,275,700 tourists visited the country between 1991 and 1994. The data for 1995 is being compiled and it has, therefore, not been incorporated in this answer.

(b) The breakdown for each of the four years is as follows:-

<u>Year</u>	<u>Visitors</u>	<u>Foreign Exchange Earned</u>	
		<u>(in US \$)</u>	<u>(in K£)</u>
1991	804,000	432 million	594 million
1992	782,000	442 million	713 million
1993	826,000	413 million	1,222 million
1994	863,000	508 million	1,404 million

As already pointed out earlier, the data for 1995 is still being compiled.

Mr. Mwaura: Mr. Deputy Speaker, Sir, the tourism industry is a very important sector of our economy in this country. Therefore, the Government must do everything to encourage it. About 10 years ago when Mr. Maina Wanjigi was the Minister for Tourism and Wildlife, he went round the country promoting tourism in this country. The Ministry [**Mr. Mwaura**] confirmed that it had tied itself to bringing in over one million tourists---

Mr. Deputy Speaker: Mr. Mwaura, I am afraid, you are now making a speech. This is a question and answer session. Ask your question.

Mr. Mwaura: I am trying to ask why the promise of one million tourists per year in the country which was given by the then Minister has not been achieved at any given time. What are the problems?

Mr. Kisiero: As it can be observed from the reply that I have already given, the figures have been rising steadily from 1991 to 1994. We hope that in the near future, we shall hit the one million figure at last.

Prof. Ouma: Mr. Deputy Speaker, Sir, from the figures which the Assistant Minister has given, it is only an average of four per cent increase per year, whereas, for most of the developing world, the average increase is 10 per cent per year, for the last 20 years.

First, does the Assistant Minister understand that the rate of increase is falling because of the saturation of the market? Secondly, what is the Ministry going to do to ensure that we have sustainable tourism in the coming years?

In other words, what have they done about the Manila Declaration, the Acapulco Document and the Ministers' Recommendations in 1993 in Addis Ababa to have sustainable tourism in Africa? This is because, if they do not do anything about all these, the environment will die.

Mr. Kisiero: Mr. Deputy Speaker, Sir, the Ministry is doing everything possible to ensure that there is an increase in the number of visitors coming to this country. One of the things we are doing is that; we are participating in all the major conferences to do with tourism---

Prof. Ouma: Mr. Deputy Speaker, he is not answering my question. I asked him: What have they done about the Manila Declaration, the Acapulco Document and the Ministers' Recommendations in 1993 to ensure that we shall have sustainable environment and sustainable development of tourism?

Mr. Kisiero: Mr. Deputy Speaker, Sir, as I have already pointed out, apart from the conferences we are attending to improve on all those conditions pertaining to attracting visitors to this country, we are also ensuring that our tourist areas are rejuvenated and diversified so that we do not only depend on certain areas like the Coast and the "Big Five" as we have been doing. We are also diversifying so that our tourists can see other things like

our big forests, our nature reserves and so forth.

Prof. Mzee: Mr. Deputy Speaker, Sir, tourism is very important. From the statistics of the last four years, there is absolutely no significant improvement. For example, a country like Sri Lanka has less to offer than Kenya, as far as tourism is concerned. However, they receive far more tourists than Kenya does.

Mr. Deputy Speaker: Ask your question!

Prof. Mzee: We know where the problem is. It is with security, poor road infrastructure and so on. My question is: What is the Assistant Minister planning to do to attract tourists to come here? We know the problem is the death of tourists on our roads and attacks by bandits. What is the Ministry doing to improve this situation?

Mr. Kisiero: Mr. Deputy Speaker, Sir, on the question of security, we are doing everything possible to enhance security in our country. We have even introduced security in certain areas. We have policemen assisting us in ensuring that our tourists are safe. On the question of roads, the Government is doing everything possible to ensure that our roads are better than in the past so that tourists do not complain.

Mr. Mwaura: Mr. Deputy Speaker, Sir, does the Assistant Minister agree that the hotel rates in this country are extremely high compared to countries like South Africa? If you went to South Africa today, you will find that rates in Class A hotels are affordable unlike in Kenya. Is he also aware that we have connen who collude with the policemen and get bribes from tourists? We have been told this by tourists who have bribed policemen and this is also frightening them. What is the Assistant Minister doing about this?

Mr. Kisiero: On the question of hotels, we know that it is true that after liberalization of the economy, hotels are free to charge what they think is reasonable and we would appeal to the hoteliers to ensure that the rates are not too high especially on telephones. We are informed that most of the hotels charge very high telephone rates.

Mr. Deputy Speaker: Mr. Njenga Mungai's Question for the second time.

Question No. 059

EVICTION OF FARM WORKERS

Mr. Deputy Speaker: Is Mr. Njenga still not there? We will now move on to Mr. Munyasia's Question for the second time.

(Question dropped)

Mr. Munyasia: Mr. Deputy Speaker, Sir, I apologise for coming late.

Question No. 225

OPERATION OF NCPB STORES

Mr. Munyasia asked the Minister for Agriculture, Livestock Development and Marketing:-

- (a) whether he is aware that the National Cereals and Produce Board completed construction of stores at Tamulega in Malakisi Location of Sirisia Constituency sometime back,
- (b) why they have not been used for storage of produce so that the residents of Sirisia can buy their food nearby; and,
- (c) when the stores will begin to operate.

Mr. Deputy Speaker: The Minister responsible is not there and, therefore, the Question is deferred to the earliest convenient date. We will now move to Mr. Nthenge's Question for the second time.

(Question deferred)

Question No. 054

PROVISION OF MATERNITY SERVICES

Mr. Nthenge asked the Minister for Health what action the Ministry is taking to provide maternity services at Kaviani Health Centre in order to alleviate the problems wananchi around Iveti Hills are currently facing.

The Assistant Minister for Health (Mr. Criticos): Mr. Deputy Speaker, Sir, I would like to bring to your attention the fact that the same Question was asked by hon. Ndetei on 3rd November, 1995. Do I have to reply to it? I am asking for your guidance.

Mr. Deputy Speaker: Order! For the benefit of Members and the hon. Ministers, the relevant rule is that the same Question shall not be asked twice in the same Session. We are now in a different Session.

The Assistant Minister for Health (Mr. Criticos): Thank you for your guidance Mr. Deputy Speaker, Sir. I beg to reply.

Kaviani Sub-Health Centre has not been recommended for expansion by the Machakos District Development Committee. My Ministry, therefore, has no immediate plans to construct a maternity ward there.

Mr. Nthenge: Mr. Deputy Speaker, Sir, I am only asking for maternity services at Kaviani Health Centre because the buildings exist. I am only requesting the Assistant Minister to provide a midwife.

Mr. Criticos: Mr. Deputy Speaker, Sir, funds are not available unless the District Development Committee approves this.

Dr. Lwali-Oyondi: Mr. Deputy Speaker, Sir, is the Assistant minister in order to tell this House that funds are not available just for somebody to watch helplessly at a woman giving birth? There is nothing wonderful about not having a maternity ward.

Mr. Criticos: Mr. Deputy Speaker, Sir, we do not have enough medical staff countrywide to furnish any health centre at the moment.

Mr. Nthenge: Mr. Deputy Speaker, Sir, would the Assistant Minister consider taking one midwife from Machakos Hospital to be a resident of Kaviani Health Centre?

Mr. Criticos: Mr. Deputy Speaker, Sir, we will consider it if there are enough midwives at the district hospital who can be made available to this health centre.

Mr. Sifuna: Mr. Deputy Speaker, Sir, since there are buildings at Kaviani health Centre and it does not cost the Government anything in terms of building the health centre, and for the purpose of helping the residents of that area, could he consider removing a midwife from Machakos District Hospital to Kaviani Health Centre so that he can help the people of that area?

Mr. Criticos: Mr. Deputy Speaker, Sir, that question is similar to the one asked by Dr. Lwali-Oyondi. What I am saying is that, I cannot promise this House to do that unless I check and verify those facts. If Machakos District Hospital can spare one midwife for Kaviani Health Centre that will be done very soon. I will investigate the matter and give the hon. Member a reply this afternoon.

Dr. Lwali-Oyondi: Mr. Deputy Speaker, Sir, since we cannot stop women from giving birth in Kaviani and since the buildings are available, can the Assistant Minister allow a private midwife to run this particular maternity?

Mr. Criticos: Mr. Deputy Speaker, Sir, that is against Government's policy. I would also like to bring to your attention the fact that Kaviani Health Centre is only ten kilometres from the main tarmac road which leads to the district hospital.

Mr. Gitau: Mr. Deputy Speaker, Sir, arising from the answer by the Assistant Minister, could he tell this House what the Ministry is doing in regard to recruiting traditional midwives because most of us were born with the assistance of traditional midwives, instead of letting a centre like this run without a midwife?

Mr. Criticos: Mr. Deputy Speaker, Sir, the laid down procedures for our medical staff has got to be adhered to. We have financial constraints at the Ministry and the medical staff that we are training at the moment have been committed to other areas. Therefore, my answer to the hon. Member is that we have to follow the laid down procedures of the Government.

Mr. Nthenge: Mr. Deputy Speaker, Sir, when will the Assistant Minister give his findings to this House?

Mr. Criticos: Mr. Deputy Speaker, Sir, I can give the House the reply this afternoon.

Mr. Deputy Speaker: Bishop Njeru's Question for the second time.

PROVISION OF DRUGS TO HEALTH CENTRE

Mr. Deputy Speaker: Since Bishop Njeru is still not here his Question is dropped.

We will now move on to Questions by Private Notice.

(Question dropped)

QUESTIONS BY PRIVATE NOTICE

CLINICAL OFFICER FOR WAMBA HEALTH CENTRE

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

(a) Is the Minister aware that there is no clinical officer at Wamba Health Centre?

(b) Is he further aware that the ambulance serving the health centre has been withdrawn and taken to Maralal District Hospital?

(c) What urgent action is the Minister taking to ensure that the health centre and the ambulance are serving the people.

The Assistant Minister for Health (Mr. Criticos): Mr. Deputy Speaker, Sir, I beg to reply.

(a) Yes, I am aware that there is no clinical officer at Wamba Health Centre. However, my Ministry will post a clinical officer to this health centre in September, 1996

(b) Yes, I am aware that the ambulance, which is a Land Rover, has been withdrawn from Wamba Health Centre to Maralal District Hospital. It was under utilised on account of low attendance of patients at the health centre. We feel that the vehicle is better utilised at the district hospital, where it is used for distribution of drugs within the whole district.

(c) The health centre is currently serving the people satisfactorily, as it has the necessary personnel and drugs. The ambulance is still serving the people both at Wamba and Samburu District as a whole by distributing drugs. I would further like to point out to the hon. Member that Wamba Health Centre is a kilometre away from a Catholic mission hospital. Also, the turn out at that particular health centre is two patients per day.

Mr. Leshore: Mr. Deputy Speaker, Sir, I would like to tell the Assistant Minister that Wamba Health Centre is serving not less seven dispensaries, which have a population of about 70,000 to 100,000 people in the whole division. I have not complained about drugs. But I would like the Assistant Minister to tell the House who is supposed to prescribe drugs for patients. Is it the clinical officers or the nurses? The personnel he is talking about at the health centre are only nurses and a few subordinate staff. I would like him to tell the House who is supposed to prescribe drugs for patients in health centres. All drugs sent to the health centre are returned to Maralal District Hospital for lack of officers who are authorised by law to prescribe them for patients.

Mr. Criticos: Mr. Deputy Speaker, Sir, as I said earlier on, we have a shortage of qualified clinical officers. At the moment we are waiting for the current trainee clinical officers to qualify from Nakuru Medical Training College in July and August, 1996 so as to post one of them to Wamba Health Centre. But to answer the hon. Member's question, only doctors are supposed to prescribe drugs.

An hon. Member: Who?

Mr. Deputy Speaker: He said only doctors are supposed to prescribe drugs.

Mr. Farah: Mr. Deputy Speaker, Sir, in the first place I wish to correct the Assistant Minister, Clinical officers are legally supposed to also prescribe medicine; he does not know that. Could the Assistant Minister confirm to this House that actually only two patients go to Wamba Health Centre in a day because there is no service? People do not go to that health centre because there are no clinical officers to prescribe medicine for them!

Mr. Criticos: Mr. Deputy Speaker, Sir, that is correct. People go to the Catholic mission hospital. Until a clinical officer is posted to this health centre, obviously we cannot do anything else except to wait.

Mr. Farah: On a point of order, Mr. Deputy Speaker, Sir. This looks like a joke. Just a while ago the Assistant Minister said that the health centre is adequately manned. That means it has the right staff and medicine. But now he is saying that patients do not go to the health centre because there is no staff. He says patients will continue going to the Catholic mission hospital until September, 1996 when the Ministry will post a clinical officer to the health centre. In 1993 the Assistant Minister promised me that there would be an

ambulance in Garissa Provincial Hospital in two week's time, but now three years have passed and nothing has happened. Can he confirm that as a matter of urgency, because we are dealing with the lives of pastoralists who live all around that place, he will have a clinical officer posted immediately to that place from any other place?

Mr. Criticos: Mr. Deputy Speaker, Sir, I cannot confirm that because we do not have any clinical officers at the moment.

Mr. Leshore: Mr. Deputy Speaker, Sir, I would like the Assistant Minister to confirm or deny that this health centre is now used as a centre of all sick people, who are transferred to it just to wait for their death?

Mr. Criticos: Mr. Deputy Speaker, Sir, I did not understand what the hon. Member is trying to imply! Could he repeat his question?

Mr. Deputy Speaker: Mr. Leshore, repeat your question.

Mr. Leshore: Mr. Deputy Speaker, Sir, I would like the hon. Assistant Minister to confirm or deny that Wamba Health Centre is now used as "a mortuary in waiting". This is because most of the critically sick people are transferred from Maralal District Hospital to it, so as to wait for the day when they will be taken to the mortuary! They are not given any food or drugs. They are just damped there.

Mr. Criticos: Mr. Deputy Speaker, Sir, I am not aware of that.

Mr. Mak'Anyango: Mr. Deputy Speaker, Sir, the Assistant Minister did accept that the Land Rover, which had been assigned to this health centre, has been removed because the demand for it was low. What was the criteria used to assign that particular Land Rover to the health centre in the first place?

Mr. Criticos: Mr. Deputy Speaker, Sir, due to lack of vehicles in the Ministry, we found it necessary to use that particular vehicle to distribute drugs in the whole district.

REPLACEMENT OF RADIO CALL SYSTEM

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

(a) Is the Minister aware that the radio call system in Lodwar District Hospital, which has been the nerve centre of communications between Lodwar District Hospital Headquarters and various dispensaries and health centres in Turkana District, has been stolen?

(b) If the answer to (a) above is in the affirmative, can he make sure that this vital equipment is replaced immediately?

The Assistant Minister for Health (Mr. Criticos): Mr. Deputy Speaker, Sir, I beg to reply.

(a) Yes, I am aware that the radio call system, which has been the main means of communication between the district medical headquarters and the rural health facilities was stolen between the 7th and 8th, March, 1996.

(b) This theft is being thoroughly investigated by the police, but if the equipment cannot be found then the Ministry will have to budget for another set in the normal way. However, the police radio call system is currently being used to communicate in emergency cases.

Mr. Imana: Mr. Deputy Speaker, Sir, I think the answer given by the Assistant Minister is unsatisfactory. I would like to ask one question. Is the Assistant Minister aware that the health services and facilities in Turkana are far away from the headquarters? Some are 100 or 200 kilometres away, and the only means of communication is the radio system. There is no telephone recently, we had cases of banditry where some people were shot and they were help up at the dispensary for three days. There was no communication to the headquarters. The cases that were supposed to be attended by the Medical Officer of Health took a very long time. The answer given by the Assistant Minister is that the radio facility will be budgeted for through the normal way. I thought this is a question of priority because it is a question of life and death.

Mr. Mulusya: You are nomads. They do not consider you!

Mr. Criticos: Mr. Deputy Speaker, Sir, what I said earlier is that the radio call system of the police is being used for emergency cases. I would like the hon. Member to tell me when there were cases of banditry there and the police did not take any action.

Mr. Shidiye: Mr. Deputy Speaker, Sir, this is a very serious issue. The Ministry has enough funds, as far as I know, because we recently approved the estimates. It costs very little to repair a radio call facility. Can the Assistant Minister make an undertaking because the Turkanas are suffering? There are cattle raids and cattle rustling, and the lives of those people are in jeopardy. Could he make an undertaking and give some little funds for this course?

Mr. Criticos: Mr. Deputy Speaker, Sir, I would like to inform the hon. Member that we are not talking

about repairing a radio. What we are saying is that the radio has been stolen and the replacement will cost Kshs350,000 only. We do not have any money until the end of the Financial Year.

Mr. Moiben: Mr. Deputy Speaker, Sir, can the Assistant Minister confirm that since Turkana District is an arid area, and realising that from the nearest health Centre at Kibish up to Lodwar is about 400 kilometres, he will be able to provide this radio call facility as a matter of priority and also ensure that enough security is provided to make sure the radio is not stolen?

Mr. Criticos: Mr. Deputy Speaker, Sir, I give the undertaking that in the next budget which is coming very shortly, this radio will be a priority facility for Lodwar, and it will be replaced. It will be done in a few months time, when the budget is passed. We do not have enough funds. The other question which the hon. Member asked is whether the replaced radio will be stolen again. Action has already been taken and guards have been deployed, and investigations are still going on to recover the stolen radio. Maybe, we might be lucky.

Mr. Mulusya: Mr. Deputy Speaker, Sir, it is very saddening to hear from an Assistant Minister that it is going to take another year to include this facility in the proposals that are forwarded by the Ministries for inclusion in the main Budget. He is telling the people of Turkana that they are not going to be adequately served in this year's budget. He has not even seen the estimates which caters for such hospitals. Can he confirm to this House that due to the fact that those people are nomads, they are not considered as part and parcel of other Kenyans, and that is why he does not care about them? The Ministry has been neglecting even the provision of ambulances, doctors and medicines! Can he confirm that because they are nomads, they are not supposed to be considered as part of other Kenyans?

Mr. Criticos: Mr. Deputy Speaker, Sir, the hon. Member should realise that Kenyans are Kenyans so long as they are citizens and they are within the Kenyan boundaries, whether they are nomads or not. We cater for all of them. That is untrue. Money will be made available in the next budget for this radio facility. **Prof.**

Ouma: Mr. Deputy Speaker, Sir, the lives of the people of Turkana are worth more than Kshs350,000. Because of the insecurity in that place, the police radio call is busy doing other things. Can the Assistant Minister consider giving the people of Turkana an immediate service of the new radio call, unless he is confirming that they are worth less than Kshs350,000? This is execrable during this day and age, unless he is confirming what hon. Mulusya said, that because they are nomads, they are of less use. Are these lives worth more than Kshs350,000? Let him confirm or deny if he is going to give them a radio call facility.

Mr. Criticos: Mr. Deputy Speaker, Sir, let me assure this House that I do not like to speak untruth in this House. What we have said is that the police radio call is being used to facilitate the hospital needs. That is how it is used. I will not---

Mr. Farah: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Assistant Minister to tell us that the police radio call is being used now, when the hon. Member from the area has just told us that when there was a problem between the Pokots and the Turkanas resulting in killings and injuries, it took them three solid days before the information reached Lodwar? Can the Assistant Minister confirm that? We are soon going to see a situation where a human being is being given a surgery and the doctor cuts the abdomen and says: "Because we do not have certain drugs, take the person back and come back after six months, until we get sufficient funds in the next budget". That is essentially what it means by saying: "Wait until the next budget".

Mr. Criticos: Mr. Deputy Speaker, Sir, I am not aware that the police did not use the radio.

Mr. Deputy Speaker: Mr. Mwaura!

Mr. Icharia: Mr. Deputy Speaker, Sir, the Assistant Minister is not taking this matter seriously. Can the Assistant Minister assure this House---

An hon. Member: Is the hon. Member speaking, Mr. Mwaura?

An hon. Member: On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Order! Order! Order! I meant, Mr. Icharia.

Mr. Icharia: Mr. Deputy Speaker, Sir, can the Assistant Minister take this matter a little more seriously and try to look for contingency funds, because this is an emergency? The lives of Turkana people are as important as the lives of other Kenyans. He is taking this matter very lightly. Can he find money from contingency funds and supply the equipment immediately, and if possible tomorrow.

An hon. Member: No, it should be immediately!

Mr. Criticos: Mr. Deputy Speaker, Sir, I am willing to confirm with my Permanent Secretary, and if there are enough funds, I will give an answer to this House next week.

Mr. Mutani: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Information and Broadcasting the following Question by Private Notice.

(a) Is the Minister aware that TV viewers, who depend on Nyambene Transmission Station, i.e. Isiolo, Meru, Nyambene and Tharaka-Nithi Districts, have been receiving very poor transmission from December, 1995 to date?

(b) What is the Minister doing to rectify the situation? I would also like to know why the Minister chose not to serve me with a written answer.

An hon. Member: It is not necessary!

Mr. Deputy Speaker: Is it a Question by Private Notice?

Mr. Mutani: Yes, I have asked the Question.

Mr. Deputy Speaker: You should know that with Questions by Private Notice, it is not necessary to get written answers.

Can we have the Minister for Information and Broadcasting's response?

An hon. Member: He should be arrested for contempt of court.

The Assistant Minister for Information and Broadcasting (Mr. Nassir): Mr. Deputy Speaker, Sir, I will reply tomorrow, when I get proper information.

(Laughter)

Dr. Otieno-Kopiyo: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Assistant Minister to sit here for nearly five years without answering any Question and the first opportunity he gets, he ducks away from it?

(Applause)

Mr. Deputy Speaker: The Question is deferred. Next Order.

(Question deferred)

MOTIONS

REVIEW OF CONSTITUTION AND ELECTORAL LAWS

Mr. Wamalwa: Mr. Deputy Speaker, Sir, I beg to move the following Motion:-

THAT, noting that the present provisions of the Constitution have not secured the establishment of a truly independent Electoral Commission; aware that the present Electoral Commission was appointed before the election of the multi-party Parliament; recognising that the legitimacy of the Electoral Commission depends on the confidence accorded to it by all political parties and the public; and aware that the pattern and basis of establishing electoral boundaries have to be fair and just; this House resolves that the Constitution and electoral laws be reviewed and accordingly amended to establish an independent Electoral Commission acceptable to all parties with a view to ensuring free and fair elections.

(Applause)

Mr. Deputy Speaker, Sir, I would like to take this opportunity to allay the fears of all hon. Members, who rightly believe that the Constitution of a country is the basic law of the country and it should not be amended at every juncture to accommodate the whims of whoever may wish. But at the same time, because it is the basic law of the land, when time and conditions arise that it be amended, it should be done so, but should be amended with all seriousness and, if possible, with a general agreement of the whole House.

We know of countries where very elaborate Constitutions were written. For example, like the United States which was written by none other than Thomas Jefferson, perhaps one of the most brilliant people ever born.

At the time the Constitution was inaugurated, if anybody mentioned that this Constitution would be subjected to so many amendments, at that time, I think he would have been seen as flying in the face of intellectual reality. Yet, the United States Constitution has been amended many times as conditions and situations dictated the

amendments to be effected. So, we are not taking the view of amending the Constitution as a frivolity. We have only come to this because conditions obtaining under the new multi-party system now and under the new multi-party status dictate that certain parts of our Constitution be looked at again in order to bring it or make it ship-shape and bring it to grips with the modern day realities.

When Section 2(A) was removed from the Constitution, it ushered in the establishment of more political parties other than just KANU. That amendment, as important as it is, as a great landmark as it is, it did not in itself bring about a truly multi-party atmosphere that we can say now all the dictates of multi-partyism have been catered for. For example, I can mention in passing, with the advent of multi-partyism, the Office of the Leader of the Official Opposition was created which had not been there before. This office carries certain rights and privileges with it. But I regret to say that the first Leader of the Official Opposition, the late Jaramogi Oginga Odinga, died before he enjoyed any of the privileges and rights attached to that office.

(Applause)

Mr. Deputy Speaker, Sir, we were told that the Motion for the establishment of those provisions was still pending in the Speaker's Committee. It is still pending there up to now. In this House, it is not possible, given the present numerical set-up, for either side of this House to effect a constitutional amendment by itself. KANU, with its numerical majority, cannot effect a constitutional change by itself, neither can we on this side of the House. So, for any constitutional amendment to be effected in this House, that amendment has to enjoy the goodwill of both sides of the House.

An hon. Member (inaudible)

Mr. Wamalwa: Yes, I would be happier to be addressing my opposite number if he was in his seat. So, even the Government itself is going to find it necessary to effect certain constitutional amendments. If those amendments are truly necessary, and we on this side of the House see that they are necessary, I am sure that we shall not withhold our support when those amendments come. Therefore, I think it behoves the Government also to extend a gesture of goodwill towards the Opposition when they feel strongly about certain constitutional amendments.

Section 41 of the Constitution states, and I will quote:

"That there shall be an Electoral Commission which shall consist of a Chairman and not less than four other members appointed by the President".

This Motion does not seek to take away the Constitutional rights of the President to appoint an Electoral Commission. It only seeks to give the Opposition parties a chance to make an input in that process of constituting the Electoral Commission. We, on this side of the House, would like to look upon an Electoral Commission as our Electoral Commission because we have some input in that Electoral Commission. All this Motion seeks is that the Opposition parties be given an opportunity to suggest names of prominent Kenyans of impeccable reputation, who can serve on the Electoral Commission, and if each party puts in two or three names, the President will then be at liberty to constitute the Electoral Commission from that pool of names that shall have been submitted by the various parties.

(Applause)

This is all that this Motion really seeks, and we are not even suggesting that that Constitutional amendment be brought here in an isolated fashion just to effect that. We know that before the next general elections, there are going to be a few amendments to the Constitution, hopefully brought by the Government itself. This could be one of those constitutional amendments. I believe that it will be better to undertake a fairly comprehensive amendment of the Constitution instead of piecemeal amendments. When that time comes, when the Government feels that certain aspects of the Constitution are due for amendment, we would like the setting up of the Electoral Commission to be among those amendments to be effected. Mr. Deputy Speaker, Sir, the Motion states that for the Electoral Commission to function properly, it must enjoy the support and confidence of all parties and the public.

Mr. Deputy Speaker, Sir, the Electoral Commission is a very important organ for democratic governance because it has tremendous responsibilities. This House may pass a Motion or a Bill authorising the creation of new constituencies. It will become incumbent upon the Electoral Commission to determine how those new constituencies will be carved out. Now, for a commission entrusted with such sensitive work, it should enjoy the confidence not just of both sides of the House, but the confidence of all Kenyans. All Kenyans should feel that this Commission is going to do the job impartially and fairly.

There are electoral commissions in other parts of the world that we know of that have acted very unfairly.

We do have, in electoral terminology, the word "gerrymandering." Gerrymandering came about because of a chairman of an electoral commission called Gerrymandering, who carved out a constituency to take care of certain interests of his until he became a wedge; a very long one an eel-shaped constituency, leaving out the areas where he thought he did not have support, and fetching little areas at the furthest corner where he thought he had support, hence the term gerrymandering. We want to have an electoral commission that is incapable of gerrymandering; that nobody will suspect of gerrymandering.

(Applause)

We want an electoral commission which, when it announces it is going to create new constituencies, we know that justice is going to be done and we do not have to quibble about it.

Mr. Deputy Speaker, Sir, in the life of the current Electoral Commission, we have seen a few odd things. I am not against any particular member on the current Electoral Commission, but I am saying that we have seen a few old things that have left us wondering. For example, take the case of the Lugari by-election; out of the blues, the Electoral Commission decides that it is going to create new polling stations. And it places these new polling stations next to areas where it was perceived a certain party had a lot of support to make it easier for those people to cross over and vote. This happened, and hon. Dr. Wameyo was there; I caught him distributing money all over the place.

(Laughter)

Mr. Deputy Speaker, Sir, the most interesting thing about these new polling stations was that when we went there at midnight, because the explanation of the Chairman of the Electoral Commission was that he was taking polling stations closer to the people, we found that the voters were still stranded there. If they were local people to whom the polling stations had been taken, they would have already been in their homes. The truth of the matter is that they had been brought from very far to vote at these polling stations, and their transport had not come back on time. So, they spent the night there! And the results were very revealing. Those were the only two polling stations in which KANU won in Lugari, and they also had a 100 per cent turn-out!

Mr. Deputy Speaker, Sir, another oddity that we have observed is the creation of new urban councils in mid-terms between general election. One would have thought that if a local authority is upgraded to the status of an urban council in mid-terms, the *status quo* should obtain until the general elections when more councillors can be elected. I am referring in this case, specifically, to Malava Urban Council. Malava Urban Council elevated to that status in mid-term, and elections were ordered and conducted in a very funny way.

I believe that any Parliament, apart from fulfilling and responding to the pressures of the present, must also have an eye on the posterity and future. Today, as we stand on the brink or on the threshold of the next millennium, this House must pass laws that are going to be useful and take care of situations in this country right into the middle of the next century. I say so because there is no guarantee that KANU will always be in power, and we shall always be in the Opposition. It is quite possible; indeed, it is probable that at the next general elections things might reverse.

(Applause)

And should that be the case, the other side will find us always ready and willing to listen to them; always ready and willing to do what is right by Kenyans, and not necessarily what is right by our parties.

Whenever we talk about a constitutional amendment, or even just the mention of the Constitution, the side opposite gets very jittery. The Constitution is the property of this House and the property of all Kenyans. And as important as it is, the Constitution is something we must talk about every day, something that we must examine every day, and if there are any additions or deductions to be made, they should be made without any fear.

It would be terrible if the KANU Government were to go down in history that after accepting multi-partyism, they remained reluctant to make any constitutional amendment that would make Kenya a truly multi-party country.

The removal of Section 2(A) and the holding of multi-party elections *per se* did not, and need not, guarantee democracy in this country. Democracy is only guaranteed when the laws of the land respond to the wishes of the people; respond to the pressures of the day and apart from, giving currency to the views of the majority, that the views of the minority are also accommodated. That is the basis of democracy. It is not enough for the majority to prevail; the views of the minority must also be accorded accommodation. This is the reason

why when we talk about these things, we are not just thinking about ourselves we are thinking about the whole country and we are not just thinking about the present, but we are also thinking about the future.

I have also noticed another oddity and this is where the electoral laws must also be looked at and be reshaped. In the last by-elections in Meru, the Electoral Commission published a timetable for campaign rallies and we went to one of these campaign rallies because it was licensed. When we got there, we found that the local Provincial Administration, the DC, had cancelled the rally at night. So, one wonders! I thought the Provincial Administration had been removed from running of elections, and that exercise entrusted 100 per cent to the Electoral Commission. Yet you still find the overbearing hand of the Provincial Administration meddling in the running of elections in this country. We went to Meru to campaign for a council candidate but when we got there the rally had been cancelled at night and we were confronted by the police, pushed around and asked to leave. We want an independent electoral commission that will run the election and not depend or be subject to the Provincial Administration.

I had an occasion recently to talk to the Chairman of the current Electoral Commission. He had great ideas, and some of those ideas are very good; they think about the future. When time comes for those ideas to be turned into legislation, I want to assure this House that we shall support them because we are not interested in scoring partisan marks. Mr. Deputy Speaker, Sir, we are interested in the process of preparing Kenya for its forward march into the next century.

When we in the Opposition seek a role in the composition of the Electoral Commission, we are not asking for what is impossible or unreasonable. We are only asking for what has been done elsewhere, even in less civilized countries than Kenya. Those of you who have been following the elections in Uganda will notice that the Electoral Commission in Uganda has been really independent. It has had occasions to criticise President Museveni and his party for overstepping certain lines of campaign. I wonder whether the current Electoral Commission here would have the guts to criticise President Moi for overstepping the lines of decency.

In Mozambique and Malawi, the constitution of the Electoral Commissions in those two countries had the input of all the parties because they are there to serve all the parties and not just one party. I would also have thought that if you want to show that you are capable of winning fairly, then, you should not arrogate yourself the exclusive rights of nominating the referee all the time. I think you should give a chance to the other people also to have a say in who is going to be the referee if you are really confident and sure of your chances. The continued resistance by the Government to the suggestions that the Electoral Commission should be a creature of all the parties in this country suggests that the current Government is afraid of a truly independent Electoral Commission. If they are afraid, then we are bound to ask the question, why are they afraid if they are sure of winning and that they also enjoy the support of all Kenyans; why are they afraid of a truly independent Electoral Commission?

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): We are not!

Mr. Wamalwa: The Leader of Government Business assures me that they are not, and I hope, therefore, that he is going to support this Motion and that---

(Applause)

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): On a point of information, Mr. Deputy Speaker, Sir. I want to inform my good friend, hon. Wamalwa, that he has no monopoly of knowledge.

Mr. Wamalwa: I did not hear what the hon. Vice-President and Minister for Planning and National Development said, but those who heard have told me that it was of no value.

(Applause)

The Vice-President and Minister for Planning and National Development is somebody whom I respect because he is somebody whom I have known for so many years, and I think he was not really serious about it. Be that as it may, I would like to sum up simply by saying that this Motion does not seek to take away the President's powers of constituting the Electoral Commission. It only seeks an accommodation for the Opposition to have an input in selecting a pool of names from which the President can constitute an Electoral Commission. I do not find anything terribly threatening about such a proposal, and I will expect the Government side to support this Motion when it comes to voting.

With those few words, I beg to move.

I now call upon hon. Kibaki to second the Motion.

Mr. Kibaki: Mr. Deputy Speaker, Sir, in seconding this Motion, I hope the points that have been raised by the Mover of the Motion have been taken seriously by the Members on the Government side. It is important that in this country, the Government and the Opposition do those things that we say we are going to do. One of the things that the Government of Kenya has told the world, and more recently has told all those they have been negotiating for aid with, is that they are committed to promoting democratisation of this nation.

In a paper published recently about policy matters, they do repeat the same thing in the introductory part, signed the by President of this Republic, namely, that they want to go on full speed with the democratisation of the nation. The starting point on democratisation is to accept that you will have an independent Electoral Commission. All those countries which we deal with, and who give us assistance, have independent Electoral Commissions in their countries. They know what an independent Electoral Commission looks like and, above all, they know that it cannot be headed by a rejected High Court Judge. They also know equally that in their own countries, you cannot have an Electoral Commission which is told by the Prime Minister or the President, or whoever is the head of Government, what to do. Our own Electoral Commission is told what to do by the Chief of the Executive. Indeed, if you remember what we read in the papers about a month ago, when the Head of State, in his capacity as head of Government, said that he has a problem in allocating the 22 seats which the Commission is supposed to be doing; what does that mean in simple English? It means that he is the one who is allocating the seats. It was also stated that he stated that he needs another 60 seats so as to know how to allocate them. Looking at what is going to happen in the future, the Commission is going to be dictated to. I hope no hon. Member from the Government side will demean himself by standing up here and try to give another meaning to those very simple words of English and Kiswahili which we clearly understood.

Equally, it is very clear that unless we have an independent Electoral Commission, then we are not serious about what we are saying. Let us start there. Why do we need an independent Electoral Commission? In pursuance of the central point in democracy, your vote and my vote and every other citizen's vote should be equal in their weight and authority in determining matters in the nation. That is the central point of democracy, and anybody who does not believe in that is not a democrat. He is a pretender. It is for that reason that when this Constitution was being written, we took the phraseology of that part which deals with the boundaries of constituencies and which guides the Electoral Commission; that is Section 42. It says: "The constituencies will be as nearly equal as possible." That is the same phraseology that is used in all democratic countries in the world, and the Attorney-General is fully aware of it. There is no point in pretending otherwise. Therefore, the present problem which we have in this country is that the constituencies are not as nearly equal as possible in population. Therefore, it is important that we have an Electoral Commission which shall be guided by Section 42 of the Constitution and not by any other thing. That is what is of importance. Our Electoral Commission must, therefore, be independent to be able to follow that particular part.

Mr. Deputy Speaker, Sir, when I spoke to two of my colleagues on the Government side, they asked me why do we need to change. If there is no crisis now, that is the right time to look seriously into the institutions we have now, and the institution we have called the Electoral Commission is due for that review. Indeed, its time is almost exhausted and it is due for that review. As the hon. Wamalwa has said, all we are saying is that the people of Kenya, through their various political parties, should be able to propose some names which should be taken into consideration in choosing members of the Electoral Commission. Then we shall all have an Electoral Commission in which we can have confidence.

Mr. Deputy Speaker, Sir, in the distribution of these seats which are going to be distributed, if we do not utilise population as a criteria, as well as other criteria that is in our present Constitution, it means then that everything is left to the discretion of whoever happens to be in authority at a particular time. It is in the interest of this nation that we do not continue to nurse the grievance which we now have and it is a serious grievance. When you have a constituency with 100,000 voters and another one with 15,000 voters, it is a genuine grievance, and if we do not recognise it, but choose to hide our head in the sand, one day we shall be forced to recognise it. It is much better we act early and there we would be seen to be fair. Many hon. Members on the Government side represent enormous constituencies which truly should be re-arranged so that people are effectively and properly represented in a situation where every voter has nearly equal authority as every other one. That is what we must pursue and if we do not, we are mistaken. What I am pleading for is that we all agree to look at this subject with honesty and dignity. This is not a question of the Opposition verses Government, but it is a question of what should be done for the nation, so that Kenyans can feel happy that the Government is looking into their needs, and this is a genuine grievance they have now and it has to be put right.

Mr. Deputy Speaker, Sir, may I also say and emphasize that until we de-link KANU from the Administration, the Electoral Commission today could have been the salvation of Kenyans, but it cannot be

because it is not allowed to supervise General Elections. It does not supervise General Elections. If it was allowed to supervise General Elections, then there might have been some hope. But as it is now, it is truly controlled by the Administration and there is no point in pretending because we have all experienced these things from the last General Elections, in the bye-elections and in the coming General Elections, and in the bye-elections which are going to come in June, 1996, we know and we can see that they are all being supervised by the Administration. The Electoral Commission must have the authority to recruit its own staff and, above all, it must have the authority to direct its supervisors on how to supervise the voting exercise. Under the pretext that chiefs, assistant chiefs and district officers (DOs) are maintaining security, we saw in the bye-elections which we have been through recently that those people come to the polling stations and interfere with the voting, and the Electoral Commission is incapable to do anything because it has no authority to order them off the polling stations. Until those agents of the Government, who have turned out to be agents of KANU, are ordered away from the polling stations by the Electoral Commission, that Electoral Commission has no power and ability to supervise a free and fair election. Even if we are blaming it, it is the law that is also faulty, and, therefore, we must amend it to give them the power to be able to supervise elections effectively and truly.

Mr. Deputy Speaker, Sir, I therefore, want to recommend that we all support this Motion. I beg to second.

(Applause)

(Question proposed)

The Minister of State, Office of the President (Mr. Kones): Thank you, Mr. Deputy Speaker, Sir, for giving me an opportunity to also contribute to this Motion.

Mr. Deputy Speaker, Sir, I would like to thank the hon. Member who moved this Motion. But I would want to propose certain amendments. We, as a Government, just as much as the Opposition are concerned, and we want to see a totally independent Electoral Commission. I would like to propose some very few amendments which will still carry the same theme, that the hon. Member who moved the Motion wanted, but without necessarily trying to imply that the Electoral Commission is not independent yet.

Mr. Deputy Speaker, Sir, I would like to propose these amendments:

First, by deleting all the words between the words "Constitution and the word "the" in the first line.

Hon. Members: You do not know what you are amending.

The Minister of State, Office of the President (Mr. Kones): I will read the Motion as amended. I am sure a lot of you may not be able to follow.

By deleting the words "aware that the present Electoral Commission" appearing in the second and third lines;

By deleting the word "confidence" and the word "all" appearing in the fifth line;

By again deleting the word "Constitution" appearing in the seventh line;

By deleting all the words after "the amended" in the eighth line up to the word "parties" appearing in the ninth line.

Then insert the words "objective of the" between the words "the and the present" appearing on the first line. For those of you who are a bit slow to catch up, I will tell you what it means later on;

(b) Insert the words "was to secure" immediately after the word "constitutions" appearing on the first line;

(c) Insert the words "notwithstanding the credible performance by the present Electoral Commission which" between the words "Electoral Commission" in the second line and the word "was" in the third line;

(d) Insert the words "general acceptance" between the word "accorded" appearing on the fifth line;

(e) Insert the word "periodically" between the word "reviewed" and the word "end" appearing in the seventh line, and

(f) Insert the words "where necessary" between the word "amended" in the eighth line and the word "with" appearing on the fifth line.

Mr. Deputy Speaker, Sir, I want the amended Motion to read as follows:-

"Noting that the objective of the present provision of the Constitution was to secure the establishment of the truly independent Electoral Commission; notwithstanding the credible performance by the present Electoral Commission which was appointed before the election of the multi-party Parliament; recognising that the legitimacy of the Electoral Commission depends on the general acceptance accorded to it by political parties and the public and aware that the pattern and the

basis of establishing electoral boundaries have to be fair and just; this House resolves that the electoral laws be reviewed periodically and accordingly amended where necessary with a view to ensure that free and fair elections".

Mr. Maore: On a point of order, Mr. Deputy Speaker. I rise on a point of order under Standing Order No. 41 in regard to the issue of amending Motions whether in your own judgement you did see the amended Motion and whether it complies with the spirit and letter of intent of the original Motion. We want your guidance on that.

Mr. Deputy Speaker: I am satisfied with the requirements of the Standing Order No.41.

The Minister of State, Office of the President (Mr. Kones): Mr. Deputy Speaker, Sir, going back again to thank the Mover of this Motion, like I said initially when I moved the amendment, I said the spirit of this House is to have a free and fair Electoral Commission. We, in the Government, as much as you in the Opposition, are equally concerned and we would like to see an independent Electoral Commission.

Mr. Deputy Speaker, Sir, the appointment of the Electoral Commission is vested in the Constitution and in the hands of the President. The present Commission is appointed according to the Constitution. What we have to do is to make sure that the Commission is operating independently. There could be certain areas of the law that we feel need certain amendments, and this is what we are saying has to be done periodically as and when there is time and need.

Mr. Deputy Speaker Sir, we recognise and we realise that there are certain sections of the law that may need certain amendments to make it more free and more independent for the Commission to carry out its duties. These are the areas that we would like to address ourselves to and indeed, we must do that. I would be doing somebody else's job by starting to propose what these laws have to be. We would like to commend the Electoral Commission for the excellent job they did in the 1992 General Elections. I am saying this given the fact that it has not been done since Independence. Since Independence, elections used to be supervised by a Supervisor of Elections. It is a big transition suddenly to have an Electoral Commission to put in place machinery to conduct successfully a multi-party election to a situation now where we are sitting on opposite sides of the House and deliberating on the issues of this country.

Mr. Deputy Speaker, Sir, I think we should give credit where it belongs. We are not saying that the Electoral Commission, with all the difficulties, did marvellously well, but we are saying they tried their outmost best. We need to congratulate them and give them more powers, strength, confidence and operational levels and we want to amend the law so that they get more powers to do better things. We cannot condemn, in totality, an Electoral Commission that has conducted elections. We complained on the Government side that the Electoral Commission was not fair, and the Opposition did the same. In all fairness, they did what they were supposed to do, and they did it quite well.

Mr. Deputy Speaker, Sir, when we talk of the distribution of the new constituencies, hon. Kibaki said that the President was talking like he is the one who is going to dish out the constituencies. It is not true because Mr. Chesoni himself has repeated many times and talked about his inability to distribute the 22 seats. He has said he would love to have another 50. That is Mr. Chesoni saying that. The President was only sympathising with him. Mr. Chesoni talked about additional constituencies in my own district when he was there, and that was three or four months ago. The President talked about it only two weeks ago and he did it in Central Province because he wanted hon. Kibaki to get more constituencies.

Mr. Deputy Speaker, Sir, I think let us all be fair. When we talk of a fair Electoral Commission, we are also talking of fair distribution of extra constituencies and if we give the Electoral Commission the support that it needs, surely, enough, they need this support and if they get the support, definitely, I think Mr. Chesoni is going to be able to distribute these constituencies fairly.

Mr. Deputy Speaker, Sir, when we talk of the Constitution, I think we ought to be a bit careful because today we are talking of an amendment to the Constitution and we know it will not receive the two-thirds majority that we want. Let us talk of smaller amendments within the law that are able to be passed by a single majority and we carry on with that instead of coming up with all these transitional constitutional amendments, which we know is not going to succeed. The best thing is that we should go for small piecemeal amendments which are going to see us through until we are able to get a two-thirds majority to pass it because, as of now, we do not have that provision. But we are saying and recognising that there is need for certain amendments in the laws.

Mr. Deputy Speaker, Sir, with these few remarks, I would like to move the amendment.

The Attorney-General (Mr. Wako): Mr. Deputy Speaker, Sir, I beg to support the Motion as amended---

Mr. Deputy Speaker: Order! Order, hon. Wako. The Motion has not been amended. I think you are supporting the proposed amendment.

The Attorney-General (Mr. Wako): Mr. Deputy Speaker, Sir, I wish to second the proposed amendment. The spirit behind the Motion as I understand it is that we have an independent Electoral Commission, but more important than that, that we have free and fair elections.

Mr. Deputy Speaker, Sir, the proposed amendment takes into account the fact that, the current Constitution, indeed, has provisions which secure the establishment of an independent Electoral Commission. This country began in 1963 as a multi-party State, then it became, *de facto*, again a multi-party State and then for a long time we were a *de facto* one-party State until 1982, when we became a *de jure* one-party State. The provisions which relate to the Electoral Commission throughout this period, right from Independence, have been similar. It is only in the 1963 Constitution that the appointment of the Electoral Commission was by virtue of office. In other words, the Chairman was the Speaker of the Senate; the Vice-Chairman was the Speaker of the House of Representatives, and so on. But even then, it was the Governor-General who appointed it. When this country became a Republic, the current provisions then came into play and they have been in play throughout this period. Therefore, we should take into account that the current provisions are not provisions which were in place when this country was a *de jure* one-party State. The current position as regards the appointments and functions of the Electoral Commission have been there and, in fact, were in place when this country was indeed a multi-party State. That is the first point. Throughout this period, the Head of State has had to appoint it.

Mr. Deputy Speaker, Sir, in 1964, when the appointment moved from the Governor-General to the President, the provision in the independence Constitution which said each region must be represented, was actually respected in practice. In other words, although the President was appointing an Electoral Commission, all these commissions which have been in place, there has always been at least one representative from each province and that was the position until, of course, 1991, when after he had appointed the eight members of the Electoral Commission, account was taken of the multi-party State and that is why the current Electoral Commission has more than eight other members.

The Mover of the Motion did say that his main aim is that the Opposition must have a say in the appointment of the Commission. Right throughout this period, even when this country was a one-party State, the processes of the President appointing a member was by way of consultations; by way of checking on the integrity of the people appointed, and so on. I can even add that when the time came when we were to have extra members, indeed, consultations took place with the leaders of political parties; I can prove it.

Mr. Shikuku: On a point of order, Mr. Deputy Speaker, Sir.

An hon. Member: You have been given!

Mr. Shikuku: But I am shouting more so that he resumes his seat. Is it in order, Mr. Deputy Speaker, Sir, for the Attorney-General to mislead the House that consultations took place between the President and the leaders of political parties, when he knows very well we were in his office; the late Odinga, the late Muliro, myself and Kibaki? We were trying to consult with him to get a pool of names from which the President could appoint the Commission. There was no consultation when it came to the appointment of these people, they had already been appointed.

The Attorney-General (Mr. Wako): Mr. Deputy Speaker, Sir, indeed, those discussions took place. Indeed, they submitted a very deep pool of names and, indeed, thereafter, additional appointments were made.

Mr. Deputy Speaker, Sir, on the issue of security and independence of the Electoral Commission, we have constitutional provisions which provide for the security of tenure of the members of the Electoral Commission who have been appointed. They are there in place for the period they are appointed; they enjoy the same security of tenure as that which pertains to Judges of the High Court, the Controller and Auditor-General and the Attorney-General. On the question of equality of seats and so on, again the issue that hon. Mwai Kibaki did refer to is true, that, that provision is there in the Constitution. Again, that provision has been there in the Constitution right from 1963 up to 1996, as I am speaking now. It is Section 43, sub-section 3 of the Constitution. But it does say that the Commission is at liberty to depart from that principle on specified grounds, and lists there six specified grounds which must be taken into account when the Commission is departing from that principle. What I am trying to say is that it is not necessary to touch the Constitution at this time, to ensure a free and fair election.

It may well be very necessary to touch provisions of the law and so on, and the Government is open to suggestions on how the law which relates to election can be amended to even further ensure, or further guarantee a free and fair election.

Mr. Deputy Speaker, Sir, I have been reading the reports of the various observers of the by-elections which have taken place since the General Elections, and by and large, you will find that the matters for which they complain are matters which can either be administratively dealt with, or can be dealt with by simple amendments to the existing election laws, rather than touching on the Constitution. In other words, I support the proposed

amendment because it does not touch the Constitution. The constitutional framework is there for an independent Electoral Commission.

What is required now are specific proposals on the election laws themselves, where we think they can be strengthened to ensure a free and fair election. But even amendment to the election laws, to me, is not sufficient because we all know that free and fair elections can be very much impeded if elections are not conducted in an atmosphere of peace. Law and order and peace have to be secured to have free and fair elections.

The climate of violence, and the climate of intimidation during election period must be dealt with if we are to have a free and fair election. Therefore, at the end of the day, it is really for all of us, leaders, to ensure that not only ourselves but our followers do not promote intimidation and, do not promote violence in the political processes and, in particular, during the election time in this country, because, it is these attitudes, more than anything else, that impede a free and fair election in any country.

With these remarks, Mr. Deputy Speaker, Sir, I totally support the proposed amendment.

*(Question of the first part of the amendment,
that the words to be left out
be left out, proposed)*

Mr. Orenge: Thank you very much, Mr. Deputy Speaker, Sir. I am grateful that you have given me this chance just after the Attorney-General has spoken. I saw hon. Mudavadi in the House earlier on, but I think he has left. When I saw him, I thought that if the Attorney-General was for liberalisation to the same extent to which his colleague, the Minister for Finance, has carried out the process of economic reform in the country and in his Ministry; if the Attorney-General was of the same mind and position, we would have probably achieved political reforms in the political front at the same pace with economic reforms. It would, therefore, mean that, probably, we would require the removal of the Attorney-General before we can achieve any political or constitutional reforms.

Mr. Deputy Speaker, Sir, looking at this amendment as I stood up, I stood to oppose the Motion proposed by hon. Kones. However, it is impossible to get blood out of stones and, when this Government makes concessions, sometimes it is good to support them in order to encourage them to come out with amendments of the nature we are demanding. But my problem is that, if you look at the original Motion moved by the Leader of the Official Opposition, the thrust and intent of that Motion is that the House should resolve that the Constitution and electoral laws be reviewed and be accordingly amended to establish an independent Electoral Commission. The intention of that Motion was that, unless we can put in place an independent Electoral Commission, then we cannot have free and fair elections. In fact, the proposed amendment does not talk of the need to secure the establishment of an independent Electoral Commission.

Earlier on, the Leader of the Official Opposition did point out cases why we need an independent Electoral Commission. I am convinced that unless we can have a mechanism in place to have an independent Electoral Commission, we can never have free and fair elections. You can have the best laws in the land but if the appointment of the Commissioners in itself is not fair and does not involve the participation, not only of the public but of all the interested parties, you cannot have a truly independent Electoral Commission.

I want to give an example of this. Under the present Constitution, the President appoints Judges of the High Court of Kenya after getting advice from the Judicial Service Commission. Even with those provisions in place, we still do not have a truly independent Judiciary because the laws in place do not secure the freedom and independence of the Judiciary. One example that I thought of is that even in the one-party era, after the election of the President--- And it is good to point out that by the Constitution Act No.1 of 1964, the President of this nation was elected by this Parliament, which constituted itself as a college. However, ever since that time, whenever a President of this country has been elected, he is sworn in, in public as the President of the Republic of Kenya. In 1992, after the general election, the President of this nation was sworn in, in a private ceremony at State House. If the Chairman of the Electoral Commission was an independent Chairman of the Electoral Commission, he would not have allowed himself to be invited to a private ceremony in State House to swear in the President of the Republic of Kenya who had been elected by the public. If he had been elected by the public, he would have been sworn in at Uhuru Park, and not at State House.

Mr. Deputy Speaker, Sir, we do not want to discuss the present Commissioners of the Electoral Commission. However, I am sure that if the full rigours of the law and the demands of that office were put in place, Judge Chesoni would not have been the Chairman of the Electoral Commission. That is a fact!

(Applause)

He knows it, and that is why he cannot act truly as an independent Chairman of the Electoral Commission. He knows it! The Attorney-General is here and he knows why Judge Chesoni is not a judge of the High Court or a judge of the Court of Appeal. He knows it and he should tell us why somebody who was disgraced as a Judge of the High Court of Kenya is given the responsibility to chair a constitutional body like the Electoral Commission.

The Attorney-General (Mr. Wako): On a point of information, Mr. Deputy Speaker, Sir.

Mr. Orengo: Mr. Deputy Speaker, Sir, I know the Attorney-General only too well. I know his information has no relevance or consequence at all. Even in the case of murder like that of Dr. Ouko, the only information he can give me is that the file is open, and yet it relates to the violation of the right to life. The only thing he can tell me is that, as far as Ouko is concerned, the file is open.

The Attorney-General (Mr. Wako): On a point of information, Mr. Deputy Speaker, Sir.

Mr. Orengo: I refuse! The Electoral Commission should be in charge of the entire election programme. When the election programme or time-table is announced, all Government functions, including those that relate to the Kenya Broadcasting Corporation (KBC) should be managed and supervised by the Electoral Commission, if we had a truly independent Commission. The law needs to be reviewed---

The Minister for Information and Broadcasting (Mr. Makau): On a point of order, Mr. Deputy Speaker, Sir. Hon. Orengo is misleading this House. Could he cite a case anywhere in the world where the state broadcasting media has been in the hands of any so called independent Electoral Commission?

Mr. Orengo: That is not a point of order. Let me tell him. Today, if you watch the debate on national radio and television, Uganda, where all the candidates will have time to give their views, they are given equal time. In Tanzania during the elections, the Electoral Commission took time---

The Minister for Information and Broadcasting (Mr. Makau): Mr. Deputy Speaker, Sir, my point of order was very specific that the hon. Member is misleading this House. I wanted him to cite a case where Electoral Commission has taken over the broadcasting of that country. That is all I wanted to hear.

Mr. Orengo: When a Minister does not know the difference between a question and a point of order, it is disastrous, but I will leave it at that.

(Applause)

But the cases are there in South Africa, Uganda and Tanzania. If you look at the situation, you will find that that is the position. Even in the licensing of meetings, the Electoral Commission should be responsible for political meetings because as hon. Wamalwa did say here at the beginning, we went for a campaign rally in Meru at Kinoru Stadium which was known to the public and it was known that there was an election going on, but at midnight the local district commissioner cancelled the licence. Can we say that in that atmosphere there can be free and fair elections? We need to amend the laws to ensure that during the election exercise it is the Electoral Commission which should be responsible.

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

Mr. Deputy Speaker: Order! As an after thought for clarity, I want to draw the hon. Members back to the wording of Standing Order No.78 and it says:-

"Where an amendment has been moved and if necessary seconded, debate must be confined to the amendment: Provided that Mr. Speaker may, in his discretion, direct that the debate on the amendment may include debate on the matter of the Motion where, in his opinion, the matter of the amendment is not conveniently severable from the matter of the Motion, and where Mr. Speaker does so direct a Member who speaks to the amendment shall not be entitled, after the amendment has been disposed of, to speak to the Motion, and any Member who has already spoken to the Motion may in speaking to the amendment speak only to any new matter raised thereby."

Now, without giving the directive first deliberately to hon. Orengo talking to the original Motion itself, and not just to the amendment I therefore, want to clarify that Members should be free to talk to the original Motion and the amendment and that will mean that they will not have a chance to contribute again after the amendment vote.

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): Mr. Deputy Speaker, Sir, let me first of all say that I would like to support this amendment for two very good reasons. The first one is that in this amendment that has been moved by the Minister of State, Office of the President, recognition is made that some time there will be need to make amendments on the various electoral laws where the need does arise. The second point which is made very clear here is that we also have got to agree and accept the fact that the

current Electoral Commission was constitutionally elected and it is elected in accordance with the provision 41 of the Constitution. The other thing which is important in this amendment is the recognition and appreciation on the part of the Government that we do share the spirit that there should be an independent Electoral Commission. Even much more, we also do contribute to the fact that Kenyans must be allowed to freely elect the leaders of their own choice when elections do come. What we were to do is to make clear the fact that the current Electoral Commission is independent. It is independent and it is stated right here in the Constitution. The Constitution is quite clear on this on paragraph 41 (9) which says, "In the exercise of the functions under this Constitution the Commission shall not be subject to the directives of any person or authority".

Mr. Shikuku: On a point of order, Mr. Deputy Speaker, Sir.

(Loud consultations)

Mr. Deputy Speaker: Order! Order, hon. Members! I can hardly hear hon. Shikuku.

Mr. Shikuku: On a point of order, Mr. Deputy Speaker, Sir. Under Standing Order No. 68, any Member standing on a point of order, the other Member should immediately resume his seat. Is it in order for him to continue talking when I am on a point of order? Is the Vice-President in order to mislead the House that there is an independent Electoral Commission when it was appointed during the one party state? We have even stated that in the Motion. The current Electoral Commission does not cater for all the political parties concerned.

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): Mr. Deputy Speaker, Sir, I was drawing the attention of this hon. House on what provision is made in this Constitution on this matter and this is contained in paragraph 41 section 9. I want to read it once again. "The Commission shall not be subject to the directions of any other person or authority". I do not think there could be any assessment of the independence of the Commission but let also dwell on something which is important here.

Mr. Mulusya: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the hon. Vice-President to keep misleading this House on the contents of the Constitution? We are all aware of the Constitution. Now what we are talking about---

Mr. Deputy Speaker: That is a frivolous point of order.

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): Mr. Deputy Speaker, Sir, I want to say that the general misconception which has been brought about is that indeed the kind of Constitution that we do have does not cater for a multiparty system. I want to refer the hon. Members to the fact that, the Kenya Constitution as in 1963 was indeed a multiparty Constitution and the time it was being promulgated and I am very happy because a number of hon. Members were here. We had a number of political parties. It was not just only KANU. We had KANU, KADU, APP and quite of a number of political parties in 1963. Therefore, the Constitution that was promulgated in 1963 by the founding fathers of this nation was a multiparty Constitution. What actually happened - I was not in Parliament during that time - was that in 1982, Section 2A was amended. Nothing else was amended in this Constitution and that is the only one that then made KANU be the only party. All other provisions were there including the ones about the Electoral Commission. The Government in its own wisdom decided to embark on a number of very fundamental political reforms starting in 1990 and at the time, I did chair a commission and quite a number of members who are in the Opposition were there also. That continued until legally and constitutionally a number of amendments were put into place. So the impression therefore that the Electoral Commission was appointed during a one party system is totally wrong. The provision of Electoral Commission was there during the time of the multiparty Constitution and all they did was to remove Section 2A. The Constitution we have in this country is a multiparty constitution. What we are saying is---

Mr. Wamalwa: On a point of order, Mr. Deputy Speaker, Sir. It is in order for the Vice-President to mislead the House by reversing the argument? We are saying that the current Electoral Commission was set up before multiparty elections This Motion does not say anything about the fact that the provisions for the Electoral Commission were made during one party state. It does not say that. It only says that the current Commission was set up before multiparty elections?

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): Mr. Deputy Speaker, Sir, I have no quarrel with what the hon. Leader of the Opposition has said. But I was referring to some of the remarks which were made earlier, to the effect that, indeed, the provision for the Electoral Commission of Kenya (ECK) was made during the time of the one-party system. That is not the case. I want to say here, and this is fundamental, that the Government is willing to amend certain laws in respect of the ECK periodically and when the need arises. Why are we saying that? This is because we subscribe to what is

contained in our Constitution, namely that at any one given time the ECK has to be independent, and that when it is doing its work it should not be subjected to any interference. Indeed, there has not been any interference with its work. I want to say that even the issue of additional Parliamentary seats over and above the 22 seats already provided for by the Constitution was itself raised by the ECK. Whatever has been done by the ECK, we have only agreed with it. We have said that if more seats than the 22 provided for are required that is well and good. That is a fundamental point.

At the same time, I want to assure this House that, indeed, the Government should also be given credit for the fundamental political reforms that we have undertaken since 1991. These have been very fundamental. We want to also say quite clearly, and categorically so, that we have no intention of going back on these reforms. We are a multi-party country. We do have a multi-party Parliament and there is no going back on it. Our intention is to move ahead. At the same time---

Mr. Muite: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the hon. Vice-President and Minister for Planning and National Development while on a very important and serious Motion like this one to mislead the House that since 1991 this Government has undertaken fundamental political reforms, when we know that apart from repealing Section 2A of the Constitution it has arrogantly refused to undertake any political reforms whatsoever?

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): Mr. Deputy Speaker, Sir, I do not want to give a catalogue of the various reforms which have been undertaken, but these are all recorded. Since my time is limited, I want to say one thing for the benefit of the hon. Members of the Opposition. In a multi-party democracy, where you have a multi-party Parliament, if the Opposition felt very strongly about certain aspects of the Constitution, normally they adopt their views as a campaign issue for the next general election. They should wait to tell wananchi during the next election campaign which parts of the Constitution they will amend if they form the next Government. Therefore, if the hon. Members feel very strongly about the amendment of the Constitution, let them adopt it as an issue in the next election. But I must say that the Opposition hon. Members cannot dictate to the Government to do what they want. That does not work in a multi-Parliamentary system!

With those words, I beg to support.

Mr. Deputy Speaker: Hon. Members, I think it is now proper and fitting that we dispose of the amendment.

(Question of the first part of the amendment, that the words to be left out be left out, proposed)

(Question of the first part of the amendment, that the words to be left be left out be left out, put and agreed to)

(Question of the second part of the amendment, that the words to be inserted in place thereof be inserted, proposed)

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

(Question of the Motion as amended proposed)

Dr. Otieno-Kopiyo: Mr. Deputy Speaker, Sir, I rise to propose an amendment to the amendment we have passed.

Mr. Deputy Speaker: Hon. Otieno-Kopiyo, if you are proposing an amendment to the amendment we have already passed that stage and it is too late to do that. But you can propose an amendment to the Motion before the House.

Dr. Otieno-Kopiyo: Mr. Deputy Speaker, Sir, I would want to propose the following amendment to the Motion.

By adding the following words after the word "election", and the full stop: "and adjust an equitable

allocation of constituencies". My reason for doing this is that, the fact that the Constitution provides for Parliament to prescribe the minimum and maximum number of constituencies into which Kenya shall be divided, section 42(3), however, takes away what Parliament has done, and gives a lot of powers to the ECK to determine the boundaries, areas and names of constituencies that are supposed to be created. The Constitution provides that all constituencies shall contain as nearly equal number of inhabitants as appears to the Commission to be reasonably practicable.

If you have a Commission which is appointed by one participant in the election when the Commission has the opportunity to create new constituencies it will obviously create more new constituencies for the so called "KANU zones" than for the Opposition areas. My fear is enhanced by the fact that in this House we have so many councillors. Very many councillors are sitting in this House.

The Assistant Minister, Office of the President (Mr. Sunkuli): On a point of order, Mr. Deputy Speaker, Sir. Maybe because you were consulting with the Minister of State you did not hear hon. Otieno-Kopiyo saying that so many councillors are sitting in this House. Is he in order to refer to hon. Members as councillors?

Mr. Deputy Speaker: I know of no councillor in this House! Is there any stranger in the Chamber?

Dr. Otieno-Kopiyo: Mr. Deputy Speaker, Sir, what I meant is this: I came to Parliament with over 30,000 votes, but there are people sitting here who had 1,700 or 1,500 votes. This is so despite the fact that my councillors went in with 9,000 votes! So, hon. Members who got 1,500 votes are no more than councillors, and yet, they are sitting in the House!

(Applause)

We want to have equity in the Constitution, regarding the distribution of Parliamentary seats.

Mr. Chebelyon: On a point of order, Mr. Deputy Speaker, Sir. Is hon. Otieno-Kopiyo in order to call hon. Members councillors? Whether we got 10, 100 or 1,000 votes, we were voted by our electorate to come and sit in this House! Is he in order to call some of us who got 1,000 votes "councillors"?

Mr. Deputy Speaker: Order! Hon. Otieno-Kopiyo, you are definitely out of order to refer to hon. Members as councillors. I recognise only hon. Members in the House. Please, continue.

Dr. Otieno-Kopiyo: Mr. Deputy Speaker, Sir, I appreciate your directive. I was only alluding to the fact that really some of those votes do not deserve a seat in this House. This is a matter of equity. The question of how many votes a person should receive before he can come to this House must be addressed. Some of these gentlemen who are complaining were not even elected in the first place: They were nominated to the House. So, let us talk about the question of how many---

(Hon. Kalweo stood up in his place)

Mr. Deputy Speaker: Mr. Kalweo, what is this burning issue?

The Minister of State, Office of the President (Mr. Kalweo): On a point of order, Mr. Deputy Speaker, Sir. Should the hon. Member continue calling hon. Members---

Mr. Deputy Speaker: Order! Order! We are beyond that. I am satisfied that hon. Dr. Otieno-Kopiyo is making a legitimate contribution.

Dr. Otieno-Kopiyo: Mr. Deputy Speaker, Sir, thank you very much for that.

An hon. Member: Hon. Kalweo does not understand the Motion!

Dr. Otieno-Kopiyo: Mr. Deputy Speaker, Sir, let us deal with the relevant issues. The Constitution reads as follows:-

The Electoral Commission shall be appointed by the President. There shall be an Electoral Commission which shall consist of the Chairman, and not less than four members, appointed by the President.

Mr. Deputy Speaker, Sir, the President is a contestant in the elections. The referee cannot be a player. All we are saying is that the constitution of the Electoral Commission should be as independent as possible, because that is where they will derive their independence from.

How is this Electoral Commission independent? Who controls the budget of the Electoral Commission? Is it not done here in Parliament by an officer appointed by the Office of the President?

An hon. Member: It is the Clerk!

Dr. Otieno-Kopiyo: Mr. Deputy Speaker, Sir, have we ever seen the Electoral Commission provide vehicles for the transportation of ballot boxes? They depend on the provincial administration and various Ministries. They do not have control of the security over voters, ballot boxes and ballot papers. How can such a body be called independent? They do not have resources. They do not control their movements. They do not control their own money. That money is given to them as and when somebody else prefers. If they do not control the means under which they operate, how can they be called independent? This is a very dependent Electoral Commission. That dependency is what we are seeking to remove.

Therefore, we must address that issue properly. Let me now address the situation of equity. My Constituency, which is Kasipul/Kabondo is 501 square kilometres with 221,000 people. We have hon. Members on the other side of the House, whose two districts in Elgeyo Marakwet have four hon. Members of Parliament and two district commissioners, and yet there are only 84,000 people there. This cannot be equitable and reasonable.

The Assistant Minister for Lands and Settlement (Mr. Sumbeiywo): On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the hon. Member to mislead this House by saying that Keiyo District has got four hon. Members of Parliament, whereas there are only two?

Dr. Otieno-Kopiyo: What I said is that Keiyo and Marakwet are two districts put together, and they have four constituencies. The total number of people living there are fewer than the number of people living in Kasipul/Kabondo, represented by one Member of Parliament. That is all that I am saying.

Mr. Biwott: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the hon. Member to mislead this House by providing false statistics out of his own ignorance?

Dr. Otieno-Kopiyo: Mr. Deputy Speaker, Sir, I have the privilege of having read thoroughly the latest bogus census that was carried out in 1989. Even with that contention, my numbers are still more than yours although you have two district commissioners.

Mr. Chebelyon: On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Order! Order!

Dr. Otieno-Kopiyo: Mr. Deputy Speaker, Sir, that issue ought to be addressed. Parliament must be able to prescribe the minimum number of inhabitants per constituency. That is a critical issue that should not be left to a dependent Electoral Commission. We want fair representation. That is all what we are saying. That matter should be addressed because sooner or later, we are going to come to terms with it. I do not want to have a situation where some people represent goats and camel, and some people represent more people than tracts of land. This is not acceptable to us and this matter should be looked into.

The second question which should arise is the matter of constitutional provisions. How much power should the Electoral Commission have, and how much power it should not have, and who gives this power? We have had a situation where there are contradictions between the provincial administration---

The Assistant Minister for Agriculture, Livestock Development and Marketing (Dr. Misoi): On a point of order, Mr. Deputy Speaker, Sir.

Mr. Ojode: On a point of order, Mr. Deputy Speaker, Sir.

(Dr. Misoi and Mr. Ojode stood at the same time)

Mr. Deputy Speaker: Order! Order! Order! What is going on between you two? Order! Your points of order are overruled.

Dr. Otieno-Kopiyo: Mr. Deputy Speaker, Sir, these people are jittery because I am speaking nothing but the truth, and they know that.

With those few remarks, I beg to move the amendment. Hon. Murungi has consented to second it.

Mr. Deputy Speaker: Hon. Murungi, are you seconding?

Mr. Murungi: Mr. Deputy Speaker, Sir, I rise to second this amendment.

The Electoral Commission as we know it today, is not independent, it is not fair and it is very unjust to us. The Electoral Commission has watered down the principle of one-person-one-vote.

The Minister for Information and Broadcasting (Mr. Makau): On a point of order, Mr. Deputy Speaker, Sir. The current contributor is supporting this Motion, although it has not been seconded by anybody?

Mr. Deputy Speaker: He is seconding!

The Minister for Information and Broadcasting (Mr. Makau): He has said he is supporting and not seconding.

Mr. Deputy Speaker: I understood that he was seconding.

Mr. Murungi: Mr. Deputy Speaker, Sir, I think it is important that you warn some of the Ministers to

stop sleeping. It is just 11.00 o'clock in the morning. I was saying that there is a lot of electoral injustice in this country caused by this unjust Electoral Commission. The reason being that in 1992 we had 1.9 million votes for the KANU presidential candidate and a total of 3 million votes for the joint opposition presidential candidates, and yet they got only 88 seats, when 1.9 million KANU votes got 100 seats in this House. It is a clear illustration that in this country, we do not respect the principle of one-person-one-vote. One KANU vote is equivalent to 1.5 of opposition vote in this country.

As hon. Dr. Otieno-Kopiyo has said, in the two districts of Keiyo and Marakwet, I have had the occasion to read the census, and the figure is 164,000 people represented by four Members of Parliament. Mr. Deputy Speaker, Sir, North Imenti alone in Meru District has 172,000 people, and they have only one Member of Parliament. So, we have to look again critically into the whole issue of electoral boundaries.

We want an Electoral Commission in this country which will ensure that Kenyans are equitably represented in this House. Part of the problem that we have lies with no other than the Attorney-General, who has turned out to be an agent of confusion in this House.

(Applause)

Mr. Deputy Speaker, Sir, we do not have an adequate constitutional and legal framework for an independent Electoral Commission in this country because the Attorney-General has been involved in foreign troubles and he does not even know what is happening to us in this country. We are asking the Attorney-General to wake up and look at Sections 41 and 42 of the Constitution, and see that, as a matter of fact, the Constitution merely talks about appointments and removal from the office of the people appointed into the Commission. It does not even specify clearly what the duties of these people who are appointed should be.

It is quite erroneous to say that the Electoral Commission is part of the multi-partyism in this country because we know that the Electoral Commission is an "illegitimate child" of the one party state. The current Electoral Commission was appointed pursuant to Section 2 of Act No. 17 of 1990 during the height of dictatorship in this country. That is when you killed so many people during *Saba Saba* disturbances. Therefore, you cannot say that a Commission appointed as a result of a law that was passed at the height of the one party dictatorship is a Commission representing multi-partyism in this country. I think what we need in this country is a fresh look---

The Attorney-General (Mr. Wako): On a point of order!

Mr. Murungi: I do not want any point of confusion from the Attorney-General.

The Attorney-General (Mr. Wako): On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member in order to imply that these people were appointed under Act No. 2 of 1990 when it is that Act which, in fact, restored the security of tenure of the members of the Electoral Commission?

Mr. Murungi: Mr. Deputy Speaker, Sir, I did not say that they were appointed in 1990. In fact, they were appointed in 1991 and their term expires in late September this year. So, we now have a chance---This is the time for Justice Chesoni to go.

(Applause)

If we are really serious about free and fair elections because the term of Justice Chesoni is expiring in September this year, if he is appointed again, we shall know that there is no seriousness on the part of the Government.

The Assistant Minister for Agriculture, Livestock Development and Marketing (Dr. Misoi): On a point of order, Mr. Deputy Speaker, Sir. Is it in order for hon. Speaker to discuss Justice Chesoni instead of discussing the Motion? Is he not misleading the House?

Mr. Murungi: Mr. Deputy Speaker, Sir, some of these people who read veterinary sciences, do not even understand the meaning of the word "discuss". I did not discuss Justice Chesoni. I merely mentioned his name.

(Applause)

To be more constructive, I think we need to look again at the Constitution. Section 108 of the Constitution sets up the Public Service Commission and then we also have the Public Service Commission Act. What we do is that after we create a commission through the Constitution, we also go into the law and establish a law which spells out clearly the powers and functions of that commission. What we need in this country is the Electoral Commission Act which should spell out clearly the powers and functions of the Electoral Commission.

Mr. Deputy Speaker, Sir, I had the privilege of serving as part of the Commonwealth Observer Team to Sierra Leone. I found out that they had a law called the Electoral Commission Act of Sierra Leone which dealt with very many things. In fact, it is the Electoral Commission in Sierra Leone which registers political parties or refuses them registration. It conducts voter education, regulates political activities including campaign meetings, conducts the voting and also handles election petitions. So, the day we shall have a truly independent Electoral Commission in this country, we will remove our petitions from the High Court because they take the entire five-year period. We would like these matters to be handled, in the first instance, by the Electoral Commission.

There is the whole question of voter education. We do not carry out voter education in this country; all we do is dish out voting cards. That is why we have so many spoilt votes in this country because we do not show the people how to vote. In Sierra Leone, we conducted mock voting the day before the elections. We had the occasion of calling out all villages and trained people on how to vote before the voting day. As a result of this education, there were very few spoilt votes in Sierra Leone.

The Electoral Commission in Sierra Leone also handled political violence. It had a code of conduct for political parties and the Commission had power to de-register or disqualify, from elections, any party which engaged itself in political violence or massive bribery of voters. We need to give powers to our Electoral Commission to disqualify candidates or political parties which behave in a manner which is not conducive to free and fair elections. A party like KANU, which clearly bribes voters should be disqualified from the next elections by an independent Electoral Commission. A party like KANU, which hires thugs and youths to prevent people from voting, should be disqualified by the Electoral Commission. So, people like hon. Kamotho who organise violence, should also be disqualified from participating in the next elections!

(Applause)

The Minister for Education (Mr. Kamotho): On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member speaking in order to make such a serious allegation that I organise thuggery in any election of the party? Can the hon. Member withdraw?

(Applause)

Mr. Deputy Speaker: Order! Order, hon. Murungi, you are definitely out of order. Will you withdraw that?

Mr. P.N. Ndwiga: On a point of information, Mr. Deputy Speaker, Sir.

Mr. Murungi: Mr. Deputy Speaker, Sir, before I do so, I would like the hon. Member for Runyenjes---

Mr. Deputy Speaker: Order! Order, hon. Murungi! I directed you from the Chair to withdraw. Now I am directing you to withdraw and apologise unequivocally.

Mr. Murungi: Mr. Deputy Speaker, Sir, I wish to withdraw and apologise as directed by the Chair. But this may not affect the truth.

Mr. Deputy Speaker: Thank you, Mr. Murungi. Hon. Sunkuli has the Floor.

The Assistant Minister, Office of the President (Mr. Sunkuli): Mr. Deputy Speaker, Sir---

Mr. Deputy Speaker: Order! Order! I beg your pardon.

*(Question of the amendment to the amendment,
that the words to be added be added, proposed)*

The Assistant Minister, Office of the President (Mr. Sunkuli): Mr. Deputy Speaker, Sir, I wish to oppose that amendment and wish that the Motion does proceed as already amended.

Mr. Deputy Speaker: Hon. Sunkuli, you got only five minutes.

The Assistant Minister, Office of the President (Mr. Sunkuli): Mr. Deputy Speaker, Sir, because of the five minutes, I will not be able to be as elaborate as I would have been. But I want to say that we in Kenya have been consistent. Those of us who came to Parliament in 1992, know that we inherited a Constitution that founded this nation in 1963. All the way, the Head of State of Kenya has appointed members of the Electoral Commission. That is a consistent thing. In 1963, it was not an Electoral Commission, but a Boundaries Commission, and the Governor-General, who was the Head of State, did in fact, appoint---The appointment of the Chairman was automatic because he was the Speaker of the Senate and the Vice-Chairman was the Head of the House of Representatives. But the rest of the members were always appointed by the Head of State. There is absolutely nothing inconsistent and there is also nothing particular against the international convention. Most

countries in the Commonwealth do, in fact, bestow the power of appointing the Chairman and Members of the Electoral Commission to the heads of States of those countries.

Mr. Deputy Speaker, Sir, I would not like to go into details because I do not have time. In some Commonwealth countries like India, Pakistan, Bangladesh, Zimbabwe, Zambia, Namibia, Malawi, Presidents appoint all the members of the electoral commission.

(Applause)

Mr. Deputy Speaker, Sir, in England where most hon. Members would like to go and get their views from, the Lord Chancellor appoints the chairman of the boundaries commission and other members of the commission. Can he sit down so that I can finish whatever I want to say?

Mr. Busolo: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the hon. Assistant Minister to tell us that in the counties he has listed that Presidents appoint all the members of the electoral commission when the truth is that they appoint members from different political parties which is not the case in this country?

The Assistant Minister, Office of the President (Mr. Sunkuli): That is not the correct position. The correct position is as I am stating.

As I was saying in most countries---

Prof. Mzee: On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Assistant Minister in order to mislead this House by saying that there is an electoral commission in England while he knows very well that there is no electoral commission in England? He is misleading this House in every word he has uttered today!

The Assistant Minister, Office of the President (Mr. Sunkuli): Mr. Deputy Speaker, Sir, I have said that it is boundaries called commission, and I am sure that if hon. Mzee was to be truth to his name he could sleep very nicely.

Mr. Deputy Speaker, Sir, since I do not have time to explain what happens in other countries, I just wanted to say two things. That in my opinion, we do have a very independent electoral commission headed by one of the most eminent judges of our country. I am a lawyer and I am able to say that Justice Zacheaus Chesoni is one of the judges whose judgements in the High Court and in the Court of Appeal are quoted by all lawyers including the hon. Murungi. The hon. Murungi used to quote this when he was lecturing to us.

I would like to put a further point here that if the Opposition was to come to power today, it would not be clear of what they would do. They would encourage the oppression of the minorities in this country. If an hon. Member stands up here to say that 1,000 people are not capable of being represented in this House, if they have an interest distinguishable from the rest, why should the minority not be represented in this House? Democracy does not mean that we have the dictatorship by the majority. No! If there is a group of people of this country, either because they are a community identifiable away from the others or having an interest that is capable of being represented in this House and occupying a territorial that is larger than the rest--- The hon. Kibaki's constituency is as big as one of my locations in Trans Mara. Many constituencies in Central Province are as big as sub-locations in Turkana. Is this not something that needs to be taken into account? If our policy in this country is one of population control, then why are we oppressing those who have been able to maintain their populations at a low level?

(Applause)

Mr. Deputy Speaker, Sir, I wish to say that there are many interests to be protected in this country than merely population and we cannot continue to hear from the hon. Members of the Opposition such matters as numbers.

With those few remarks, I beg to oppose.

(Question of the amendment to the amendment, that the words to be added ded added, put and negatived)

(Debate on the original amended Motion resumed)

Mr. Deputy Speaker: Order! Order! Now, we have come to the last 15 minutes which is now time

for the Mover to reply. But, I understand from the Mover that he wants to surrender five minutes to hon. Shikuku and five minutes to hon. Farah.

An hon. Member: It is always ten minutes for the Mover when replying.

Mr. Deputy Speaker: I am afraid, I am wrong and I have been corrected. I am told that the hon. Mover who is the Leader of the Opposition has only ten minutes to reply, which means he is surrendering five minutes to hon. Shikuku. Please, indicate what you want.

Mr. Wamalwa: Mr. Deputy Speaker, Sir, I had actually surrendered my entire ten minutes to the hon. Shikuku, but he has by arrangement wanted to surrender a few minutes to hon. Farah.

Mr. Shikuku: Mr. Deputy Speaker, Sir, I wish to react to some of the remarks made in this House on this very important Motion.

I wish to start straightaway by the remarks made by hon. Attorney-General, which were completely untrue when he said that there were consultations before the appointment of the present electoral commission. That was far from the truth. The time has come when we leaders of this country whenever we stand up to speak, we should speak nothing, but the truth to save this country.

The fact of the matter is that the late Oginga Odinga, late Muliro, hon. Kibaki and myself, were in his office trying to get into his office. In view of the fact that we had political parties, we wanted to get a pool of names suggested by all the political parties so that the President would be able to nominate some of the members of this Commission. That request was rejected!

The Attorney-General (Mr. Wako): On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member in order to say that the proposal was rejected when after that meeting they did submit a list of many names which I am prepared to table here, and thereafter, additional appointments were made to the commission?

Mr. Shikuku: Mr. Deputy Speaker, Sir, I stand by my word that that list was rejected and I think time will come when some of us will have to pay for untruths we go on telling in this Republic. Some of us are young enough to harvest the bitter fruits of our own folly.

The second point is that we are not objecting to the appointments of that Commission by the President, but we are only saying that the Opposition should propose names from various parties from which the President shall nominate members for this Commission. There is a lot of difference between what they are trying to tell this House. This has been done in Mozambique and in other countries where the Opposition had names suggested and they were taken into account. We want to participate in moulding the future of this country together. But, if there is an attitude that people do not want, then it is too bad.

The other thing is on what the Vice-President and Minister for Planning and National Development said that the current electoral commission is independent. It cannot be because it was appointed during the one-party state and nobody using any other language can change that fact.

Another area that I want to dwell on is what hon. Sunkuli said about dictatorship by the majority. Democracy means the wishes of the majority and must be respected. Wishes of the minority should be respected too. But you cannot say that minority must have more seats in this House because they occupy the large areas, some of which are occupied by antelopes, rabbits and so on.

The Assistant Minister, Office of the President (Mr. Sunkuli): On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member for Butere in order to misrepresent my views when all I said is that some communities, even if they are smaller than his tribe, must also be represented in Parliament adequately? He said that he will not accept the dictatorship of the majority. Since they are more in this House, they are going to pass this Motion whether we like it or not. But, when he comes to his small fellows, he wants them to dictate to the majority. That is a Maasai sort of thinking! The hon. Member must know---

The Assistant Minister, Office of the President (Mr. Sunkuli): Is hon. Shikuku---

Mr. Deputy Speaker: I think, with all due respect, hon. Shikuku, you should also not be all that derogatory. Will you finish? You have very few minutes left.

Mr. Shikuku: We must accept that the democratic system of governing is a civilised way of governing the people on this earth. Having accepted that, we must also agree that there are minorities whose views should be taken into account. What we are trying to say on this side of the House, is that the Electoral Commission, as it stands today, is toothless. It has no police and it has nothing of its own. It depends on the administration which the Opposition is fighting. How do you expect the Opposition to get a license from the Government that it is trying to oppose? They are using that to suppress the Opposition who are the majority because we had 3.4 million votes when KANU had only 1.9 Million. You can see why the minority is oppressing the majority. They may vote against this Motion, but that will not change the situation.

Mr. Farah: Thank you very much hon. Shikuku for giving me the five minutes.

The Electoral Commission is not independent. We have no quarrel with the Electoral Commission being appointed by the President, but it has to be ratified by this House. That way, we can have checks and balances so that it is not abused. Democracy does not mean the rule of the majority when the majority itself is based on ethnicity and not ideology. The political set up which we have in the country right now calls for us to renegotiate once more our stand in this country. What I am saying is that I come from a constituency that is equivalent to Western Province.

The Assistant Minister, Office of the President (Mr. Sunkuli): On a point of order, Mr. Deputy Speaker, Sir. Is hon. Farah in order to mislead this House that there are any ideological differences between the Opposition parties when, in fact, the only basis for the Opposition parties is tribal?

Mr. Farah: I am not talking about the Opposition or the ruling party. I am talking about this country and the future of this country. Unless we get serious and think in terms of a nation and try to put a firm foundation to take us to the next millennium, we will be faced with genocide in this country. If we are divided, the way we are right now, very passionately, on the basis of tribes and regions, we are not going to get anywhere in this country.

In the United Nations, you have nations with a population of less than 100,000 people and nations that have over 1 billion people and they all sit there as equals. Until we reach such a homogeneity in this country, such as the one Tanzania has reached, we will have no right absolutely that would empower us to take away the rights of the minority, however, small, they are. Having said that---

Dr. Otieno-Kopiyo: On a point of order, Mr. Deputy Speaker, Sir. The assertions which I made earlier on has nothing to do with taking away the rights of the minority. What I said is that we should prescribe the minimum. If that minimum is a thousand people, it should be the same for everyone.

Mr. Farah: Mr. Deputy Speaker, Sir, I happened to have been in the US last time. Gerrymandering was basically designed to empower the blacks in the USA and it merely means that they have to be given the right which they have to enjoy in that country.

(Loud consultations)

An. Hon. Member: You are a conman, Dr. Otieno-Kopiyo.

Mr. Ojode: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for hon. Dr. Misoi to call hon. Dr. Otieno-Kopiyo a conman?

Mr. Deputy Speaker: I did not hear that.

Mr. Farah: What I am trying to say is that, until such a time a Somali will stand for an elective post in Nyanza and be able to be voted in---

Mr. Shikuku: On a point of order, Mr. Deputy Speaker, Sir. I rise to seek your guidance here. We are all hon. Members in this House. I did, as a matter of fact and with goodwill respect the hon. Member and surrendered those five minutes to him. He told me that he was going to support the Motion. What he is saying is completely different and we still call him an hon. Member when he goes back to---

Mr. Farah: All what I mean is that I am not taking away the conscience of anybody----

(Loud consultations)

Mr. Deputy Speaker: Order! Order! Order, hon. Members!

*(Question of the Motion as amended
put and agreed to)*

Resolved accordingly:

THAT, noting the that the objective of the present provisions of the Constitution was to secure the establishment of a truly independent Electoral Commission, notwithstanding the credible performance by the present Electoral Commission which was appointed before the elections of the multi-party Parliament, recognising that the legitimacy of the Electoral Commission depends on the general acceptance accorded to it by political parties and the public; and aware that the pattern and basis of establishing electoral boundaries have to be fair and just; this House resolves

that the electoral laws be reviewed periodically and accordingly amended where necessary with a view to ensuring free and fair elections.

Mr. Orengo: On a point of order, Mr. Deputy Speaker, Sir. Under Standing Order No 45, I arise to move that in view of the importance of this Motion that is following, I do not need to give notice. I am made to understand that Standing Order Number 45 read together with S.O. No. 81 deals with the limitation of time relating to any Motion or debate before this House. The last Motion was a very important Motion and many voices were not heard in relation to that Motion. This subsequent Motion is equally very important and I move that the time allocated to the next Motion be increased from two hours to three hours, so that as many Members as possible can have time to contribute.

(Applause)

Mr. Deputy Speaker: Order! Order! Frankly with all due respect, hon. Orengo, you have a genuine point, but if that proposal was made from some other hon. Member, I would be much more tolerant. But coming from you as a lawyer, I think you are being a little cheeky.

Firstly, I would want hon. Members, if you have such serious proposals to vary the procedure before the House, if possible, to come and consult the Chair, but not by ambushing it.

Secondly, there is a resolution of this House, which has already set the time limit. I am afraid, you can do it later, but at this stage I have to call on hon. Member Shikuku to move his Motion. Hon. Shikuku has the Floor!

Order! Order! We are on the next Motion, hon. Shikuku.

Mr. Orengo: On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Order! Order, Mr. Orengo! I have said that I am not entertaining any more points of order on this matter, hon. Orengo. I have given the Floor to hon. Shikuku to move his Motion.

Mr. Sifuna: On a point of order, Mr. Deputy Speaker, Sir. Is the word cheeky Parliamentary language or not?

Mr. Deputy Speaker: It is very Parliamentary.

Hon. Members: No, Mr. Deputy Speaker, Sir.

REPEAL OF OPPRESSIVE STATUTES

Mr. Shikuku: Mr. Deputy Speaker, Sir, I beg to move the following Motion:-

Dr. Otieno-Kopiyo: On a point of order, Mr. Deputy Speaker, Sir.

Mr. Shikuku: What is your point of order? My time is going!

An. Hon. Member: Conman!

Mr. Deputy Speaker: Order! Order! Hon. Members, would those Members who want to leave, leave quietly and speedily without infringing on the right of hon. Shikuku to be heard? Proceed hon. Shikuku.

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

Dr. Otieno-Kopiyo: On a point of order, Mr. Deputy Speaker, Sir. Just a while ago, I was called a conman and this has happened in this House before. I do not mind hearing my name being besmirched by churchmen or religious people, but I do take exception to a bunch of thieves who are sitting on the Government Front Bench, to insist on calling me names.

I regard this name---

Mr. Deputy Speaker: Order! Order! Hon. Dr. Otieno-Kopiyo, I did not hear any hon. Member call you a conman.

Hon. Members: Dr. Misoi!

Mr. Deputy Speaker: And frankly speaking, when somebody did rise to object to that, I felt he was the one. I am afraid sometimes you raise some points of orders on quiet discussions that you have left behind the scenes which are not on record of the HANSARD and by that kind of behaviour, you end up putting that insulting language in the HANSARD. I do not think it is in the interest of Members to do that. If the HANSARD bears that remark, I would definitely revisit it.

Is hon. Dr. Misoi here?

Hon. Members: He is not here and he should withdraw that remark.

Mr. Deputy Speaker: Order! I am not entertaining any more points of order at this stage before hon. Shikuku is well into his debate, unless it is a matter concerning the actual Order on the Floor of the House.

Continue, hon. Shikuku.

Mr. Shikuku: Thank you, Mr. Deputy Speaker, Sir. It should be recorded that I am starting at 12.05 p.m. I beg to move the following Motion:-

THAT noting that the repeal of Section 2(A) of the Constitution has not *per se* established a democratic civil society in Kenya, this House resolves that the Attorney-General takes expeditious measures to enable Parliament to repeal The Public Order Act, The Chief's Authority Act, The Vagrancy Act, The Preservation of Public Security Act, Sedition laws and other oppressive enactments.

Mr. Deputy Speaker, Sir, I wish to start, first and foremost, by saying that the repeal of Section 2(A) was brought about due to heavy pressure from within and outside Kenya, to establish democratic governance. In that hurry, having resisted the pressure for sometime, those who were in this House including the Attorney-General, who was in this House, were to comply with the pressure locally and internationally to repeal Section 2(A). In their hurry, to repeal Section 2(A), they forgot the consequential amendments which must emanate as a matter of the repeal of Section 2(A).

[Mr. Deputy Speaker left the Chair]

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

They did not sit down and consider the consequential amendments emanating from the repeal of Section 2(A). For example, they did not show clearly--- I think the Attorney-General's ears are being interfered with by hon. Kones discussing across the Attorney-General to the Vice-President and Minister for Planning and National Development. I think they should give him time to listen to these views because they are very, very important.

Mr. Temporary Deputy Speaker, Sir, for example, they have not given a detailed position in the Constitution, which will provide the rights of the Opposition in the Constitution. They are not there. For example, we, who are registered political parties in this country should not be subjected to the Office of the President. Under the President himself we have the Provincial Administration, Police, Special Branch, CID, name it. Yet we expect them to licence those of us in the Opposition to oppose the system in power. That is what has happened. They do not give us licences and they do everything to frustrate the Opposition. When we apply for licences, they give us conditions that we must apply 14 days before. We even apply one month before and still they do not give us licences. They wait until there are only two days remaining before the meeting, and that is the time they give us the licence knowing very well that we have no time to advertise that meeting and to mobilise the people in two days. Even sometimes, they give us the licence a day to the time of the meeting. That is how they behave. And if they also make the mistake of giving us that licence a day or three days before, the meeting is normally cancelled at the 11th hour. This is one thing that is really crippling the people of Kenya. Some writers have said that the Opposition is not doing much and we are not getting what was expected from the Opposition. How do you organize the people? How do you propagate your own policies when you are not, even allowed to hold a seminar, leave alone a public rally?

You are not allowed to hold a seminar yet KANU can hold their meetings. The other day it was by sheer luck that the Labour Party Shadow Foreign Minister and also Sir David Steel were here that we were able to continue with our Limuru Conference because the Government were ashamed to rush in and disperse the conference that was taking place because they knew the repercussions. How do you expect to have democracy when the system itself is not de-linked from the Executive arm? We are at the mercy of the Government to be able to propagate our policies and they make sure we do not get that. As I speak now, the provincial commissioners, the district commissioners, the district officers and chiefs are the arms of the KANU Government. They go out of their way even to solicit and try to induce the members of the Opposition to cross over to the Government. That example tells you very clearly what we are up against. I have evidence where in Western Province all the FORD(A) councillors were summoned by the PC who is now in the Rift Valley; summoned by Mr. Raburu the DC of Kakamega, asking them to cross over to KANU and they refused. They even made a statement to that effect. Now, how do you operate in such a situation? Here is a civil servant being paid from the public coffers of which Members of the Opposition are taxpayers, who is using or 'eating' that salary and also trying to destroy the Opposition. I must take this opportunity to pay my tribute to the councillors of Kakamega district who refused to cross over to KANU and they told the PC and DC Raburu so. And it is actually criminal. One day we shall try them for all these sins for it is written "Mshahara wa dhambi ni mauti".

Mr. Temporary Deputy Speaker, Sir, you will find the DCs and the PCs are now the arms of KANU. The

PC is the provincial chairman of KANU, the DC is the district chairman of KANU, the DO is the divisional chief of KANU and the locational assistant chief are the KANU sub-locational chairmen.

The Minister for Labour and Manpower Development (Mr. Masinde): On a point of order, Mr. Temporary Deputy Speaker, Sir. Can the hon. Member substantiate which districts have got DCs as chairmen of KANU and if he cannot can he withdraw?

Mr. Shikuku: Mr. Temporary Deputy Sir, I do not know where the hon. Member was when I was speaking because I substantiated when I said that the PC, Western Province who has now been transferred to Rift Valley and the DC Mr. Raburu and DO Butere, and all other areas are acting as KANU agents. I even do not see the reason why I should go further substantiating because the other day ---

The Temporary Deputy Speaker (Mr. Wetangula): Hon. Shikuku, the hon. Member has asked you a very simple question to substantiate by pointing out to him and to the House which PC or DC is also doubling as chairman of KANU in the province?

Mr. Shikuku: Mr. Temporary Deputy Speaker, Sir, I said they are the agents of this system and they have gone out of their way to even approach FORD(A) councillors in Kakamega district to cross over to KANU.

The Assistant Minister, Office of the President (Mr. Sunkuli): It is that fact that we want substantiation on. It is a fact of urgency that we want substantiation. The hon. Member for Butere cannot just stand in this House and smear the names of other people with mud for no reason.

Mr. Shikuku: Mr. Temporary Deputy Speaker, Sir, I was responding to a point of order and even why do we go far? The other day Mr. Makhanu was a chairman of KANU and he was appointed the DC in this very Government and now he is a PC. What else are you looking for?

The Assistant Minister for Education (Mr. Komora): On a point of order Mr. Temporary Deputy Speaker, Sir. Is the hon. Member right in misleading this House that DCs are chairmen of KANU? I stand here as chairman of KANU Tana River District and I am not a DC.

Mr. Shikuku: Mr. Temporary Deputy Speaker, Sir, it is a shame that an old Member like him does not know what a point of order is. I do not know to which school we should take such fellows. And my time is being taken up by ---

The Minister for Labour and Manpower Development (Mr. Masinde): Mr. Temporary Deputy Speaker, Sir, I still insist that I get a reply to my question. On the other hand, the hon. Member has said that Mr. Makhanu was the chairman of KANU but Mr. Makhanu was not a chairman of KANU when he was a DC. If he was a chairman, he was then in Parliament but when he became a DC he was never chairman of KANU.

Mr. Shikuku: Mr. Temporary Deputy Speaker, Sir, when he gets the opportunity to speak, he can reply to my---

The Temporary Deputy Speaker (Mr. Wetangula): Hon. Shikuku, I am satisfied that you are unable to point out any single DC or PC who is doubling as a KANU chairman. If you said they behave like KANU chairmen, I will let you get away with it. Your statement was very categorical that the PCs and DCs are also KANU chairmen. You are unable to substantiate that and you must withdraw it.

Mr. Shikuku: Mr. Temporary Deputy Speaker, Sir, that is my deduction based on ---

Hon. Members: Point of information.

The Temporary Deputy Speaker (Mr. Wetangula): Order! hon. Shikuku, you cannot get any information until you comply with my order.

Mr. Shikuku: Mr. Temporary Deputy Speaker, Sir, I will comply with your ruling because I know and I said that these PCs---

The Temporary Deputy Speaker (Mr. Wetangula): It is so simple Mr. Shikuku. Withdraw your remarks!

Mr. Shikuku: Mr. Temporary Deputy Speaker, Sir, I said therefore they are KANU agents and because of their behaviour I deduct and there is no difference between them and KANU ---

The Temporary Deputy Speaker (Mr. Wetangula): Order. hon. Shikuku. I have just told you what you said, do not twist it. I heard you as well. My order is that you withdraw the remarks. It is as simple as that.

Mr. Shikuku: Mr. Temporary Deputy Speaker, Sir, if that is the way you have interpreted it and I was taking into account the evidence I have got and called them chairmen and you want me to say that they are currently elected KANU chairmen and they are also PCs, that is not the case. I do not need to quarrel with the Chair but the truth remains that these people are agents of KANU. That is all and I comply with your ruling.

The Temporary Deputy Speaker (Mr. Wetangula): Order hon. Shikuku. Have you withdrawn?

Mr. Shikuku: Mr. Temporary Deputy Speaker, Sir, I have withdrawn because you are saying that I said they are also PCs and they are also KANU chairmen.

The Temporary Deputy Speaker (Mr. Wetangula): Order, hon. Shikuku! You are normally a very honest Member of this House and why you are running away from what you said, I do not know. You simply categorically stated that the PCs and DCs are also KANU chairmen. I have told you that you would have escaped with it if you said that they behaved like KANU chairmen but you categorically say they are KANU chairmen and that is what you have been told to substantiate. So that is the simple thing I am telling you to withdraw.

Mr. Shikuku: Mr. Temporary Deputy Speaker, Sir, I have no need to quarrel with the Chair. I withdraw but I will take your words that ---

The Temporary Deputy Speaker (Mr. Wetangula): Order. I have not put any words in your mouth, but carry on.

Mr. Shikuku: They behave like KANU and they have done so in Kakamega and I have substantiated that they are.

The Minister for Education (Mr. Kamotho): On a point of order Mr. Temporary Deputy Speaker, Sir. We are not still satisfied with [**The Minister for Education**] what hon. Shikuku has said. For the benefit of this House, the Constitution of KANU has no provision for a provincial chairman and therefore, could this House note that? Also could hon. Shikuku desist from making unnecessary allegations about the Party unless he tells us in what capacity he is speaking. Is he speaking in his capacity as a Member for Butere or the ex-Secretary-General of FORD(A)?

Mr. Shikuku: If a woman has ever produced a shameless human being, this is one!

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): On a Point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order, for know hon. Shikuku to cast aspersions of great vulgarity on a sitting Member of Parliament here?

Mr. Shikuku: Mr. Temporary Deputy Speaker, Sir, I wish to continue and say that, there is no provision in the Constitution which---

The Temporary Deputy Speaker (Mr. Wetangula): Order, Mr. Shikuku! Hon. Sunkuli, what is it?

The Assistant Minister, Office of the President (Mr. Sunkuli): On a point of order, Mr. Temporary Deputy Speaker, Sir. The sentence that hon. Shikuku has just constructed about the hon. Kamotho, was definitely unparliamentary. Can he be told to withdraw? He used totally abusive words. To say the the least, the "Ex-Secretary-General" is a national notoriety and that is known.

Mr. Shikuku: Mr. Temporary Deputy Speaker, Sir, I am moving this Motion. In case of a tie---

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): On a point of order, Mr. Temporary Deputy Speaker, Sir. I think we all heard what hon. Shikuku said, in regard to hon. Kamotho. He used totally unparliamentary and vulgar words. Am I not in order to ask hon. Shikuku to withdraw those remarks?

An hon. Member: You can ignore that one!

Mr. Shikuku: Mr. Temporary Deputy Speaker, Sir, I will ignore that.

(Several Members stood up in their places)

The Temporary Deputy Speaker (Mr. Wetangula): Order! Order! Hon. Shikuku, if you want to move your Motion, you better move it, if you are going to theatrics you are losing the spirit of your Motion. It is up to you!

Mr. Shikuku: Mr. Temporary Deputy Speaker, Sir, I am not going into theatrics at all. There was a definite statement made by the hon---

The Temporary Deputy Speaker (Mr. Wetangula): Hon. Shikuku, you have withdrawn your remarks against hon. Kamotho. Carry on!

Mr. Sifuna: On a point of information, Mr. Temporary Deputy Speaker, Sir. I do not know why the House is trying to crucify hon. Shikuku, when he said earlier on, that the provincial administration; the DCs and PCs are at the same time KANU Chairmen. To be honest, and you can bear me out, hon. Makhanu was a DC Makueni and at the same time he was the Chairman of KANU, Kanduyi Sub-branch. So, why should you crucify this man?

The Temporary Deputy Speaker (Mr. Wetangula): That matter is over!

Mr. Shikuku: Mr. Temporary Deputy Speaker, Sir, the truth will always ooze out.

In this Motion you will find that I am trying to look at the question of a tie. If they were to have consequential amendments, they will also have considered the question of the tie. Suppose we have equal numbers of seats in this House, what will happen? That was not taken into account, therefore, we should also

consider that the consequential amendment would also have included the coalition clause whereby if there is such a thing, there would be a coalition. The rights of the Opposition are nowhere in this system at all. Therefore, we on this side of the House feel that it is not enough to remove section 2 (a) and just stop there. There must be consequential amendments to make sure that there is a democratic system of government in this Republic. At the moment democracy is on the lips of this Government, but in practice they are doing nothing to make sure that the democratic processes and institutions are also taken care of. Therefore, I am sure the hon. Members from this side of the House and the other side of the House will not find it very difficult to accept this Motion so that the Attorney-General can go straight into the question of looking at the whole issue so that we have a true democracy and removing these obnoxious laws like the Chief's Act as I have mentioned here. They are completely out of step and therefore they should be removed.

As concerns I not being Secretary-General, which was said by my brother on the other side, I would like to tell him that, I am the registered Secretary-General of FORD(A). He is one of the Secretary-Generals who failed to come to this House and went through the back-door, being a nominated Member and he has no shame. Shame on him!

Mr. Orenge: Mr. Temporary Deputy Speaker, Sir, I beg to second this Motion. This is a very important Motion. If one looks at the statutes which are mentioned in this Motion and the provisions of those statutes, they are certainly not in tune and consistent with the new spirit of multi-partism, since the repeal of Section 2 (a) of the Constitution. We would have expected the Attorney-General to move with speed to ensure that these oppressive enactments are repealed totally so that they disappear from the volumes of our statutes in this country. One of the examples of the oppressive laws that are still in our statute books is the Societies Act. According to the Constitution of this country, the freedom of assembly exists as a matter of right. The freedom of association exists and it is enshrined in the Constitution as a matter of right. The Attorney-General is aware that, in accordance with the provisions of the Societies Act, the Registrar of Societies who normally acts under the direction of the Attorney-General, can cancel the registration of societies or even political parties when he deems it necessary. This is a very serious matter because, even as we exist as political parties, the registration of all the parties in this House can be cancelled by the Registrar of Societies, and he does not need to explain or justify his action.

The Attorney-General (Mr. Wako): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member in order to say that the Registrar of Societies can do this when there are provisions on how he can do it and the grounds for doing it, under the Societies Act?

Mr. Orenge: Mr. Temporary Deputy Speaker, Sir, in fact, what I am saying is that the Registrar of Societies can ban any political party and he has done so, before. In 1969, the Kenya People's Union (KPU) was banned, just in the same fashion as the Kenya African Union (KAU) was banned by the colonial government in 1952. The same provisions of the law which were used by the colonial government to ban KAU were later used to ban the KPU in 1969. It is a shame that the party which fought for Independence and for land rights in this country; and which was led by Jomo Kenyatta in 1952 is a banned organisation. Up to now, according to the Societies Act, the KAU is a banned organisation and if you are a member of that organisation, you can be charged in a court of law and be imprisoned.

Those enormous powers that the Registrar of Societies holds in accordance with the Societies Act go against the very grain of the Constitution. You can see even in instances where persons have applied for registration of political parties, the Attorney-General can "sit" on it as long as he wishes.

The Attorney-General (Mr. Wako): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member in order to say that the Attorney-General can sit on applications when, under the Societies Act, the Attorney-General is not in charge of deciding whether or not to register any society? The Attorney-General only comes in where there is an appeal from the decision of the Registrar of Societies. Can the hon. Member quote any instance where such an appeal has been made and the Attorney-General has failed to decide?

Mr. Orenge: Mr. Temporary Deputy Speaker, Sir, we have been in this business for too long. Even when we tried to register the original FORD or when there were problems in it, it was quite clear that the Registrar of Societies cannot act until he is directed by the Attorney-General. The Attorney-General remembers this very well.

The Temporary Deputy Speaker (Mr. Wetangula): Order! Hon. Orenge, you have a balance of five minutes for next Wednesday.

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Wetangula): Hon. Members, it is now time for the interruption of business. The House, therefore, stands adjourned until this afternoon, at 2.30 p.m.

The House rose at 12.30 p.m.