

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 1st August, 2001

The House met at 9.00 a.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

ORAL ANSWERS TO QUESTIONS

Question No.345

ENCASHMENT OF CHEQUE NO.009053

Mr. Obwocha asked the Minister of State, Office of the President who was paid the proceeds of cheque No.009053 for Kshs43,605.75 dated 9th July, 1997, from Barclays Bank of Kenya, Kakamega Branch, on account of the late Frederick Saisi made out in the name of District Commissioner, Nyamira, as a trustee.

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

No one has been paid the proceeds of cheque No.009053 for Kshs43,605.75. Nobody has come forward with the list of beneficiaries even after the DC Nyamira made such appeals.

Mr. Obwocha: Mr. Deputy Speaker, Sir, I would have liked to give the Assistant Minister the actual details of the widow of the late Frederick Saisi and the efforts they have made to get this money from the DC Nyamira. Unfortunately, this Question has come when my documents are not here. Could I appeal to you for this Question to be in tomorrow's Order Paper so that I can produce the papers?

Mr. Deputy Speaker: Just supply the information regarding the beneficiary of the late Frederick Saisi's estate who is to be paid, to the Assistant Minister.

Mr. Obwocha: Mr. Deputy Speaker, Sir, then let me ask this Question: Is the Assistant Minister confirming to this House that the money is with the DC, Nyamira?

Mr. Samoei: That is correct, Mr. Deputy Speaker, Sir. The Public Trustee, Western Province, has confirmed that the money due to the estate of the late Frederick Saisi is in the bank and is earning interest.

Mr. Obwocha: Mr. Deputy Speaker, Sir, if I can recall from the papers I was given by the family, this cheque was given out to somebody who is not known. The Assistant Minister is now confirming that the money is earning interest in the account. Is this trustee the DC or who is he?

Mr. Samoei: Mr. Deputy Speaker, Sir, the Public Trustee is under the Attorney-General's office who normally handles those issues. But the DC acts on behalf of the Public Trustee in the office of the Attorney-General. What is important here is that the money is available. The hon. Member can do his constituent a favour by providing details. That is what the DC requires so that this money can be paid urgently.

Dr. Oburu: Mr. Deputy Speaker, Sir, is the Assistant Minister telling the House that from 1997, a Kenyan who lost her husband is not traceable, even by the Provincial Administration whose arms go down to the sub-location and even up to the village where they have elders? Is it now for the an hon. Member of this House to go and help them to trace a constituent as if the Provincial Administration arm does not exist?

Mr. Samoei: Mr. Deputy Speaker, Sir, the Government can undertake that effort. So far, the onus has been on the relatives and the wife of the deceased to show up because it is important that this money is paid to the genuine beneficiaries of that estate.

Mr. Deputy Speaker: Next Question!

Question No.009

LIQUIDATION OF KNAC

Mr. Anyona asked the Minister for Finance:-

(a) whether he could make a comprehensive report regarding the liquidation of Kenya National Assurance Company (KNAC);

(b) what the total assets and liabilities of KNAC are; and,

(c) what the total benefits of the former employees are and when they will be paid.

The Minister for Finance (Mr. Okemo): Mr. Deputy Speaker, Sir, I beg to reply.

(a) Prior to its liquidation, KNAC used to underwrite both non-life (general) insurance business and life insurance. The general insurance business is hopelessly insolvent and will be liquidated. The life insurance is currently being operated as a closed life fund and will be transferred to another insurer. Following preliminary approval by the Minister for Finance and the Cabinet, the Official Receiver and provisional liquidator had been instructed to proceed with the transfer of the closed life fund of the KNAC. There were only two bidders for the closed life fund.

After doing due diligence for a period of six months, the first bidder cancelled negotiations and indicated that they were no longer interested in the transaction. As instructed, the Official Receiver and the provisional liquidator commenced negotiations with the second bidder as a result of which, a draft scheme of transfer of the Closed Life Fund was discussed. This draft scheme of transfer involved reduction in benefits promised to the policy holders. This reduction would be effected via a court order.

In summary, it would involve paying ordinary life policy holders over a three-year period and superannuation or pensioners policyholders over a 15-year period. This means that policyholders would be paid lower values and these would be paid over a longer period than initially promised. If the proposed scheme of transfer to the second bidder had to proceed as envisaged, there were likely to be a number of negative consequences.

In view of the above, it has been proposed that rather than go through the route of transferring the Closed Life Fund to the second bidder, another option be sought and implemented in order to alleviate the great suffering of many policy holders. This option involves the transfer of the Closed Life Fund to a new company to be formed. The Government will own 100 per cent shares of this company at the start.

(b) (i) The Closed Life Fund (Superannuation and Ordinary Business)

As at the transfer date, that is 30th June, 1997, the assets and liabilities were valued at Kshs3,380,304,000 and Kshs3,162,937,000 respectively. In order to arrive at the draft scheme of transfer, an actuarial valuation of the Closed Life Fund was undertaken on 30th June, 2000 and it revealed the following financial position:-

	Ordinary Life Kshs	Superannuation Kshs	Total Kshs
Assets	872,579,025	652,529,525	1,525,108,550
Liabilities	1,484,186,717	2,358,636,940	3,842,823,657
Deficit	611,607,692	1,706,107,415	2,317,715,107

It is evident from the above, obviously, that the Closed Life Fund is in significant deficit. It is important to note that the assets shown in the above table have been valued at a net realisable value, that is on a forced sale basis. If the assets are valued at market value, then the overall deficit would come down to Kshs1,739,213,657.

(ii) General Insurance Business (Non-Life)

The assets of the general insurance business are in the order of Kshs70 million whereas the liabilities are in the order of Kshs1.25 billion.

(c) As at the date of collapse of the company, in July 1996, the total benefits of the former employees were Kshs192,065,372.50. Since the benefits of the former employees of KNAC are held in a Deposit Administration Scheme which forms part of the Closed Life Fund that is the subject of the proposed transfer, benefits will be paid once the transfer has been completed.

Mr. Anyona: Mr. Deputy Speaker, Sir, I am grateful for that detailed answer given by the Minister. Nevertheless, I would like the Minister to give us a breakdown of the various categories of policy holders and the form of assets and liabilities.

Mr. Okemo: Mr. Deputy Speaker, Sir, I have the totals but I can actually provide the detailed breakdown which is a huge document. However, I can make it available to the hon. Member. However, suffice it to say that the assets are predominantly buildings or properties and the reason why the values have been coming down is because of the general decline of the economy. If you look at the values in 1997 and those of 2000 or 2001, they have deteriorated by over 50 per cent. However, the actuarial liabilities have continued to increase as policies mature and they become liabilities. That is why the assets have been diminishing in value and the liabilities have been increasing in value because of the maturing policies.

Mr. Keriri: Mr. Deputy Speaker, Sir, KNAC was, in the early 1980s and 1970s, one of the biggest and most viable insurance companies in Kenya. It was then run down to what it is now. There must have been something wrong with those who were running it. Has the Government considered what action to take against those who ran down KNAC to that extent, because it must have been due to mismanagement? What has the Government intended or proposed to do against those who ran down KNAC?

Mr. Okemo: Mr. Deputy Speaker, Sir, well, obviously the outcome of the alleged mismanagement is that the company went under receivership. I do not know and I have no records anywhere to show any criminal evidence that could be taken against anybody who may have mismanaged the company. However, obviously, the consequence of a company coming from a profitable position to a position of receivership or liquidation indicates gross mismanagement. However, as to whether legal action can be taken against individuals who were involved in the mismanagement, I think I am incompetent to answer that question.

Mrs. Mugo: Mr. Deputy Speaker, Sir, that company is known to have been a top corporation in this country and definitely the person who was at the helm was a Minister in this Government. In fact, the same Minister who was in charge of KNAC at that time had run down other areas like the 1987 Fourth All Africa Games. We know what happened in that mess. Could we be told why the Government keeps having such Ministers who run down one institution and then they are given even a bigger Ministry to run down? Could the Minister then consider, with all his collective responsibility, to recommend to the President that, that Minister is sacked because Kenyans are suffering?

(Applause)

Mr. Deputy Speaker: Ask your question!

Mrs. Mugo: Yes, Mr. Deputy Speaker, Sir. Could the Minister consider recommending that to the President? When will the former employees of KNAC be paid?

Mr. Okemo: Mr. Deputy Speaker, Sir, I think in full compliance with the Constitution of this country, I have no mandate to recommend to the President either for the firing or hiring of Ministers. So, I am not a competent part to carry out that function.

Mr. Anyona: Mr. Deputy Speaker, Sir, because of the importance of this issue, I would like the Minister to actually table the document he was referring to here so that we have a complete record of the situation. In any case, I would like to find out from the Minister when, the various option measures he has proposed here are likely to be in place so that we can put this problem behind us?

(Mr. Okemo laid the documents on the Table)

Mr. Okemo: Mr. Deputy Speaker, Sir, in fact, the next thing we want to do immediately is to constitute a new company under the name Kenya National Assurance (2001) Limited, with 100 per cent shareholding by the Government. The Government is going to raise Kshs1.7 billion to pump into this company. I think we will start the process by--- You are talking about the completion?

Mr. Anyona: Yes!

Mr. Okemo: Mr. Deputy Speaker, Sir, we will start maybe in the next month to actually carry out the legal formalities for the formation of the company. However, as to the raising of the Kshs1.7 billion, we intend to do that through a Treasury Bond. Then, we want to go out and get a management contract from either an international or a local company to manage this company. Then, in the next two years, they will merely be paying out the liabilities to the policy holders and to the pensioners. After that, we would like even to mandate them to continue to do new business so that after say four to five years, we can then sell that company and the money that the company has put in will then be recovered through the sale of that company.

Question No.555

AUDITING OF THURDIBUORO SCHOOL ACCOUNTS

Mr. Deputy Speaker: Mr. Ochilo-Ayacko is not here? We will leave his Question until the end. Next Question!

Question No.556

DESTRUCTION OF CROPS

Dr. Murungaru asked the Minister for Environment:-

- (a) whether he is aware that on 14th November, 2000, forest guards destroyed food crops and dwellings of peasant farmers at Guara area of Gathiuru Forest, though the farmers had paid for the plots and had been allowed to cultivate in the forest by the Forestry Department;
- (b) when he will compensate these farmers for the losses incurred, and;
- (c) what disciplinary action he will take against the officers concerned.

Mr. Deputy Speaker: Is anyone here from the Ministry of Environment and Natural Resources? We will leave that Question until the end.

Next Question.

Question No.547

REPAIR OF MUONI BRIDGE

Mr. Kaindi asked the Minister for Roads and Public Works:-

- (a) whether he is aware that the bridge at Muoni Dam on Machakos-Kathiani Road (E 484) was washed away during the *El Nino* rains, and;
- (b) what urgent steps he is taking to ensure that this bridge is repaired.

The Assistant Minister for Roads and Public Works (Eng. Rotich): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am aware that Muoni pipe culvert was washed away during the *El Nino* rains.

(b) My Ministry will repair the culvert as soon as the project is prioritised by the Machakos District Development Committee (DDC). If this has been done, we will repair the culvert as soon as we receive the minutes of the DDC's meeting.

Mr. Kaindi: Mr. Deputy Speaker, Sir, the Assistant Minister has given a very interesting answer. First of all, Muoni Dam is the third largest dam in Machakos District. The entry point is a big river where line culverts could never have been put in the first place. Secondly, the Assistant Minister has said that the Ministry will repair the bridge as soon as the Machakos DDC prioritises that project. The Assistant Minister is not serious. I have made representations to his Ministry and he is very much aware of this. The District Engineer, under the direction of the Machakos DDC, has already written a report on this particular bridge. Last year, we prioritised this project in our work plan for our constituency roads. Could the Assistant Minister, as a matter of urgency, tell this House when the Ministry will repair the washed-out section of the bridge? The road now is impassable. It is a tarmac road and the bridge serves Kathiani Township.

Eng. Rotich: Mr. Deputy Speaker, Sir, if the documents the hon. member has referred to are with us, we shall undertake the project during this financial year. I have not seen the documents, but I undertake that as soon as I see them, we shall repair the bridge this financial year.

Mr. Kaindi: Mr. Deputy Speaker, Sir, I am talking about a very serious issue where a section of a tarmac road has been washed away. This is the Machakos Town-Kathiani Market Road. We have made our efforts, as a community, but every time there are heavy rains, the section is washed away. Therefore, vehicles which ply this road are forced to go through Mitaboni, and so cover 45 kilometres. Could the Assistant Minister, under the Emergency Roads Programme, ensure that, that section of the road is repaired?

Eng. Rotich: Mr. Deputy Speaker, Sir, in fact, that is what I was saying. As soon as I see the documents, may be today or tomorrow, I undertake that we shall repair this section of the road. The estimated cost of the repair work is Kshs2.5 million.

*Question No.344*APPOINTMENT OF OFFICERS FOR
MARAGWA COUNTY COUNCIL

Eng. Toro asked the Minister for Local Government:-

- (a) whether he is aware that for over one year, Maragwa County Council has been operating without a treasurer, an administration officer and an internal auditor, and;

(b) when he will have the posts substantively filled.

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

(a) Yes, I am aware that the Council has been without a substantive Treasurer, an administration officer and an internal auditor.

(b) The posts have been declared vacant to the Public Service Commission of Kenya (PSC) for advertisement.

Eng. Toro: Mr. Deputy Speaker, Sir, Maragwa County Council, as the Assistant Minister knows, is a new county council and has got to be nurtured to grow. Currently, we have management problems in the Council. The County Council Clerk is running it single-handedly. This Clerk is known to be very corrupt, from past experience. He has not even been confirmed in his post by the PSC besides the three officers whom I have referred to. Could the Assistant Minister tell this House how many other posts in the County Council are vacant?

Mr. Kiangoi: Mr. Deputy Speaker, Sir, it is not true that the Council Clerk, in the first place, is corrupt. Secondly, he is not running the council single-handedly because there are people who are in acting capacities as treasurer, administrative officer and internal auditor. These are qualified people and it is only that the posts have not been advertised by the PSC. Those are the only vacant posts in that Council.

Mr. O.K. Mwangi: Mr. Deputy Speaker, Sir, it is a very pathetic situation that Maragwa County Council is run by one person, as though it is personal property. This person, who has not been confirmed by the PSC, is being retained in his position by the Ministry to further its political interests. He is the one who is---

Mr. Deputy Speaker: Ask your question!

Mr. O.K. Mwangi: Mr. Deputy Speaker, Sir, could the Assistant Minister tell the House why there is no deputy clerk, treasurer, deputy treasurer, administrative officer and an internal auditor at Maragwa County Council? It is the duty of the Ministry to post these officers to the council and then advise the PSC about them. Could the Assistant Minister promise the House that he will appoint and post these officers to the council with immediate effect?

Mr. Kiangoi: Mr. Deputy Speaker, Sir, the Ministry does not appoint officers. The appointments are done by the PSC; from grades 1 to 9. I have said, and I wish to repeat it, that there are officers there in an acting capacity. The treasurer is---

Mr. O.K. Mwangi: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister not misleading the House by saying that officers of the local authorities are posted by the PSC? Indeed, even the clerk to Maragwa County Council was posted by the Ministry and has not, up to date, been confirmed by the PSC.

Mr. Deputy Speaker: Order! Next time an hon. Member stands up on a point or order after he has asked a question, and goes on to make a long speech, I will move to the next Question. Proceed!

Mr. Kiangoi: Mr. Deputy Speaker, Sir, the hon. Member ought to distinguish between appointments and postings. I talked about appointments, which are done by the PSC. That notwithstanding, let me say that there are officers in Maragwa County Council. The Clerk is not running the council single-handedly, but there are councillors. The council is run by the councillors and the officers. These acting officers are qualified. The Treasurer is qualified up to Section V Certified Public Accountant (CPA) III; the Administrative Officer has been there and has a Bachelor of Arts degree and CPA I. The Internal Auditor has a Bachelor of Arts degree and CPA I and II. These officers are helping the Clerk until such time that the appointments will be effected by the PSC.

Eng. Toro: Mr. Deputy Speaker, Sir, the Assistant Minister is not taking this matter seriously. The Clerk is a very qualified person, as the Assistant Minister has said. He is using his experience to run down the council. We are very concerned about what he is doing. We would like the county council to be healthy. There is no deputy clerk, but the Clerk has appointed a clerk who was employed in 1997 as the deputy. There is no treasurer, but the clerk has appointed an accounts clerk to be the treasurer. It is very serious when a person appoints, within his administration, people who are not qualified. Therefore, these people are subject to his dictatorship. Could the Assistant Minister consider posting a deputy clerk, a chief administrative officer and an internal auditor to Maragwa County Council? A county council cannot be run the way Maragwa County Council is being run.

Mr. Kiangoi: Mr. Deputy Speaker, Sir, in view of what the hon. Member has said, we shall ask the Public Service Commission (PSC) to expedite the appointments.

Question No.532

ALLOCATION OF PLOTS TO TRADITIONAL DANCERS

Mr. Muchiri asked the Minister for Local Government:-

(a) when the traditional dancers of Nairobi will be allocated their plots at Kayole District Centre, off Komarock Road, by Nairobi City Council (NCC),

(b) why the groups have not been issued with leases since 1997, when they paid Kshs46,160, each

for the plots; and,

(c) whether he could consider writing off the annual premiums for the years 1998 to 2001 for the aforesaid plots.

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

(a) It is true that traditional dancers were allocated the land in 1997 by the NCC and were issued with official allotment letters. However, they could not take possession of the land as another group of people, by the name of Dandora Farmers Company, claimed ownership of the land and went to court. The case is still on, according to the information we have so far.

(b) Owing to the court case, the NCC cannot deal with the matter regarding the parcel of land as this would be *sub judice*.

(c) The issue will be considered once the court matter is completed.

Mr. Muchiri: Mr. Deputy Speaker, Sir, this is a very serious matter. The Assistant Minister, in parts "b" and "c" of his answer has misled this House. The facts are known to the Assistant Minister because I have communicated to him. The Government issued allotment letters to about 150 women groups in Nairobi and each group paid about Kshs47,000. The land which they were being allocated belonged to that company. The case has been finalised and I have the judgement here. Tena and Umoja Estates and Dandora Factory stand on that piece of land, and it was allocated by the NCC. Why did the NCC allocate land for which they did not have a title deed, and why did they receive money from members of the public? Is the Government not a land grabber?

(Laughter)

Mr. Kiangoi: Mr. Deputy Speaker, Sir, the Government cannot be a land grabber because it owns the land. But to answer the questions that have been raised by the hon. Member, this parcel of land originally measured 818 acres. The land was acquired from the Government and allocated to various users, including the ones the hon. Member has enumerated. The NCC remained with the smaller portion which it allocated to the women groups.

I have had occasion to talk to the hon. Member, and he brought to my attention the fact that there is a judgement. I would have liked to see it because I cannot comment further on the matter because the case is in court. If there is a judgement on the matter, and it is brought to my attention, we will see what we can do about the allocation.

Mr. Ndilinge: Mr. Deputy Speaker, Sir, here is a women group which was allocated the parcel of land. Arising from what the Assistant Minister is saying, somebody somewhere was also allocated the same parcel of land. Could the Assistant Minister confirm or deny that the council did double allocation?

Mr. Kiangoi: Mr. Deputy Speaker, Sir, in the first place, I would not know who the "somebody somewhere" was, but this is normal in land issues. These are claims and that is why the matter was taken to court for adjudication.

Mrs. Mugo: Mr. Deputy Speaker, Sir, there are many such cases all over the City. That is why there is a lot of violence where land is concerned. Could the Assistant Minister tell this House why they cannot consider keeping title deeds or allotment letters for those people who occupy this land? People who have been on a piece of land for a long time are moved out and new ones are allocated the same land. That is what creates disturbances as far as land is concerned in the City. Could he consider allocating the piece of land to the people on the ground so that proper homes, sanitation and other amenities can be developed?

Mr. Kiangoi: Mr. Deputy Speaker, Sir, various factors are taken into consideration when it comes to allocation of land. Occupation alone does not guarantee the person, on the land at that particular moment, allocation of the land. This is because if that was to be the case, people would occupy any piece of land that is empty and wish to be issued with allotment letters. There are other factors that are taken into consideration when allocation of land is done.

Mr. Anyona: Mr. Deputy Speaker, Sir, the Assistant Minister's reason for not taking any action is that the matter is before court. But, at the same time, he said that he has been told by the hon. Member that this matter has been concluded and there is a judgement somewhere, and he does not go beyond that. The House wants to know, in one way or the other, if the matter is in court, then our hands are tied, but if there is a judgement, then some action must be taken. Could either the Assistant Minister or the hon. Member let the House know what the position is?

Mr. Kiangoi: Mr. Deputy Speaker, Sir, the hon. Member for Kitutu Masaba Constituency is right. I requested to be furnished with a copy of the judgement but that has not been done.

Mr. Muchiri: Mr. Deputy Speaker, Sir, the Assistant Minister just called me to the other side of the House when I was about to ask my Question.

(Laughter)

Mr. Deputy Speaker: Order! Order!

Mr. Muchiri: Mr. Deputy Speaker, Sir, I have the judgement and correspondence from the Government.

Mr. Deputy Speaker: Order! Ask your question first!

Mr. Muchiri: Mr. Deputy Speaker, Sir, the Assistant Minister is aware that the court ruled that, from time immemorial, that land belonged to Dandora Housing Company. Dr. Leakey wrote to the Assistant Minister and the Office of the President advising them that the land belonged to these people. What happened is that there was a conspiracy between the NCC and the Physical Planning Department in the Ministry of Lands and Settlement, to deprive some Kenyans of their land, and he allocated the land. The documents are here. Right now, he cannot allocate what he does not have. He has received the money! Could the Assistant Minister table any documents that indicate that the NCC owned that land, at any one time? I would like to table these documents.

(Mr. Muchiri laid the documents on the Table)

Mr. Kiangoi: Mr. Deputy Speaker, Sir, I do not know whether the documents the hon. Member has tabled constitute judgement. But if the matter is in court, it is irrelevant whether Dr. Leakey had written or not written. If one of these documents is the judgement, then I will look at it. But I believe there is no judgement there. It does not really matter when we talked. We consult at all times. We may even have a chat for one minute.

Mr. Deputy Speaker: Order! Order!

Mr. Maitha: On a point of order, Mr. Deputy Speaker, Sir. As the Shadow Minister for Local Government, I get very bitter when the Government tries to cover some illegal transactions by the City Council. We have taken a stand to discipline councillors who grab land from the public. Could the Assistant Minister confirm or deny that this land is not owned by the Council and is being allocated by the City Council?

Mr. Deputy Speaker: Order! Order! That is not a point of order! You are making a statement.

Mr. Maitha: My point of order is whether the Assistant Minister---

Mr. Deputy Speaker: That is not a point of order! What has he breached?

Mr. Maitha: He has breached---

Mr. Deputy Speaker: Order! Order! I was quite happy to give you an opportunity to ask a question. But do not get that opportunity through deceit! Ask your question!

Mr. Maitha: I am very sorry, Mr. Deputy Speaker, Sir. I am the Shadow Minister for Local Government. Could the Assistant Minister explain to this House whether he is trying to harbour corruption in this document which has been laid on the Table by the hon. Member so that we can take action?

Mr. Kiangoi: Mr. Deputy Speaker, Sir, I am sorry I did not get the question because I was trying to get the judgement. With your indulgence, could he ask it again?

Mr. Deputy Speaker: Are you attempting to harbour corruption?

Mr. Kiangoi: Certainly not, Mr. Deputy Speaker, Sir! We cannot do that. The hon. Member stood up and said he is the Shadow Minister for Local Government and he knows we do not do that.

Mr. Anyona: On a point of order, Mr. Deputy Speaker, Sir. In view of the fact that some light has come out--There is some correspondence on this issue and given the importance of the matter, would I be in order to request the Chair maybe possibly not to defer the Question but to require the Assistant Minister to go and study the documents and come back and make the position clear in the House?

Mr. Deputy Speaker: That is correct. The Question has really been exhausted. But, Mr. Assistant Minister, after you have reviewed those documents, could you come back and make a factual statement on what is on the ground?

Mr. Kiangoi: Yes, Mr. Deputy Speaker, Sir, I will look at the purported judgement and then we will---

An hon. Member: That is the judgement!

Mr. Kiangoi: I have not looked at it. I will look at it and I will come back on Tuesday, next week.

Mr. Deputy Speaker: Next Question, Mr. Maitha!

Question No.128

SETTLEMENT OF COAST SQUATTERS

Mr. Maitha asked the Minister for Lands and Settlement:-

- (a) whether he is aware that despite adoption of a Motion to settle the squatters in Coast Province, no settlement has been done so far; and,
- (b) whether he could, as a matter of urgency, settle the said squatters.

Mr. Deputy Speaker: Is there anyone from the Ministry of Lands and Settlement? They are not here. We will come back to that Question.

Next Question, Mr. Twaha!

Question No.483

UTILIZATION OF WIYONI BEACH

Mr. Twaha asked the Minister for Lands and Settlement to what use the Government intends to put the newly reclaimed beach at Wiyoni, Lamu Island.

The Assistant Minister for Lands and Settlement (Mr. Sudi): Mr. Deputy Speaker, Sir---

Mr. Kihoro: On a point of order, Mr. Deputy Speaker, Sir. Question No.128 was asked and there was no Minister to answer it. Now the Question by Mr. Twaha has got an Assistant Minister to answer it. Is the Assistant Minister in order to have avoided answering Question No.128?

The Assistant Minister for Lands and Settlement (Mr. Sudi): Thank you, Mr. Deputy Speaker, Sir. I am sorry my colleague who was supposed to answer Question No.128 is not here. But, maybe, he is on the way coming.

However, let me answer Question No.483.

Mr. Deputy Speaker: Which Question are you answering?

The Assistant Minister for Lands and Settlement (Mr. Sudi): I am answering Question No.483. I am waiting for my colleague to come and answer Question No.128.

Mr. Deputy Speaker: Proceed!

The Assistant Minister for Lands and Settlement (Mr. Sudi): Thank you, Mr. Deputy Speaker, Sir.

Mr. Maitha: On a point of order, Mr. Deputy Speaker, Sir. I have a written answer from the Minister. Is it possible that we can pass it to the Assistant Minister so that he can answer Question No.128?

Mr. Deputy Speaker: Order! Order! The Assistant Minister has told you quite clearly that he is unable to answer Question No.128. There is another Minister who is supposed to do so. You cannot make him answer a Question he cannot answer.

Proceed, Mr. Assistant Minister!

The Assistant Minister for Lands and Settlement (Mr. Sudi): Thank you, Mr. Deputy Speaker, Sir, for saving the situation.

However, I beg to reply.

The Government intends to use the newly reclaimed beach at Wiyoni, on Lamu Island, for the following purposes; expansion of Wiyoni Primary School, as a picnic site, port building yard, sports ground, fish landing site and for sewerage works.

Mr. Twaha: Mr. Deputy Speaker, Sir, I presume the Government will be giving this land to the county council to implement these projects. I hope the Assistant Minister is putting in place enough safeguards to keep the councillors from dividing it among themselves. Why did the Assistant Minister not consider giving the land to the poor landless people in Lamu for settlement instead of setting it aside for picnics and beaches?

Mr. Sudi: Mr. Deputy Speaker, Sir, the land issue in Kenya is becoming a big problem. My Ministry is in the process of considering establishing committees to study land issues which have caused a lot of problems in the nation. However, we will make sure that this land is utilized properly and not by the councillors for individual use but for the intended purpose. In the past, we have seen that people have been using it for personal use. It is supposed to be used for the intended purpose. However, the whole of Lamu Township has been declared a national museum because of its historic importance. Currently, Lamu Township lacks a sewerage plan as the population increases daily. That is why we have set aside land for sewerage works. About 15 acres have been reclaimed.

Mr. Deputy Speaker: Order! Order! Mr. Assistant Minister, restrict yourself to answering the question asked.

Mr. Mwakiringo: Mr. Deputy Speaker, Sir, we are worried about the councillors dishing out land to themselves as councillors and to other politically-correct individuals. How much land was reclaimed and how much is being sub-divided into those uses so that we are sure that none of the pieces of land remaining is divided amongst the councillors or dished out irregularly?

Mr. Sudi: Mr. Deputy Speaker, Sir, there are 15 acres which have been reclaimed for the Wiyoni sea front. Out of this acreage, there will be land set aside for the expansion of Wiyoni Primary School, picnic sites, building yard, sports ground, fish landing site and sewerage works. However, the total acreage of each purpose was not asked about in this Question. It will be given to the Member when he raises a Question on each one of them.

Mr. Maitha: Mr. Deputy Speaker, Sir, of late our Government has become fond of allocating itself the reclaimed land in Coast Province. According to the Act, people are allocated beach plots about 200 metres away from the sea. If there is any reclamation of land beyond those 200 metres, the Government is not allowed allocate any plot to anybody beyond that point. Could the Assistant Minister confirm whether that Act is now being violated and that the Government can now allocate itself the reclaimed land from the sea?

Mr. Sudi: Mr. Deputy Speaker, Sir, I have told this House that due, to problems being experienced by Kenyans on land issues, the Ministry is considering to set up a committee to address these issues. We will make sure that reclaimed land will be utilised for intended purposes.

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

Mr. Deputy Speaker: Order! Land is being reclaimed physically from the sea. That is a fact. You are the one who is out of order!

Mr. Achilo-Ayako's Question for the second time!

Question No.555

AUDITING OF THURDIBUORO SCHOOL ACCOUNTS

Mr. Achilo-Ayacko asked the Minister for Education:-

- when the Ministry did last carry out an audit of the accounts of Thurdibuoro Secondary School;
- whether he is aware that the headmaster was transferred to Kobila Secondary School following allegations of misappropriation of funds; and,
- what action he has taken against the headmaster.

The Assistant Minister for Education, Science and Technology (Mr. Awori): Mr. Deputy Speaker, Sir, I beg to reply.

- The last audited accounts for this school are of 1999.
- I am not aware that the headmaster has been transferred. In fact, he is still at the school.
- Under the circumstances, there is no action that is required to be taken against him.

Mr. Achilo-Ayacko: Mr. Deputy Speaker, Sir, could the Assistant Minister lay on the Table of this House a copy of the last audited accounts of this school?

Mr. Awori: Mr. Deputy Speaker, Sir, I am prepared to lay a copy of the audited accounts on this Table; but, of course, not now because I was not asked to come with them.

Mr. Anyona: Mr. Deputy Speaker, Sir, since there is a big mess in schools with respect to the auditing of books, could the Assistant Minister tell us what is the policy and practice followed in auditing of school funds throughout the country?

Mr. Awori: Mr. Deputy Speaker, Sir, at the district level, we have District Accountants who inspect and audit school books.

Mr. Badawy: Mr. Deputy Speaker, Sir, if the assertion by the Assistant Minister is that school accounts are audited regularly why, on several occasions, do we have to wait for a special monitoring unit from the Office of the President to reveal these discrepancies, anomalies and irregularities in books of accounts in schools? This is prevalent in quite a number of schools in the country. Why is it so? Is it because the auditors in the Ministry inefficient?

Mr. Awori: Mr. Deputy Speaker, Sir, I never used the word "regularly". I only talked about this particular school. I also said that books of accounts in all schools are subject to audit at the district level. There are, of course, many schools that go against this rule. It is the responsibility of the Ministry to follow it up and we are doing exactly that.

Dr. Murungaru: Mr. Deputy Speaker, Sir, this is a very widespread problem and it is one of the causes of conflicts between parents and teachers, particularly the headteachers. When school books take over five years to be audited, and auditing amounts to an exercise of trying to shut bott the gate after the horse have bolted, does the Ministry have a time limit as to when the accounts should be audited? If not so, could he institute that kind of regulation with immediate effect, to avoid these problems arising in nearly all public learning institutions?

Mr. Awori: Mr. Deputy Speaker, Sir, there is a requirement, not only in our Ministry, but in all Ministries and organisations, that accounts of the previous year should be ready in the following year. But, of course, this does not happen. The situation is very unsatisfactory; I do accept that. This is because there are many schools whose accounts have not been audited for four to five years as the hon. Member says.

Mr. Achilo-Ayacko: Mr. Deputy Speaker, Sir, the Assistant Minister has said that the last audited report in this school was done in 1999. It is now clear that in Year 2000 no auditing exercise was carried out and that the allegation that this headmaster is involved in corruption is, therefore, true. Is it in order for the Assistant Minister to

say that they cannot take any action against the headmaster when there is a pending audit year?

Mr. Awori: Mr. Deputy Speaker, Sir, at the moment, books of accounts for the Year 2000 have not been audited. However, the exercise is going on. It has not been completed. Therefore, headteacher has not misappropriated any funds. He is still in that school. The allegation that he has been transferred because of misappropriation is very wrong.

Mr. Deputy Speaker: Dr. Murungaru's Question for the second time.

Question No.556

DESTRUCTION OF CROPS

Dr. Murungaru asked the Minister for Environment:-

- (a) whether he is aware that on 14th November, 2000, forest guards destroyed food crops and dwellings of peasant farmers at Guara area of Gathiuru Forest, though the farmers had paid for the plots and had been allowed to cultivate in the forest by the Forest Department;
- (b) when he will compensate these farmers for the losses incurred; and,
- (c) what disciplinary action he will take against the officers concerned.

Mr. Deputy Speaker: Anyone here from the Ministry of Environment and Natural Resources? The Question is, therefore, deferred up to Tuesday, next week.

(Question deferred)

Mr. Maitha's Question for the second time!

Question No.128

SETTLEMENT OF COAST SQUATTERS

Mr. Maitha asked the Minister for Lands and Settlement:-

- (a) whether he is aware that despite adoption of a Motion to settle the squatters in Coast Province, no settlement has been done so far; and,
- (b) whether he could, as a matter of urgency, settle the said squatters.

The Assistant Minister for Lands and Settlement (Mr. Sudi): Mr. Deputy Speaker, Sir, I seek the indulgence of the Chair to defer the Question up to Tuesday afternoon.

Mr. Deputy Speaker: I will defer this Question to tomorrow afternoon.

(Question deferred)

QUESTIONS BY PRIVATE NOTICE

SHOOTING OF MR. CHEGE

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

- (a) Is the Minister aware that on 7th June, 2001, Mr. Njui Chege, a resident of Uthuru, was shot dead, with eight bullets pumped into his body?
- (b) Could he explain why it took the police from Kabete Police Station, which is only a few kilometres away, four hours to respond?
- (c) What action is the Minister taking to ensure that the perpetrators of this heinous crime are arrested?

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

- (a) I am aware that Mr. Njui Chege was killed by robbers at his house on 7th June, 2001.

(b) After the robbers attacked Mr. Chege, his son managed to escape and telephone a relative who lives in Nairobi. The relative drove all the way from Nairobi to Kabete Police Station to report the incident and hence the delay in police taking action.

(c) The police are still investigating the matter vide Kabete File No.163/141 of 2001 with a view to arresting those behind the murder.

Mrs. Mugo: Mr. Deputy Speaker, Sir, either the Assistant Minister does not have the correct information or he is deliberately misleading the House. The fact is that Mr. Chege was killed at about 8.00 p.m. His killers pumped eight bullets into his body and stole absolutely nothing from his house. So, the motive of the murder has nothing to do with robbery. Mr. Chege was killed in cold blood. It is also not true that his son escaped. The fact is that about five of Mr. Chege's neighbours telephoned Kabete Police Station immediately and reported the murder. However, four hours later, nobody had arrived at Mr. Chege's house from Kabete Police Station, which is less than five minutes-walk away. Kyuru is next door to the police station. It was at that time---

Mr. Deputy Speaker: Ask your question, now!

Mrs. Mugo: Mr. Deputy Speaker, Sir, it was at that time that Mr. Chege's son rang his relative.

Mr. Deputy Speaker: Could you, please, ask your question?

Mrs. Mugo: Mr. Deputy Speaker, Sir, why did the police say that they had no vehicle to take them to the scene of the crime? Could the Assistant Minister explain why the police kept on failing to answer the stress calls from the people of Kyuru Village, where more than five murders have taken place?

Mr. Samoei: Mr. Deputy Speaker, Sir, as I said, the police knew of this particular murder after it was carried out. Kabete Police Station is on telephone. If this information had been availed to the station, a quicker response by its officers would have been possible.

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

Mr. Deputy Speaker: I am going to give you a chance to ask a question.

Mr. Samoei: Mr. Deputy Speaker, Sir, there was no deliberate move by the police to ignore distress calls from Kyuru or any other area. Indeed, the greater assignment of our policemen is to be at hand to help whenever citizens are in danger.

Prof. Anyang-Nyong'o: Mr. Deputy Speaker, Sir, this is a very important Question. Last weekend, when I was in Kisumu Rural, a young man was chopped on the head with a panga. He would have died had I not been there to take him to Maseno for treatment. When the police were called, they said that we should go to Maseno and buy them petrol, so that they could put it not in their car, but in a car from the District Commissioner's Office in Kisumu. The Assistant Minister is saying that the police are always on call to respond to calls when people are in distress. Could he explain to this House how the police can respond when they do not have vehicles with which to respond, and when they ask citizens to fuel their vehicles to respond to calls of distress?

Mr. Samoei: Mr. Deputy Speaker, Sir, we have had incidents of police not being in a position to respond to distress calls due to unavailability of transport. Sometimes the police get more than one distress call at the same time. We do not have a commensurate number of vehicles to respond to each of the distress calls. However, whenever possible, the police have responded to such calls. It is the wish and, indeed, the vision of the police, that there will be a time when they will have enough vehicles and fuel to enable them respond to each and every case.

Mr. Muchiri: Mr. Deputy Speaker, Sir, the true position is that there is central allocation of petrol to the police. What the Minister is telling this House is not the truth. Even today, there are several bodies in people's houses. It is the duty of the police to take bodies to the mortuary, but they do not do that. Could the Assistant Minister ensure that, from today onwards, the police are provided with sufficient petrol so that they can respond to distress calls?

Mr. Samoei: Mr. Deputy Speaker, Sir, I am not aware of any incidents of bodies which have not been collected from people's homes by the police. However, we have enhanced the current budget for police transport and fuel purchases to enable them respond effectively to their call of duty.

Mrs. Mugo: Mr. Deputy Speaker, Sir, the Assistant Minister has deliberately misinformed this House. Mr. Chege's neighbours can swear that they telephoned Kabete Police Station and reported the murder. However, the police took four hours to attend to the scene of crime. So, could the Assistant Minister tell this House whether that is the same station that is investigating this case? If the answer is in the affirmative, what makes him think that officers from that station will be interested in finding out the truth of the matter if they were not interested in going to capture the robbers who hid in a neighbour's house for a whole hour after the incident? They terrorised the whole village.

Mr. Samoei: Mr. Deputy Speaker, Sir, to the best of my knowledge, I have given the House the correct information regarding this incident. Indeed, Kabete Police Station is about five kilometres from the scene of this murder. It is unfortunate that the police were not informed of it in good time. Otherwise, they would have responded. We have one Police Force in this country. That is the same Police Force that is investigating this matter. We have

enough trained policemen and women to be able to carry out this exercise.

Mr. Gitonga: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to continue misleading this House that the scene of the murder is five kilometres away from Kabete Police Station when Mr. Chege's home is only two kilometres from the police station? Would the police not have walked to that house even if they did not have transport?

Mr. Samoei: Mr. Deputy Speaker, Sir, I maintain that Mr. Chege's home is five kilometres away from Kabete Police Station. The police were not informed of the murder in good time.

ARREST OF MACHAKOS RESIDENTS

(Mr. Kikuyu) to ask the Minister of State, Office of the President:

(a) Why were the homes of Machakos residents raided and people arrested, beaten and locked up by police on the night of 18th May, 2001?

(b) Who was responsible for this and what action has the Minister taken against the officers involved?

(c) Could the Minister assure the House that such incidents will not occur?

Mr. Deputy Speaker: Mr. Kikuyu is not here. So, the Question is dropped.

(Question dropped)

AWARDING OF MOI INTERNATIONAL AIRPORT TENDER

(Mr. Sungu) to ask the Minister of State, Office of the President:-

(a) Why is the management of Kenya Airports Authority planning to award the tender for cleaning Moi International Airport, Mombasa, to the highest bidder, leaving out the lowest bidder?

(b) Could the Minister table the list of the tenderers and their quotations?

Mr. Deputy Speaker: Mr. Sungu also not here? Question dropped!

(Question dropped)

POINTS OF ORDER

INSECURITY IN TAVETA

Mr. Munyao: On a point order, Mr. Deputy Speaker, Sir. I rise on a point of order to request for a Ministerial Statement from the Minister of State, Office of the President, regarding urgent security issues about the recent concluded by-election in Taveta. The latest information has it that on Monday, the 30th July, 2001, soon after counting of votes, an individual was cut with a panga near Darajani. The victim was treated in a hospital at Taveta and discharged. On the same day, at Mbogoni in Kimorigo Location, some thugs went to Mr. Kaleli's farm and cut down all his bananas. In the same area, at a place called Njolo, next to the polytechnic, pamphlets are being circulated with a picture of a panga and a human head and we do not know what that means. The taxi people who trade around Taveta area and the business community are fairly disturbed because of insecurity since they cannot do any activity in the area. This is very serious and I would like to request the Minister of State, Office of the President, in charge of internal security, to give a Ministerial Statement addressing this matter so that the people of Taveta can settle down after having elected their Member of Parliament peacefully.

The Assistant Minister of State, Office of the President (Mr. Samoei): Mr. Deputy Speaker, Sir, owing to the gravity of the allegations that have been made and the information that has been provided to this House and the seriousness this Government attaches security issues where citizens are concerned, I do undertake to investigate the issues raised and possibly issue a Ministerial Statement on Tuesday, next week.

An hon. Member: Maybe, by Tuesday, another person could have been cut!

Mr. Deputy Speaker: Order! Order! I think it is fair that the Assistant Minister be given time to investigate this matter and to give a factual report to the House. But let me say this: Points of order after Question Time, requesting Ministers to make Ministerial Statements, are being abused. You ought to request Ministers to make clarification on matters of a policy nature, not to answer questions! From today, be advised that if you come to seek a Ministerial Statement, that can best be dealt with during Question Time, that is not going to be allowed to happen.

VALIDITY OF ANNUAL REPORTS

Mr. Anyona: On a point of order, Mr. Deputy Speaker, Sir. I wish to raise two issues and the first issue is on procedure. Last week, some reports from various parastatals were laid on the Table of this House. I did raise a point on the validity of those reports because they were basically time-barred and were in breach of the law. I think one part of the Chair's response was that the Office of the President should come and offer some explanation while the Chair would be considering what kind of ruling to make. That has not happened yet, and I want to raise the issue again.

The second issue is on both---

Mr. Deputy Speaker: Let us first find out whether the Office of the President is ready with an explanation.

The Assistant Minister, Office of the President (Mr. Samoei): Mr. Deputy Speaker, Sir, indeed, I did take up the issue with the relevant sections of the Government and I will be able to issue a report tomorrow.

Mr. Deputy Speaker: Thank you. Next point order, Mr. Anyona!

BREACH OF PROCEDURE AND PRIVILEGE

Mr. Anyona: Mr. Deputy Speaker, Sir, the second point is both procedural and a matter of privilege. The sanctity of Parliament is that nothing is done or said here that is in breach of matters of procedure and privilege. Last week, there was an issue concerning substantiation with regard to the goings-on in the KCC. I do not want to play the devil's advocate, but my primary responsibility is to make sure that Parliament operates as Parliament. In that substantiation, a Report was tabled as part of the substantiation. That Report was said to be a Report of a Government's Task Force, chaired by a Permanent Secretary and the Report, of course, brought out the facts that were being alleged. A Statement was also made that a similar Report had been laid on the Table of this House several years ago and that Report, apparently, disappeared.

Mr. Deputy Speaker, Sir, I have had occasion to look at what was laid on the Table of this House. It does not appear to me to be the Report that was talked about. This is because the document which was laid on the Table has no title and signature of the Chairman. In fact, if you go through it, you will see that there are chapters one, two, three and then it jumps to chapters eight and nine and the rest is a mass of pieces of paper which have been pinned together and that is said to be a Report. I have also checked and I am given to understand that, in fact, this document - if you can call it a document - was actually put together by bringing various pieces of paper and they were bound in the library of Parliament. If that should be the case, then in my view, there is a serious breach of privilege; to use Parliament to do that kind of thing. I think it is one of the least things that should happen in this Parliament. So, I am asking the Chair to find out what the correct position is so as to protect the integrity of Parliament.

Mr. Deputy Speaker: I believe you are referring to the substantiation with regard to allegations made on the KCC and some of its directors. That, as you will recall, was raised when the Speaker was in the Chair and he did rule that he was going to look at it in detail before he makes a ruling. I am, therefore, going to rule that, what you have just said will be brought to the attention of the Speaker, and it will be part of that ruling that he is going to make.

CURRENT STATUS OF DRCs

Mr. Murungi: On a point of order, Mr. Deputy Speaker, Sir. Last week I requested for a Ministerial Statement from the Minister for Roads and Public Works regarding the current status of the District Roads Committees. The Chair ordered that, that Statement be made in this House on Thursday last week. To date the Statement has not been made and I informally talked to the Minister yesterday and he told me that he would make a Statement this morning. I would like the Chair to revisit the matter and make a further order so that we can get a clarification on this issue.

Mr. Deputy Speaker: Is there anybody from Ministry of Roads and Public Works? I would like to direct that the Statement be made in the House tomorrow afternoon. Today is an Allotted Day for the Committee of Supply and we have normally run short of time. That Statement has to be made tomorrow afternoon. So, that information should be relayed to the Minister.

Next Order!

MOTION

REPEAL OF INDEMNITY ACT

THAT, in view of the provisions of the Indemnity Act, Cap.44, of the Laws of Kenya, which restrict legal proceedings in respect of certain omissions and commissions done in the prescribed area, namely North Eastern Province; Isiolo, Marsabit, Tana River and Lamu districts, between 25th December 1963 and 1st December, 1967; this House urges the Government to repeal the Act and consider compensating and/or indemnifying the people grossly affected by the aforementioned omissions and commissions by public officers.

(Mr. Keynan on 25.7.2001)

(Resumption of Debate interrupted on 25.7.2001)

Mr. Deputy Speaker: Mr. Kihoro still has three minutes.

Mr. Kihoro: Thank you, Mr. Deputy Speaker, Sir. In my contribution to this Motion, I was concluding by stating that the Indemnity Act, Cap. 44 of the Laws of Kenya, needs to be repealed in order to give opportunity to people who have previously been injured. Innocent people should be given an opportunity to claim compensation against the Government because, in the process of suppressing crime or enforcing the law, it is improper that innocent people could be injured and they are left without compensation.

I have also been looking at Cap. 57 of the Laws of Kenya, which is the Preservation of Public Security Act. Under that Act, there are North Eastern Province and Contiguous Districts Regulations which have been made under that Act. Indeed, a lot of the operations were carried out, between 1964 and 1967, under these regulations. I have found out also that these regulations need to be repealed because if we are talking about a country which has got a Constitution, and institutions enforcing the law, it is important that all Kenyans be treated equally and there should be no law which should be applied in this country in a discriminative manner.

It is, therefore, important that as we do repeal, Cap. 44, we also look at the regulations which have been made under this Act, to make sure that they are also repealed because the general law of the land, as contained in the Penal Code and Constitution, is sufficient to make sure that in this country, we have got law and order. What is important here is to do justice and be fair and also agree that any collective punishment that could have been meted out to innocent Kenyans is illegal and unconstitutional and it needs to be made good. That could only be made good by setting up a Commission to investigate all these cases of maltreatment and injury to innocent Kenyans. This applies to what has happened in North Eastern Province and a Commission needs to be set up to make sure that it will investigate all cases where innocent people were injured and award them compensation as appropriate. It is, indeed, necessary to set up this Commission or a tribunal because we are dealing with matters that happened 35 years ago, to ensure that the people who were injured and whose relatives were killed, are going to have an opportunity of making good, the collective punishment that could have been meted out to them.

I beg to support this very important Motion. **Mr. Maore:** Thank you, Mr. Deputy Speaker, Sir, for giving me an opportunity to say a few words about this Motion. We are calling upon the House to recommend the repeal of an Act of Parliament that is 31 years old. It is important that we take note of the changed circumstances in the country, where we may have situations that are calling upon us to pick on issues that might look irrelevant now and were relevant yesterday. Thirty five years ago, the situation in North Eastern Province, including Isiolo, Marsabit, Tana River, Lamu and we may add several other areas like, West Pokot, Samburu and Turkana which are today, no-go zones because of stories of banditry and cattle rustling and the Government seems to be quite incapable of ensuring that there is security and also provide law and order---

History is history and it does not change. The height of this period; 1963 and 1967, is not referred to in this Act. It is what we call the shifta war or shifta activities or the secession threat. The intention of those who passed this law in 1970s was to contain the shifta war. The Government did take some draconian and outrageous measures sometimes, to contain the shifta war. It is important also to go back to the same history and the causes of the shifta activities were not acts inspired by the spirit of liberation by a certain group of Kenyans who felt that they were oppressed. It was not an act of feeling that they wanted to free themselves from an oppressor. It was an act that is not allowed by any country that recognises the territorial integrity of itself. It was an act of secession; a certain group of Kenyans wanted to secede and join another country.

[Mr. Deputy Speaker left the Chair]

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

I was seven years old in 1967 and I remember spending nights in the bush and I can name villagers in my own village who were killed, not by the Government forces, but by Somali militias who were supporting the secession. It would be wrong for me, and against my conscience, to stand here and say that those who stopped it should be prosecuted. I am talking about the whole spirit. There was a group of Somalis in Kenya who had nothing to do with the shifta activities and there were many of them. The problem with the shifta uprising or activities were those Somali aliens who were brought in by the Colonial Government to be kept in Isiolo and Marsabit and several other parts of the country. Those people felt that they did not want anything to do with Kenya at the dawn of our Independence. They wanted to be with Somalia. It was proper for the Government of the Republic of Kenya, which was young then, to protect the territorial integrity of the new Republic.

The Kenya Land Commission Report approved by her Majesty's Government, of May, 1934, had some references; towards what can be taken as history of the Shifta War. Paragraph 8, page 112, reads out as follows:-

"Apart from the Northern Frontier Somali tribesmen, there are a considerable aliens or immigrant Somalis from Aden and Somaliland who are principally engaged in cattle trading. These later use Isiolo and Nairobi commonage as their main centres where they keep large herds of cattle and are in fact ranching on Crown land. There are also several of them at Kitale, Gilgil and other places."

We are talking about the alien Somalis and not the Kenyan Somalis. Paragraph 8 (1) (iii)--- The question of a reserve---

Mr. Maitha: On a point of order, Mr. Temporary Deputy Speaker, Sir. We need guidance from the Chair. Is it proper for an hon. Member to read out from a document when he is contributing to a Motion?

The Temporary Deputy Speaker (Mr. Muturi): Order! He is quoting. He is perfectly in order!

Mr. Maore: Mr. Temporary Deputy Speaker, Sir, paragraph 8 (1) (iii) reads out as follows:-

"The question of a reserve for these Somalis has been mooted but they are not natives of the colony.

They are foreigners paying non-native poll tax. While we consider that they have a right to be allowed to buy land in suitable places, we cannot see that they have any claim on a native reserve."

We are not questioning the legitimacy of anybody. We are just referring to history. It is history and we cannot deny it. So, why I would like to support the Indemnity Act and oppose the Motion is to try and justify--- Members of Parliament who were here in 1971 passed this Act. They were trying to protect Government officers who actually sacrificed and deserved medals, for preserving the territorial integrity of this country under a threat from some citizens who wished to be in another country. As I said earlier, circumstances have changed. It is okay to sue or open lawsuits for those people who might have been victimised because of just being Somalis. They could have been suspected to have participated in the shifta activities while they did not. It would be appropriate to open an inquiry and have data regarding who was or was not involved in the shifta. Then, after that kind of an inquiry, we can see whether we can have selective clemency and compensation from the Government. But it would be inappropriate, when we are in a state of emergency or war, to prosecute those people who put their lives on the line to defend the country. It does not happen in any other country.

With those few remarks, I wish to oppose the Motion.

Mr. Ndicho: Mr. Temporary Deputy Speaker, Sir, I rise to spend just a few minutes to say that we really sympathise and feel very bad that, immediately after the attainment of Independence on 12th December, 1963, instead of all Kenyans in general enjoying the fruits of the new Government, the shifta war was started almost immediately. It is important to know the real history of what transpired during the struggle for Independence of this country from the British yoke of colonialism.

It must be known, and it is in the books of history, that the British Government had summoned Mzee Jomo Kenyatta and tried to soothe him to accept to be given Independence only in Central Province where he came from, and then leave the British to continue being in all other places in Kenya. It is also on record that the late President Jomo Kenyatta turned down that offer and declared that the struggle for Independence was for the whole of Kenya as indicated by international boundaries. He turned down that offer and declared that he wanted Independence for the whole of this nation.

When the British failed to persuade Kenyatta to relent in the war for Independence, they conspired immediately to have him arrested in 1952 along with other leaders in the struggle for Independence. They were then tried and locked in jail for seven years. That struggle, and Kenyatta's refusal to accept that offer from the British, made them angry with Kenyatta. What they did was to set the new Government of the whole country that attained Independence on 12th December, 1963--- If you look at the Motion, the Indemnity Act took effect from 25th December, 1963. It was only about 12 days after Kenya was granted Independence by the British. So, it is the British who incited the uprising between the citizens of this country to discredit the new Kenyatta Government.

Mr. Temporary Deputy Speaker, Sir, I would honestly support that the innocent people who were tortured,

killed and maimed during the uprising be compensated. They naturally deserve compensation. But the question is: Who will give that compensation? Is it the Kenya Government under the regime of Mzee Jomo Kenyatta, or is it the Kenya Government per se, including the regime of President Moi? I support that the people who suffered innocently be compensated by the British Government. That was a British affair. It was the British Government that incited the people because it was angry that it had lost the war to the veterans of this country. Now, they were out to discredit the new Government. So, the people of this country, including those who participated in the Mau Mau War, who lost their lives, property or were maimed, and who live in abject poverty today because of that war, deserve to be compensated by the British Government. If the British Government has got any shred of moral integrity, it should feel duty-bound to compensate the people who lost their lives, their relatives, those who were maimed, those who lived in the areas where the struggle took place and in North Eastern Province.

Mr. Temporary Deputy Speaker, Sir, we would like to know, as Mr. Maore has said, who incited the Somalis in the northern part of Kenya. Who created the so-called shifta war? Who incited the so-called shiftas to call for their own independence away from the Kenyatta Government? Who was that? It is common knowledge that, instead of giving Mzee Kenyatta and the liberators of this country from British colonialism some peace and rest so that they could start building the nation, there was somebody who incited the people from the back, so that the new Government could be discredited and then, declare that Kenya was not mature enough to attain Independence.

Mr. Temporary Deputy Speaker, Sir, I support this Motion in the sense that we should not call for the late President Kenyatta to be tried when he is peacefully lying in his grave. It is disrespect to the former Head of State who refused to be enticed by the British to be given Independence for Central Province only. If Mzee Kenyatta was a selfish man, he could have accepted. I am sure that even today, if some people were asked to get independence in their respective regions, they would accept and say: "Let other people fight for the liberation of their own areas." But that old man refused and said that he wanted Independence for the whole of Kenya the way it was established by international boundaries.

So, it is in bad faith for anybody to stand and accuse Mzee Kenyatta of sins of omission and commission that were committed at that time. Honestly, as a Government, if Mzee Kenyatta gave in and lost that war, then possibly, the Government of Somalia could have changed the international boundary from where it is today to Meru or wherever they would have demarcated. It was important. I commend and congratulate the late Mzee Kenyatta because when Idi Amin claimed that a part of Kenya around Naivasha was part of Uganda, Kenyatta said that not even an inch of the Kenyan Republic to the border would be ceded to the Republic of Uganda. This is a man who exhibited exemplary leadership and showed the whole world that he was ready to govern his country and to protect his new country.

I heard somebody say that if this House agrees to repeal this Act, then we will open floodgates for trillions of shillings which will be sought for as compensation arising from this atrocity. I would like to ask the House to agree that we repeal this Act and that the blame should be shifted to the British Government. They should be made to settle this compensation. We can take the British Government to the Hague court where they have taken former President Milosevic.

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

Mr. Ndicho: How can he ask for a point of order when he is seated down? He is out of order!

Mr. Kihoro: Is the Member for Juja in order to say that a situation which arose after this country became independent in 1963, should be taken up by the British Government? This is totally different from what the spirit of the Motion is urging this House to do. Is he in order to take us back to colonialism when we should be proud of our Independence?

Mr. Ndicho: You wanted to be heard and you have been heard! I hope you are following my argument, that it is the British who brought about this matter and they should be made to pay compensation and not the Kenya Government.

The Assistant Minister for Energy (Mr. Sasura): Thank you, Mr. Temporary Deputy Speaker, Sir.

First, I would like to correct the impression that this Act was coined by the British Government. It is very clear that this Act was in commencement from 5th June, 1970, and that was the time when this Government was being led by Mzee Jomo Kenyatta. I am really shocked, although not surprised, that an hon. Member is describing as "territorial integrity", the atrocities committed by security forces against the people of northern Kenya. He gave a very narrow definition of the shifta war, whom he said were killing people in Meru.

The word "shifta" is Boran word meaning - running away from home; being a bandit in the bush and nothing more than that. It is granted that, when the British Government was leaving, they kind of created a difference between the people of northern Kenya; those who wanted to remain under the Kenyatta Government and those who wanted to secede to Somalia. That is not a justification for the security forces of independent Kenya to commit acts of atrocity. This Act is very clear. It is an Act that restricts taking legal proceedings in respect of some actions and matters that have not been specified. It has given a blanket amnesty to cover these acts that have been committed in specific areas,

namely, North Eastern Province, Isiolo, Marsabit, Tana River and Lamu Districts.

If you look very critically at these areas, they have got a characteristic outlook. One, these areas are mainly in northern Kenya and they are dominated by Muslims. This Act is purely meant to protect people who have done things that cannot be mentioned in this House. Acts of atrocity have not been witnessed by many people. When Mr. G.G. Kariuki was the Minister of State, Office of the President in charge of internal security, I witnessed in Garissa, what would be described as acts of atrocity. Any hon. Member who has witnessed that cannot stand here today to support that we should not repeal this Act. This is the Act that has given precedence to Kenyans to have a very negative attitude to the people of northern Kenya.

During that year, when Mr. G.G. Kariuki was the Minister of State, Office of the President, I remember very well when he said that: "Kenya does not need the people of North Eastern Province. North Eastern Province is very vast and yet there is shortage of land in other parts of the country. The people of North Eastern Province can be wiped out in one week and then the people who have no land can come and occupy the province." That is a clear indication of how insignificant the people of northern Kenya are to this nation. This Act should have been repealed a long time ago. This is the Eighth Parliament in independent Kenya and, therefore, this Act should have been repealed earlier enough. I do not understand how any moral citizen of this country can stand here and say that we should not take these people to court, seek compensation or ask the Government to consider compensating these people. I am talking about precedence.

Mr. Temporary Deputy Speaker, Sir, you will also note that public servants are normally posted to northern Kenya purely on disciplinary grounds. That is the place where people who are expected to behave properly are taken. On the education front, there is no single Muslim university in this country. There is the Catholic University and the Methodist University, but Muslims in Coast Province were denied the chance to start their own university. This by extension, is caused by Cap.44 of the Laws of Kenya. This Act must be repealed if the attitude of Kenyans towards the people of northern Kenya and Muslims in general is to change.

The Assistant Minister, Office of the President (Mr. Samoei): Mr. Temporary Deputy Speaker, Sir, I stand to respond to this Motion.

As hon. Members have made contributions to this Motion, various points have been raised with respect to what this Cap.44 Laws of Kenya, the Indemnity Act, portends for the country today. It is important for this House to take into account the circumstances under which this Act came into being. At Independence, Kenyans from different cultures were made to be part and parcel of each other. It is only then that we had a country called Kenya. I want to comment at this stage---

Mr. Muite: On a point of order, Mr. Temporary Deputy Speaker, Sir. Did you hear the Assistant Minister say that it was only at Independence that different ethnic communities were brought together and we had a country called Kenya? Is he in order to mislead this House that Kenya came into being at Independence when the boundaries, in fact, date way back before Independence?

The Assistant Minister, Office of the President (Mr. Samoei): Mr. Temporary Deputy Speaker, Sir, we became an independent country on Independence Day and it is only then that we could rightfully refer to ourselves as Kenyans. Before that, we were an entity of our colonial masters.

However, I still want to proceed and say that I want to commend our founding fathers for the efforts they made in putting our country together. Those efforts were under threat at a stage in our history. It is because of that threat of cessation to our territorial integrity and national sovereignty that the Government, and I am sure the National Assembly then, thought it wise to come up with legislation and regulations to make sure that this country became what it should be as a nation.

Mr. Temporary Deputy Speaker, Sir, history bears me witness that acts of lawlessness and banditry had been manifested in certain parts of our country, hence the necessity of this legislation. Various arms of Government, mainly the Armed Forces, Police and administrative officers, by virtue of their calling and duties, in order to maintain the integrity of our nation and for the sake of the sovereignty of this country and on behalf of this country, performed their duties sometimes in excess of what is provided by law. However, this was only in an attempt to keep our country the way it should be as an independent state.

Mr. Temporary Deputy Speaker, Sir, it is because of such acts by our administrators and our armed forces personnel that this Act came into being, mainly to protect our men and women who gave their lives to defend the integrity of our nation, the sovereignty of our country and our territorial boundaries. These men and women gave what it took to be able to contain the situation then. It is only befitting that, as a responsible Government and as a nation, that we protect such persons from acts of court litigations and compensation demands from persons that were aggrieved then.

Mr. Temporary Deputy Speaker, Sir, this Act gives protection to people who committed their lives to protect the integrity of this country. In the course of their duties, indeed, certain excesses were experienced. Many lives and

property were lost. However, against the very integrity of this nation, as much as those incidences are regrettable, the Act provides that in cases where such acts were done in exercise of good faith and to be able to protect our national boundaries, it was then necessary to provide in our legislation, indemnity and protection to our men and women who had given their lives for the sake of our country.

Mr. Temporary Deputy Speaker, Sir, it is worth noting that indeed, since then, the situation has changed and Kenyans, having been independent close to 40 years, now feel part of each other much more than they did at Independence. It is the wish of this Government that we continue to be as Kenyan as we can so that we do not have to revert to incidences where we have to provide for legislation to be able to contain ourselves as Kenyans.

Mr. Temporary Deputy Speaker, Sir, indeed, this Cap. 44 of the Indemnity Act, gives me thoughts to think about the incidences we have in the North Rift sometimes with cattle rustling. This is a very serious menace that not only impoverishes the people of that region but also gives us as a country a very bad image. In fact, this House should be considering legislation for us, as a Government, to be able to take enough serious action to be able to bring down incidences of cattle rustling in that part of our country. This is so that we not only save property and lives of people living in those regions but we also maintain our image as an independent country.

Mr. Temporary Deputy Speaker, Sir, it is against that background that this Indemnity Act was passed. Repealing this Act would not only compromise and, in fact, betray our administrators, policemen and women, and our armed forces personnel who went out of their way and, indeed, lost their lives in the exercise of their duties to protect our country. This Act does not give blanket amnesty to all acts of violence or against the law in North Eastern Province. It gives a specific time limit; between 1963 and 1967. It is specific on the time and it does not mean that acts of violence or acts against the people of North Eastern Province now cannot be prosecuted.

Mr. Temporary Deputy Speaker, Sir, indeed, it would be against the spirit of this House to repeal this Act because; noting the fact that this legislation was actually passed after the atrocities had already been carried out. Indeed, allegations have been made against our founding father of this country and I do not think it is responsible enough for us to accuse the late President Jomo Kenyatta for what happened in North Eastern Province then. He did have a duty as the Head of the State to protect the integrity of this House and to use whatever means that was available to him to be able to safeguard us as a country. I think Parliament then was in agreement with him that the steps taken by the armed forces were in good faith and surpassed whatever small or major incidences that happened then to protect the integrity of our country.

Mr. Temporary Deputy Speaker, Sir, I do oppose this Motion because it does not state explicitly that the Act has a specific time limit. Acts of violence against the people of North Eastern Province that took place after 1967 are, indeed, actionable on whoever committed crimes against the people of North Eastern Province. Compensation can be paid by either Government agencies or any other persons who have committed crimes against the people of North Eastern Province after the expiry of the period stated in the Act. So, it is not correct to say that this Act gives blanket indemnity to security personnel or other persons to continue to inflict acts of atrocities on the people of North Eastern Province.

North Eastern Province, as it stands today, is, indeed, an integral part of our country like any other and I am happy to stand in this House and say that today the people of North Eastern Province feel as Kenyan as any other Kenyan today. It makes me happy that, indeed, we do not have to go back to legislations like the one we are discussing today to maintain our territorial integrity any more. In fact, the rate of development in North Eastern Province gives confidence to our citizens there; they know that they are, indeed, part of our country as any other citizens from any other part of our country.

With those few remarks, I beg to oppose.

Mr. Keynan: Mr. Temporary Deputy Speaker, Sir, I would like to give three minutes of my time to Mr. Maitha.

The Temporary Deputy Speaker (Mr. Muturi): The Chair does allow Mr. Maitha three minutes.

Mr. Maitha: Bw. Naibu Spika wa Muda, nikiunga mkono mjadala huu ambao unaendelea sasa, ama maada ya leo ambayo imeletwa na Bw. Keynan, ningetaka kusema kwamba Bunge hili lazima litilie maanani sheria ambazo zilitungwa ili kuwazuia watu wengine wasipate haki zao.

Kwa mfano, historia inasema mengi kuhusu vile Wafrika wameteseka hapa Kenya; hata hatukuteseka hivi wakati wa ukoloni.

Hata baada ya Wajumbe kuleta Hoja katika Bunge, ni wajibu wa Serikali kutulinda. Watu kutoka Mkoa wa Pwani waliuzwa kama watumwa na hata hawakuruhusiwa kukaa pamoja na watu weupe. Tumeendelea kuwa vivyo hivyo hata baada ya Kenya kupata Uhuru. Leo tuko vivyo hivyo. Sisi tulikuwa chini ya Sultan, na hata wakati Kenya ilipopata Uhuru tulikuwa bado tuko Zanzibar. Mpaka leo, Serikali ya Kenya haijajua kwamba watu wa Pwani wanateseka. Tukileta mijadala yoyote kuhusu jambo hili hapa Bungeni, inakataliwa na tunaambiwa sisi sote ni Wakenya.

Watu kutoka Mkoa wa Kaskazini Mashariki wanaishi vizuri na Wameru na majirani wao wote, ingawaje Serikali wakati huu, imeanza kuwachokoza tena. Serikali imewakataza Wameru kuuza miraa kwa nchi ya Somalia na jambo hili litaleta taabu kubwa. Ni lazima Serikali ione kwamba wakati huu watu wana amani. Kuzuia Wameru kuuza miraa yao Somalia ni jambo baya sana. Serikali imesema kwamba bunduki zinaingizwa nchini katika harakati za biashara hii. Huu ni wakati wa watu kukaa pamoja, kukumbuka yaliyopita na kusameheana. Tunayakumbuka haya mambo mabaya kwa sababu yalifanywa kwa watu wetu.

Kwa hayo machache, ninaunga mkono.

Mr. Keynan: Mr. Temporary Deputy Speaker, Sir, I am getting dismayed and displeased by the response from the Government.

I will not be shocked tomorrow if the same Government asks for a legislation to protect the perpetrators of the ethnic clashes in the Coast and the Rift Valley Provinces, as part of the Constitutional Review Process. It is in the same spirit that I ask hon. Members to rise above petty politics and demand for the rights of Kenyans regardless of where they come from.

What we are seeing and what we have heard in the Government's response is a repeat of banditry and bad governance, memories and policies, which are still being perpetuated. Time will tell and history will repeat itself. This Act was meant to affect the residents of the entire northern Kenya region and not only the Somalis as Mr. Moore has put it. It affects also the Bajuni from Lamu; the Wardei from Tana River and the Orma community. I am confident that this legislation will be repealed during the constitutional review. That is the only review we want, as people of North Eastern Province. Why can the Government not take action and repeal that Act? It does not make any sense to pass the buck to the British Government. This Act was passed in 1972 and backdated to cover the period between 1963 and 1967. The onus lies with the Kenyan Government. I want to put it on record that the issue is not the late Mzee Kenyatta *per se*. The late Mzee Kenyatta was the Head of Government, just as President Moi is the Head of this Government and anything bad that has happened during his time, he will be held responsible for it. It is in the same spirit that the issue of the late Mzee Kenyatta *per se* should not arise.

Mr. Temporary Deputy Speaker, Sir, the people of northern Kenya are today keenly listening. I am sure, tonight, all of them will be listening to the report of the proceedings in this House. They will not want to hear that their Government, 37 years after Independence, has opposed the repeal of a legislation that has been associated with the rape, mass looting and maiming of the residents of North Eastern Province. I know a great son from that region will go to a constitutional court to demand an interpretation as to whether we need the Act. The Act contradicts the basic fundamental rights of Kenyans.

There is a contradiction in the sense that in the current Constitution, there is a provision for separation of powers. The Executive, the Legislature and the Judiciary each has a role to play. This is the only legislation in our statute books that transfers powers of the courts to the Executive.

This might not be acceptable today, but I am sure tomorrow, the circumstances will demand that this law be repealed because it is repugnant and oppressing. Today, we hear about people who have committed a lot of injustices in Rwanda, the Democratic Republic of Congo and Yugoslavia. History does not fade. Somebody somewhere is taking down notes and generations will read about this. One day, somebody will wake up and say so-and-so was responsible for injustices.

I know quite a number of hon. Members from the Government side, especially those from North Eastern Province, have decided to absent themselves from the House because they are in a fix. Morally, I know all of them are for this Motion and quite a number of them stood up and supported it, and I want to thank them for their courage. At the end of the day, charity begins at home. You are accountable to your people down there. Were it not for the people's generosity and the votes they gave you, I am sure, you would not have become a Member of Parliament. This is the high time they stood up to be counted. This is a Motion about life and death.

The north Kenya region is the only region about which somebody can just dream. A senior official in the Office of the President, Mr. Kiarie, who was the Registrar, dreamt in 1989 that all the people of northern Kenya were not genuine Kenyans. He published a Gazette notice asking all the people of Somali origin to register themselves afresh. Today, residents of North Eastern Province happen to be the only community that carries two identity cards. Where is the justice we are talking about? Today, I cannot go to the Immigration Department to request for a passport like other Kenyans, but I must verify that I am a Kenyan. This applies also to the Bajuni from the Coast. Indirectly, the same policy applies to the entire Muslim community. For how long will we cry?

The Assistant Minister, Office of the President (Mr. Samoei): Mr. Temporary Deputy Speaker, Sir, our verification exercise does not only apply to the people of North Eastern Province, but to all people living along our borders. It is not in order for the hon. Member to mislead the House.

Mr. Keynan: Mr. Temporary Deputy Speaker, Sir, that is flattery. The Assistant Minister has just misled the House. I want to table a copy of the Kenya Gazette Notice dated 10th November, 1989.

(Mr. Keynan laid the document on the Table)

I want the Assistant Minister to read this document because he is ignorant of some of the laws the Government has put into force. The verification exercise was meant for Kenyans of Somali origin.

The Assistant Minister, Office of the President (Mr. Samoei): On a point of order, Mr. Temporary Deputy Speaker, Sir. I do insist that for purposes of issuance of these documents, all Kenyans who live along the borders require to be verified.

Mr. Keynan: Mr. Temporary Deputy Speaker, Sir, I have said that the Somalis are the only people who are required to produce those documents. These are some of the documents which were rejected even by the apartheid regime in South Africa. This is the only country that requires a section of its citizens to carry dual identification. History will repeat itself.

I would like to inform my colleagues here that tomorrow, they will find a legislation indemnifying the perpetrators of ethnic clashes, and they will recall this Motion. It is high time we stood up and demanded that this Act be repealed. Once it goes to the constitutional court, even if this Parliament refuses, I am confident that it will be accepted because it contradicts our entire Constitution. Equally, I will table these documents just to prove that whatever we are being told is nothing but false.

If I am given time, I can table a list of Kenyans of Somali origin who have been denied identity cards just because their parents did not have the pink card which is called "screen card". Where does this apply in the world? This document has been rejected in South Africa, Rwanda, Burundi, Australia and all over the world. For how long will we remain slaves of our own legislation? For how long will we use statutes that are barbaric to deny Kenyans their rights? For how long will we wait, because the Assistant Minister has talked about the rights of the Kenyan soldiers--- Did the law allow them to rape women, maim, commit plunder and castrate men? Where does it apply? Will we just oppose something just because the time allows, or one is in a position? These are some of things that have made the residents of North Eastern Province feel that they have been declared people who do not belong to this regime. It is not true the way the Assistant Minister has put it, that the people of North Eastern Province are happy. These people have been given so many false promises, and I would like to assure him that they are awake. What they will demand is nothing short of their constitutional right which, first of all, should start with the repeal of a section of our statutes.

Mr. Temporary Deputy Speaker, Sir, I beg to appeal for support.

(Question put and agreed to)

BILL TO AMEND SECTION 22 OF THE CONSTITUTION

Mr. P.K. Mwangi: Mr. Temporary Deputy Speaker, Sir, I beg to Move:-

THAT, this House do grant leave to introduce a Bill for an Act of Parliament entitled Constitution of Kenya (Amendment) Bill to amend Section 22 of the Constitution to provide that the President shall appoint such number of Permanent Secretaries as he may determine who shall be vetted by Parliament.

I came up with this Motion because of the manner in which this House has been belittled by the Government of Kenya. We cannot say that this Parliament has been respected by the two regimes which have ruled this country since Independence. We have been crying that Kenyans are not patriotic, but tribalism has been perpetuated by the leaders of this country since Independence. If we look at the manner in which Permanent Secretaries have been appointed, we will see that since 1963, some of them have been appointed from one region. The situation became serious after multipartyism.

Mr. Temporary Deputy Speaker, Sir, today, we have more than 20 Ministers with only 15---

Prof. Anyang'-Nyong'o: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. Member to move this Motion when the Attorney-General, to whose office this Motion is being moved, is not in the House?

The Temporary Deputy Speaker (Mr. Muturi): The Attorney-General is part of the Government of which he is the Principal Legal Advisor. From time to time, Questions or Motions are moved in his absence, but notes are taken for his attention and response at the appropriate time. So, I rule that it is in order for the hon. Member to move the Motion.

Mr. P.K. Mwangi: Thank you, Mr. Temporary Deputy Speaker, Sir. We still insist that the Permanent Secretaries are the Accounting Officers of the Government. This House is used to vote for the Budget and after that, we do not have any right to question how that money has been spent. We are not asking for much; what we are saying

is that, let the President appoint the persons he requires to be Permanent Secretaries, but let this House vet those names. This is because we can no longer continue to work with some people who are immoral and corrupt. We need to have change. We think that the Government will come up with an amendment, but it cannot deny this House its right to amend certain sections of the Constitution of Kenya.

Today, if we look at the list of the Permanent Secretaries, we will find that most of them come from Rift Valley Province. The President has been saying that he does not want regionalism or tribalism. But why should he practice tribalism of the highest order? He should lead by example. That is why we can still say, and it is true, that he is a tribalist number one.

We cannot instill patriotism in the youth of this country if the leadership, itself, leads by example -tribalism. That is why this country has disintegrated. Today, tribalism has affected Kenya and this trend must be reversed. The Government itself must lead by example. Permanent Secretaries should be people with integrity and moral authority. But we cannot afford to live with people who owe their loyalty to the appointing authority. Most of the Permanent Secretaries no longer work for Kenyans, but for the President. They work under fear because they do not know what will happen by the lunch-hour news. They should be given time to work. If today, one is a Permanent Secretary under one powerful politician, he works under fear. I have a case in point.

The other day, we said that Maragua District Headquarters is in the wrong place and the Permanent Secretary himself asked us to join KANU. Why would he ask such a question? He is there to advise the Government on its own policies, whether they are good or bad. We do not want to see public servants such as Permanent Secretaries being used as KANU youth-wingers. We want them to be directly responsible to the people of Kenya. We do not want them to be under somebody else. That is why we want this Parliament to be given power to vet them, and that is what I am appealing for. Even we, as Members of Parliament, work without fear because we are only answerable to the people of Kenya, but not to one single authority. Once we have been given this power by the people of Kenya, it is taken over by one person. That is wrong. Time has come for Kenyans to demand their rights. It does not matter where one comes from. But does he care for this country?

Mr. Temporary Deputy Speaker, Sir, we want to have transparency because we want to change the economy of this country. Corruption, which we have seen either in the Ministry of Roads and Public Works or in the Ministry of Health and others, has been done with the full knowledge of Permanent Secretaries. When the public cries, they are reshuffled. Some of them are made ambassadors somewhere else to cover up the mess. But if we want to see a good Government, it must be accountable to its people. If it is the Permanent Secretary, Ministry of Finance, even before the Budget is read, he should tell Kenyans how they spent the funds they were allocated during the last financial year. It is not a matter of presenting the Budget and then asking Parliament to pass it. Once the money has been voted, it goes to some few individuals and most Kenyans are left poor. Kenyans will be very happy to hear the Government's response on this. It is shameful leaving all the work to the President. He wakes up one morning and instructs public servants on what he wants to be done. We have seen public servants running to political rallies where the President is campaigning. We want to see people who can implement Government policies. All those policies which the Government has come up with are gathering dust in the shelves because only one person is in charge. Permanent Secretaries should be given the opportunity to carry out their duties.

Mr. Temporary Deputy Speaker, Sir, we want to have Permanent Secretaries who have freedom of expression. When one Permanent Secretary, Dr. Kang'ethe Gitu, differed with the Government on the implementation of policies, he was fired.

The Assistant Minister, Office of the President (Mr. Gumo): He retired at 55 years!

Mr. P.K. Mwangi: He did not retire as Mr. Gumo is trying to say. He was fired just because he differed with the Government. We have so many Permanent Secretaries who are over 55 years and are still working. At the same time, we would like to see the number of Ministries rationalized. Currently, Permanent Secretaries are overworked, because one Permanent Secretary works under three Ministers. How do we expect this person to work? Who is his boss? He is only one person working under three powerful Ministers.

Mr. Munyasia: On a point of order, Mr. Temporary Deputy Speaker, Sir. Mr. P.K. Mwangi has made a serious allegation, that one Dr. Kang'ethe Gitu was fired not because he was 55 years, but that he had disagreed with the Government. He alleges that there are many Permanent Secretaries that are over 55 years and are still working. Could he be called upon to substantiate and name those Permanent Secretaries that are over 55 years and are still working for this Government?

Mr. P.K. Mwangi: Mr. Temporary Deputy Speaker, Sir, I was asked to substantiate the remarks I made about Dr. Kang'ethe Gitu. Dr. Gitu came to Maragua District and he was not accompanied by the DC. The DC himself complained and that is when it was said that he was issuing Government policies from bars.

Mr. Munyasia: On a point of order, Mr. Temporary Deputy Speaker, Sir. Mr. P.K. Mwangi said clearly that there are Permanent Secretaries who are over 55 years and are still working for this Government. I asked him to

substantiate by naming some of those that are over 55 years and are still working. Could he be asked to name them?

Mr. P.K. Mwangi: Mr. Temporary Deputy Speaker, Sir, one of them is the Permanent Secretary to the Ministry of Agriculture and Rural Development. He is over 55 years. If this Parliament had been given that chance to vet, we could have young people instead of engaging people who are over 55 years old. We are denying the youth of this country a chance to work when we have so many deadwoods in the Government. Let us give the youth of this country a chance to lead.

The Assistant Minister for Labour and Human Resource Development (Mr. Chanzu): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the Member to name the Permanent Secretary, Ministry of Agriculture and Rural Development when he knows very well that he is on contract with the World Bank? He is not a Civil Service employee.

Mr. P.K. Mwangi: Thank you, Mr. Temporary Deputy Speaker, Sir. Whether he has been seconded by the World Bank or what, he is still serving the Government of Kenya as a public servant. That is what we know. We do not know anything about the contract with the World Bank.

Mr. Temporary Deputy Speaker, Sir, in moving my Motion---

Mr. Murathe: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. Member to confuse issues? The hon. Member has raised a very fundamental point, that the Permanent Secretary, Ministry of Agriculture and Rural Development is actually not an employee of the Government of Kenya and that he is on contract. This Permanent Secretary is one of the most efficient and effective Permanent Secretaries we have today in this Government. Therefore, it is not in order for the hon. Member to impute that this Permanent Secretary is over 55 years, which again I do not know, and he is incompetent. I stand to challenge the hon. Member that this Permanent Secretary is not an employee of the Government of Kenya.

An hon. Member: That is not a point of order!

Mr. P.K. Mwangi: Mr. Temporary Deputy Speaker, Sir, I respect hon. Murathe. But that is not the issue. The issue is that the Permanent Secretary is a civil servant and we have an age limit of when civil servants are supposed to retire.

On that note, I call upon Mr. Kihoro to second this Motion.

Mr. Kihoro: Mr. Temporary Deputy Speaker, Sir, I beg to second this very important Motion.

The Minister for Roads and Public Works (Mr. W.C. Morogo): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for Mr. Kihoro to second a Motion which has not been moved properly?

The Temporary Deputy Speaker (Mr. Muturi): Hon. Members, the Mover, Mr. P.K. Mwangi, has merely concluded his contribution by requesting Mr. Kihoro to second him.

Mr. P.K. Mwangi, what is being seconded? Is it the Motion that you have just moved or some contributions you have made?

Mr. P.K. Mwangi: Mr. Temporary Deputy Speaker, Sir, I beg to move and ask Mr. Kihoro to second this Motion.

(Applause)

Mr. Kihoro: Mr. Temporary Deputy Speaker, Sir, the Motion has been moved very ably by the hon. Member for Maragwa. He should be congratulated because he has done a very good research to show and confirm that, indeed, some civil servants, especially Permanent Secretaries, are beyond the working age of 55. They continue to occupy positions in Government and yet, we have very many competent young people who should be given the opportunity to serve their country. Some of the most senior officers in Government today have already clocked 75 years. Therefore, it is important that we agree that people with advanced age are less efficient and that we apply the rule of 55 years to all civil servants. We will make sure that the Permanent Secretaries and other officers comply fully with this Government regulation.

Mr. Temporary Deputy Speaker, Sir, it is important that the President of this country appoints Permanent Secretaries in various Ministries. I know there is a Motion already before this House on the appointment of Government Ministers. It will be very important to have Permanent Secretaries vetted by Parliament so that they can serve this country with diligence. This will also make sure that we appoint efficient people as Permanent Secretaries. The executives in Ministries will make sure that there will be good governance for all Kenyans in this country. It is true that this principle has been flouted too many times in the past and that is why the Civil Service is in a sorry state. The Permanent Secretaries being heads of various Ministries need to be vetted by Parliament to make sure that they are relevant to their Ministries. We should apply the doctrine of relevance because there are people who cannot do such a job. It is important that people who are competent and relevant to Ministries are appointed as Permanent Secretaries.

This principle has been flouted many a times.

Mr. Temporary Deputy Speaker, Sir, we know some Permanent Secretaries never do a steady job because of the kind of luxurious life they lead in their post-service period. That has happened. It is important to apply the principle of accountability. People who are appointed as Permanent Secretaries must be accountable so that they can safeguard public funds. We must make sure that our Ministries are well-run because people appointed to head them understand their work. The doctrine of relevance and competence is very important when appointing these people. That is why more minds than one should address the issue at the right time. We know also there is tendency of appointing some Permanent Secretaries through other criteria rather than being competent, relevant to the Ministry and being accountable to the public. That criteria needs to be relegated to the times that were and not into the future. This country is being left behind, not only in the region, but in the rest of the world because we have incompetent people who are not capable of discharging their responsibilities effectively and efficiently. Therefore, it is important for us as Parliament to have the opportunity to vet people who will be appointed as Permanent Secretaries in various Ministries.

Mr. Temporary Deputy Speaker, Sir, we have had so many Questions brought up in this House in respect of heads of parastatals. That is a matter that has come up. I saw a list here of nearly 100 pages of various heads of parastatals. If only these appointments were made with the knowledge of Parliament, I am sure we would reduce the number of questions asked about heads of parastatals. It would be important to give Parliament an opportunity and let it play a key role in the appointment of various heads of parastatals. Two weeks ago, we had a Question about OCPDs in this country. We need to give this Parliament an opportunity to vet Permanent Secretaries.

Mr. Temporary Deputy Speaker, Sir, in the USA when Jimmy Carter was elected the President, a madam Reno became the Attorney-General of the USA after the Congress turned down the appointment of two other Attorney-Generals. They had been appointed to act as the Chief Legal Advisor to the Government, but their appointment were turned down. Eventually, Madam Reno became the Attorney-General in the USA. Two times, President Jimmy Carter failed to appoint the right person to the highest legal office in his Government because the vetting committee turned them down.

The Attorney-General (Mr. Wako): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. Member to mislead this House that President Carter appointed Reno as the Attorney-General of the USA?

Mr. Kihoro: Mr. Temporary Deputy Speaker, Sir, I am grateful for that correction. Actually, it was Mr. Bill Clinton. In 1992, he made two appointments of Attorney-General, which Congress turned down twice. So, it is important. The principle is not new. When one mentions the Attorney-General, very quickly, Mr. Wako comes to life.

The Temporary Deputy Speaker (Mr. Muturi): He has given you his service. So, you should give him credit for that.

Mr. Kihoro: Mr. Temporary Deputy Speaker, Sir, also, when the time comes, the holder of the Office of the Attorney-General should also be vetted. It is good that Mr. Wako has reminded me of his presence here. That is another very important Office in this country.

Now that my very learned friend, Mr. Wako, is not doing his job, the point I want to make is that when one occupies that very high office, he should get the support of this House. Maybe, when this House is not quite sure whether one should continue holding public office, there should also be a clause about the removal of certain public officers from certain offices, so that we do not have people who cannot perform. The country has been waiting for performance which has not been forthcoming for years on end.

So, when we have new dispensation that will allow Parliament to vet Permanent Secretaries (PSs), there should also be a provision to review the ability and capability of particular individuals from time to time, so that they do not get too old while in service. In human beings, senility sets in at different times. Some people become senile at 50 years of age while others remain alert up to 80 or 90 years of age. So, what is important is to have a service that will have competent people to discharge their responsibilities to Kenyans in the way they are required by law.

Mr. Temporary Deputy Speaker, Sir, this country's future Government should be efficient. As I said, we are being run down by our neighbours and the rest of the world. It is important that we have people who can understand what is happening and who are capable of picking up new ideas and new methods of performing their duties. That is very important. Only then can we keep up with the times and have a Government that can perform at all times and keep up with the rest of the world. So, I support the principle of having PSs vetted by Parliament in future. That way, a PS will no longer be appointed on the basis of their ethnic origin or on the basis of their proximity to the President or other extraneous principles that will work against the performance of their main duty. The principal assignment of PSs should be service to the people and not loyalty to an individual or keeping up with the very busy schedule of the President of, sometimes, travelling around the country.

That could be an assignment to be fulfilled by some PSs but in terms of discharge of public service, many of the PSs need to be vetted by Parliament to ensure that they do their work properly and to the satisfaction of members of the public, whom they have got a duty to serve.

With those remarks, I beg to second this Motion.

(Question proposed)

The Minister for Agriculture (Dr. Godana): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me the Floor. I rise to oppose the Motion.

For the better part of the last four years, until a few months ago, this country, the present and past Parliaments, have been preoccupied with efforts to establish a comprehensive constitutional review process. After a protracted tussle, we finally managed to create the Constitution of Kenya Review Commission (CKRC), which has now begun the process of reviewing our Constitution. I recall that virtually every political party in this House, and particularly Opposition parties, pursued this with a lot of passion.

The reason why we opted for a comprehensive constitutional review process is that, instead of bringing here piecemeal amendments, we can, through the process, establish a whole integral Constitution, which will be much more viable. Some of the mistakes we may have made on the road to this date since Independence may actually have been occasioned by isolated constitutional amendments. It is, therefore, surprising that Members of this House, and political parties which have unanimously signalled their support for this process, and who are, indeed, party to the establishment of this process, should again seek to introduce a piecemeal amendment of this nature.

I think this has not been done in good faith; we will be eroding the integrity the CKRC is entitled to have in the eyes of the public if, even as it has began to hear opinions from the public, we, as Parliament, seek to make amendments to the Constitution. The question as to what additional supervisory powers Parliament should have over the Executive in terms of vetting and ratifying or rejecting nominations of the executive officers is very fundamental; it is one which the entire Kenyan population, through the review process, should be encouraged to reflect on and express their opinions. I would, therefore, like to plead with hon. Members that we do not pass this Motion. If we do pass it, it will mean that we are not taking the comprehensive constitutional review process seriously, and that the whole exercise is going to be a waste of time.

I am surprised that following this Motion on today's Order Paper is another Motion seeking leave of the House to introduce another constitutional amendment Bill. This sends a very wrong signal not only to the CKRC, but to Kenyans and the world generally, that the Kenya Parliament can spend so much time, effort, engage in so much acrimony and establish a Commission almost unanimously, a Commission which is going to tax the public coffers extensively in terms of resources going to be spent, and yet ignore that Commission's on-going work by doing exactly what it was trying to avoid when it justified the establishment of that Commission.

With those few remarks, I beg to oppose.

Mr. Muite: Mr. Temporary Deputy Speaker, Sir, I stand to support the Motion. The arguments advanced very strongly by Dr. Godana are that we have the comprehensive constitutional review process underway and that we should, therefore, not recommend minimum reforms of the Constitution. From the look of things, nobody can tell how long the comprehensive constitutional review process will take. If we are to take Dr. Godana seriously, he should support this position.

If we are to take the comprehensive constitutional review process, let the Government accept that it is simply not possible to have comprehensive constitutional reforms within the remaining 17 months. That is not going to be possible. It is no use misleading Kenyans and building false hopes in their minds that we are going to complete the comprehensive constitutional review process and have a new Constitution in time for the next general election to be conducted on the basis of that new Constitution. That is not possible and it is tantamount to misleading Kenyans. The sooner this issue is owned up by everybody the better for Kenyans. If you do not want us to keep on bringing this sort of piecemeal reforms, then bring some confidence in the comprehensive constitutional review process by accepting that it is going to take more than the remaining 17 months.

One of the major mistakes that are being made is to expect that, by October next year, when the elections will be around the corner; probably in December, 2002; political actors will agree on minimum reforms targeted at the elections. In October next year, the mood of the people will be targeted at the elections. Every player will be analyzing to see how those minimum reforms will improve the chances of a particular stakeholder in the elections or worsen the position.

In other words, the environment will not be right for us as political actors to agree on minimum reforms targeted at the elections when the elections are around the corner. We ought to admit that comprehensive reforms are going to take much longer than the remaining period. Therefore, we should agree or disagree now on an interim Constitution. Do not wait until October to start debating on an interim Constitution. Let us debate that interim Constitution today, when the elections are not around the corner, so that we can have enough time to even quarrel about the interim Constitution, until we are able to trade off forces and we agree.

It is critical for this nation that the contents of that interim Constitution targeted at the elections should be debated now. There is no time to wait. It should be done now so that people can start preparing for elections on the basis of that interim Constitution. But to wait until October next year is to court disaster. We will not agree at that time because everybody's emotions will be targeted at the elections. When the elections are around the corner, it is of universal application that human beings take leave of their senses; instead of reasoning out, emotions take over and rationality takes a back seat. Do we want to wait and see that happening? Are we not going to do this country a major service by debating that interim Constitution now instead of waiting until October?

Mr. Temporary Deputy Speaker, Sir, let us not keep on blaming the President and KANU all the time about manipulating the electoral process. It is us, and particularly in the Opposition, who hand over the opportunity for such manipulation to the President and to KANU. In Ufangamano, we vehemently objected to the inclusion of the clause about minimum reforms. When the negotiations were taking place, the negotiating committee specifically said that they did not want minimum reforms, yet the clause giving the Constitution of Kenya Review Commission (CKRC) the power to recommend minimum reforms was sneaked back. When Mr. Pheroze Nowrojee tried to ask how the minimum reforms clause was sneaked back, he was not listened to. When most of us tried to say that, that clause should not be part of merger conditions, and that minimum reforms should not be in the current CKRC Act, we were not listened to. Our point was very simple; we cannot pass the buck to the CKRC to recommend minimum reforms. This is something to do with elections and it is the political actors who should have debated that minimum reform package in this House, or an interim Constitution, and either agreed or disagreed on it. But now we handed over that power to the CKRC, whose majority Commissioners are sympathetic to KANU and NDP, and then we start complaining about President Moi manipulating the electoral process. We are the ones who have handed over that loophole to him, which is going to be exploited, and that is why we are now hearing about the joint delegates congress between the two parties, for them to take a common position. One can foresee what they are going to do; they are going to impose on this nation and on the Kenyan people, minimum reforms that are advantageous to them, and because they are going to secure continuation of KANU and NDP in power. We are to blame because we are the ones who handed over that opportunity to them.

What I am saying is that, we have got to begin to think about this country because---

Mr. Munyasia: On a point of order, Mr. Temporary Deputy Speaker, Sir. Could we invoke the Standing Order on relevance? Since Mr. Muite started contributing, would the Chair say that he has been strictly relevant, talking about the vetting of the Permanent Secretaries to be appointed by the President, or he has gone out to discuss the interim Constitution?

Mr. Muite: Mr. Temporary Deputy Speaker, Sir, I am answering why these piecemeal amendments to the Constitution are necessary and I am saying that we cannot wait for the comprehensive reforms. I am saying that no one knows how many years the comprehensive reforms are going to take. But if my friend, Mr. Munyasia, wants to know about Section 22 of the Constitution-- Yes, I am supporting this point because one of the major themes in this country has been the over-concentration of powers in the institution of the Presidency. How can we continue to allow, even for one day, a situation where the President may appoint such number of Permanent Secretaries as he may determine? That is something that should not even wait for the comprehensive constitutional reforms. I would ask the Attorney-General, if we are going to pass this Motion, to harmonise it with Section 25, that says: "Permanent Secretaries and all the other people employed in the Public Service hold office during the pleasure of President." This is the den of the destruction of this country because it amounts to over-concentration of powers in the institution of the Presidency.

Through the Chair, could the Attorney-General not wait for the comprehensive reforms? Could he also bring a law into this House in order for it to discharge its responsibilities under Section 16 of the Constitution, which places responsibilities for deciding how many Ministries are going to be in the Cabinet? It is this House that is required to do that under Section 16 of the Constitution. We have never done it! We are required to fix the number of Ministries, or to enact a law in this House giving authority to the President to fix the number of Ministries. We have never passed that law, and we will never, as a National Assembly, fix the number of Ministries. That has a direct consequence, that beyond any question whatsoever, all the current Ministries are unconstitutional and illegal. So, it is not just with regard to Permanent Secretaries; it also has to do with Ministries. This is the House that should be setting an example in respecting and complying with the Constitution, and we are not doing it. All we are saying is that, some of these issues are too fundamental to be left to comprehensive reforms, which we do not know when they are going to be completed. I am supporting this Motion because, as of today, any right-thinking person can see that truly, comprehensive reforms are going to take a period that we cannot fix just now.

With those remarks, I beg to support.

Mr. Murathe: Thank you, Mr. Temporary Deputy Speaker, Sir. The real reason why people are moving amendments to the Constitution of Kenya in piecemeal is because there will never be a comprehensive review of the Constitution as long as this Government is in charge of that process. You can see that they have already started

frustrating the basic requirement of civic education. Yet in the Act, it is clear. But from the highest office of this Government, to the Minister for Trade and Industry, they only care about civic education.

Mr. Temporary Deputy Speaker, Sir, the reason why hon. Members are bringing in piecemeal constitutional amendments is because there will be no review of the Constitution as long as this Government is in place. Secondly, these Bills are a pointer to the direction that Kenyans want to take. The Kenyan Constitution is okay. It has been okay and served this country well for a long time. It was only adulterated by this Government by sneaking in unpopular and anti-people amendments over time. That is the problem with the Kenyan Constitution. All the amendments that have been done since 1978 have been to concentrate power in one person and to disempower Kenyans. That is the problem with our Constitution, and I want to support what Mr. Muite has said; that, some of these things cannot wait for another day. For example, the President, under Section 22 can appoint such a number of Permanent Secretaries as he desires. Some of the PSs currently in the Government do not even have job descriptions. The job of Professor William Ochieng, who is a PS in the Office of the President, is to churn out KANU propaganda. I do not even think he has a desk. The man sits in State House and he is said to be a PS. But what is he doing? The House must assert itself and rationalise the structure and job description of the PSs. We should have an equal number of PSs to the number of Ministries. They must have specific job descriptions and tasks. The job currently being done by Prof. Ochieng used to be done by another "cartoon" called Mr. Wamatu Njoroge from Gatundu. This is total misuse of public resources. We are supporting this Motion---

Mr. Muithia: I did not hear that one!

Mr. Murathe: I was talking of somebody from your constituency whose job was to sit in State House and churn out KANU propaganda.

Hon. Members: It is a shame! It is ridiculous!

Mr. Murathe: Mr. Temporary Deputy Speaker, Sir, now, he has been replaced by Prof. William Ochieng who writes for Mr. Nassir.

(Laughter)

We want to extend this to even include Section 16. That will also require Parliament to vet Ministers because this is the only way we will eliminate mediocracy, nepotism and sycophancy, which has been used to reward highly unqualified people in senior Government positions. If we were not going to mess up with the provisions of the Constitution, we should even have gone as far as vetting Judges, High Commissioners and those Commissions that the President puts in place. Whoever sits on them should be brought to this House for vetting in order for the House to be satisfied that those people are properly qualified for those jobs.

We are saying that even if it does not happen now, those are some of the issues that we are going to tell Kenyans to look into, during the constitutional review process. Parliaments all over the world, including the United States Congress, vets important appointments of Government. House Committees vet these appointments, and they even dig into the history of some of the characters, so that if such people had conducted themselves honourably or dishonourably earlier, or at some stage, it is brought out for the public to know.

Today, appointments are made on the radio and nobody has time even to know who has been appointed to where, his or her academic background; whether they were con men or women or crooks. We just have to make do with them, including ministerial appointments. That is why this country has gone to the dogs. People are not even matched with their professional qualifications. You will find a person who is a doctor being made the Assistant Minister for Information and Tourism. I do not know how Dr. Wamukoya can perform well in the Ministry Information and Tourism. It is very serious; that, somebody from North Eastern Province becomes the Minister for Medical Services, and yet we know he has no academic background related to medicine. How is he appointed to head such a Ministry when we have hon. Members who are medical doctors by profession and are fully qualified? All professionals should be matched with the right Ministries. I think something is fundamentally wrong. Therefore, I cannot say that Parliament is supreme, the way we are made to believe. If Parliament was supreme, these are some of the issues that cannot wait for a constitutional review process to kick off, which will never happen.

An hon. Member: It is only Mr. Biwott who is in the right Ministry, dealing with trade!

Mr. Murathe: Mr. Temporary Deputy Speaker, Sir, Mr. Biwott is properly matched with his Ministry. That is why you see him performing well because he is a businessman.

Mr. Mwenje: I thought he is a politician!

Mr. Murathe: Mr. Temporary Deputy Speaker, Sir, we are trying to---

Mr. Mwenje: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member in order to say that Mr. Biwott is a businessman when we all know that he is an outstanding politician in this country?

Mr. Murathe: Mr. Temporary Deputy Speaker, Sir, he may not know, but Mr. Biwott is an accomplished businessman in the region. He does not do business in Kenya. He does it in the wider East African region, with business enterprises like the Regional Air.

I know that the Government would say that some of these amendments have to wait for the constitutional review process to start off, but these issues cannot wait. If there is something fundamentally wrong, we cannot wait for another 24 months or three years or forever to change. Let us agree that we are capable as Parliament, to change some of these issues. That is why we are Parliament, because we make and amend laws as and when we realise that there is a problem. You will recall that the week before, the Attorney-General came to this House telling the whole country and the world at large that the Government of the Republic of Kenya deliberately violated the Constitution by creating illegal districts *ultra vires* the Constitution because they knew that they will come back here for us to regularise an irregularity.

The Attorney-General (Mr. Wako): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member in order to mislead this House, when the HANSARD is there for checking, that I told this House that the Government deliberately violated the Constitution?

Mr. Murathe: Mr. Temporary Deputy Speaker, Sir, even if you remove the word "deliberately," you would still find that he admitted that they knowingly created illegal districts contrary to the Constitution of the Republic of Kenya, which they swore to protect and defend. These people think that the Constitution is just a piece of paper; that, they can violate it and then come to this House for us to validate illegal actions. In any sane society, this Government should have quit that day when they admitted that those districts were created illegally and it was against the Constitution, which they were supposed to uphold and defend, and the Attorney-General is the custodian of the Constitution; it is a big shame. Shame on this Government! That is why we are asking the Government to stop hiding under the cloak of the wider constitutional review process. Let us change the issues as they come, which we find necessary to be tackled now. It may be too late tomorrow.

I beg to support.

The Minister for Trade and Industry (Mr. Biwott): Thank you, Mr. Temporary Deputy Speaker, Sir. First of all, I think it is important to realise where we are in the constitutional review process. We have already started the process which, if conducted properly, should cover everything which the hon. Members on the other side of the House want. The Motion itself is asking for leave to introduce a Bill. That is a long process which, if we grant that leave now, might take as much time as the constitutional review process. Therefore, at this stage, it may be futile to ask for leave to do something which we have already given leave to the Constitution of Kenya Review Commission to do. Perhaps, if the Mover of this Motion, Mr. Kamande, had consulted the learned Attorney-General, who is the well-placed lawyer in this House, he might have been advised correctly that there is a lot more to that leave that is being sought, especially with regard to timing. Perhaps, at this stage, it would be unnecessary to introduce the Motion.

Mr. Kamande: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Minister in order to insinuate that this side of the House does not have the capacity to bring any Bill in this House, when we have brought so many, and have a legal advisor by the name of Mr. Kiraitu Murungi?

The Minister for Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Speaker, Sir, I have not said that. What I have said is that they have a long way to go in their attempt to come to this side of the House! By the time they come to this side of the House, they will have gone through a long process to be in a position to launch a Motion to successfully change the Constitution.

Ms. Karua: What about Taveta?

The Minister for Trade and Industry (Mr. Biwott): Taveta was just a fluke! They waited for a man and a woman to tussle first and then sneaked in and snatched the seat which was left open by a KANU candidate who---

An hon. Member: A councillor!

The Minister for Trade and Industry (Mr. Biwott): A councillor is a councillor---

An hon. Member: But he was replaced in Kiambu!

The Minister for Trade and Industry (Mr. Biwott): No! Kiambu is perfectly logical for DP because as we know, DP is a tribal political party which is expected to excel very well in its own backyard!

Mr. Murathe: On a point of order, Mr. Temporary Deputy Speaker, Sir. This Motion is properly before the House. It has been vetted properly by the Clerk. It has been approved by the Speaker. Is it in order for the Minister to bring in other issues, when the Motion is properly before the House?

Ms. Karua: And when he is the leader of a tribal group called KAMATUSA!

The Temporary Deputy Speaker (Mr. Muturi): Hon. Members, let us concentrate on the Motion!

The Minister for Trade and Industry (Mr. Biwott): If they will stop disrupting me, I will concentrate on the Motion the way it is drafted! They should be aware that I am also quite capable of going at length---

Mr. Parpai: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Minister in order to say that DP is a tribal party when I, Mr. Parpai, am a Maasai and in DP? Is he really in order to state that and yet, he is leading a tribal group called KAMATUSA?

The Temporary Deputy Speaker (Mr. Muturi): Order, hon. Members! Let us avoid discussion of those other issues that may have excited a few Members in the recent past, and concentrate on the Motion!

The Minister for Trade and Industry (Mr. Biwott): Thank you very much, Mr. Temporary Deputy Speaker, Sir. To advise my colleagues on the other side of the House, the hon. Member from Kajiado South knows very well that he started as a KANU candidate, and then ended up in the tribal party because he just strayed into it! The door was locked. But, in the next general election, I hope we will see him in his true colours!

Mr. Kihoro: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Minister in [Mr. Kihoro] order to say that there is an unnamed tribal party in this House? Could he be called upon to substantiate the tribal party he is talking about? Could that be KANU, Mr. Minister?

The Minister for Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Speaker, Sir, the way they are agitating, they know what a tribal party is. Therefore, I will not really bother to---

Ms. Karua: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Minister in order to call DP a tribal party, when he knows that his constituents, beginning with a very prominent constituent of the Minister, Mrs. Tabitha Seii, are members of DP, plus many others in his constituency? Is he in order to mislead the nation?

The Minister for Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Speaker, Sir, I think the hon. Member knows very well that, that Opposition Member subscribes to that tribal party. I never named any party, but she has already volunteered to name it. She knows exactly that, that is so. Let me continue with my contribution now!

Mr. Katuku: On a point of order, Mr. Temporary Deputy Speaker, Sir. I am looking at the Motion before the House, and also listening to the contribution coming from Mr. Biwott. There is a lot of irrelevance in what he is discussing. Could you use your powers and terminate his debate and give me that chance to contribute?

The Temporary Deputy Speaker (Mr. Muturi): Let us concentrate on the Motion.

The Minister for Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Speaker, Sir, I think that when people are defeated, they resort to blocking others from contributing!

Let me now go straight to the Motion. It is quite true and convincing to argue that because we are undertaking the constitutional review process now, it is not necessary to request for piecemeal amendments to the Constitution. I think it makes sense to look at it in a comprehensive manner, in order to see the total picture, and effect changes that will stabilise this country for its good. In any case, Permanent Secretaries (PSs) have already been appointed. The next batch of PSs will be appointed after the next general elections, hopefully, by the good Government of KANU!

Mr. Murathe: On a point of order, Mr. Temporary Deputy Speaker, Sir. Mr. Biwott is misleading this House! We can have a new set of PSs announced over the radio this afternoon! So, is he in order to mislead this House that, because we already have PSs, the Motion is, therefore, irrelevant?

The Temporary Deputy Speaker (Mr. Muturi): He is entitled to his opinion on that!

The Minister for Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Speaker, Sir, I think the hon. Member knows very well that there will be no time when all the PSs will be appointed in one batch, other than immediately after the general elections. There may be an occasional one being appointed, or, maybe, a few transfers being effected here and there, but those do not necessitate the amendment of the Constitution. I think the Constitution is a very important document, which we need to take very seriously! Therefore, there is---

Prof. Anyang-Nyong'o: On a point of order, Mr. Temporary Deputy Speaker, Sir. I am sorry to interrupt, but is the Minister really in order to misconstrue the spirit of the Motion, which seeks to give a constitutional amendment so that Permanent Secretaries who are appointed, whether in a bunch or singly, can be vetted by Parliament unless, of course, the hon. Minister is suffering from "Acquired Nyayo Deficiency Syndrome"?

(Laughter)

The Minister for Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Speaker, Sir, I think his own contribution suffers severely from "SDP Deficiency Syndrome". I do not even know how far he has succeeded in the unseating agenda which is a retrospective act. I think he should be positive enough to promote that gender instead of undermining them.

I would also like to refer to civic education. Our own contribution in that aspect is very positive because we would like civic education to be taught by people who understand the Constitution and who can educate the people correctly, so that they can participate fully in their constitutional review. But we have never denied civic education

except those volunteers who like to offer themselves from afar.

With those few remarks, I beg to reject the Motion.

Prof. Anyang'-Nyong'o: Mr. Temporary Deputy Speaker, Sir, I think it is important to note that the argument advanced by the other side, that the Constitution should not be amended piecemeal does not stand up to facts. Very soon, a Motion will be brought here asking the House to amend the Constitution so that the KACA Bill can be entrenched in the Constitution. If that is not a piecemeal amendment to the Constitution, then I do not understand what "piecemeal" means. The other side is really erecting a strongman to strike it. But we do know that it is the responsibility of this House to continue examining the laws of the land and bringing them up-to-date regardless of which commission exists.

At the moment, there is a Njonjo Commission looking into the land issue. That cannot stop this august House from debating any Motion dealing with land issues in this country. Were that to be the case, then Members of Parliament would, in fact, be asked not to ask any questions on land or on the Constitution provided there is a certain commission going on, either dealing with the Constitution or land. So, I do believe that Mr. P.K. Mwangi is quite in order to seek leave to introduce a Bill to this House directing the Government to ensure that any time that Permanent Secretaries are appointed, they be vetted by Parliament.

This proposal is long overdue. One of the reasons why the Government had to go into a very expensive exercise of trying to revitalise its own administration by bringing in the "Dream Team" and then complaining that they are paying them a lot of money is precisely because the appointments at higher levels, having not been vetted by this Parliament, had enhanced mediocrity rather than good quality and performance in the Government.

The spirit of this Motion is to point out to the Government that appointment of persons to Permanent Secretaries is an extremely important responsibility on the part of the President. They should be "Permanent Secretaries" and not secretaries appointed for 18 months and then dismissed. When they are being appointed, there is a lot of fanfare on the other side. I do remember that when Dr. Leakey and his team were appointed, there was a lot of fanfare on the other side. This country almost declared a holiday because a "dream team" had been appointed. Hardly 18 months later, well before their time was over, they were dismissed with a whisper. This is not the way to run a country. You may run a cattle shed that way or your dossier bureau that way, but you cannot run a modern nation State the way this one is being run. This is one of the reasons why Parliament is now trying to take this responsibility to ascertain that the Government does its work properly.

Mr. Temporary Deputy Speaker, Sir, it is really sad that almost 40 years after Independence, the Government has not found its foot on the ground. It is as if the President is trying to prove to himself everyday that he is the President, by ensuring that somebody is fired or hired on a daily basis. This is very sad because it makes the Government unstable, administration inefficient, and the cost of running Government very high. This is because every time somebody comes into the office, he is learning the ropes and during the time that he is learning the ropes, inefficiency goes up, productivity goes down and expenses also increase. This is one of the reasons why it is important that the appointment of Permanent Secretaries in this nation should be something very serious that this House vets and approves. And even once they are appointed through that process, they cannot even know that these are the proper persons to occupy a certain position for a permanent period of time - five years or so - so that they do a good job.

Mr. Temporary Deputy Speaker, Sir, I remember when I was in high school, we had Permanent Secretaries like Messrs. Leonard Kibinge and Joel M. Ojal; people who had a fantastic experience in the Civil Service and the Ministries that they run were extremely professional ones. It is no wonder that during that period, bodies like the National Social Security Fund (NSSF) and National Hospital Insurance Fund (NHIF) were established by men and women who, indeed, were people of responsibility. These were people whose mission and calling to run the Civil Service was something they took pride in and put all their energies in. However, now when you are appointed and you know that you will be fired the next day, you cannot put your spirit in the job. You cannot see it as a mission; you see it as something you perform for daily bread. Indeed, it even shows in this House. We are beginning to come to this House as if it is just something for daily bread. It is killing! It kills the spirit because some of us came into politics because we want to serve this nation, see some changes come, and leave this nation a better place than we found it. However, if we are coming into this House through thinly and simply to mark time and say that we are there, we are costing this nation a lot of money and having very little productivity.

Mr. Temporary Deputy Speaker, Sir, even in the Government very recently, there was an attempt to reduce the Ministries. The Minister for Agriculture, for example, has four Assistant Ministers under him. If you ask him what those four Assistant Ministers are doing under him, he will be hard put to explain to you what they are doing. In the Office of the President, you have a whole array of Ministers and Assistant Ministers with very vague job descriptions. I think it is unfair to put my friend, for example, hon. William ole Ntimama, a Kenyan with a long-time experience in politics and public service, in an office where he is not going to be productive during his many mature years in life, a time when he should not be marking time anywhere, but a time when he should be putting his mark on history. If that

is the way we are going to run this nation, the Government has to wake up.

Mr. Temporary Deputy Speaker, Sir, the spirit of this Motion is not only pointed at the fact that Permanent Secretaries should be appointed and vetted, but to instill in this Government the attitude that this National Assembly must have the responsibility of ensuring that the public service is run properly, and that appointment to public service positions is something that is properly vetted and looked into.

Mr. Temporary Deputy Speaker, Sir, we go to school because we value education but Kenyans have now lost faith in education because they see people rise to positions of responsibility irrespective of their educational achievements. Let us not bend to this populist notion that education does not matter and that you can get anywhere if you have money or you are popular. Running a modern nation state is a technocratic issue. It is the issue of knowing what is to be done and how to put things together that can work. Running a modern nation is like forecasting into the future. You cannot forecast into the future if you do not have the knowledge of doing so. If, indeed, this Government is going to speak about development planning, we must have people at the head of every Ministry; people with some collective memory on what that Ministry is doing. One of the reasons why the colonial Civil Service thought of something called Permanent Secretaries and not just Principal Secretaries--- In Tanzania, for example, they have changed from Permanent Secretaries to Principal Secretaries because of this syndrome of having to move people so frequently. So, rather than call them Permanent Secretaries, you call them Principal Secretaries so that you are not confounded over the fact that the people are not permanent. Be that as it may, the point I want to make is that one of the reasons why the colonial Government created the post of a Permanent Secretary was because it wanted an individual in every Ministry with a collective memory of what that Ministry does; somebody who, when a Minister or an Assistant Minister comes into an office, can tell them what the Ministry is all about. You should accept it that, politically, Ministers and Assistant Ministers can be moved on the basis of political expediency, but PSs should not be removed on the basis of political expediency. If you do that, then you are really confounding two things.

The Temporary Deputy Speaker (Mr. Muturi): Hon. Members, we will now move to the Motion for Adjournment by Ms. Karua. This Motion will continue and Prof. Anyang-Nyong'o will have two-and-half more minutes.

MOTION FOR THE ADJOURNMENT UNDER STANDING ORDER NO.18

PARTICIPATION OF CIVIL SERVANTS IN POLITICS

The Temporary Deputy Speaker (Mr. Muturi): Will a Minister, please, move that the House do now adjourn.

The Minister for Transport and Communications (Mr. Mudavadi): Mr. Temporary Deputy Speaker, Sir, I beg to move that the House do now adjourn.

The Temporary Deputy Speaker (Mr. Muturi): I wish to announce to hon. Members that due to the indications received by the Chair about interest that this debate has generated, debate will be limited to five minutes for each speaker.

Ms. Karua: Mr. Temporary Deputy Speaker, Sir, on 11th June, 2001, the Minister in charge of the Provincial Administration conceded before this House that it is illegal for civil servants to engage in politics. He said he had issued a circular to that effect.

It is however, disheartening to see that this particular Minister, and his office continue to take no action against civil servants who engage in politics. The most notorious lot is the Provincial Administration, which is headed by one Mr. Zachayo Cheruiyot. The activities of this particular PS, who is currently behaving as though he is part and parcel of the KANU party, is what has spoilt the Provincial Administration. If the person who is supposed to be disciplining errant civil servants or members of the Provincial Administration is leading them in behaving like youth-wingers, then we cannot expect a professional Civil Service.

Mr. Temporary Deputy Speaker, Sir, in the just concluded Taveta Constituency Parliamentary election, we all observed on national television, the said PS, Mr. Cheruiyot, and the Commissioner of Police, Mr. Abong'o, trailing the President. It is not right for a PS to trail the President in all his political rallies. This means that the office of that PS is left unattended and people cannot get service. The Code of Conduct is very clear. Section G(6) requires that an officer should remain aloof from active participation in politics. When a civil servant is seen in all political rallies, and is seen to be trailing the political campaign of one party, that is not professionalism. He gives the impression that the law in this country permits the administration to engage in politics. He may not talk in that political rally, but he is in the campaign bandwagon of a political party. This is not only denying people impartial service, but is also actually misusing taxpayers' money.

While the PS and Members of the Cabinet are trailing the President, it is my understanding that their expenses are paid for by the taxpayer. This House refused to pass a Motion to allow state funding for political parties. Why should the ruling party cheat Kenyans? Why should it stage its campaigns through use of public money while pretending that they are state functions? The Head of State's campaign for the KANU candidate in Taveta Constituency was not a state function. This is a delicate balance between the office of the Head of State and the Chairman of a ruling party. When the President tells people to wave the KANU one-finger salute and is being trailed by not only a PS, but also a Police Commissioner and other senior civil servants, it is a disgrace.

The ruling party and the Government must rise above this kind of behaviour. They must distinguish state functions from party functions. They are entitled to propagate their party ideas, but they must do so without relying on the Provincial Administration and the taxpayers' money. It is common knowledge that in the just concluded Taveta Constituency Parliamentary election, the District Officer (DO) for Taveta was harassing the residents to vote for KANU. What else can we expect when the head of the Provincial Administration, Mr. Cheruiyot, went there in the company of the President on a campaign trail, as if to confirm that the actions of this particular DO were correct? We need seriousness. Tomorrow, KANU will not be in power, but another party, most likely the DP. We shall be expected to be above partisan politics in discharging state duties. Secondly, we shall be expected to distinguish between state duties and party politics.

Mr. Temporary Deputy Speaker, Sir, the Minister of State, Office of the President, in charge of the Provincial Administration and Internal Security, has failed to instil professionalism in the Civil Service. The DCs and PCs should have no role to play even where the President is addressing a rally. If he does that as a KANU Chairman, the Provincial Administration have no business being in that meeting; not even to welcome him. The President should be welcomed by the local KANU officials. After all, it is their party function. Why is the Provincial Administration being turned into party youth wings? Do we really need the Provincial Administration? Let them be hired by KANU as their officers and be paid by this party, and let us be left with officers who are non-partisan. We expect a responsible Government because this Government has shown total irresponsibility in separating duties of the state and partisan politics. It is a shame and we expect the Government to respect taxpayers by refraining from abusing their facilities.

Mr. Munyao: Mr. Temporary Deputy Speaker, Sir, I would like to thank Ms. Karua for asking for this Motion of Adjournment. I also beseech my dear friends, particularly the ones who are looking at me, to take the sentiments of this House seriously. I remember, when we were debating the Vote of the Office of the President, I rejected the item on the salaries of the Provincial Administration. I said at that time that I lead a party, and I was not there to vote money to pay civil servants of one party. It is very clear that the money that was voted to the Office of the President would be used to pay KANU members. I can prove this because most of the DCs, PCs and even chiefs have been forced to become members of KANU. Most of these officers, until recently, have been hanging KANU membership certificates behind their seats because they thought that by doing that, they would be promoted. They did this so that when Ministers visited their offices, they would see them.

I made it very clear that when we vote money to the Office of the President, we are paying KANU employees. It is high time this Government realised and separated--- When the DP comes to power, we will ensure that the Provincial Administration operates separately, and we will have our own members. How come that without the Provincial Administration, KANU does not have anybody? It is only the employees of the Government who are members of KANU. Why do they not have voluntary members like other parties have?

Before we went to Taveta, we received a faxed message which I took to the Electoral Commission of Kenya (ECK), which revealed that a DO, by the name Joseph Muturi - I am not referring to the Chair because the names sound similar - went around holding *baraza* and threatening voters that if they did not vote for the KANU candidate, they would see what Molo people saw. What did that mean? It is for that reason that this morning I requested the Assistant Minister, Office of the President, whom we respect very much because he is young and has been campaigning for the youth to be given a chance to lead, to make a Ministerial State in this House. We would like to see how he will handle the issue. We want him to prove to us that he is actually mature, although he is young in age.

The Assistant Minister, Office of the President (Mr. Samoei): On a point of order, Mr. Temporary Deputy Speaker, Sir.

Mr. Munyao: Mr. Temporary Deputy Speaker, Sir, we do not want that point of order because I have only five minutes to contribute. The Assistant Minister is the one who will reply!

The Assistant Minister, Office of the President (Mr. Samoei): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for Mr. Munyao to allege that I proposed that young people should be given leadership? Indeed, it is the President who said that young people should be given leadership. It is not me.

Mr. Munyao: That is not new. Neither do I see what order I have breached. We expected it even before the President spoke. We knew he would say exactly that. What else would he have said?

During President Moi's campaigns in Taveta, on a certain Thursday, despite seeing that KANU had no

following in Taveta, he asked people to "tingiza". What is that? He said that from a platform that had been made using public money. In fact, in the course of time, I will request for clarification because the President is the Head of State.

Mr. Shidiye: On a point of order, Mr. Temporary Deputy Speaker, Sir. We do not understand his language. He should either speak in English or Kiswahili. But he is trying to mix. He should use even Kikamba.

Mr. Munyao: Mr. Temporary Deputy Speaker, Sir, that day, the President said: "You, KANU youth-wingers, ingieni kwa kazi and defend your boss". He had seen that there were no votes. Are we going to allow this kind of misuse of public funds? There were no KANU followers except the Provincial Administration who are paid by the taxpayers. I would like the Government to be more serious.

Mr. Muihia: Thank you, Mr. Temporary Deputy Speaker, Sir. I rise to support the Motion by Ms. Karua in terms of representation or activities of civil servants in public affairs which are the domain of politics. It is only yesterday that the President of this country discourteously entered my constituency to deliver an ambulance which was bought by the contributors of the National Hospital Insurance Fund (NHIF) and turned it into a KANU rally. We have Ministers in this Government who can deliver an ambulance. But the President wants to make somebody feel like he is a Member of Parliament when he speaks in front of a crowd. The person who spoke in Gatundu yesterday, I trounced him in the last elections. If we have to separate the duties of the Executive and the political role, then the President should at all times---

The Assistant Minister, Office of the President (Mr. Samoei): On a point of order, Mr. Temporary Deputy Speaker, Sir. I was at the meeting Mr. Muihia is alluding to. If Mr. Muihia believes it was wrong for the President to deliver the ambulance, he should not have been there himself to receive it.

Mr. Muihia: Mr. Temporary Deputy Speaker, Sir, that is not the point. The ambulance does not belong to the President. He did not buy it. It was not a gift. The ambulance is in Gatundu by right. But when the President comes tramping like a rogue elephant in my constituency, without any courtesy of even informing me, that is not very interesting. I was even refused to tell him what ails Gatundu. He was told that the roads are good. The money that was supposed to make those roads was stolen. An amount of Kshs50 million was stolen from the Government and given to Mr. Uhuru Kenyatta to conduct campaigns.

The Assistant Minister for Labour and Human Resources (Mr. Maizs): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. Member not to substantiate the allegation? If people of Gatundu are not in need of an ambulance, let them surrender it to us.

Mr. Muihia: Mr. Deputy Temporary Deputy Speaker, Sir, the ambulance is well written on the side, "National Hospital Insurance Fund."

I think it is high time we separated the---

The Assistant Minister, Office of the President (Mr. Samoei): On a point of order, Mr. Temporary Deputy Speaker, Sir. If I heard hon. Muihia correctly, he said public funds were, indeed, taken out of public coffers and given to Mr. Uhuru Kenyatta. That is a very serious allegation, especially bearing in mind the colossal amounts of money he has mentioned. Is it in order for him to impute improper motives on a person who cannot defend himself before this House? Could he substantiate or withdraw his allegation?

Mr. Muihia: Mr. Temporary Deputy Speaker, Sir, I will bring to this House evidence by way of a Question which is already in the House. The Question is about a road which was supposed to be tarmacked in 1988. The contractor only did 20 kilometres instead of 79 kilometres, and he was paid Kshs228 million.

The Assistant Minister, Office of the President (Mr. Samoei): On a point of order, Mr. Temporary Deputy Speaker, Sir. I think it does serve well, this House, and for the sake of integrity of this House, to maintain its honour before the Kenyan public, that if we make statements here, we be responsible for their accuracy. Is it in order for hon. Muihia to refuse to substantiate the allegation that he made against a person who is not in this House to defend himself?

The Temporary Deputy Speaker (Mr. Muturi): Order! You have not requested him to do so. Ask him to substantiate or withdraw the allegation!

Mr. Muihia: Mr. Temporary Deputy Speaker, Sir, I have said that I will substantiate by way of a Question and give documentary evidence.

The Temporary Deputy Speaker (Mr. Muturi): Mr. Muihia, you are required to either substantiate the allegation you have made or withdraw it.

Mr. Muihia: Mr. Temporary Deputy Speaker, Sir, could I bring the information tomorrow? I will substantiate tomorrow.

Mr. Shidiye: On a point of order, Mr. Temporary Deputy Speaker, Sir. If Mr. Muihia is jittery and fearing that he will lose in the next general election, why should he make a wild allegation that he cannot substantiate rightaway?

Mr. Muihia: Mr. Temporary Deputy Speaker, Sir, I beg to support this Motion.

The Assistant Minister for Education, Science and Technology (Mr. Poghiso): Mr. Temporary Deputy Speaker, Sir, my point of order is on the matter of procedure in the House; it is not for Mr. Muihia or any other hon. Member. If a Member wants to substantiate later, then he must withdraw his allegation.

The Temporary Deputy Speaker (Mr. Muturi): Order! I have already made a ruling on that issue. A more substantive ruling will be made by the Speaker himself because a practice has already been set in motion whereby hon. Members have been allowed to bring substantiation a day or two days after. They are quite in order.

Mr. Shidiye: On a point of order, Mr. Temporary Deputy Speaker, Sir. If somebody makes an allegation and he knows he will talk about it, why does he not come with substantive documents to prove the allegation? If he cannot substantiate right now, we should not allow him to do so later on.

The Temporary Deputy Speaker (Mr. Muturi): Order! Mr. Shidiye, you are engaging in argument for no apparent reasons.

Mr. Ndwiga: Mr. Temporary Deputy Speaker, Sir, this is a very important Motion which I stand to support. Abuse of office by civil servants is so evident, particularly in Eastern Province where I come from. We have raised these issues in this House several times, that the Provincial Administration will not allow Harambee drives to go on. In the last two months, four Harambee drives have been cancelled out of instigation by the Provincial Commissioner, Eastern, Mrs. Koech. This PC acts as a KANU chairlady or youth-winger. There are very many people who qualify to hold that position. The only qualification this woman has is one with a lot of negative consequences. It is that she sleeps with a Kalenjin man. The woman had the audacity to even call me names, despite the fact that I am an hon. Member of this House. We would, therefore, like to know who is in charge of that province.

The Assistant Minister for Local Government (Mr. Kiangoi): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. Member to use unbecoming language? He said that the only qualification of a certain officer in Eastern Province is that she is a woman?

The Temporary Deputy Speaker (Mr. Muturi): Continue, Mr. Ndwiga.

Mr. Ndwiga: Mr. Temporary Deputy Speaker, Sir, the issue is not whether that officer is a woman. She even slapped another woman. The officer was the subject of discussion in this House throughout the Seventh Parliament when she was District Commissioner in Kitui District.

The Minister for Transport and Communications (Mr. Mudavadi): On a point of order, Mr. Temporary Deputy Speaker, Sir.

Mr. Ndwiga: Mr. Temporary Deputy Speaker, Sir, I have only five minutes.

The Minister for Transport and Communications (Mr. Mudavadi): On a point of order, Mr. Temporary Deputy Speaker, Sir. For the purpose of the integrity of this House, I think it is out of order for Mr. Ndwiga to allege that the only qualification a certain person has for appointment to a certain office is that, that person sleeps with somebody else. I think it would do a lot of good for the hon. Member to withdraw that remark because it does not only demean the integrity of this House, but also that of men and women.

Mr. Ndwiga: Mr. Temporary Deputy Speaker, Sir, I withdraw that remark. I made that remark because I was very annoyed.

However, somebody must tell this lady that she does not have to misbehave and behave like a colonial chief to prove that she is better than the rest of the women in the country. There are very many women in this country who perform their duties very well; they are respectable, and we recognise their stature because they do their job well. However, the qualifications this particular woman has are what I referred to.

(Laughter)

Mr. Temporary Deputy Speaker, Sir, we cannot have a Provincial Commissioner who goes round cancelling Harambee meetings.

The Assistant Minister for Local Government (Mr. Kiangoi): On a point of order, Mr. Temporary Deputy Speaker, Sir.

Mr. Ndwiga: Mr. Temporary Deputy Speaker, Sir, Mr. Kiangoi slapped a lady officer recently. Now he purports to defend women. Could he sit down?

The Assistant Minister for Local Government (Mr. Kiangoi): On a point of order, Mr. Temporary Deputy Speaker, Sir. The hon. Member has severally referred to the qualifications of that officer. That lady is known to have read up to university level. So, could the hon. Member talk about---

Temporary Deputy Speaker (Mr. Muturi): Mr. Kiangoi, what is your point of order?

The Assistant Minister for Local Government (Mr. Kiangoi): On a point of order, Mr. Temporary Deputy

Speaker, Sir. Is it in order for the hon. Member to question that officer's qualifications when we know that the lady under reference has read up to university level?

Temporary Deputy Speaker (Mr. Muturi): Mr. Kiangoi, that matter has been sorted out.

Proceed, Mr. Ndwiga!

Mr. Ndwiga: That is Mr. Kiangoi's business. We are talking about misuse of office by public servants. We have seen ambulances which have been bought with public funds being misused. The ambulance in Mbeere has not even reached Siakago District Hospital. As I speak here, the ambulance is out there ferrying maize. Surely, this is misuse of public facilities.

Mr. Temporary Deputy Speaker, Sir, we have said in the past that the provision of security to public meetings is the business of the police. How does the Provincial Administration come in to control public rallies and cancel meetings purportedly for security reasons? That is the business of the police.

The Temporary Deputy Speaker (Mr. Muturi): Your time is up!

The Assistant Minister for Education, Science and Technology (Mr. Poghio): Mr. Temporary Deputy Speaker, Sir, I just want to take this opportunity to support the matters that have been raised. If this issue is relevant to a particular Question, which was not answered well or to an unsatisfactory reply given to the Questioner on that particular day pertaining to civil servants involving themselves in politics, I would like to say that if civil servants are directly involved in politics, it should be realised that regulations bar them from doing so. But many times, it is very difficult for civil servants themselves having to walk on a very tight rope to observe these regulations because the duties of the Head of State are not just particularly partisan. He is available at any time and at any place to respond to the needs of his people as the Head of State. So, he may end up going to one place as party Chairman and in that same place begin to perform the functions of the Head of State. That is why his position does not become contradictory, although direct involvement of the civil servants in politics is what we would like to stop.

Thank you.

The Assistant Minister, Office of the President (Mr. Samoei): I wish to respond on behalf of the Government in respect to the issues that have been raised by hon. Members with regard to members of the Provincial Administration participating in party affairs.

Indeed, I have issued instructions to the effect that provisions of Section 5 of the Public Order Act prohibit civil servants from engaging in partisan politics. I have tabled before this House my instructions in respect to that particular issue. The issues raised in respect to Mr. Zakayo Cheruiyot, who is the Permanent Secretary in charge of Provincial Administration and Internal Security, and the Commissioner of Police, Mr. Abong'o, to a great extent have been blown out of context. Indeed, these two officers are professional public servants whose experience spans over 20 years. These are persons of integrity and by virtue of the fact that the President has appointed them to the offices they hold, it indeed, confirms the President's support for such persons, and his confidence that these public servants would perform those duties without fear or favour.

These officers report directly to the President. Mr. Cheruiyot is a Permanent Secretary in the Office of the President, and he knows very well what is expected of him. Instructions have been given to that effect, that he shall not participate in partisan politics. Mr. Cheruiyot is free to accompany the President wherever he is visiting because the President is the Head of this Republic at all times.

Mr. Temporary Deputy Speaker, the President is also the Chairman of our party, KANU, and that does not, in any way, reduce him from being the President of this country. At all times, he can be called upon to perform his presidential functions. In this particular incident referred to, indeed, it was a KANU function. Mr. James Njiru, who was the convenor of the meeting, is the KANU Chairman of Kirinyaga District. Whoever attended that meeting knew very well that it was a KANU meeting.

Ms. Karua: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Assistant Minister in order to mislead this House that a district bursary meeting, not a KANU rally, was a KANU function? Is he in order also to continue insisting that the Provincial Administration did not contravene the law if they were there officiating in a KANU function?

The Assistant Minister, Office of the President (Mr. Samoei): Mr. Temporary Deputy Speaker, Sir, this particular function was spearheaded by KANU. The President was there in his capacity as the Chairman of the party. I personally did contribute with the full knowledge that it was a party function. All councillors from different political parties, knowing very well that our party, being mindful of the welfare of the people of Kirinyaga--

Ms. Karua: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Assistant Minister in order to claim that councillors from all political parties were at the function, when it is well known that in Kirinyaga, all councillors are from one party, DP?

The Assistant Minister, Office of the President (Mr. Samoei): Mr. Temporary Deputy Speaker, Sir, that

notwithstanding, even the hon. Member was present, yet she is not a KANU Member of Parliament.

Hon. Members from DP actually spoke in that meeting to show that they agreed with us that we are mindful of other people's welfare. Indeed, we did contribute generously towards the welfare of the children of Kirinyaga.

Mr. Temporary Deputy Speaker, Sir, members of the Provincial Administration are appointed not on party lines. We do not need, as a party, to be assisted by youth-wingers from the Provincial Administration.

ADJOURNMENT

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

The House rose at 1.00 p.m.