

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 11th October, 2000

The House met at 9.00 a.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

ORAL ANSWERS TO QUESTIONS

Question No.248

KILLING OF MESSRS. OGWEL AND OJWUNGU

Mr. Deputy Speaker: Is Mr. Onyango not here? We will come to this Question later on. Let us proceed to the next Question.

Question No.424

PLOT ALLOCATIONS TO GATARAGWA
LAND COMPANY MEMBERS

Mr. Deputy Speaker: Mr. Murungaru is also not here? We will come back to his Question. Let us proceed to Mr. Ndilinge's Question.

Question No.604

PAYMENT OF COMPENSATION TO MRS. MUVYA

Mr. Ndilinge is also not here? We will come back to his Question later on. Col. Kiluta's Question is next on the line..

Question No.165

MEASURES TO FACILITATE EARLY
PLANTING IN MASINGA

Mr. Deputy Speaker: Is Col.Kiluta not here? We will come back to this Question later on. Let us proceed to Mr. Wamunyinyi's Question.

Question No.461

COMPLETION OF KIBABII TEACHERS' COLLEGE

Mr. Sifuna, on behalf of **Mr. Wamunyinyi**, asked the Minister for Education:-

- (a) how much money the Government spent on the construction of Kibabii Teachers Training College between 1995 and 1999; and,
- (b) what plans the Government has to complete the project.

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

(a) Between 1995 and 199, the Government spent Kshs33 million on the construction of Kibabii Teachers Training College (TTC).

(b) After terminating the construction contract on 21st November, 1997 due to non-performance, the Government decided to take legal action to recover the Kshs33 million from the contractor, and at the same time, to look for more funds to complete the project.

Mr. Sifuna: Mr. Deputy Speaker, Sir, arising from that reply, is the Assistant Minister aware that the idea of putting up Kibabii TTC was first mooted in 1979? Now that the college has not taken off up to date, what action is he taking to ensure that its construction is completed immediately?

Mr. Awori: Mr. Deputy Speaker, Sir, due to the hard economic times, the Government does not have the funds to complete the construction of college immediately. Nevertheless, the project is still in the books covering those projects for which the Government is looking for funds to ensure that its construction is completed. However, I regret to state that I cannot give the time-frame within which the project will be completed.

Eng. Muriuki: Mr. Deputy Speaker, Sir, for the last couple of years, there has been no intakes of trainees to TTCs. Could the Assistant Minister explain and specify whether this is not the reason why the construction of Kibabii TTC is not being completed?

Mr. Awori: Mr. Deputy Speaker, Sir, that is partly correct. However, we took primary teacher trainees last year and early this month. However, I would like to remind this House that we still have more than 16,000 teachers, who have been trained, but have not been employed by the Government.

Mr. Obwocha: Mr. Deputy Speaker, Sir, in view of the fact that the Government is, currently, neither employing those teachers, who have been trained nor taking any more teacher trainees, what is the Government's policy regarding the establishment of new TTCs?

Mr. Awori: Mr. Deputy Speaker, Sir, I think hon. Obwocha did not get part of my reply to Eng. Muriuki's question. I said that we admitted teacher trainees to TTCs last year and this year. The Government's current policy on increasing the number of TTCs has been put on hold. This is, simply, because we do not have finances for doing so.

Dr. Kulundu: Mr. Deputy Speaker, Sir, early this year, this Assistant Minister told us that AIDS has devastated the teaching profession in certain parts of this country. What plans does the Government have to absorb the more 16,000 trained primary school teachers and those from universities, who have not been employed, in view of the shortage of teachers that has been occasioned by AIDS?

Mr. Awori: Mr. Deputy Speaker, Sir, I remember that, while answering a Question here early this year, I conceded that AIDS is taking a great toll on teachers. However, I would like the hon. Member to remember what I said recently that, there was a surplus of nearly 8,000 teachers up to now. So, due to natural attrition, including the toll taken by AIDS, the numbers are balancing out. Nevertheless, we have requested all teachers who have been trained to register with the Teachers Service Commission (TSC), so that when vacancies become available, they can be employed.

Mr. Kihara: Mr. Deputy Speaker, Sir, I am surprised that the Assistant Minister says that there is a surplus of teachers when many schools in my constituency are short of teachers, and parents are employing some teachers with their own resources. Where are the surplus teachers the Assistant Minister is talking about?

Mr. Awori: Mr. Deputy Speaker, Sir, before we went on recess, I said that we were in the process of balancing our figures. Indeed, there are certain districts that are understaffed, while others are overstaffed. We are in the process of balancing out, and I am sure that the hon. Member's district is one of those which will soon be getting more teachers.

Mr. Sifuna: Mr. Deputy Speaker, Sir, could the Assistant Minister tell this House who that contractor was? Could he also confirm or deny that the reason why he has not been taken to court is because he is associated with the former Minister for Education, Mr. J. Kamotho, who gave him the tender for the purpose of looting Government money and then running away?

Mr. Awori: Mr. Deputy Speaker, Sir, I have no information as to the last question, and, therefore, I can neither confirm or deny. However, I can give the name of the contractor. I do not think that, that is a secret at all. He is M/S Matrix General Contractors Limited of P O Box 60902, Nairobi.

Mr. Sifuna: Mr. Deputy Speaker, Sir, could the Assistant Minister now tell this House how far the Government has gone as far as taking legal action because from 1997 to 1999 it is almost four years? Could he tell us whether it will be possible for the Government to recover that money?

Mr. Awori: Mr. Deputy Speaker, Sir, the matter is with the Attorney-General. Indeed, as a stakeholder, I am quite worried about that, not only as the stakeholder working in the Government, but also because I am a parent and a grandparent, who requires to see that, that college is completed. I fear that we may not be able to recover the Kshs33 million, because when we lastly checked the facts, we found that the work, including the few equipment left there, was only worth about Kshs177,000 as opposed to the Kshs33 million that had been given as mobilisation funds. So, the matter is with the Attorney-General and we will keep reminding him to take the legal action.

Question No.335
INTRODUCTION OF DNA TESTING
IN HEALTH INSTITUTIONS

Dr. Kulundu asked the Minister for Medical Services what urgent steps the Ministry is taking to introduce DNA testing in public health institutions.

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

The Ministry is not taking any urgent steps to introduce DNA testing in public health institutions at the moment since the Government has already established three DNA testing sites at the Kenyatta National Hospital, KEMRI and the Government Chemist Department, and they are adequate to meet the present demands and needs of the country.

Dr. Kulundu: Mr. Deputy Speaker, Sir, DNA testing is the most accurate biomedical testing for identity. It would be very useful in cases such as paternity, where one would want to know the father of a child. For example, it would be possible to know the father of Master Dennis. Also, it can be used in rape cases, murders and other medical-legal issues. Could the Assistant Minister tell this House when the Ministry established the three DNA testing stations and whether he is satisfied that they would satisfy the demands countrywide?

Dr. Galgalo: Mr. Deputy Speaker, Sir, I am not exactly sure about the dates when they were established, but as I have said, we have those three facilities at the moment. Quite a number of tests which the hon. Member has quoted have already been carried out. For example, KEMRI has done five paternity cases since it was established, two forensic cases and 500 organs plantation cases over the last 10 years, and the KNH has done over 2,000 cases over the last two years. Cases of renal transplant have also been carried out. So, there is no excessive demand to warrant establishment of new sites at the moment. We feel that what we have is enough.

Dr. Kulundu: Mr. Deputy Speaker, Sir, in fact, the Assistant Minister is misleading the House by saying that there is no sufficient demand because the public does not know. Even the doctors' fraternity in this country may not know that those tests exist in the Kenyatta National Hospital. For the information of the Assistant Minister, last year when the Chief Government Pathologist appeared before my Committee on Health, Housing, Labour and Social Welfare, he admitted that there was no DNA testing at the KNH. So, the fact that those tests are now new and the demand is low does not necessarily mean that there is no need for it to be established countrywide. The DNA testing material is so cheap. I do not even see why it cannot be decentralised to the district hospital levels.

Dr. Galgalo: Mr. Deputy Speaker, Sir, contrary to what the hon. Member believes, DNA equipment are very expensive. One costs between Kshs15,000 and Kshs17,000, and I am sure hon. Members would have much more use for that kind of money than put up that kind of facility in every other institution that would not be of much use to Kenyans. However, if what the hon. Member is saying is true; that people do not have information about that, then, we will inform the public that those services are available and they can go and utilise them.

Eng. Muriuki: Mr. Deputy Speaker, Sir, could the Assistant Minister confirm whether there are any intentions of introducing DNA testing to trace criminals who sometimes attack people in their homes? If there was DNA testing, and maybe the criminals would get injured a little, but one could follow the blood stains and be able to catch them.

Dr. Galgalo: Yes, Mr. Deputy Speaker, Sir. Indeed, DNA testing process has been used for all kinds of things, like testing blood, semen, skin tissue, hair bones and teeth identification in cases of murder, rape, burglary, hit-and-run vehicle accidents, paternity disputes, as hon. Dr. Kulundu said, infanticide and kidnap cases. So, we will inform the public that those services are available, and can be used for a variety of cases. There is no limit as to what it can be used for.

Mr. Ojode: Mr. Deputy Speaker, Sir, the Assistant Minister is alleging that the equipment is too expensive. It is expensive because they want to go for single-sourcing. Could he confirm or deny that they are looking for single-sourcing to purchase the equipment?

Dr. Galgalo: Mr. Deputy Speaker, Sir, we are not looking for any kind of sourcing. We have said that, we pay market prices, and that we are not looking for any equipment at the moment. We are saying that what we have is enough. There is no question of single-sourcing.

Dr. Kulundu: Mr. Deputy Speaker, Sir, given the range of uses that the Assistant Minister has enumerated, is he still satisfied that the three testing sites are adequate to meet this country's demands?

Dr. Galgalo: Mr. Deputy Speaker, Sir, I will say it again: As far as we are concerned, there is no demand that will warrant extra sites to be established. If we find that people would like to use those services, and, for example, there are many cases from Kakamega, then, however, expensive it is, of course, the Ministry will try to establish extra facilities there. But at the moment, we are emphatic and we are sure that what we have is enough to meet the needs of

the country.

Question No.288

CONSTRUCTION OF MIKUNGI BRIDGE

Mr. Deputy Speaker: Mr. Githiomi is not here? We will come back to that Question. Next Question!

Question No.018

RUNDOWN OF CITY COUNCIL ASSETS

Mr. N. Nyagah asked the Minister for Local Government:-

- (a) if he could order the Chief Valuer of Nairobi City Council to reconcile the inventory of property held as at January, 1964, and separately indicate all surrendered plots (acquired through sub-dividing of utilities) and those other purchased up to and including 1999, by the City Council;
- (b) if he could give a break down of all property disposed of with reference to their authority for the same period as in "a" above;
- (c) how many properties were disposed of without authority of the Council; and,
- (d) if he could repossess those sold without the Council's authority.

Mr. Deputy Speaker: Is there anyone from the Ministry of Local Government? We will come back to the Question later on.

Mr. Onyango's Question for the second time?

Question No.248

KILLING OF MESSRS. OGWEL AND OJWUNGU

Mr. Onyango is not here? The Question is dropped?

(Question dropped)

Dr. Murungaru's Question for the second time?

Question No.424

PLOT ALLOCATIONS TO GATARAGWA
LAND COMPANY MEMBERS

Dr. Murungaru is still not here? The Question is dropped.

(Question dropped)

Mr. Ndilinge's Question for the second time?

Question No.604

PAYMENT OF COMPENSATION TO MRS. MUVYA

Mr. Ndilinge is still not here? The Question is dropped.

(Question dropped)

Col. Kiluta's Question for the second time?

Question No.165

MEASURES TO FACILITATE EARLY
PLANTING IN MASINGA

Col. Kiluta is still not here? The Question is dropped.

(Question dropped)

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- (c) how many properties were disposed of without authority of the Council; and,
- (d) if he could repossess those sold without the Council's authority.

Mr. Deputy Speaker: Is there anyone from the Ministry of Local Government? The Question is deferred to tomorrow afternoon.

(Question deferred)

QUESTIONS BY PRIVATE NOTICE

EFFORTS TO FULFIL DONOR CONDITIONALITIES

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

- (a) Could the Minister table a progress report indicating the Government's efforts to fulfil the conditions set out by donors?
- (b) What is the total emoluments in terms of salaries, house, medical and other allowances, payable to each of the six Permanent Secretaries seconded to the World Bank and other donors?

Mr. Deputy Speaker: Is there anyone from the Ministry of Finance? Leader of Government Business, this Question was deferred from last week specifically to today. What is happening?

The Minister of State, Office of the President (Maj. Madoka): Mr. Deputy Speaker, Sir, on behalf of the Leader of Government Business, may I give an undertaking that we will see that it is answered tomorrow.

Mr. Ojode: Having known very well that this Question was deferred last week, I would prevail upon you to compel the Minister to answer this Question today at 2.30 p.m.

Mr. Deputy Speaker: Order! Do not ask the Chair to do the impossible. The Order Paper for this afternoon is already out. I will compel the Minister to answer it tomorrow afternoon.

Mr. Ojode: On a point of order, Mr. Deputy Speaker, Sir. The mistake is not mine and that is why I am requesting you to compel the Minister to answer it at 2.30 p.m., whether or not the Order Paper is out.

Mr. Deputy Speaker: Order! I cannot compel him to answer a Question which is not on the Order Paper.

The Order Paper for this afternoon is already out. So, the earliest possible opportunity is tomorrow afternoon and it is so ordered.

Mr. Murathe: On a point of order, Mr. Deputy Speaker, Sir. Questions by Private Notice are supposed to be answered within 48 hours. This Question has been deferred previously. The nature of the issues at hand is of such importance that I concur with the Questioner that you are in order to compel these people to answer this Question. Otherwise, it should not have been---

Mr. Deputy Speaker: Order! You will not argue with the Chair's ruling. I have already ruled that this Question will be answered tomorrow afternoon because that is the earliest possible opportunity. Whether I compel the Minister to answer it today or not it is meaningless because it will not appear on the Order Paper today. The Order Paper is already out and you have received your copy. So, let us raise points of order which we know, and think, are enforceable.

(Question deferred)

DUTY ON IMPORTED MAIZE

(Mr. Parpai) to ask the Minister for Finance:-

(a) Is the Minister aware that Legal Notice No.80 of 21st June, 2000, imposed duty on maize imported into this country indiscriminately?

(b) What action has the Minister taken to reduce the tariff to conform with PTA rates?

Mr. Deputy Speaker: Mr. Parpai is not here? The Question is dropped.

(Question dropped)

DISBURSEMENT OF FUEL LEVY MONEY

Eng. Toro: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Roads and Public Works the following Question by Private Notice.

(a) Could the Minister give a breakdown of the current liabilities and commitments of the Fuel Levy Fund?

(b) What is holding the transfer of money held by the Fund to the Kenya Roads Board Fund?

The Minister for Roads and Public Works (Mr. W.C. Morogo): Mr. Deputy Speaker, Sir, I beg to ask for indulgence of the House and request that I answer the Question this afternoon. However, having listened to what you have just said, I request that I answer this Question tomorrow afternoon.

Mr. Deputy Speaker: Mr. Minister, what is likely to happen between now and this afternoon that will improve the quality of your reply?

The Minister for Roads and Public Works (Mr. W.C. Morogo): Mr. Deputy Speaker, Sir, as I was coming to the House this morning, this Question was being worked on. It is just an administrative matter which I was trying to rectify in my office. I had asked that it be ready this afternoon.

Eng. Toro: Mr. Deputy Speaker, Sir, I have no objection because it is important that the House gets the proper figures and answer. Even if the Minister wants to be given time up to tomorrow afternoon, I do not mind as long as he comes to the House with a satisfactory answer.

Dr. Kulundu: Mr. Deputy Speaker, Sir, you heard the Minister say that he was just given the answer this morning as he was coming to Parliament. Is it really in order for Ministers to bring answers to this House that they have not discussed with their officers in detail?

Mr. Deputy Speaker: I have had occasions in the past to say that Ministers are personally responsible for the answers they bring to this House. Wherever they get those answers from is not the concern of this House. Questions by Private Notice

are so designated because the Speaker is satisfied that the answers should be given within two sitting days. That is what the Standing Orders state. It is not a question of discretion on the part of the Minister answering or of the Member asking. Once the Chair has determined that, that Question deserves to be answered by Private Notice, that is what must happen. Hon. Minister, in view of the fact that you are in charge of a fairly large Ministry, we will allow you to answer this Question tomorrow afternoon. We must insist that Questions by Private Notice are answered within two sitting days after being asked.

The Question is deferred to tomorrow afternoon.

(Question deferred)

MOTIONS

LEAVE TO INTRODUCE CONSTITUTION
OF KENYA (AMENDMENT) BILL

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

THAT, this House do grant leave to introduce a Bill for an Act of Parliament entitled the *Constitution of Kenya (Amendment) Bill, 2000* to amend Sections 58 and 59 of the Constitution to provide for the National Assembly to control the calendar of the Business of the House.

Mr. Deputy Speaker, Sir, I bring this Motion under Section 95(2) to seek leave in order to bring the Constitution of Kenya (Amendment) Bill, 2000, to amend Sections 58 and 59. The President and Members of Parliament are elected on the same day during general elections. By winning elections, the President is mandated to become the Head of State. He is also mandated to form the Executive Government. He appoints Ministers from the list of hon. Members of Parliament. Therefore, the primary duty of the President is to lead the Executive Government in and outside Parliament in the legislative and the administrative processes. During the campaign for election, the President promised the electorate certain policies, either in his manifesto or the manifesto of his party, or in his own speeches or the speeches of the members of his party. These policies constitute the legislative agenda, which he brings to Parliament for approval as national policies. Through them, he brings legislations for this House to enact into law. Parliament also derives its mandate from a nationwide constituency. Before the constituency of Parliament is the sum of the popular majority in the 210 constituencies into which Kenya is divided. Parliament is elected with a very specific mandate; to control the President and the Executive Government. It is a community forum where the representatives of the people of Kenya come to control the Executive Government and the President. That is very important because I will elaborate on why our role here, when we function properly, must not be a subject of question. Hon. Members of Parliament can also initiate public policy just as the President and the Ministers can initiate public policy. Hon. Members of Parliament too, like Ministers, can initiate legislation. Last year, this House, through the hon. Members themselves, brought the Constitution of Kenya (Amendment) Bill which created the Parliamentary Service Commission (PSC). I am proud now that there are many more hon. Members, who have given notice of Bills to be brought to Parliament. As I said at the beginning, the first initiative is for the President and the Government--- It is when he fails that we step in to tell him and the Government what to do. It is the duty of Parliament, therefore, to approve, reject or amend any proposed policy. After Parliament has approved any such policy or law, the President is also bound to give assent for it to become law. This arrangement was a very healthy one. It was meant for co-operation and not antagonism. Parliament and the President must co-operate in the running of this country, but it was also meant that this Parliament must capture its role of controlling the President and the Government. At any time during his tenure, Parliament can pass a vote of no confidence in the President and the Government. This causes a general election for both Parliament and the Government. I will argue in the course of my presentation that Parliament should not be punished for the mistakes of the President and the Government, but we must find a system where we can send the President and the Government packing while Parliament remains in place as the representative of the people of Kenya.

(Applause)

So, this is the terminal vote which we have, and which is by far the most far-reaching power of Parliament; the power to hire and fire a government between general elections. In a general election, of course, our basic boss is the people, but during the general elections, we have the power to hire and fire the Government. I am very pleased that hon. Orenge brought a Motion here and suddenly the country woke up and saw the powers of Parliament. I remember coming from my house that day and finding the whole Parliament Building surrounded by police, and attempts were made to kidnap some of us, but we knew that they were acting unconstitutionally and we were prepared, as Parliament, to stand up for our rights. This system of Government is a hybrid one. It borrows from the Parliamentary and the Presidential systems of Government. The President and the Ministers are hon. Members of Parliament. That is why our Ministers are here. The criteria for appointing a Minister is that he should be an hon. Member of Parliament. Under the current Constitution, the President can appoint Ministers from both sides of the House. Those who argue that he can only appoint Ministers from his party do not understand the Constitution. So, when he has not extended co-operation into practical terms, it is because he is tricky! That is all! It is not because the Constitution does not allow him to do that.

(Applause)

The American President on one hand is the Head of State and the Head of Congress on the other hand. A negative vote against the President of the United States of America (USA) or the Ministers in the Government of the USA does not automatically lead to their being compelled to resign. That is the difference between Presidential and Parliamentary systems of Government, but since we are hybrid, we might as well go on to be creative and show how our system can work better. The USA Constitution, therefore, does not tie the fate of the President and members of his party in the Senate and the House of Representatives together the way this Westminster model does.

Mr. Deputy Speaker, Sir, hybrid system was a symbiosis in which Parliament and Presidents were meant to complement each other. It was not meant to create antagonism between the President and Parliament. It was meant to provide checks and balances between Parliament and the Executive Government, but the reality of the Kenyan situation is different. Since Independence, both President Jomo Kenyatta and President Moi have manipulated the Constitution and Parliament to amass vast personal power at the expense of Parliament. So, rather than separation of power, our problem in this country is the concentration of power. Every amendment of the Constitution has been for the concentration of power in one hand; creating personal power and, therefore, what we call "Imperial Presidency" or "Presidential Monarchy". So, the more than 30 amendments which we have passed in this House were not meant to improve these checks and balances, but to undermine it. So, the first victim of Imperial Presidency was the doctrine of separation of power. It was at the heart of the Lancaster House Constitutional Conference. The doctrine of the separation of power was the symbiotic relation between Parliament, the Executive and the Judiciary, each of which ought to be independent even though complementing each other. That was the principle of Government in that theory. It is a theory which has been undermined; it is a theory which has been thrown overboard. It has been replaced by a theory of "personal power" - the concentration of power in one hand at the expense of Parliament. This provided checks and balances to all the branches of the Government. It also provided co-operation by all these three organs of Government. Therefore, Parliament exercises this oversight function through criticism, influence and, as I have pointed out, through a vote of no-confidence or what we call a "vote of censure". The extreme act of censure, of course, available to Parliament is meant to pass a vote of no confidence in the President and the Government. Hon. Members of Parliament can also approve, reject or amend specific policies. Hon. Members of Parliament are here to raise Questions, Motions and introduce Bills in the House.

I am very pleased to thank the House Business Committee for giving this Motion this time, because every hon. Member in this House has absolute right to bring a Motion and a Bill before it. That should never be compromised. I will address this at a different sitting, to appeal to parties to re-organise themselves instead of trying to use Parliament to bring draconian legislations, which we shall reject, of course.

Mr. Temporary Deputy Speaker, Sir, parties must learn to organise themselves instead of trying to appeal for the use of legislation. However, that is not my subject today. The purpose of this Motion is to seek leave of this House, under Standing Order 95(2), to bring a Bill to the House to amend Sections 58 and 59 of the Constitution. These two sections allow the President to prorogue and dissolve Parliament at any time without reference to anybody else or to any other authority. That is draconian!

Recently, Parliament enacted the Constitution of Kenya Amendment Act No.3 of 1999, which created this autonomous Parliament, in which the Parliamentary Service Commission constitutes the administration of Parliament. It is this Parliamentary Service Commission which is responsible for the management of funds and staff of the National Assembly on behalf of the National Assembly. This autonomy is not complete if Parliament does not control its own timetable.

(Applause)

Mr. Deputy Speaker, Sir, Parliament shares, therefore, in the leadership of the Government and the country as a whole by approving policies and legislative agenda of the President and the Government. The arbitrary powers which allow the President to prorogue Parliament must be removed and we are going to do so by making amendments to the Constitution.

Let me go quickly through Sections 58 and 59 of the Constitution, just to remind those hon. Members who may not be having a copy of the Constitution what they constitute. I will make very brief references to Sections 58 and 59.

Section 58 (1) states as follows:-

"Subject to this section, each Session of Parliament shall be held at such place within Kenya and shall commence at such time as the President may appoint."

Mr. Deputy Speaker, Sir, since we created the Parliamentary Service Commission and since there is no time during which there will be no Speaker, this amendment will provide that, there will be no time when there will be no Parliament; in other words, in the same way there is no time when there is no President in the Government - after

dissolving Parliament, the President hands over to the next President and the Ministers remain in office to hand over to the next Ministers - Parliament too will remain in office so that only the new Members of Parliament will be sworn in. Others will continue with the oath they had taken. That means, therefore, there will be no time when there will be no Parliament.

(Applause)

As I had pointed out earlier, the practice is already being done by the Government and the President himself. I am glad that my colleagues who went to Germany were very impressed that one of the Acts of the German Parliament was to make sure that the life of Parliament is five years, but it continues so that the new Parliamentarians are gazetted the same day Parliament is supposed to be dissolved.

Mr. Deputy Speaker, Sir, Section 58 (2) of the Constitution states:-

"There shall be a session of Parliament at least once in every year."

This means that the President is only obliged to call the House one day in one year; one day in one year, and yet we are the representatives of the people. By sheer coincidence, we have been called more regularly partly because the Government needs the money and, therefore, it needs Parliament to authorize it. But that notwithstanding, the Constitution only provides that the President calls Parliament once a year. That is shameful! An institution elected by the people is at the mercy of one individual.

Mr. Deputy Speaker, Sir, Section 58 (3) of the Constitution states that:

"Whenever Parliament is dissolved, a general election of Members of the National Assembly shall be held, and the first session of the new Parliament shall commence within three months of that dissolution."

Mr. Deputy Speaker, Sir, just as I have said in these amendments, the Speaker will be the person to call Parliament, but we shall control him by saying that one month before the dissolution of Parliament, he gives notice to the President to dissolve Parliament for purposes of election only and no other reason. We will then put in that, the Speaker will be compelled to call Parliament one week after a general election, but after not three or five months. We cannot put Parliament in abeyance because that is what creates room for one person's rule. That is what we are fighting for.

Mr. Deputy Speaker, Sir, Section 58(4) of the Constitution states as follows:-

"Subject to this section, the sittings of the National Assembly in a session of Parliament shall be held at such time and on such days as may be determined in accordance with the Standing Orders of the Assembly."

This is about recess and prorogation. These powers will be taken away from the President and be vested in the Speaker. I have to emphasize that.

Mr. Deputy Speaker, Sir, briefly, I want to touch on Section 59 (1). It states as follows:-

"The President may at any time prorogue Parliament."

Imagine, we are the representatives of the people, but the President does not consult anybody, not even his wife, if he had one! He just wakes up, and if he is in a bad mood, he dissolves Parliament! That cannot be acceptable! We must share in this very important constitutional decision.

For example, all school-going children know their terms. Children in nursery schools, secondary schools and universities know their terms. They know when the term begins and when it ends. But the institution of Parliament does not know; not even our Speaker knows, when the President will be in a good mood to call Parliament back. It is for that reason that in this amendment, I am going to provide for any one-fifth of the Members of Parliament to recall Parliament when it is in recess.

Mr. Deputy Speaker, Sir, Members want me to shorten my contribution. However, this is an opportunity for us to impress on the Government that the wind of change is sweeping everywhere, including along the corridors of power!

Mr. Deputy Speaker, Sir, I would like to talk at length on the provisions of the Constitution so that hon. Members know that we have a draconian situation. We are worse than our own children because they can plan their terms, but Parliamentarians cannot even plan their calendar and yet we have a Parliamentary Service Commission in place, which is a constitutional body!

Mr. Deputy Speaker, Sir, following the 1997 General Elections, which took place on the 29th of December, the President did not call the House for the first sitting until 3rd February, 1998. That date, 3rd February, 1998, is the beginning of the five-year term for this Parliament. Therefore, this Parliament has a life of five years; up to 3rd February, 2003. The amendment, therefore, will prevent this myth about snap elections. I will say more about the snap elections and the spirit of it all; that it is being used as a weapon over our heads.

The creation of the Parliamentary Service Commission, therefore, provides this House with its own administration to run the National Assembly. The Speaker and the Parliamentary Service Commission have powers to manage this Assembly on behalf of hon. Members. They should be responsible for preparing the calendar of the House, including the Sessions of Parliament for the duration of five years. There will also be provisions in the amendment to provide that 15 per cent of Members can recall Parliament from recess.

Mr. Deputy Speaker, Sir, I am not saying anything new today. The Constitution of the United States of America set, 200 years ago, the date for the election of the President and Congress. That is as it should be! Every American knows the date. Why should it be a secret to the people of Kenya?

The circumstances under which the President can dissolve Parliament are clearly stated, and basically, it is when there is a disagreement over a major policy like the Budget. Nothing else! He cannot just wake up one morning and then send the likes of hon. Nassir, running all over the place confusing this country and trampling everywhere like a rogue hippopotamus to cause confusion.

(Laughter)

Mr. Deputy Speaker, Sir, in Uganda, for example, they have now a fixed term for Parliament and the President has no powers to dissolve Parliament. It is the Speaker who notifies him that the life of Parliament is coming to an end for the purposes of general elections only. As you heard in Safari Park, the Ugandans have learnt that through a bitter lesson; that you must not tamper with institutions, and yet, here, we are tampering with institutions from left, right and centre.

Mr. Deputy Speaker, Sir, the Constitution of Ghana provides four years for the life of Parliament, during which the President cannot prorogue or dissolve it. It is the Speaker who notifies the President, because, as I said, there is no time when there is no Speaker. This talk about a snap election must stop. There is no secret in the dates of elections to the people of Kenya. You cannot plan to ambush the people of Kenya. We want to stop this mentality of the President calling elections his secret weapon. They cannot be his secret weapon. They are the property of the people of Kenya.

Mr. Deputy Speaker, Sir, the right to dissolve Parliament must also be shared between this Parliament, through the Speaker, and the President. This is the only way that we are going to restore our dignity. This is the only way we are going to enhance the dignity of the Members of Parliament.

Mr. Deputy Speaker, Sir, with those few remarks, I wish to ask hon. Kiraitu Murungi to second this Motion.

(Applause)

Mr. Murungi: Thank you, Mr. Deputy Speaker, Sir. It is my great honour and privilege to be asked by the Vice-Chairman of the Parliamentary Service Commission to second this Motion. I must say this is the greatest day in the history of this Parliament since it was established by the colonial Government in 1906. The Motion is seeking to amend Sections 58 and 59 of the Constitution, so as to enhance the independence and self-determination of this Parliament.

Mr. Deputy Speaker, Sir, as the previous speaker has said, this Parliament has been worse than a kindergarten. Our existence has been precarious and our operations are wholly dependent on the whims of the President. We cannot plan for tomorrow because we do not know for certain whether we shall be here. The President can dissolve this Parliament even as I am talking now. I think no Member of Parliament of sound mind can vote against this Motion.

Dr. Kituyi: There are very many unsound minds here!

(Laughter)

Mr. Murungi: Mr. Deputy Speaker, Sir, it would be extremely foolish for any Member of Parliament to vote against this Motion because it is in the interests of that Member, this Parliament and the nation at large. This Parliament and the constitutional system of this country is based on that fundamental concept called "separation of powers" as defined by the French philosopher called Montesquieu in the 18th Century. The concept requires the Legislature, Executive and Judiciary to be independent and separate from each other and each of them is supposed to act as a check on the powers of the other one, so that there is no tyranny; absolute dictatorship. Indeed, it was intended to curb the powers of absolute monarchs in Europe in the 18th century. It is very unfortunate that while we talk about separation of powers, in practice in Kenya, the concept is that of concentration of powers in the President.

Mr. Deputy Speaker, Sir, Professor Okoth-Ogendo, who is not in any way associated with the Opposition, has

described the Kenyan Presidency as the "Imperial Presidency". The President has the powers of an absolute monarch. He is very much like Louis XIV of France, for whom the state was him and he was the state, and in Kenya, Moi is the State and the State is Moi. In England, we talk about supremacy of Parliament. They say that Parliament is so supreme and powerful that it can turn a man into a woman.

(Laughter)

Dr. Kituyi: It can turn the total man into a total woman!

Mr. Murungi: Mr. Deputy Speaker, Sir, my colleague here is saying that it can even turn the total man into a total woman.

(Laughter)

Mr. Murungi: Mr. Deputy Speaker, Sir, that is in England and not in this country. Anyway, it was on a light note.

The Minister for Tourism, Trade and Industry (Mr. Biwott): On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member in order to compare the unlikes? Can he also confirm that this House is so powerful that it can turn hon. Kiraitu Murungi to be a *mwekuru* of Meru?

(Laughter)

Mr. Murungi: Mr. Deputy Speaker, Sir, I would like to continue. The point I wanted to make is that, whereas in England we talk about supremacy of Parliament, here in Kenya the reality is that of the supremacy of the Executive. This Parliament exists wholly at the whims and pleasure of the President. He calls us when he wants in accordance with the Constitution. He also sends us packing whenever he wants. As hon. Oloo-Aringo has said, under Section 58 of the Constitution, the President is not bound to summon Parliament for more than one day a year. So, when he calls Members, swears them in and sends them away for the rest of the year, he has complied with his constitutional duty. Why can we not have a Parliament which Moi can do without?

Mr. Deputy Speaker, Sir, we might ask: Why have we given our President such draconian powers? In parliamentary systems, it is usual to divide the powers of governance between the Head of State and the Head of Government. In England, we have the Queen and the Prime Minister. In India, we have the President and the Prime Minister and the Head of State is supposed to be the custodian of the Constitution. He is supposed to represent the popular will. When a Government loses a majority, those powers can be exercised in a democratic manner, so that the Head of State dissolves Parliament, so that it is possible to create a Government which has the support of the people.

Mr. Deputy Speaker, Sir, in this country, these prerogative powers, which are not usually vested in the Head of Government, are now vested in the Head of Government and the reasons why this is done is because by a constitutional amendment in 1964--- The former Attorney-General, Mr. Charles Njonjo, was responsible for all this. The powers of the Head of State were vested, in the 1963 Constitution, in the office of the Governor-General and the powers of the Head of Government were vested in the Prime-Minister. However, in 1964, the Kenya Constitution was amended and the office of the Governor-General was abolished and his powers were merged with the powers of the Prime Minister and we created a new powerful office called the Office of the President. So, as we speak now, the President is the Head of State, Head of Government and in addition to that, he is the Commander of the Armed Forces, and he is also the head of the ruling party.

Dr. Kituyi: He is also the Chancellor of all universities.

Mr. Murungi: He is also the Chancellor of all universities. This is the most powerful man on earth. This confusion which was created by the 1964 amendment is what has landed us into this absolute monarchy and this imperial Presidency that we are talking about today.

Mr. Deputy Speaker, Sir, 1994 was the beginning of dictatorship in this country. We created an imperial Presidency and vested upon it the dictatorial and monarchical powers of a Parliament. This Motion today is intended to correct that anomaly. The prerogative powers have been used by both President Kenyatta and President Moi, in a very selfish manner and in a way that undermines parliamentary democracy in this country. In 1975, the same powers were used to prorogue Parliament immediately after the assassination of J.M. Kariuki. In 1983, the same powers were used to dissolve Parliament when Mr. Njonjo was identified as a traitor and there was need for President Moi to consolidate his power and to remove Mr. Njonjo and his henchmen, including hon. Kamotho then.

(Laughter)

Mr. Deputy Speaker, Sir, President Moi has used the dissolution of Parliament as his secret weapon. He imposes on us elections when Kenyans are not ready and when such elections are not necessary. All this talk about snap elections cannot be brought in any other way; it can only be brought through misuse of these powers. The Parliamentary Service Commission that we have appointed cannot prepare a two-year plan because they do not know when Parliament will be dissolved. We had a bitter experience during the IPPG reforms. We spent one Thursday night with Mr. Fares Kuindwa, hon. Anyona and other people drafting a Sessional Paper for implementation of IPPG reforms. This was to be tabled in Parliament on a Tuesday. But before that Tuesday, Parliament was dissolved. We were thrown into disarray and the fact that the IPPG reforms have not been implemented to date is because of misuse of these powers. We cannot allow one person to turn Parliament on and off like a water tap. It is high time we did away with these monarchical powers and asserted our independence. I think today is the day for declaration of the independence of Parliament in this country.

Mr. Deputy Speaker, Sir, I beg to second the Motion.

(Applause)

(Question proposed)

The Minister of State, Office of the President (Mr. Sunkuli): Mr. Deputy Speaker, the Mover of this Motion is an eminent Member of this House who, I am sure, has a long experience in parliamentary democracy and I have no reason to doubt his wisdom. I do believe that there is, indeed, going to come a time when Parliament will determine its calendar. Indeed, there will come a time when Parliament will be able to say that "this will be the day it is going to be dissolved."

Mr. Deputy Speaker, Sir, as a general rule, many Commonwealth countries behave the way Kenya does. Quite a number are, in fact, adjusting this particular activity of determining the calendar. The Ghanaian position is that Parliament serves its full term. So, Parliament serves for five years. At the end of those five years, the term of Parliament comes to an end and it stands dissolved. But this matter should be seen in perspective. I know that my learned colleague, hon. Murungi, does call this an imperial activity but I would like to call it a legacy of our membership of the Commonwealth. As we stand today, there is still a monarchy, even in the most democratic country like Great Britain. Today, the Queen of England can still dissolve Parliament when she is asked by the Prime Minister, who is the head of the Government, to do so. The Prime Minister can just walk to Buckingham Palace and say to the Queen: "I would like Parliament to be dissolved."

Mr. Murungi: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the hon. Minister, who is a lawyer, to compare President Moi with the Queen of England? Is President Moi the Queen of this country?

Mr. Deputy Speaker: Order, Mr. Murungi! The Queen is the Head of State in the United Kingdom and President Moi is the Head of State in Kenya! To that extent, they can be compared.

Proceed, Mr. Sunkuli.

The Minister of State, Office of the President (Mr. Sunkuli): Mr. Deputy Speaker, Sir, indeed, the practice of Parliament dissolving itself in the world, is an exception. The general rule is that the Head of State has the prerogative powers to dissolve Parliament. This actually has something to do with exactly what hon. Murungi said. It was stated by Montesquieu himself. Montesquieu saw a situation where none of the arms of the Government were independent of the other. In such a situation, one had to be controlled by the other. I do understand that we have had a situation where the Executive was viewed as the one with most powers. I am a Member of this House, and a Member of the Legislature, but I hope we do not create a new Leviathan of modern days; namely, that we transfer all the powers that the Executive used to have to Parliament. I hope that we still retain the situation where there is going to be separation of powers.

Mr. Deputy Speaker, Sir, while dwelling on this issue of supremacy of Parliament, I am so glad that the hon. Members of the Opposition are at long last proclaiming the supremacy of Parliament. This is because there are so many things which are wrong with our Constitution, including the fact that many millions of people in this country do elect a President and a few of them want to remove him by a vote of no confidence; a President they did not elect. This should be amended in our Constitution, so that either Parliament appoints the Head of State and removes him or the people appoint him and Parliament cannot remove him. These are things we need to change in our Constitution. That is why we are saying that the only person who can change the Constitution of this country is Parliament. I am glad that hon. Oloo-Aringo has actually brought this change of the Constitution to Parliament and not to Ufungamano House. This is because the power to change the Constitution of this country lies in Parliament. We will put a constitutional commission in place in a couple of weeks or so. The commission will go round the country and ask the people of this

country how and when they want Parliament to be dissolved. We will amend that section of the Constitution in accordance with the wishes of the people of Kenya.

Mr. Deputy Speaker, Sir, there is also another channel which has been proposed, one which is being referred to as the Ufungamano Channel. If there are people who believe that the clerics are going to obtain the views of the people, why are we short-circuiting the process? Why can we not wait for the people of this country to be asked how they want the Constitution to be amended? One of the biggest issues that we have had in Parliament is that there has been a lot of patch work. People are amending the Constitution piecemeal. We are continuing in that mischief of amending the Constitution piecemeal.

Mr. Deputy Speaker, Sir, the 1963 Constitution has, indeed, served this country very well. I am very glad that throughout the Nyayo Era there has only been one single time when snap elections have been called. I am glad that the prerogative powers of dissolving Parliament have been placed on a sober President; one who makes decisions in State House or in Harambee House and not in a bar. One day if we get a President who is not sober, that will destroy this country.

Mr. Ndwiga: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the hon. Minister to mislead this House and this nation that the President makes his decisions soberly in State House when recently, he appointed the Vice-President in the streets, and we hear policy statements being made at Harambee meetings?

Mr. Deputy Speaker: Order! Order, hon. Members! If you stand on a point of order, let it be a point of order as per our Standing Orders. I will not tolerate any more arguments or questions under the guise of points of order.

Proceed!

The Minister of State, Office of the President (Mr. Sunkuli): Mr. Deputy Speaker, Sir, the action by hon. Oloo-Aringo is very good for this country, but for the future. This is supposed to control the future when it is possible to get a President who uses arbitrary powers arbitrarily. Luckily, the concept of snap elections arose recently in the form of a rumour. The last time this country had a snap election was in 1983 and it has never been misused. It is also wrong for Members of this House to view these powers only in terms of President Moi. When I look at the arguments by many hon. Members, it is like they are only thinking about President Moi. That is absolutely wrong because it is very myopic. If we are not thinking about President Moi alone, then let us be patient and wait for the time when all the amendments to the Constitution will have been made, then this Motion will be seen in the proper perspective. What is the hurry for? All of us have dedicated ourselves to amending the Constitution of this country; in fact, to reviewing the Constitution of this country, and I see no sense at all in having piecemeal amendments.

Mr. Deputy Speaker, Sir, I want to urge this august House not to give a second thought about this Motion and to reject it.

(Applause)

Mr. Kihoro: Thank you, Mr. Deputy Speaker, Sir. I stand to support this very important Motion which is seeking the consent of this House to amend Sections 58 and 59 of the Constitution.

Mr. Deputy Speaker, Sir, the concept of separation of powers has been dealt with by the previous two speakers and it is important. It has worked well in America, Britain and in all non-totalitarian states. We know very well what has happened to Communism in the last ten years and that concept has been outlawed throughout the world. It cannot work because of concentrating power in an individual or in a party. Times are catching up with us in this country and we need to do the necessary reforms by amending Sections 58 and 59. We need not wait any longer. What is being done by the party opposite, and what could be proposed elsewhere, might not catch up with us by the time we go into the next elections.

Mr. Deputy Speaker, Sir, if we look back into the history of this country, especially from 1963, we find that the powers which have been concentrated in the Presidency have not worked well.

(Loud consultations)

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

Mr. Kihoro: Mr. Deputy Speaker, Sir, I do not speak of President Moi only. I also speak of President Kenyatta who ruled this country from 1963.

It is wrong for the party opposite to talk about President Moi every time we talk about constitutional amendments. We are talking about this country; we are not talking about President Moi or necessarily about President Kenyatta. We are talking about the needs of this country, and we need a constitutional reform that is going to enable this House to control its own calendar. If you look at what happened in 1967, this particular Parliament had the audacity to extend its own life. The first elections were held in June, 1963. The next election were supposed to be held

in 1968 but that did not happen. The people of this country were entitled to an election in 1968. Whether it was President Kenyatta who was in power or Moi who was his Vice-President, Jaramogi would have been very happy to have an election in 1968 because it is very clear at that point, he would have been able to trounce President Kenyatta. Things have changed from that time. Elections were held in 1969.

Mr. Deputy Speaker, Sir, in 1974, this Parliament was prorogued for five months after there was a deadlock about the election of the Deputy Speaker Marie John Seroney stood for Deputy Speaker but some people in the Government then did not like him, and Parliament was prorogued for five months. That should not have happened. When Parliament reconvened, this House endorsed the Deputy Speakership of Marie John Seroney. However, five months was lost by the people of this country who wanted to see a more active Parliament.

Mr. Deputy Speaker, Sir, let us now turn to President Moi and I do not want to see anybody rising up. I have already taken on President Kenyatta. It is time for you to listen. In 1983, Parliament again was dissolved by President Moi and there was a snap election. Some people in the Front Bench of the party in power at that point, that is KANU, had to be purged. That did happen. Some were purged but they have come back since. The country did not need to go to an election for that purge to happen. All those people should have been sacked by their party. At least, it was in the process of making sure that it removed whoever it did not want. It was able to expel members and that is what should have happened, but not drag this country through an election.

Mr. Deputy Speaker, Sir, there is talk of a snap general election. The quarrels in KANU should not become a national issue. KANU should be able to resolve their problems. If they cannot be able to govern, we have got a party in the Opposition that can take over. We have got a coalition and this is the way of the future. It is inevitable; we can form a coalition Government in this country that will run this country on a more consultative basis as opposed to a more authoritarian approach to national affairs. We need a calendar to run this Parliament so that the people of this country can know exactly what is happening. We need to know the date of the next general elections. The people of this country are entitled to know when the next general elections will be held. Just like the Americans today, they know the date of the elections for the next President of the USA. Since 1963, we have been labouring with only two Presidents, but the greatest power in the world has been able to change the Presidency seven times. They vote every other second Tuesday of November in a leap year. They are going to vote in the second Tuesday of November. They are also going to do that in the year 2004 and 2008. We need to know the date of the next general elections in this country and that should be put in the parliamentary calendar. We need to know in good time when Parliament is going to be dissolved. This should not be a lottery. It should not be a date that is going to be dreamed of by an individual; by either the number one or the most powerful man in the country, or number two. We want to know when the next President of this country is going to be sworn in. After his election, we want to know exactly when he is going to be sworn in. We should not have the farce we had in 1992 when the President was sworn in in State House and the next time in 1997, when he was sworn in at Uhuru Park. Next time, it might be in some other place in a remote corner of this Republic. Thirty million Kenyans want to know when the next President of this country is going to be sworn-in. We also want to know when the next President of this country will move into State House. We do not want to have a standoff at the Office of the President or State House when the next President of this country is elected. There might be a standoff if the incumbent President loses in the elections and refuses to vacate the State House for another President to move in. We want to know when the next President of this country is going to be sworn in; when he is going to move into the Office of the President and to State House.

Mr. Deputy Speaker, Sir, the constitutional amendments that have been proposed by hon. Oloo-Aringo are going to enable the people of this country to know their country well. The people who own this country will know when things are going to happen and in what order they are going to happen. That will be very important in terms of maintaining stability. Let us not have a bogus stability. We want to put in place a transparent mechanism in the management of Parliament, the Executive and the Judiciary. That is what the people of this country demand.

This Motion is going to make sure that the "KANU civil war" which is being experienced now does not turn out to be a Kenyan civil war.

With those remarks, I beg to support.

The Minister for Tourism, Trade and Industry (Mr. Biwott): Mr. Deputy Speaker, Sir, first of all, we should appreciate the Constitution the way it is. We allowed hon. Oloo-Aringo leave to introduce a Bill to amend the Constitution in order to pave way for the creation of the Parliamentary Service Commission. That was the right thing to do as it was long overdue.

Mr. Temporary Deputy Speaker, Sir, hon. Oloo-Aringo and those supporting this particular Motion are the same people asking for a comprehensive constitutional review. So, why the desire for a piecemeal review now? We all want Parliament to have the powers that it needs. We also want Parliament to control its timetable at an appropriate time and hon. Sunkuli has said this will have to happen eventually. Why are we in a hurry? We should do this with the approval of Kenyans. Why can we not do it as people who are interested in the welfare of this country?

Mr. Deputy Speaker, Sir, why is it that there is a lot of urgency for Parliament to control its calendar? The need to introduce this amendment has been around for a long time. The late hon. Seroney tried to introduce this type of an amendment to no avail. We should use the remaining time, before the next General Elections, to review the whole Constitution. We should avoid this talk about imaginary snap elections. The President has come out clearly that there will be no snap election. Is it because of the fear that if there was to be a snap election, the Opposition Members of Parliament will not be in this House because they are not popular? If they were popular, they would have been anxious to have the snap election so that they can be in Government.

Mr. Deputy Speaker, Sir, those controlling the calendar of Parliament today are Members of Parliament. The President is a Member of this House hence we should have faith in ourselves! The Constitution we have at the moment is a mixture of the United States of America model and the Westminster models. Therefore, we need to re-write it to reflect the wishes of Kenyans. Indeed, everyone has been talking about the draconian powers which the President enjoys today. I think hon. Kibaki will confirm the fact that when they were arguing about the constitutional review in this country prior to the 1964 Republican Constitution, the late Tom Mboya, who was the Minister for Justice and Constitutional Affairs, argued that in an African mentality and concept, we cannot have an African Head of State who is powerless. He has to have the power. So, this had its origins in our own conceptions as opposed to the ones we are now referring to which have had other considerations as a result of the evolution of the political systems of those countries.

Mr. Deputy Speaker, Sir, there has always been fear that the executives and the monarchies in the European countries whose constitutions we are following today used to oppress the common man. So, they came up with the doctrine of separation of powers. Indeed, it is necessary to have separation of powers in order to have checks and balances.

Mr. Deputy Speaker, Sir, we are the people who are responsible for upholding the dignity of this House. How then can we maintain the dignity of this House when we go out there and flout the very legislation which we have come up with? Our actions demonstrate a complete reversal of what we stand for - the rule of law. Why can we not be the first people to uphold the rule of law so that whatever legislation we pass here becomes absolute? Why should we abuse our dignity by abusing the institutions which we set up? Why should we be abusing the Presidency? We should approach the constitutional review process in a macro sense so that we can look at the many aspects which interrelate instead of going for a mere amendment. Why should the hon. Members of the Opposition now see it fit to introduce amendments in the House while teaming up with the Ufungamano initiative in the clamour for constitutional review? They should subscribe to the appointment of the Members of the constitutional review by Parliament so that they go out there to get the views of wananchi. The people will give them the views that are necessary to empower this House to control everything within the purview of the Parliamentary Service Commission. In that way, we will be acting more reasonably.

Mr. Deputy Speaker, Sir, it is also important to draw from the experiences of other people. Recently, the Governor-General of Australia fired the Prime Minister without going through Parliament because he had the constitutional authority. In Pakistan, the Governor-General also fired Ms. Bhutto because he had that constitutional power. So, it is not only in Kenya that this is happening. In any case, President Moi today exercises authority which is given to him by the Constitution. He is not acting unconstitutionally. So, he is acting very much within the Constitution which we want to review today.

Mr. Deputy Speaker, Sir, due to the fact that we want to review the Constitution as a whole, I would like to urge every Member here to reject this Motion so that we can do things in a sane way.

With those remarks, I beg to oppose.

Mr. Ngure: Thank you, Mr. Deputy Speaker, Sir, for giving me the opportunity to support this Motion moved by our colleague, hon. Peter Oloo-Aringo, EGH, MP. For him, it is an awakening to the ills that have been going on in this country. The ills that could not honour the doyens of the Opposition with an EGH award.

I stand here to beg for the consistency of this House. The inconsistency of this House is amazing to the members of the public. We should be consistent and tell members of the public that Parliament is supreme and is charged with the duty to amend the Constitution in total or piecemeal. But we will not sit in this Parliament and see people walk out when a mere Act of Parliament is being amended to streamline the work of Parliament. That is hypocrisy. I thought some of our colleagues would have walked out because Parliament is incapable of handling the Constitution. Be that as it may, we should support whatever is good, even if, like instant coffee, it is made out of sweepings from the floor of an auction.

Mr. Deputy Speaker, Sir, we have pressure groups in this country which are mere sweepings of the great floor of the political multiparty theatre. That is why we should be consistent. We should give the Parliamentary Service Commission power on the Floor of this House and not in the churches, the streets or Ufungamano. When I saw this Motion, I thought it would be debated at Kamukunji and passed. But because of hypocrisy, they could not face the

public because they do not understand. The fear is that people think there will be snap elections. We will resist it if comprehensive amendments to the Constitution are not in place. I am talking as a Commissioner to the Parliamentary Service Commission, so that I can have power; power to tell hon. Members of Parliament what our calendar is like. But if, as a Commissioner, I will also be dissolved at the whims of an hon. Member of Parliament who is under the Commission, then we have to support this Motion.

Mr. Deputy Speaker, Sir, amendments have been made to our Constitution, which have given a lot of power to the Presidency. That is what we are starting to resist. The ruling party, KANU, should stick to its manifesto and the mandate that it was given by its people, that if you win, you will govern for five years and put in place amendments that will see this country move forward. We do not want to see a Parliament where hon. Members have sleepless nights because they do not know whether they will wake up in the morning as hon. Members of Parliament or not. That is what we want to put in place. We know the comprehensive constitutional amendments will also cover this amendment. This can only be done in Parliament. We have put together the names of hon. Members of the select committee which is going to appoint the Commissioners. I remember when the names were being read, some of our colleagues shouted "shame". We have not shouted "shame" to this amendment, because we believe in the supremacy of Parliament. We believe that Parliament is capable of guiding the constitutional amendments in this country, as much as we believe that the Parliamentary Service Commission is here to serve hon. Members of Parliament. It only needs constitutional powers to control their calendar. We believe that Kenyans out there know what they want changed in the Constitution. They know the powers that should be reduced, but they also want guidance from the people they elected, who are hon. Members of Parliament.

Mr. Deputy Speaker, Sir, I guard my position as an hon. Member of Parliament very jealously because within the five years as an hon. Member of Parliament, I have to guide my people. I will go to church to pray for that guidance from the Almighty God, but I will never give that position to my pastor. That is the hallmark of parliamentary democracy, and it will take time before most of us realise the finer tuning of multiparty politics that is being played by the National Development Party (NDP). It is confusion, just like people drink instant coffee and think it is the best, whereas it is a mere sweeping from the floor of an auction godown. Politics needs fine-tuning and more so, the multiparty democracy that we are nurturing here. I believe hon. Oloo-Aringo has realised that here is where we practise multiparty democracy. We are looking straight into the eyes of the people on the other side to support it because that is what democracy is all about. We should sit in the House, project our views and be judged by those who elected us.

Mr. Deputy Speaker, Sir, since I can see hon. Members from the other side of the House coming in the House in droves, to avoid the risk of losing the vote, I beg to support.

Mr. Deputy Speaker: Mr. Musyoka!

Mr. Angwenyi: That is unfair!

Mr. Deputy Speaker: Order, Mr. Angwenyi! If you want to appoint yourself to speak on every issue, come to the Chair. One more interruption on your part and you will face the consequences.

Proceed!

The Minister for Education (Mr. Musyoka): Thank you, Mr. Deputy Speaker, Sir, for giving me the opportunity to contribute to this Motion. At the outset, I would like to categorically state that I am speaking in opposition to this Motion.

Mr. Deputy Speaker, Sir, as an august House, we have to uphold the essential tenets of democracy. One essential tenet, according to me, is that whatever we do as hon. Members should be the product of good faith consideration. I feel that this Motion is not brought in the spirit of good faith.

Secondly, I would like to state that as we speak, Executive authority of Government is vested in the Office of the President. That is clearly stipulated under the current Constitution.

Mr. Deputy Speaker, Sir, the third point I would like to make is that it is the business of Government side of this House to recommend legislation. As a Member of the House Business Committee, I have realised that the trend in this House nowadays is that many of Private Members' Motions seem to seek the leave of the House to introduce legislation. Our friends on the Opposition side must, therefore, be convinced that the Government side is not doing its business. I would like to assure them that the Government is committed to introducing legislation that is beneficial to this country, and for the welfare of society. What this country needs are not piecemeal amendments to the Constitution.

I heard hon. Ngunjiri say that we are dealing with an amendment to the Act; maybe I misheard him. It is, however, clear that this Motion aims at amending sections of the current Constitution. I remember that when we first started the constitutional review process at the Bomas of Kenya, I argued that what Kenyans wanted was not discussion of constitutional amendment in perpetuity, but comprehensive reforms. One may refer to reform process by any term, but some kind of definite attention has to be given to the question of re-consideration of our national ethics as contained in the current Constitution. That is what Kenyans want. Therefore, to me, this Motion is seeking to amend the Constitution on a piecemeal basis. We, on the Government side, have said several times that we are committed to

reviewing this country's Constitution. Really, we would like the country to re-look at the current Constitutional document, which has, up to now, stood the test of time; it has served this country well.

If you look at the history of this continent, you will agree with me that there have been very many political upheavals. If we did not have a proper constitution in place, we would, today, perhaps, be languishing in some of those difficulties some countries on this continent seem to have had. Their difficulties have sometimes been based on ethnic chauvinism and such like things. An example of these are the problems being experienced in the Great Lakes region. I would, therefore, like to appeal to my colleagues on the Opposition side to agree with us on the Government side that, together, we remain committed to amending or reviewing the Constitution based on the legal framework that is already in place. We have in place an Act of Parliament that seeks to put together a Constitutional Review Commission. I realise that the Office of the Clerk of the National Assembly has already advertised the posts of Commissioners to be appointed to their respective places, so that, in time, we can look into the question of reviewing the whole Constitution, and not on a piecemeal basis as this Motion seems to suggest.

Mr. Deputy Speaker, Sir, since many of my colleagues might also wish to contribute to this important Motion, I would like to say that I am totally opposed to this Motion.

Dr. Kituyi: Mr. Deputy Speaker, Sir. You realise that during Question Time, we had problems getting answers to Questions because the Leader of Government Business and Ministers were not in the House to answer those Questions. However, all of a sudden, the Front Bench is now packed to capacity. I understand that this is the case, because we are going to vote to determine the outcome of this Motion. We have listened to hon. Sunkuli, hon. Biwott and hon. Musyoka speak. The impression gotten is that there is no way the three Ministers can oppose a Motion and then, later on, it is supported by Members of the Government's Front Bench. So, I would like to start my first point by asking them questions. What is the logic in their voting? What have they told us has brought them here to vote?

Mr. Deputy Speaker: Order! Order! There has been no voting yet, Dr. Kituyi.

Dr. Kituyi: Mr. Deputy Speaker, Sir, I am going to argue: What are the arguments that have been presented to this House by the Government which, I suppose, indicate the direction they will take when it comes to voting?

Mr. Deputy Speaker: Order, hon. Kituyi!

Dr. Kituyi: Mr. Deputy Speaker, Sir, maybe, they will not go in that direction; I hope they do not.

Mr. Deputy Speaker: Order! Dr. Kituyi, no hon. Member has voted on this Motion yet. Give them the benefit of the doubt!

Dr. Kituyi: Mr. Deputy Speaker, Sir, I would like to give these hon. Members the benefit of the doubt; if we show them the hollowness of the arguments presented so far, they will not vote as hon. Sunkuli, hon. Biwott and hon. Musyoka, are suggesting they should.

Mr. Deputy Speaker, Sir, let me start with the weakest of those arguments. The weakest of the three arguments, intellectually actually, is that by hon. Biwott. He is saying: "Oppose this Motion--"

Mr. Deputy Speaker: Order! Order, Dr. Kituyi! You must not, really, be answering points raised by other hon. Members.

Dr. Kituyi: Mr. Deputy Speaker, Sir, I am destroying argument by argument.

Mr. Deputy Speaker: Order!

(Loud consultations)

Order, hon. Members! It is not the practice in this House for a hon. Member to rise and rebut what other hon. Members said while on the Floor. So, advance your arguments separately, Dr. Kituyi.

Dr. Kituyi: Mr. Deputy Speaker, Sir, I am going to advance an argument by showing how some arguments raised here are nonsensical, and there is nothing wrong with that in our system of Parliament.

Mr. Deputy Speaker, Sir, hon. Biwott told us that time is not yet ripe for us to control the powers of the Executive and that, that could be done at an appropriate time. He later on said that we have only two years to go. What that means is that it is alright to have a good constitutional order that curbs the powers of the Executive so long that does not affect the current Executive. How can we argue in the National Assembly, which is supposed to make laws and constitutions for prosperity, that, what we are dealing with now is for certain posterity that is supposed to come after President Moi leaves office? There is another argument that the hon. Member brought up---

The Minister for Tourism, Trade and Industry (Mr. Biwott): On a point of order, Mr. Deputy Speaker, Sir. First of all, the hon. Member is misleading the House. Secondly, he is misinterpreting what I have said. The hon. Member does not own my mind. I own my mind, and what he alleges to have been said by me is different from what I said. Whether I said---

Mr. Deputy Speaker: Mr. Biwott, you cannot rise on a point of order and start arguing. On the other hand, it

is the line of argument that has been taken by. Kituyi that has induced this kind of time-wasting tactic! So, proceed, Dr. Kituyi!

Dr. Kituyi: Mr. Deputy Speaker, Sir, I will not continue without mentioning names.

(Laughter)

One hon. Member, by quoting another hon. Member, told this House that in an African society, you need a powerful Executive. As an African, I get very ashamed to hear one of my own colleagues say that there is a certain perversion of the African mind that you need a powerful Executive to stop it from behaving like a baby, because we are inherently juvenile! Where a person gives verbal effect to such a statement, he negates---

The Minister for Tourism, Trade and Industry (Mr. Biwott): On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Order! Order! Mr. Biwott, there will be a Government Responder when the time for hon. Members to contribute ends. Perhaps you had better tell him what you want rebutted when he responds. So, proceed, hon. Kituyi.

Dr. Kituyi: Mr. Deputy Speaker, Sir, at the foot camp of the 21st Century, an African Parliamentarian who puts verbal effects to the notion that Africans are so juvenile in the mind that they need a powerful Executive does a lot of disservice to the African race. Such arguments should only be treated with contempt. There was another argument, which was that--

The Minister for Tourism, Trade and Industry (Mr. Biwott): On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Mr. Biwott, that had better be a point of order, and not a point of argument.

The Minister for Tourism, Trade and Industry (Mr. Biwott): Mr. Deputy Speaker, Sir, is the hon. Member in order to mislead this House? What I said is that the late hon. Tom Mboya---

Hon. Members: No! That is not a point of order!

The Minister for Tourism, Trade and Industry (Mr. Biwott): Mr. Deputy Speaker, Sir, I referred to that point to show the historical aspect in our current Constitution, but I did not say that we should continue following that reasoning.

Hon. Members: No! Sit down!

Mr. Deputy Speaker: Order! Order, hon. Members! This must be the 100th time I am going to read out the Standing Order that deals with points of order in this House. Standing Order No.68(1) reads as follows:

"Any Member may rise to a point of order at any time, during the speech of another Member, stating that he rises to a point of order. The Member who was speaking shall thereupon resume his seat and the Member rising to the point of order shall do likewise when he has concluded his submission. No other Member may, except by leave of Mr. Speaker, speak to the point of order".

More importantly, Paragraph 2 of the Standing Order reads as follows.

"Mr. Speaker shall either give his decision on the point of order forthwith or announce that he defers the same for consideration after which the Member who was speaking at the time the point of order was raised may continue with his speech."

This means that, really, the hon. Member on the Floor must have breached one of our Standing Orders, so that the Speaker is called upon to rule whether, indeed, he has breached one of our Standing Orders or not. So, hon. Members, when you rise on points of order, you should point out this House's Standing Orders that may have been breached by the hon. Members on the Floor. Proceed, Dr. Kituyi.

Dr. Kituyi: Mr. Deputy Speaker, Sir, there was a very interesting contradiction that I listened to here. A Minister said: "We cannot have piecemeal reforms of the Constitution." He is part of the Government that brought here the Constitution of Kenya (Amendment) Bill, 1997 under the Inter-Parties Parliamentary Group meeting, which were piecemeal amendments to the Constitution of Kenya. Similarly, a Minister says that the Government is committed to constitutional reform and, in the same breath, he says that the current Constitution has served us well. If it has served him well, why is he committed to constitutional reform? There was another interesting argument; "that what we have seen is a rare thing; an attempt to have Parliament control the timetable of its activities. "Maybe, that is selective reading of history! To my knowledge, it may be rare because it is only done in Norway, Denmark, Finland, Switzerland, Iceland, the United States of America, Ghana, Uganda, Tanzania, South Africa and Brazil. Now, if those countries are evidence of something being rare, I do not know what the contrary means.

We are being accused of trying to create a Leviathan. I have been a student of political theory and I know

about the Leviathan. The challenge before us now is to curb the powers of a Leviathan and not to create him. We are looking for constitutional mechanisms to curb the excesses of the Chief Executive. This Parliament cannot speak about its commitment to self-renewal and self-dignity when the same Parliament is responding to official Executive edict, like being told: "Change the Constitution after we are out of power." What are we talking about? We are talking about a matter where the Government has so far not given us any argument to prove that to give Parliament the power to control its Parliamentary calendar is something wrong. They are only telling us that they want to do it over a longer time, or some other time. They ask us to give them only two years. That is an argument that stands up to reason. We are being told: "Wait for the comprehensive Constitutional reforms." There will not be any comprehensive constitutional reform in Kenya while President Moi is still the President. Tell him this! You can talk the kind of things that you want to talk, but you know that the Government is on the brink of the crime that the ancient Greeks called the "Crime of Hubris." You get so drunk with succession and the battles that you fight, that you are ready to take all the gold for petty battles whose victory do not bring anything to you, but whose defeat destroys everything you have gained. That is Hubris. You cannot impose a constitutional reform method on a people.

Much as Members of the Government side and some from the Opposition side showed substantial ignorance about the difference between constitutional amendment and constitutional reform, that is a subject of another debate. But what is before the House is a specific agenda within the mandate of Parliament and for the good of Parliament, and excuses should not be found in talking little things about what is dreamt of being done out there, which Kenyans do not allow to be done. Kenya will not allow you to hijack her rights to create her own Constitution. Kenya will not endow unto you the capacity in your limited vision, to define for her what she wants for herself. Kenya will not continue forever being patient in the sense of arrogant arrogation of power by elements of the State hirelings.

The Minister for Vocational Training (Mr. Ruto): On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the hon. Member to insinuate that other hon. Members have got limited vision? He is arrogating himself the powers of knowledge.

Dr. Kituyi: Mr. Deputy Speaker, Sir, I have so little time. If my colleague likes, after we finish this matter, I can sit out there with him and give him a lesson on the English language. But I am saying that we have a specific matter: Does this Parliament have the capacity to stand up and say: "We, as a Parliament." Or must it look over its back and listen to the Executive telling us about what Parliament should say about itself? When Ministers of the Government are paraded at the Airport and told: "None of you is material to be President," they are weakened and humbled because they have no backbone to stand on. Ministers, if we strengthened you as a Parliament, you will tell your Executive: "We are capable." But you are denying yourselves a chance to grow and to speak to President Moi and say: "We are capable of being President."

(Applause)

Mr. Deputy Speaker, Sir, we are told that they believe in the rule of law. That is very naive to hear. When the President orders the police not to allow people to have licences against the law; when an Assistant Minister in the Office of the President has the temerity to organise hooligans to take over Government land and what you see next is him celebrating a party in the State House Gardens with the President, what do you say? Is that the rule of law that we are talking about?

I beg to support the Motion, Mr. Deputy Speaker, Sir.

The Vice-President (Prof. Saitoti): Thank you very much, indeed, Mr. Deputy Speaker, Sir. I stand to give the Government's position on this matter. At the very outset, I am astounded by the reasons why this Motion is being brought at this time. I shall give the two reasons that persuade me to take that view. Firstly, it is a fact that when it comes to the question of the amendment of the Constitution that pertains to Parliament, we, Members of Parliament, move very quickly and clearly amend it. Therefore, we take the view that we do not even need to consult Kenyans. Inside there, there is also a contradiction in the sense that a number of hon. Members here have gone on to say that Parliament cannot and should not be the one to arbitrate on the Constitution. We must go and talk to the people at Ufungamano. My very good friend, hon. Oloo-Aringo, does belong to that school of thought. But when an amendment to the Constitution is perceived to benefit us, then, we do not go to Ufungamano but we come right here. I think Parliament has got to be seen to be consistent in what it does.

[Mr. Deputy Speaker left the Chair]

[The Temporary Deputy Speaker

(Mr. Musila) took the Chair]

The second issue that worries me is this: Fine, a number of us may very well have opposed the Constitution of

Kenya (Amendment) Bill when it came here for debate. But following the laid down procedures of this House in matters of debate, that Bill was passed, and it is now an Act. What is the intention of that? The intention is to set up the machinery for a comprehensive review of the Constitution. It is only last week, pursuant to the provisions of the Act, that this House did appoint a Select Committee comprising of MPs with the mandate to scrutinise those who want to become Members of the Constitution of Kenya Review Commission and appoint them. The work is already underway. This Motion should be seen as an act to pre-empt, for reasons which are not clear at this particular time, a comprehensive constitutional review process. There is no doubt that when we do get down to the business of the constitutional review process, the Commission is expected to travel all over the country and collect the views of the wananchi on what type of a constitution Kenyans want. Do we now want to take the view that Kenyans should not talk about Parliament? Are we now pursuing the position that when Kenyans will be asked about their views on what the Constitution should have, then, Parliament should be left aside? That is the only proviso for Parliament. I beg to differ with that view. When the constitutional review gets into place, there will be no aspect or provision of the Constitution that will not come under scrutiny including the provision which has to do with this Parliament. Indeed, we do not even know what kind of recommendations will be contained in the report that will be brought to this Parliament by the Commission. The Commission may very well recommend that we have a bi-parallel Parliament or that we do have two Chambers rather than one.

Mr. Ndwiga: On a point of order, Mr. Temporary Deputy Speaker, Sir. I hate to interrupt the hon. Vice-President, but is he in order to mislead this House and nation that we should now wait for a comprehensive review of the Constitution when he knows very well that there was a Saitoti Commission whose recommendations lie somewhere on some shelf today and were never implemented? Kenyans, therefore, cannot be expected to trust this Government to run anything.

The Vice-President (Prof. Saitoti): Mr. Temporary Deputy Speaker, Sir, it is hardly my intention to mislead this House. I do not want to go back to the issue of the Commission because the fundamental reform came about as a result of that Commission. We have received a lot of criticism from the wananchi of all shades of opinion. There is something wrong with that Constitution because it has been amended on a patchy manner several times. We have had too many patches. This is what Kenyans have said. We know that there is a review coming on and all of us want a review of the whole Constitution. We should not add more patches to the Constitution. We are Members of Parliament. Why can we not wait for the review to take place? If anything, I would have agreed with the Motion that we set a time limit for the entire Constitution to be reviewed. This is what we really want. We need to move into matters that matter to us and move very quickly to review the Constitution. Are we going to be accused by Kenyans that we are only interested in what matters to us today? There are very many fundamental aspects of the Constitution which need to be reviewed and yet we never bring them here. We are only interested in ourselves. The other day we awarded ourselves high emoluments. I am not saying that they are bad; you deserve to be paid, but you must be aware that we are being denounced because Kenyans are going through very major problems today. Since we have that power we are able to award ourselves good salaries. The perception out there about us, Members of Parliament, is extremely negative. This Motion, if anything else, will add much more negativity on the perception they have of us out there. Whether we like it or not they will ask that. We are talking of a comprehensive constitutional reform and right now we are only concerned about ourselves.

Mr. Temporary Deputy Speaker, Sir, what reasons have been given? Let me let the cat out of the bag. We seem to be worried that there will be a snap election. In other words, we are taking an extremely selfish position. Due to our own fear we are saying: "Quick! Let us bring a patch and seal that piece of the Constitution which may allow a snap election." We will be seen that way. I want to say this as the Leader of Government Business: First and foremost, I want to allay the fears of all the Members of Parliament who may be thinking that there will be a snap election. There will be no snap election. Absolutely not! I will give subsequent and convincing arguments on why there cannot be a snap election.

Mr. Murathe: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the Vice-President to give an undertaking on this issue when the Constitution only allows the President to dissolve this House and call elections? Is he quoting the President or is he speaking out of his own head?

The Vice-President (Prof. Saitoti): Mr. Temporary Deputy Speaker, Sir, I will continue with my line of argument to assure Members of Parliament that there will not be a snap election whatsoever.

Mr. Mwenje: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for two Cabinet Ministers to give contradictory statements to this House, and to the nation, with one saying there will be a snap election and another one saying there will be no snap election? Which one do we go by?

The Vice-President (Prof. Saitoti): Mr. Temporary Deputy Speaker, Sir, I am very clear on one thing; there is no Member of Parliament or a Government Minister who said in this Chamber that there will be a snap election.

Hon. Members: Nassir!

The Vice-President (Prof. Saitoti): I know what hon. Members say. Hon. Members are used to making all kinds of statements on platforms. I am now making an authoritative statement, as the Leader of Government Business; to tell hon. Members that there is no snap election. There are good reasons for this. We cannot afford a snap election today. The economic realities today are such that we cannot have a snap election. This is a moment of severe drought. The priority of the Government today, and indeed, it should be a priority of us hon. Members---

Mr. Sifuna: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Vice-President in order to continue misleading this House when experience in this House speaks for itself? In 1982, the then Vice-President, Mr. Mwai Kibaki, assured MPs in this House that there would be no snap election and immediately after that, there was a snap election. Which is which?

The Vice-President (Prof. Saitoti): I know this is where the thorn is in the flesh. I want to say once again that there will be no snap election. The economic realities today argue totally against a snap election. The main consideration today is the drought. We have a number of Kenyans today who are hungry as a result of the worst drought.

Mr. Nderitu: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Vice-President in order to insinuate that he knows what President Moi thinks? Does he know when President Moi will call a snap election?

The Temporary Deputy Speaker (Mr. Musila): Order! I have allowed points of order from Mr. Murathe and Mr. Mwenje on that issue. I think that point of order has been sufficiently covered. Would you continue, Mr. Vice-President?

The Vice-President (Prof. Saitoti): Mr. Temporary Deputy Speaker, Sir, I would like to continue, but let me also tell the hon. Members one important thing; what goes on between the Vice-President and the President is only a subject between the two persons, and you will not get anything out of my mouth on that whatsoever.

(Laughter)

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

The Vice-President (Prof. Saitoti): Mr. Temporary Deputy Speaker, Sir, I think they should allow me to finalise this matter.

Mr. Murungi: Mr. Temporary Deputy Speaker, Sir, you can see that hon. Members do not trust the Vice-President. Can we get this assurance from hon. Biwott, because he is the one who is---

The Temporary Deputy Speaker (Mr. Musila): Order, Mr. Murungi! Let us be serious on this issue. I have allowed sufficient points of order. Now, you have even moved to the person who was contributing. So, let us be serious. Let us allow the Vice-President to reply.

The Vice-President (Prof. Saitoti): Mr. Temporary Deputy Speaker, Sir, I have no doubt, because the argument on the fact that there will be a snap election has been "crushed". I have said that today, we do not have any provision in our Budget for a snap election.

Secondly, our priorities are two; to deal with the terrible effects of the drought and feed our Kenyans. There is no way any Government can call a general election when the people are facing the kind of drought we are experiencing today. Secondly, let me also say that we have already entered into an agreement with a number of international organisations for the purpose of reforming the economy. We want, first, to ensure that the economy is put back on track. We cannot do that with a snap election. So, I would like to plead with the hon. Members here to be seen to be transparent. We have been asking for transparency and let us begin it here; the transparency being that we are now committed to a comprehensive constitutional review. The process is underway. Do we want or do we not want it? We are not here just as hon. Members of Parliament. I would like to repeat a statement I have made on a number of occasions; that hon. Members of Parliament should remember that we are not here for ourselves alone, but we are here as the trustees of the future. We should open our eyes wide. If there is a major review here, let us do it fully. I would like to say that we have already amended the Constitution to ensure that we have the Parliamentary Service Commission. It is a good idea; we have agreed and accepted it, but we still need to consolidate it. There is a Bill which will come here, whose intention is to consolidate the independence of the Commission and we will support it. But I think we seem to be running too fast; we seem to be bringing too many things in this House. I feel that the most important thing is for this House to focus itself on a comprehensive constitutional review. I believe that, that is the best thing. I do not think that we need to discuss the Bill here which will ridicule us in the eyes of Kenyans. They expect us not to review the Constitution only for ourselves, but to review the Constitution for all Kenyans. That is what we want.

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

The Vice-President (Prof. Saitoti): Mr. Temporary Deputy Speaker, Sir, I do not know what my good friend

is up to, but---

Mr. Ndwiga: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the Vice-President to continue misleading this nation that this Motion is intended to benefit hon. Members of the House, while it is intended to benefit Kenyans?

The Temporary Deputy Speaker (Mr. Musila): That is a point of information and not a point of order.

The Vice-President (Prof. Saitoti): Mr. Temporary Deputy Speaker, Sir, since I do not want to go very far, I hope that in voting for this Motion, every hon. Member will exercise his or her conscience. It is not a fact that we do not want the House to set up its own calendar. I do not want to be misunderstood on that issue, but it is a question of timing; it is a question of refusing to be part of the comprehensive review and taking the whole amendment of the Constitution on a patch-basis. We decline to do that. We come in this House; we even go out and tell Kenyans that Parliament is now fit to review the Constitution and then walk out. When it suits us, we come and say that it is Parliament, but those are arguments I do not want to get into; the bizarre aspect of it. I think the fundamental thing is for us to focus on a comprehensive review; let Kenyans have a say on how they see us as Parliament. Let Kenyans come out with their perception and view of the kind of Parliament they want.

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

The Temporary Deputy Speaker (Mr. Musila): Hon. Members, I have five minutes before I call the Mover to reply and I think I will give them to Mr. Murathe.

Mr. Murathe: Thank you very much, Mr. Temporary Deputy Speaker, Sir. If these people were honest, they would tell you quite clearly that they are here under instructions not to support any other constitutional amendment before a comprehensive review of the Constitution has been done. It is blackmail. Secondly, this Constitution is about predictability and certainty. It is good for business and investment. There is nobody who will invest in this country, if he does not know what is likely to happen two years down the road.

The Minister for Tourism, Trade and Industry (Mr. Biwott): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member in order to mislead this House by saying that investors will not come and, yet, right now there are so many of them who would like to invest in the country? I can bring a list of them.

Mr. Murathe: Mr. Temporary Deputy Speaker, Sir, nobody will invest in any country when he or she does not know what is likely to happen two years down the road. This Motion is about confidence and assuring our business partners that there is a time-table to work their programme. In any case, these people are contradicting the President.

Mrs. Kittony: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member in order to mislead this House by calling us "these people"? I think there are no "people" here; we are hon. Members.

Mr. Murathe: Mr. Temporary Deputy Speaker, Sir, yesterday, the President said that hon. Members should be given their full term to deliver; the Government needs its full time to deliver. This Motion seeks to institutionalise that arrangement so that it is not at the whims of anybody. I am surprised that the Vice-President can stand here and tell us what is in the mind of the President. It is very dishonest. The constitutional review process which is making these people to panic will not happen, and I would like to echo Dr. Kituyi, that no constitutional review can be done in this country as long as President Moi is in charge of that process.

(Applause)

Everyone knows that the constitutional review is a social contract document. A social contract is between two parties. You cannot have hon. Members of Parliament reviewing the Constitution. It has to be the ruling class and the people who are being ruled by that document. That is why we are saying "no" to this. But amendments can be made in Parliament provided that they are for the good of this country and the people of Kenya. The previous amendments that have been done in this House have been to disempower people and concentrate power on the presidency. That is why they have been bad. Amendments to the American Constitution and any other constitution which are for the better governance of people are welcome and should be carried out at any time. Right now---

The Temporary Deputy Speaker (Mr. Musila): Order, Mr. Murathe! Your time is up. I now call upon the Mover, Mr. Oloo-Aringo, to reply.

Mr. Oloo-Aringo: Mr. Temporary Deputy Speaker, Sir, because this is a non-partisan Motion and has support from both sides of the House, I donate five minutes to hon. Kibaki, two minutes to hon. Angwenyi and two minutes to the leader of SAFINA, hon. Muite.

(Applause)

The Temporary Deputy Speaker (Mr. Musila) Very well. Mr. Kibaki, it is your time.

Mr. Kibaki: Mr. Temporary Deputy Speaker, Sir, I am grateful to the hon. Member.

This debate is being taken for a ride. As we come to voting, let us bring back the debate to where it truly belongs. What we are being called upon to do is to complete a job we started in this House, namely:- Giving Parliament the authority to manage its own schedule, to prepare and arrange its own calendar without any threat from any corner. That is what we started doing by creating the Parliamentary Service Commission. The Parliamentary Service Commission is now working and all we are doing now is to complete that job by removing any potential for that calendar to be cut short so that people elected by the 30 million Kenyans will have five complete years, without anybody anywhere else having authority beyond 30 million Kenyans. Thirty million Kenyans elected Parliament and it will be there for five years. That is all we are saying! It is a very small matter, it does not have to wait for anything comprehensive.

So, we are requesting every Member to support what is logical. The argument that what is good--- Because every Member on the Government side has said:- "This is very good, indeed, but wait for two years." There is nothing we are waiting for because we know that this change should be made now so that during the two years remaining, the Parliamentary Service Commission will be able to organise the business of the House without those threats.

Finally, although we were told to use our conscience, it is actually important for us to call upon the Leader of Government Business and all Members of Parliament to also use their conscience to ask themselves whether it is right or proper that there should be a provision in the Constitution which can negate the will of 30 million Kenyans. When they have chosen Parliament, it should serve the period for which it was chosen. That is where the conscience would lead you. I cannot see anybody's conscience leading him to anywhere else. It must lead you to where it will tell you that, when 30 million Kenyans have chosen Parliament for five years, nobody else on earth should have powers to change what they have decided. That is exactly what we are asking Members to vote for.

Mr. Temporary Deputy Speaker, Sir, it is not complicated, so let us not have all those complicated theories. This is a very simple and a straightforward matter and that is all we are asking. Indeed, it is not a matter which is personal to any particular President, we are talking about putting the Constitution proper for the Kenyan nation, not for a particular person. This is because anybody's conscience will tell him exactly that and, therefore, I am sure that, in his own mind, even the President of this country will support this Motion fundamentally.

With those remarks, I beg to support.

(Applause)

*[The Temporary Deputy Speaker
(Mr. Musila) left the Chair]*

[Mr. Deputy Speaker resumed the Chair]

Mr. Angwenyi: Thank you, Mr. Deputy Speaker, Sir. I support this Motion wholeheartedly as all Kenyans do, but because my friend, hon. Wamalwa is senior, I would like him to take my time.

Mr. Deputy Speaker: Order! Order! Hon. Oloo-Aringo, this is, in fact, time for you to reply. Really, it is the indulgence of the House that you were allowed to "donate" some of your time to hon. Mwai Kibaki as the Leader of Official Opposition. But hon. Angwenyi having been given a small piece of your time has no powers to donate the same to another Member. So, he would have to contribute or forfeit the time.

(Laughter)

Mr. Oloo-Aringo: Mr. Deputy Speaker, Sir, may I "donate" two minutes to hon. Wamalwa.

Mr. Deputy Speaker: Okay, go ahead.

(Applause)

Mr. Wamalwa: Thank you, Mr. Deputy Speaker, Sir. I would like to thank hon. Oloo-Aringo for allowing me two minutes, at least, to throw a punch. I would like to state from the outset that I support this Motion and to echo what hon. Kibaki has said. This Motion is not directed at President Moi. In fact, President Moi on his own, is a very good man. It is the terrible advisors around him who sometimes mislead him.

Mr. Deputy Speaker, Sir, earlier in this Session, this Parliament passed the Parliamentary Service Commission Bill. To insist now that the Parliamentary Service Commission be given a right to work out the calendar for Parliament is the most natural and logical step from that Bill. I know that they always think that the Opposition is

afraid of a snap election. I would like to agree with the Vice-President that there cannot be a snap election. KANU dare not call a snap election at this time for obvious reasons:- Retrenchment, famine, no water, no power--- There is no way they could win such a snap election.

(Applause)

Mr. Deputy Speaker, Sir, if KANU were to ask for a snap election now, they would be like turkeys praying for an early Christmas to be slaughtered.

According to the principles of natural justice, although we were saying President Moi dare not call a snap election, a crazy President could misuse this power to call a snap election after every one year. According to principles of natural justice, it is wrong for a player to also be the referee. This is because the moment he scores one goal and, maybe you have the potential to score ten, he will declare it the golden goal and bring the match to an end. Therefore, participants should not be the judges also. Any executive President should not have the power to dissolve or call elections when he wants.

In countries where they have non-executive presidents, like in Great Britain where there is a Queen who does not run for Parliament, it is probably right for non-executive Presidents to have that power. For instance, in India, if the Prime Minister of the day wants to call a snap election, the President can always refuse. Similarly, the Queen in England can always refuse such a call. But here, if an Executive President wants to call a snap election every other year, there is no authority above him that can keep him in check. This is why we feel that the Parliamentary Service Commission, in the interest of all Members of Parliament both in the Opposition and in the Government, should have the power to determine the calendar. I can assure you, if a crazy President were to keep calling snap general elections, even those in Government would suffer the same fate.

With those few words, I beg to support.

Mr. Muite: Mr. Deputy Speaker, Sir, it is significant that practically every hon. Member from the Government side who has stood to speak on this Motion has actually supported the merits of the Motion. All we are being told to do is to wait. The thrust and objective of this Motion is actually not the amendment to the Constitution as such; the amendments are incidental. The objective of this Motion is the enhancement of the independence and authority of this House. Therefore, that is something that the hon. Members on the other side really ought to support.

Let us not confuse the power to amend the Constitution with the authority to re-write a Constitution. The authority to re-write the Constitution and make comprehensive reforms is in the people of Kenya because even Parliament is a creature of the Constitution. But the power to amend the Constitution is vested in this House. Therefore, because we are talking about the enhancing the independence and the authority of this Parliament, this amendment is within our power and that is something which should be done today and not to wait for comprehensive reforms. If the KANU Members of Parliament and even Members of the Cabinet support this Motion, they will be increasing their autonomy and authority as well. When our term in this House is fixed, we will not have that sort of situation we are seeing today, when Members of the Cabinet come here, not to speak out of conviction, but merely to talk because they were directed on Thursday to come and oppose this Motion.

Thank you, Mr. Deputy Speaker, Sir. I beg to support the Motion.

Mr. Oloo-Aringo: Mr. Deputy Speaker, Sir, my final remarks are that this is a non-partisan Motion. It is a development out of the creation of the Parliamentary Service Commission. One year ago today, we created the Parliamentary Service Commission and we amended the Constitution. That is what makes hollow the other arguments that we should not tamper with the Constitution. At any time, this Parliament has a right to amend the Constitution in order to streamline and extend the frontier of democracy.

I am asking the Members, therefore, to vote with their conscience, so that Parliament can be in charge of its timetable. That is all and we must be better than our own children, who know the times of their terms in school.

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

Mr. Deputy Speaker: Order! Hon. Members, I will now put the question.

(Question put and agreed to)

Hon. Members: Division! Division!

Mr. Deputy Speaker: Order! Order! There have been more than 20 Members standing up, indicating that they want a Division to be held. There will, therefore, be a Division, and I therefore, order that the Division Bell be rung for five minutes. In that period, I want the Clerks to be given the names of the Tellers to bring to me.

Proceed!

(The Division Bell was rung)

Mr. Deputy Speaker: Order! Order! Lock the doors and draw the Bar.

Hon. Members, these are the names of the Tellers. For the Ayes, they are hon. David Musila and hon. Orwa Ojode. For the Noes, they are hon. E. Morogo and hon. J. Katuku. Now, let me furnish the Members as to the procedure and then, I will put the question once again. The Ayes will proceed to the lobby to my right and the Noes to the lobby to my left. Now, hon. Members, you will now proceed to those lobbies. Those who do not wish to vote, come and register with the Clerks-at-the-Table. Now, the doors to the lobby will be locked for ten minutes from now. So, proceed to the voting lobby. Members, we are now going to lock the lobby doors. They were opened 10 minutes ago to allow you to go in and you have 15 minutes to complete the voting. But you may not just sit here without voting Ayes or Noes, or recording your names here. If you do not do any of those three, the numbers will not tally. So, if you have chosen not to vote, please, record your names with the Clerk-at-the Table. But if you have chosen to vote, then proceed to do so; the Ayes on my right, the Noes on my left.

DIVISION

(Question put and the House divided)

(Question carried by 72 votes to 58)

AYES: Mr. Achola, Dr. Ali, Messrs. Angwenyi, Ayoki, Donde, Gatabaki, Gitonga, Kaindi, Kajwang, Kamau, Kanyauchi, Ms. Karua, Messrs. Karume, Kathangu, Katuku, Keriri, Khamasi, Kibaki, Kihara, Kihoro, Eng. Kiptoon, Dr. Kituyi; Messrs. Kiyonga, Kones; Dr. Kulundu, Messrs. Maina, Maitha, Maore, Mbitiru, Michuki, Muchiri, Mugeke, Munyasia, Muihia, Muiruri, Muite, Murathe; Dr. Murungaru, Mr. Murungi, Eng. Muriuki, Messrs. Mutahi, Muya, Mwakiringo, Mwangi O.K, Mwangi P.G, Mwenje, Mwiraria, Munyao, Nderitu, Ndwiga, Ngure, Nyagah N.G, Obwocha, Ochilo, Odinga R.A, Ojode, Oloo-Aringo, Opore, Otita, Otula, Parpai, Shaaban, Shill, Sifuna, Sungu, Eng. Toro; Messrs. Wamae, Wamalwa, Wanjala, Wehliye, Mrs. Seii and Mrs. Sinyo.

Tellers of the Ayes: Messrs. Musila and Ojode

NOES: Mr. Affey, Dr. Anangwe, Messrs. Arap-Kirui, Awori, Biwott, Chanzu, Choge, Ekirapa, Dr. Galgallo G.B., Messrs. Gumo, Kalulu, Kalweo, Kamolleh, Kamotho, Karauri, Keah, Khaniri, Mrs. Kittony, Messrs. Kitur, Kochalle, Kosgey, Koske, Lagat, Leting, Maj. Madoka, Eng. Manga, Dr. Masakhalia, Messrs. Mkalla, Mohamed, Mokku, Morogo E.T., Morogo W.C., Muchilwa, Mugalla, Musila, Musyoka, Mwakalu, Mrs. Mwewa, Messrs. Ndambuki, Ngala, Ng'eny, Ngutu, Ntimama, Nyagah J.W, Nyang'wara, Nyenze, Obure, Odongo, Okemo, Ombasa, Prof. Ongeru, Messrs. Ruto I.K., Prof. Saitoti, Messrs. Samoei, Sang, Sunkuli, Too and Dr. Wako.

Tellers of the Noes: Messrs. Katuku and Morogo

INTRODUCTION OF SESSIONAL PAPER ON RETRENCHMENT

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

THAT, in view of the fact that the retrenchment of public servants under the on-going Public Service Reform Programme has tremendous adverse financial, psychological and social impact, and noting that the programme lacks a legislative initiative; this House urges the Government to introduce a Sessional Paper detailing criteria for retrenchment, financial package and retraining of the retrenched public servants.

Mr. Deputy Speaker, Sir, from the onset, procedures were not followed when the retrenchment exercise was ordered by the Government. Under normal circumstances, a Sessional Paper must be brought into the House to be debated and adopted in order to lay down the criteria for retrenchment. Even the Minister who is in charge of this exercise does not know how many people have been retrenched. He does not even know the criteria which was used! We are at a loss here. Who is actually doing the retrenchment? Is it Treasury, Office of the President or the Public Service Commission?

Mr. Deputy Speaker, Sir, this retrenchment targets 25,000 innocent Kenyans. Under what law is the Government carrying out this exercise? There is a Constitution in place which we need to follow, but this Government has ignored the provisions of that Constitution. I am not against the retrenchment exercise, but certain criteria must be put in place first. I have a circular here written and signed by Dr. Richard Leakey who is purported to be Permanent

Secretary, Secretary to the Cabinet and the Head of the Public Service. As a matter of fact, it was even wrong for Dr. Leakey to have signed this circular. The Constitution does not recognize the office of the Head of the Public Service. It is there as a fact, *de facto*. Kenya is being run by a Constitution which was established and enacted by this House. Why should the Government bring this exercise through the back door? This exercise is full of malice, nepotism, tribalism and personal hatred. Those are some of the considerations which the Government has used to retrench innocent Kenyans who are at their prime age. Why should somebody who has reached his mandatory retirement age of 55 years be allowed to retrench 27-year-old innocent Kenyans?

[Mr. Deputy Speaker left the Chair]

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

Mr. Temporary Deputy Speaker, Sir, it is being said that the Government is retrenching only 25,000 people. The Government should realise that by retrenching two or three people, a whole sub-location will have been retrenched because these people have extended families. The suffering of those innocent Kenyans will haunt hon. ole Ntimama for having accepted unprocedural provisions! It is provided in the Constitution that nobody will ever do any retrenchment apart from the Public Service Commission. The Public Service Commission is the employer of all civil servants, but not hon. ole Ntimama or Dr. Leakey. The circular from Dr. Leakey is copied to the Public Service Commission hence it amounts to an exercise in futility because it came from the wrong office.

Mr. Temporary Deputy Speaker, Sir, what will happen to those who have been retrenched? The Minister concerned should bring here a Sessional Paper so that we can decide how to deal with this matter. Within this circular, Dr. Leakey says those who have been retrenched will never join the Civil Service again. This is ridiculous! We would like to know whether these people are criminals. I thought people were being retrenched as a result of the bloated Civil Service? I would like to request you to allow me to move this Motion from the Dispatch Box because I have got a lot of papers to refer to.

The Temporary Deputy Speaker (Mr. Musila): Very well. You can do it from the Dispatch Box.

(Mr. Ojode moved to the Dispatch Box)

Mr. Ojode: Mr. Temporary Deputy Speaker, Sir, the law says very clearly:

"That, under this Scheme, those who have been deleted from the payroll will not be accepted to join the Civil Service thereafter".

There are those who have been trained as chief accountants and supplies officers by the Government, and a lot of money has already been spent. Why should this clause be included? How about if it was a case of natural attrition? The Government spends taxpayers' money to train an individual, and then retrench you never to be employed in the Civil Service again. What is the rationale of doing this?

Mr. Temporary Deputy Speaker, Sir, I would like to prove to the Minister that the circular which was written by Dr. Leakey came from the wrong hands. We would have expected the circular to come from the Public Service Commission, but not from Dr. Leakey. Even the Parliamentary Service Commission Act says very clearly that, they can only delegate powers to an authorised person to deal with retrenchment of certain cadre of officers in the Civil Service. This means that a Permanent Secretary who is the Accounting Officer is the only authorised person who can retrench, promote or retire a civil servant, but not any Tom, Dick and Harry. We are not going to accept that. The authorised person is the Permanent Secretary who exercises supervision over the department concerned or over the department in which the public officer concerned holds a post. So, in other words, he must be an Accounting Officer. This is described in the PSC Act. Dr. Leakey is not an accounting officer. So, he should not give any circular to that effect.

Mr. Temporary Deputy Speaker, Sir, the Constitution of Kenya, Clause 111, shows the appointment of Permanent Secretaries. It states:-

"That, the power to appoint a person to hold or act in the office of Permanent Secretary, Secretary to the Cabinet or Director of Personnel, shall vest in the President".

That is why I am saying that Dr. Leakey's letter has no meaning at all, because he is holding a constitutional office. It does not state that he is the Head of Public Service. So, this letter is null and void and should be thrown into the dustbin. We are not against retrenchment, but we should give the retrenched a good retrenchment package. We have to look at what other countries have done, for example, Algeria, Ghana and Uganda. In Algeria, the retrenched were given three months gross salary and 80 per cent monthly gross salary a year for those who had been in the service

for more than three years and a maximum of 18 years. In Ghana, the retrenchees were given two months basic pay per year for continuous service, be retrained and then assisted in their search for jobs by the Government. It also provided them with food for work programmes plus other safety measures. That is contrary to what our Government is giving the retrenchees.

In Uganda, the Government removed about 46 per cent or 145,500 civil servants between 1992 and 1994. Those who were retrenched were given 50,000 Uganda Shillings as golden handshake, three months basic salary in lieu of notice for every completed year of service up to 20 years, for pensionable staff. Then they were also given commuted pensions and gratuities. Monthly pension was also paid to confirmed officers aged 45 years and continuously for those who had already served for ten years. They were also paid an equivalent of 1.67 Uganda Shillings a kilometre for the officers within the district headquarters and about 10,000 Uganda Shillings to cover transport costs from the place of work to their rural homes.

Mr. Temporary Deputy Speaker, Sir, the Government of Kenya woke up one morning and started distributing letters, telling the retrenchees to vacate Government houses and yet, they know that those officers have families to take care of. They know they have school-going children. What is the hurry for? They also know that they are doing it illegally because they did not bring a Sessional Paper in the House. Tribalism and personal hatred is the order of the day. In the same Civil Service, the Government has about 18 chief executives in parastatals who have already attained the mandatory retirement age of 55 years and are still in the offices. Some are earning about Kshs1.8 million in the pretext of having some special interests. When the Minister stands here, I would like him to tell us what special interests those people have. For example, the Managing Director of Kenya Ports Authority, Mr. Muriithi earns Kshs1.8 million per month. If you retrenched or retired Mr. Muriithi, you would have saved about 500 jobs in the cadre of clerical officers, typists and messengers who earn between Kshs4,000 and Kshs5,000 per month. It is not only Mr. Muriithi; there are many others whose names and ages I know. For example, in the Consolidated Bank of Kenya, we have Mr. Eliud Mathiu at the age of 59 years while in the Postbank, we have Mr. Isaiah Kiplagat at the age of 58 years. At the Kenya Literature Bureau, we have Mr. Langat at 60 years and at the Kenya Power and Lighting Company, we have Mr. Gichuru at 60 years. Mr. Edwin Wasuna at KenGen is 63 years. At the Kenya Bureau of Standards, we have Eng. Okundi at 60 years of age.

Mr. Osundwa: On a point of information, Mr. Temporary Deputy Speaker, Sir. Hon. Ojode has forgotten the Chairman of the Presidential Permanent Commission for Soil Conservation, Mr. Mulu Mutisya who is 90 years, is and on salary scale "R"!

(Laughter)

Mr. Ojode: We are saying that the Minister should come up with something; he should tell us why they are doing things this way.

If we were to retire these chief executives on attainment of the mandatory retirement age, as stipulated in the Code of Regulations for the Civil Service--- Paragraph G43 of the Code of Regulations for the Civil Service provides that a public servant must retire upon the attainment of the age of 55 years, unless public interest demands that one should be retained. If we retire these 18 chief executives, in terms of their emoluments, the Government will save 10,800 jobs. This is to say that there is no need of retrenching civil servants. Why should we retrench other civil servants yet we have people who have already attained the age of 55 years, and who are supposed to retire? What kind of special interests to these people have? Is it corruption or are they "politically-correct?" I would like the Minister to openly explain to us why the Government is retaining Mr. Gichuru and other public servants who have attained the age of 55 years?

(Applause)

Mr. Temporary Deputy Speaker, Sir, it is quite unfortunate and absurd that, as late as last week, the Government renewed the contract of the Agricultural Finance Corporation (AFC) Managing Director for three years; he is to serve for another three years.

Hon. Members: Shame! Shame!

Mr. Ojode: Mr. Temporary Deputy Speaker, Sir, the Government extended the contract of that Corporation's MD just last week, yet the same Government claims to retrench civil servants, because the Civil Service is bloated. That is total nonsense. There is no honesty at all in retrenchment. That is why I am saying that the Government should suspend the implementation of the programme and reinstate all those civil servants who have arbitrarily been retrenched until we debate this issue and reach a consensus.

We have to set up a committee to oversee the implementation of this programme, and that committee should be headed by the Public Service Committee (PSC), and not the Treasury or Dr. Leakey. One cannot just walk out of SAFINA Party Offices today and start retrenching 25,000 public servants. We cannot agree to such a thing. This House is going to formulate a way of having a committee in place to oversee the implementation of the retrenchment programme. The membership of that committee will have representation from the Treasury, the Federation of Kenya Employers (FKE) and private companies such as M/S Peat Marwick and M/S PriceWaterhouse, as well as from the Central Organisation of Trade Unions COTU, among other trade unions.

(Applause)

Civil servants are being treated this way, because COTU does not exist any more. Where is Mr. Mugalla, who purports to be COTU's Secretary-General? COTU is dead, but I am going to also bring a Motion here, seeking the "resurrection" of the defunct Kenya Civil Servants Union.

Mr. Temporary Deputy Speaker, Sir, while recommending civil servants for retrenchment, hon. Ntimama must consider the younger people. Why should civil servants who are in their prime age - 27 and 34 year olds - be retrenched by a 72 year old person? There is no honesty in this exercise. I would like to tell people in the Government that even those friends of theirs whom they have retained in parastatals will pay back the money they have received in terms of emoluments after the attainment of their mandatory retirement age. Those people serve on contract-basis, and know when their contracts should end. The problem is that they insist that they should continue serving in those parastatals, simply, because they have spoken to either hon. Ntimama or hon. Biwott, or whoever else. We are not going to accept that; they are all going to re-pay that money.

Having said that, I now beg to move.

The Temporary Deputy Speaker (Mr. Musila): Who is seconding the Motion?

Mr. Ojode: Mr. Murungi is seconding the Motion.

Mr. Murungi: Mr. Temporary Deputy Speaker, Sir, it is now quite clear that the Public Service Reform Programme is being implemented in a cruel, inhuman and degrading manner.

The Minister of State, Office of the President (Mr. ole Ntimama): On a point of order, Mr. Temporary Deputy Speaker, Sir. I do not want to interfere with my hon. friend, but I have kept quiet during the whole speech of hon. Ojode and I want to point out---

The Temporary Deputy Speaker (Mr. Musila): Order, Mr. ole Ntimama! You have stood up on a point of order.

The Minister of State, Office of the President (Mr. ole Ntimama): Yes, Mr. Temporary Deputy Speaker, Sir. I am coming to the point of order. My point of order is: The retrenchment exercise is in court today and the Motion is talking about a Sessional Paper, and I was going to tell my hon. Murungi not to veer away into what is *sub judice*. I want you to make a ruling on this one because the Chair---

Hon. Members: You are taking away his time!

The Minister of State, Office of the President (Mr. ole Ntimama): He will get plenty of time next Wednesday.

The Temporary Deputy Speaker (Mr. Musila): Order! Mr. Murungi, there is no doubt, as the Minister said, that the matter is in court, but if you look at the Motion, and if you stick to the Motion, which talks about the package, remuneration and retraining of the retrenched civil servants, you would not talk on the matter that is in court. So, would you please stick the terms of the Motion?

Mr. Murungi: Mr. Temporary Deputy Speaker, Sir, in fact, I was aware of that. I do not know why he needs to give all those warnings. We need this policy paper. One of the core functions of Parliament is to make policy. Parliament is the "centre of gravity" of all policies and legislative matters in this country. In the past, the Executive hijacked this role from Parliament. We have very important matters of policy which have been enacted by the Executive in consultation with experts, without any reference to Parliament. That is why this country is in a lot of trouble. You remember the way the 8-4-4 system of education was introduced. A Professor from Canada was commissioned, made a report and it was not brought to Parliament and then the following day, we changed our education system which has now become a headache to teachers, students, parents and everybody. The 8-4-4 system of education should have been debated in this Parliament.

We also have privatisation which has now been riddled with corruption, inconsistencies and a lot of dilatory processes. Privatisation in this country, unlike in other countries, has also been done without any Sessional Paper and any legislative framework, again by the Executive with the advice from experts. The Public Service Reform Programme is also being implemented without any reference to Parliament. That is why we, as Parliament, have to

stand up and say "no." We have to protect the interests of our people. Retrenchment could open a can of worms. It could be done on the basis of tribalism, corruption, nepotism, cronyism and other undesirable methods. That is why we need a clear criteria for retrenchment.

Mr. Temporary Deputy Speaker, Sir, we also need to talk about the financial package because retrenchment is increasing the pensioner poverty in this country. We also need to retrain the retrenched people because retrenchment is not the end of life. Those people would have 30 to 40 years to live and as a Government we should be concerned on how those people live through those years. The agenda of policy-making in this country has been captured by the World Bank, the IMF and other donors. The Government is merely implementing policy ideas developed elsewhere, and that is why we, in Parliament, are being made irrelevant. The donors have taken our work; they are thinking for us. Now, we are talking about poverty reduction strategy papers. Where did that language come from? Not from Kenya! That is a terminology from the World Bank and the IMF. Before that, we were talking about Structural Adjustment Programmes. Where did that come from? Not from this country! It was also the World Bank and the IMF terminology. The retrenchment programme that we have in the country today was part of the Structural Adjustment Programmes which were implemented in Africa for over the last 10 years. We have now changed the cover and the title, so that the SAPs are now called the "Poverty Reduction Strategy Programmes." There is no poverty that we are reducing in this country. If anything, these programmes are increasing poverty in the country. We have half of the population of the country -about 15 million Kenyans - living below the poverty line. The retrenchment programme will increase the number of those people living below the poverty line.

With those few remarks, I beg to support.

(Question proposed)

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Musila): Order! It is now time for the interruption of business. The House is, therefore, adjourned until this afternoon at 2.30 p.m.

The House rose at 12.30 p.m.