

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 15th October, 1997

The House met at 2.30 p.m.

*[Mr. Deputy Speaker in the Chair]*

## PRAYERS

## ORAL ANSWERS TO QUESTIONS

*Question No.600*

### FREQUENT TRANSFERS OF AEOs IN IKOLOMANI

**Mr. Magwaga** asked the Minister for Education:-

- (a) whether he is aware that frequent transfers of Assistant Education Officers (AEOs) has adversely affected educational activities in Ikolomani Constituency; and,
- (b) if the answer to "a" is in the affirmative, if he could ensure that such transfers are only made when absolutely necessary.

**The Assistant Minister for Education** (Mr. Komora): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am not aware that there are frequent transfers of Assistant Education Officers (AEOs) in Ikolomani Constituency or that such transfers have adversely affected educational activities in Ikolomani.

(b) My Ministry will continue to transfer education personnel in Ikolomani and elsewhere in the country only when it is absolutely necessary.

**Mr. Magwaga:** Mr. Deputy Speaker, Sir, that is a very unfortunate answer to a very important Question. Could the Assistant Minister give the House the names of AEOs who have served in Ikolomani from 1993 to date?

**Mr. Komora:** Mr. Deputy Speaker, Sir, that supplementary question is not part of this Question. If the hon. Member wants to get this information, it is available.

**Mr. Magwaga:** Mr. Deputy Speaker, Sir, it is unfortunate that the Assistant Minister is not prepared to answer my Question. In 1993, we had Mr. Lwanda who stayed there for only one year. In 1994, we had William Lumaki, who left in 1995, and Mr. Elphas Muhambe who also left during the same period. In 1996, we had Mr. Paul Orinda, who left in January, 1997. From January to March, 1997, we had Mr. Arthur Terer who left after only three months. From April 1997 up to date, we have Mr. Frederick Otindo. Are these frequent changes not affecting the educational activities in Ikolomani?

**Mr. Komora:** Mr. Deputy Speaker, Sir, my research has shown that the constant transfers of officers in that division have, in fact, improved the standards of education in that constituency.

**Mr. Deputy Speaker:** Next Question, Mr. Henry Ruhu.

**Mr. Anyona:** On a point of order, Mr. Deputy Speaker, Sir. I was standing in a bid to contribute to this Question, but you just ignored me.

**Mr. Deputy Speaker:** I am sorry about it, but I have already called for the next Question.

**Mr. Anyona:** But I was standing here!

**Mr. Deputy Speaker:** Well, I do recognise you and I can assure you that with no ill-intention, I think I have called for the next Question.

**Mr. Anyona:** This is an important Question and I think I should have an opportunity to contribute to it, with your indulgence.

**Mr. Deputy Speaker:** I will not want to establish a precedent. Once I have called for the next Question, I have called for the next Question.

**Mr. Anyona:** But I was standing here, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** I am sorry, Mr. Anyona. Mr. Ruhu, it is time for your Question.

**Mr. Anyona:** It is very unfair!

**Mr. Deputy Speaker:** Next Question, Mr. Ruhiu.

*Question No.516*

REHABILITATION OF MOI DRIVE ROAD

**Mr. Ruhiu** asked the Minister for Local Government whether he could take urgent steps and rehabilitate Moi Drive Road in Umoja Estate, which has become virtually impassable during both dry and rainy season.

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

Moi Drive Road is one of the roads prioritised for rehabilitation by the City Council of Nairobi once funds are available. But in the meantime, routine maintenance work on the road is going to be carried out to make the road passable. This will include sealing of potholes, cleaning and clearing of the drainage network.

**Mr. Ruhiu:** Mr. Deputy Speaker, Sir, this road is currently impassable and the Stage Coach Company have withdrawn their services on this road which are vital for the residents of both Umoja I and Umoja II. Secondly, this road is named after H.E. the President and it is a real shame that it has got "craters" instead of potholes. No small car can pass on this road. May I ask the Assistant Minister, if it is true that routine maintenance work on the road is going to be carried out to make the road passable, how soon the work can be undertaken because we want this road to be made passable very soon?

**Dr. Wameyo:** Mr. Deputy Speaker, Sir, I will ensure that is done.

**Mr. Ruhiu:** On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister did not answer my specific question. I did not ask him whether he is going to ensure that this work is done, but about time factor. How soon does he think he can undertake this work?

**Dr. Wameyo:** Since the hon. Member has said that this is a very urgent matter, it will be very soon.

*(Laughter)*

**Mr. Anyona:** Mr. Deputy Speaker, Sir, these are the kind of answers that are causing a lot of problems in this country. Here is an important road that has gone to waste and we are trying to get some action taken and the Assistant Minister tells us "very soon" as if he is talking to nursery school children who do not know the meaning of English. Could we have Ministers moving away from hiding behind vague answers like these? Could he tell us exactly "how soon" is "soon"? Is it one or two months, one year or 100 years? How long is it?

**Dr. Wameyo:** Mr. Deputy Speaker, Sir, I do not want to give an English lecture, but "soon" is "soon" because I do not repair roads. I am going to look into the matter. After answering my Questions, I will go to the Ministry to find out from City Council when this will be done. I will bring the answer tomorrow.

**Mr. Mbeo:** Mr. Deputy Speaker, Sir, the same Assistant Minister yesterday gave a similar answer when we asked about the sewerage system and other facilities within the City of Nairobi. The same Assistant Minister is again giving us the "as soon as possible" answer which means nothing. The entire City of Nairobi is in a complete mess with roads that are impassable, broken sewerage systems, lack of toilets and so forth. That falls under the Ministry of Local Government. Could he undertake to tell this House exactly when, if at all the Government is interested in any activities in the boroughs of Nairobi, we are going to have any facilities in this City? When are we going to have the roads repaired in the City of Nairobi?

**Dr. Wameyo:** Mr. Deputy Speaker, Sir, repairs on Tom Mboya Road are going on. Moi Drive Road has been prioritised for rehabilitation. We are going to do maintenance on the road very soon.

**Mr. Ruhiu:** Mr. Deputy Speaker, Sir, it appears that the Assistant Minister for Local Government is not prepared to quantify "soon". However, is he aware that in Embakasi Constituency, there are over 14 Members of Parliament living there, the majority of whom are KANU Members of Parliament and they need better roads? There are five Members of Parliament living in Umoja. Could he make sure that this road is maintained properly for the comfort of these Members of Parliament, including the residents?

**Dr. Wameyo:** Mr. Deputy Speaker, Sir, I will do that.

**Dr. Otieno-Kopiyo:** Mr. Deputy Speaker, Sir, does the Ministry of Local Government have a grand plan for the maintenance of roads in Nairobi? Why do we have Questions on the Order Paper every day about roads? How much would it cost and how long does it take?

**Dr. Wameyo:** Mr. Deputy Speaker, Sir, the maintenance of roads in the City of Nairobi is the responsibility of the City Council of Nairobi and not the Ministry of Local Government.

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

**Mr. Deputy Speaker:** Order! Order, hon. Ndicho! Next Question!

*Question No.395*

UTILISATION OF CESS IN NYAMIRA DISTRICT

**Mr. Anyona** asked the Minister for Local Government:-

- (a) how much cess was collected from Nyamira District by Gusii and Nyamira County councils in respect of coffee, pyrethrum and tea during 1991/92, 1992/93, 1993/94, 1994/95 and 1995/96; and,  
 (b) how much of the cess collected was used in the development and maintenance of roads in Kitutu Masaba Constituency and Nyamira District generally.

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

(a) A total of Kshs5,891,058:20 was collected in Nyamira District by Gusii and Nyamira County councils as coffee, pyrethrum and tea cess. Out of this figure, Gusii County Council collected Kshs1,879,472 during the 1991/92 and 1992/93 financial years from Nyamira District, after which it stopped with the creation of Nyamira County Council. Nyamira County Council collected Kshs4,001,586:20 during the 1993/94 and 1995/96 financial years from Nyamira District.

(b) The cess collected was used to maintain 37 roads with a total length of 303 kilometres within Nyamira District during the five years in question, which includes various roads within Kitutu-Masaba Constituency.

**Mr. Anyona:** Mr. Deputy Speaker, Sir, in the first place, this Assistant Minister has violated the Standing Orders. He is required to furnish copies of his answer to the Clerk's Office before the reply is brought to the House. I have not received a written answer to this Question. So, I do not even know what he is reading.

Mr. Deputy Speaker, Sir, as far as I know, from tea alone, the cess that is collected in Nyamira alone is over Kshs5 million every year. Now, he has given us a gross grand figure of Kshs5 million as being the cess from coffee, tea and pyrethrum. Could he give us a detailed breakdown of how much was collected each year from each of the crops? This answer is fictitious.

**Dr. Wameyo:** Mr. Deputy Speaker, Sir, I apologise to the hon. Member for not having received the answer beforehand. There must have been a breakdown in the system because it is not my duty to personally give written answers to hon. Members.

Mr. Deputy Speaker, Sir, I do not have the information on how much cess was collected each year. I only have information on the amount of money collected for the five years. Since it is a very important Question, I would like to plead with the hon. Member to give me time to go and compile the figures for year after year collections.

**Mr. Manoti:** Mr. Deputy Speaker, Sir, tea cess comes from the farmers, yet they do not benefit from it. Could the Assistant Minister make it a policy that farmers benefit? At the moment, we are not benefitting from it.

**Dr. Wameyo:** Mr. Deputy Speaker, Sir, I wish the hon. Member was specific as to the type of benefits he is referring to because I have already said, the money was used in maintaining roads.

**Mr. Anyona:** Mr. Deputy Speaker, Sir, I would go by what he has said that he will go back and bring a proper answer. But I would like him to give us an undertaking on three issues. First, when is he going to bring that answer? We want the answer as soon as possible. In that answer, could he also identify the 37 roads which he claims have been repaired with the money? Could he give us the names of those roads and how much money was spent on each road because, so far, no road has been done? There are no roads in Kisii, we live in the *bundu*.

**Dr. Wameyo:** Mr. Deputy Speaker, Sir, I have the list of the names of the roads here. The only information I do not have is the amount of money spent on each road.

**Mr. Obwocha:** On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister is misleading this House. I raised a similar Question here on the tea cess collected in 1993/94 financial year. The Minister for Public Works and Housing said at that time said that they had collected Kshs7 million for that year. Therefore, under part "a" of the Question, there is no way the Assistant Minister can say that a total of Kshs5 million was collected for 1991/92, 1992/93, 1993/94, 1994/95 and 1995/95 financial years. Could I plead with the Chair that the Assistant Minister gives us the correct figure of cess collected from the three cash crops separately for each financial year?

**Dr. Wameyo:** Mr. Deputy Speaker, Sir, I have already answered that question. I pleaded with hon. Anyona to give me time to go to the Ministry and look for that information.

**Mr. P.N. Ndiga:** On a point of order, Mr. Deputy Speaker, Sir. I asked a Question about the tea cess collected in Embu and we got a list of roads that had been maintained using that money in Embu District, just like the list the Assistant Minister says he has got now, but it transpired that there was no road that was ever done in that place. The truth of the matter - and that is what the Assistant Minister should go and check as he brings an answer to this Question - is that the district commissioners who are in charge of this money embezzle these funds. We complained to

this Ministry, especially in Embu, that two district commissioners embezzled a total of Kshs15 million and nothing happened to them. They were merely transferred. So, he should not just give us a list of the roads here. Could the Assistant Minister have his officers check the situation on the ground before he tells us that the money was actually utilised in maintaining those roads?

**Dr. Wameyo:** I have informed hon. Anyona that although I have the names of the roads here, I do not have the amount of money spent on each and I am going to ask the officers in the Ministry to give me this information.

**Mr. Deputy Speaker:** Dr. Wameyo, when will you bring that information? Next week?

**Dr. Wameyo:** Mr. Deputy Speaker, Sir, I will bring that information when I get it.

**Mr. Deputy Speaker:** Order, Dr. Wameyo! You have to give a definite day.

**Dr. Wameyo:** I will bring that information on Wednesday, next week.

*Question No.629*

OPERATION OF DAM CONSTRUCTION UNIT

**Mr. Deputy Speaker:** Mr. Farah's Question is deferred to next week.

*(Question deferred)*

*Question No.667*

REINSTATEMENT OF BUMPS ALONG MAKUPA CAUSEWAY

**Mr. Kiliku** asked the Minister for Public Works and Housing:-

(a) whether he is aware that the section of the road between Changamwe and Mombasa Island at Kibarani along Makupa Causeway has become a black spot, since the removal of the speed limit bumps; and,

(b) if the answer to "a" above is in the affirmative, whether he could consider reinstating the bumps in order to enhance road safety along this section of the road.

**The Assistant Minister for Public Works and Housing** (Col. Kiluta): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am not aware that the section of the road between Changamwe mainland and Mombasa Island at Kibarani along Makupa Causeway has become a black spot since the removal of the speed limit bumps as there has been no increase in the frequency of road accidents along the section.

(b) The Ministry will not consider reinstating the bumps because they were removed after it was discovered that motorists were being attacked and their properties stolen when they slowed down at the bumps. Additional relevant road signs will be put in place to warn motorists to reduce speed in this area. After removal of the bumps, the number of attacks on motorists has decreased. I wish to appeal to the hon. Member and the local leaders to advise motorists, pedestrians and cyclists to strictly observe road signs.

**Mr. Raila:** Mr. Deputy Speaker, Sir, can the Assistant Minister give the House the statistical data about the reduction of the attacks on motorists as a result of the removal of those bumps? Why is he attributing the attacks to the bumps? It is possible for bandits to erect road blocks and block traffic even without the bumps. Can he give the data and say why he thinks these attacks were being made because of the bumps?

**Col. Kiluta:** Mr. Deputy Speaker, Sir, this can be done but the issue here is that this Question was brought to this House sometimes back and we pushed it to the administration and the police at Mombasa. They discussed it during security committee meetings and the report they brought to us was that since the bumps were removed, the attacks have reduced. But if he wants the actual statistics, I will provide that information.

**Mr. Raila:** On a point of order, Mr. Deputy Speaker, Sir. I have asked the Assistant Minister to be specific. This question is very clear. Can he tell us how many attacks were there before the removal of the bumps and how many were as a result of the bumps?

**Col. Kiluta:** I thought I was very clear when I said that I do not have the statistics here, but I can provide that information.

**Mr. Kiliku:** Mr. Deputy Speaker, Sir, the Assistant Minister is misleading this House. Last year, when the "Government" was visiting Mombasa for the Agricultural Society of Kenya show, the administration was ordered to remove the speed limit bumps, on the promise that when the "Government" left Mombasa, the speed limit bumps would be reconstructed. Therefore, since the "Government" has left Mombasa, why have they not reconstructed the speed limit bumps?

**Bishop Njeru:** On a point of order, Mr. Deputy Speaker, Sir. I hope you heard the hon. Member say that when the "Government" visited Mombasa. Can he tell us which Government he is referring to?

**Mr. Deputy Speaker:** There is only one Government!

**Col. Kiluta:** Mr. Deputy Speaker, Sir, the Government that was in Mombasa is still there and it is the same Government which removed the bumps and the only way we can put the bumps back is for the hon. Member to go and talk to the same Government through the DDC. If the Government will agree that we should put them back, we will return them. But it is the same Government which said that we should remove them.

**Mr. Nyagah:** Mr. Deputy Speaker, Sir, although the question of putting up speed limit bumps is a very crude method used by uncivilised nations, can the Assistant Minister tell us what the role of the Ministry is, as far as the construction of speed limit bumps is concerned? In Embu and Mbeere districts, if we want any bumps erected, we go before the DDC and it recommends the areas where the bumps should be placed. In this case, I would like the Assistant Minister to tell us what the role of the Ministry is as far as the construction of bumps is concerned. Is it the duty of his Ministry or the DDC?

**Col. Kiluta:** Mr. Deputy Speaker, Sir, if the hon. Member was listening when I answered the hon. Questioner, I said that we get recommendations from the DDC to erect the bumps. So, if you have bumps that you either want removed or put back, you have to go to the DDC, write to the Ministry and we will comply.

**Mr. Kiliku:** Mr. Deputy Speaker, Sir, could the Assistant Minister tell this House the number of people who have been attacked along this road? On average, three accidents occur between Mombasa Mainland West and the Island everyday, claiming the lives of people. How can you compare the innocent people dying every day and those motorists who, for their own reasons, pass through this road very late when they are drunk and complain that they were attacked? Can the Assistant Minister substantiate the fact that motorists have been attacked on this road? He should also state the time when these attacks occurred.

**Col. Kiluta:** Mr. Speaker, Sir, if the hon. Member wants the details of the attacks during the period when the bumps were there and after the bumps were removed from those areas, I can go back and get that information.

**Mr. Kiliku:** Could the Assistant Minister tell this House when he will bring those statistics?

**Col. Kiluta:** We will write to the police at the Coast to give us those details. As soon as I get them, I will let him have the details.

*Question No.660*

TARMACKING OF ROADS IN KINANGOP

**Ms. Wanjiru** asked the Minister for Public Works and Housing:-

- (a) if he is aware that roads in Kinangop have deteriorated due to heavy rains and poor volcanic soils, particularly the main Magumu-Njabini Road and Engineer-Ndunyu-Njeru-Geta Road;
- (b) if the answer to "a" is in the affirmative, how much money has been allocated for tarmacking these two roads in 1997/98 Financial Year; and,
- (c) if he could consider making it mandatory for all contractors to lay an extra hardcore layer on the road foundation so that the roads may have a long lifespan.

**The Assistant Minister for Public Works and Housing (Col. Kiluta):** Mr. Deputy Speaker, Sir, I beg to give the following reply.

(a) Yes, I am aware that some roads in Kinangop Constituency have deteriorated due to the heavy rains that were experienced in the months of April to June this year. The Ministry has plans to repair the affected roads during the current financial year.

Bitumen patching of the Magumu-Njabini road is already on-going and we have set aside Kshs3 million for this project.

(b) The Magumu-Njabini road is already tarmacked and is currently being patched. No funds have been set aside for tarmacking the Engineer-Ndunyu-Njeru-Geta Road during this financial Year. Engineer-Njabini section which is 15 kilometres long was patched in the last financial year at a cost of Kshs2 million and it is fairly motorable.

(c) While I appreciate that a strict road foundation would increase road lifespan, I will not consider making it mandatory for all contractors to lay an extra layer of hardcore as the resulting construction cost would be prohibitive.

**Ms. Wanjiru:** Mr. Deputy Speaker, Sir, I appreciate the Assistant Minister's reply, but considering that road maintenance and rehabilitation is what the Government has been doing in my Constituency, why can he not authorise his officers on the ground to bring back the machinery which has been taken away by some of his officers? There is no grader at Ndunyu-Njeru; it is somewhere in Murang'a. The allocated money that we are talking about is there in theory, but in practice, it is not being utilised. Would I be in order to ask the Assistant Minister to transfer the officers

concerned because they are making it impossible for our constituents to have good roads?

**Col. Kiluta:** Mr. Deputy Speaker, Sir, I will try to answer that question. It deals with the issue of equipment being transferred and the transfer of officers. I would like the hon. Member to know that we have given the whole district some money. Once we give the money to the district, we leave the control to the District and Provincial Works Officers. For this particular district, we have set aside Kshs27 million for that work. The hon. Member might have a good reason in that those with "muscles" might have hijacked the equipment to the other area. We will look into this and make sure that the use of equipment is fairly distributed to all constituencies. I do not have the details of where the equipment is, but since she has mentioned it, I will go back, check and make sure that her constituency is well catered for.

**Mr. Githiomi:** Mr. Deputy Speaker, Sir, I am very much surprised by the answer given by the Assistant Minister. The Assistant Minister said that for the Engineer-Ndunyu-Njeru-Geta Road, he does not have funds to tarmac it in the 1997/98 financial year. My surprise is that any time the "Government" has had a public rally either at Kinangop or Kipipiri, he has continually promised that the Njabini-Oi Kalou road would be tarmacked.

Now, the big problem here is that whenever there is rain in the two constituencies, farmers have to pour their milk on the road because no vehicle which can get to where the farmers sell their milk. Could the Assistant Minister tell this House whether he has a comprehensive scheme of making roads passable in Kinangop and Kipipiri because there is no single inch of tarmacked road? We have had a very raw deal from this Government. Could he tell us whether he has a comprehensive scheme of tarmacking these roads or, at least, making them passable so that farmers can reap benefits from their farming activities?

**Col. Kiluta:** Mr. Deputy Speaker, Sir, I do not know whether you heard what the hon. Member said, that they have been "pouring milk on the road". It is no wonder that we have not been getting milk. This is a fairly motorable road and I would discourage the idea of pouring milk on the ground when we do not have milk in Ukambani.

Secondly, the hon. Member has asked me whether I have a comprehensive plan for the roads in that area. He has also cited an example of a promise made during public rallies. I must admit that I never attended any of those rallies and I am not aware of the promises.

Finally, I said that we have Kshs27 million to maintain these roads during this financial year and this will be done.

**Ms. Wanjiru:** Mr. Deputy Speaker, Sir, I wish to inform the Assistant Minister that Kinangop and Kipipiri areas produce a lot of foodstuffs. We supply Nairobi with vegetables, milk and with water from Sasumwa Dam. But during the rainy days, it is impossible for those people with trucks to transport these goods to Nairobi. In fact, the milk is poured by the roadside and vegetables are left rotting on the farms. Can he actually pay a visit to the constituency when it is wet and, maybe, he can instruct his officers to assist in making the roads motorable?

**Mr. P.N. Ndwiga:** On a point of order, Mr. Deputy Speaker, Sir. I am getting worried by the way we are carrying on with this Question. Is the Assistant Minister in order to continue giving us lengthy stories about the amount of money they have set aside, while it is so clear that in every district works office, all the money that was set aside for this financial year has all been recalled by the Treasury? What is he talking about? There is no money at the district works offices. There is no Kshs27 million set aside. The Assistant Minister is terribly misleading this House. There is no money anywhere. So, what stories is he giving this House?

**Col. Kiluta:** Mr. Deputy Speaker, Sir, I am surprised we seem to have two Assistant Ministers in the Ministry of Public Works and Housing; one, "who does not know" and another one "who knows". This is fuel levy money and it has nothing to do with the money that was returned. The money is available. It will be used on the roads in Kinangop.

**Mr. Nyagah:** Mr. Deputy Speaker, Sir, before I ask the Question on behalf of hon. Mathenge, I would like to protest that the hon. Member has not received a written reply.

*Question No.676*

DISTRIBUTION OF SUBSCRIBERS' TELEPHONE SETS

**Mr. Nyagah**, on behalf of **Mr. Mathenge**, asked the Minister for Transport and Communications:-

- (a) what the total number of subscribers' telephone sets registered in Kenya is;
- (b) how the telephone sets are distributed in the Provinces; and,
- (c) how much revenue was collected by the Kenya Posts and Telecommunications Corporation (KPTC) on telephone accounts in 1995/96.

**The Assistant Minister for Transport and Communications** (Mr. Morogo): Mr. Deputy Speaker, Sir, I

beg to reply.

(a) The total number of subscribers' telephone sets registered in Kenya are: manuals, 7,212; automatic, 487,667; totalling 494,879.

(b) Telephone sets are not distributed by the KPTC. They are purchased by customers from KPTC and registered vendors. The KPTC operates on the basis of regions, which may cover two or more provinces. It is not, therefore, possible to say exactly, how many telephone sets are in which province. Nevertheless, the following are the estimated sets per province: In Coast Province, we have 431 manual sets and 69,167 automatic sets. In Eastern Province, we have 2,131 manual sets and 17,608 automatic sets. In Nairobi Province, we have 279,300 automatic sets only. In Central Province, we have 1,067 manual sets and 39,823 automatic sets. In Rift Valley Province, we have 1,911 manual sets and 49,353 automatic sets. In Western Province, we have 533 manual sets and 9,511 automatic sets. In Nyanza Province, we have 942 manual sets and 19,144 automatic sets. In North-Eastern Province, we have 197 manual sets and 3,762 automatic sets.

(c) The revenue collected by the KPTC on telephone accounts in the two financial years is as follows: In 1994/95 Financial Year - Kshs11,949,549,414.36 and in the 1995/96 financial year - Kshs13,267,124,629.59.

**Mr. Nyagah:** Mr. Deputy Speaker, Sir, you must agree with me that you have to have a computerised mind to be able to follow what the Assistant Minister has said, and to be able to come up with a meaningful supplementary question. However, I would like to ask the Assistant Minister, whether the criteria for giving out subscriber telephone numbers and accounts on landmarks is population or activities involved in such provinces. Then from there, I will be able to build up my question.

**Mr. Morogo:** Mr. Deputy Speaker, Sir, it is the commercial viability of the telephones in various areas. So, it combines all that he has said.

**Prof. Ouma:** Mr. Deputy Speaker, Sir, I would like to ask the Assistant Minister what their interpretation is. From what I see down there, among the figures which were given very quickly, it looks like Nyanza Province is "low" down there. It has a very low figure. Does he mean to say that in their interpretation, Nyanza Province is one of the least economically viable province? Otherwise, what do these figures show? What is their interpretation in terms of development?

**Mr. Morogo:** Mr. Deputy Speaker, Sir, I did not say that Nyanza Province is not viable. But it depends on who wants the telephone set. In any case, as I said, we no longer distribute these items. It is a matter of who applies for a line. The line is investigated and if it is viable, the KPTC will instal an exchange, and various people will get the telephones. But heads and the set are purchased by the individuals.

**Dr. Lwali-Oyondi:** Mr. Deputy Speaker, Sir, bearing in mind that the Assistant Minister has got about 500,000 telephone lines in Kenya, could he explain why his officers do not put the code numbers in the directories? We get a lot of problems when we try to call somewhere. You have to look up the code number from somewhere else. Why can he not adopt the international way of recording telephone numbers in the directories? He should include a code number for every telephone number.

**Mr. Morogo:** Mr. Deputy Speaker, Sir, the figures that I have given are for the telephone sets and not the lines that we have in the country. In any case, as to the question that the hon. Member has asked, we will do that eventually. But for the time being, we are operating within the limitation of the funds that we have.

**Mr. Obure:** Mr. Deputy Speaker, Sir, the Assistant Minister said that the revenue collected for the financial year 1995/96 was Kshs13 billion. Is he aware that much of this money was collected unfairly? This is because the public telephone booth sets keep on "swallowing" the money. What is he going to do to make sure that if you put your money in a public booth set and your call does not go through, you get it back?

**Mr. Morogo:** Mr. Deputy Speaker, Sir, the amount collected from telephone booth sets is a small fraction of the total revenue collected. We have set a line to deal with faulty telephone booths. We will try to attend as quickly as possible to any damaged telephone booth sets. I would only urge the hon. Member to report such faulty telephone booth sets as soon as possible. The KPTC is trying very hard to minimise such an occurrence. But they are machines and are bound to get faulty.

**Mr. Obure:** On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to mislead this House, when he knows that if you want your money to be returned because you have not used it, you are told to send your name and address to KPTC, but you will never receive anything back? Is he aware of that?

**Mr. Morogo:** Mr. Deputy Speaker, Sir, if the hon. Member can cite a specific case, I can deal with it. But I am not aware of cases where people have been refused refunds for telephone services which have not been rendered.

*Question No.640*

PAYMENT OF TERMINAL BENEFITS TO MR. ONDIEKI

**Mr. Obwocha** asked the Minister for Labour and Manpower Development when Mr. David Ngote Ondieki, who was an employee of DACMA Express Services Limited, will be paid his terminal benefits.

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

M/S DACMA Express Services Limited does not have a Mr. David Ondieki in their employment records and, neither do they know him. He should report to the nearest labour office with the relevant documents, where he will be accorded the necessary assistance.

**Mr. Obwocha:** Mr. Deputy Speaker, Sir, this is unfortunate. It appears that the Assistant Minister never did his homework properly. I have a letter of appointment here from DACMA Express Services Limited to Mr. David Ngote Ondieki, dated 16th June, 1994. I cannot read out the whole of it, but it is signed by one R.M. Mukok, General Manager, and the Assistant Minister comes here and says that M/S DACMA do not have this man in their records. I wish to table this letter here for the Assistant Minister to be serious with his replies.

*(Mr. Obwocha laid the letter on the Table)*

This company is owned by a KANU Assistant Minister and these people are conspiring not to pay this boy. The Assistant Minister has conspired with the Assistant Minister, who owns this company so as not to pay this young man. Could he tell us when Mr. David Ngote Ondieki is going to be paid his terminal benefits?

**Mr. Ali:** Mr. Deputy Speaker, Sir, in the first place, I would like to refute the allegation that the Assistant Minister has conspired with the Assistant Minister who owns the company. Secondly, as I said earlier, they have no records of Mr. Ondieki, but if they are there, the company is willing to entertain the issue.

**Mr. P.N. Ndwiga:** On a point of order, Mr. Deputy Speaker, Sir. I hope you heard that very categorical statement made here. Who is this Assistant Minister who owns this company and is conspiring with the Assistant Minister? We do not want certain implications. So, can he tell us who is this conspiring?

**Mr. Obwocha:** Mr. Deputy Speaker, Sir, I raised this issue on 20th June, 1995 with hon. Bishop Tanui, the Member of Parliament for Kipkelion, who owns this company. I would say that he is behaving like a conman. Could the Assistant Minister be serious and tell us, now that I have given him the details about this young man, when he is going to be paid his terminal benefits?

**Mr. Ali:** Mr. Deputy Speaker, Sir, it is true that the company is owned by hon. Bishop Tanui. He is willing to entertain the claim, provided a proper document can be sent to him and also to our Ministry for us to carry out further investigations.

*(Dr. Otieno-Kopiyo stood up in his place)*

**Mr. Deputy Speaker:** What is your point of order, Dr. Otieno-Kopiyo?

**Dr. Otieno-Kopiyo:** On a point of order, Mr. Deputy Speaker, Sir. Could the Assistant Minister inform the House what his source of information is? Hon. Obwocha has got a letter which confirms that the young man was hired by DACMA Express Services Limited, but the Assistant Minister is saying that the company has no records. Which one of these statements is true? Are they denying him the records? Is he saying that he is willing to go and check whether the company lied to him before we get to the next point?

**Mr. Ali:** Mr. Deputy Speaker, Sir, the case was never reported to the Ministry of Labour and Manpower Development's office. Therefore, we were not aware of the case until today when hon. Obwocha tabled the letter. After scrutinising the letter, we will carry out further investigations. The claimant should also take the letter to the company to hasten his claim.

**Mr. Nyagah:** On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister is not being honest in the answer he has just given. Looking at this question, I can see that it was not framed last week. It is an old Question. What has he been doing since the Question got to his Ministry to give us an answer? He must have known that this Question was going to come up. Where did he get the answer that he has given us from? Where did that answer come from if he is not misinforming the House?

**Mr. Ali:** Mr. Deputy Speaker, Sir, the answer came from all the branches of the company and they denied having any knowledge of Mr. David Ngote Ondieki. Now we will carry out investigations since Mr. Obwocha has tabled his letter of appointment.

**Mr. Kaptan:** Mr. Deputy Speaker, Sir, this letter of appointment of Mr. Ondieki comes from the General



Manager of this company and is dated 16th June, 1994. The Assistant Minister says that the information they got was from the company branches. Now that we have this document showing that Mr. Ondieki was an employee of this company, and the management gave him false information that this man was not employed by the company, what steps is he going to take against the company which gave him false information?

**Mr. Ali:** Mr. Deputy Speaker, Sir, the only action we would take is to solicit the claim immediately. As for any further action for refusal to pay the claim, the Ministry has a right to take the culprit to court.

**Mr. Deputy Speaker:** Mr. Onyango's Question!

*Question No.649*

COLLAPSE OF CO-OPERATIVE SOCIETIES IN NYATIKE

**Mr. Onyango** asked the Minister for Co-operative Development:-

- (a) whether he could explain why the co-operative societies in Muhuru, West Kadem, North Kadem and Karungu in Nyatike Constituency have collapsed; and,
- (b) what action he is taking to revive the said societies.

**The Minister for Co-operative Development** (Mr. Munyi): Mr. Deputy Speaker, Sir, I beg to reply.

(a) The co-operative societies in Muhuru, West Kadem, North Kadem and Karungu in Nyatike Constituency have not collapsed, as alleged by the hon. Member.

(b) Given the answer to (a) above, I would like to tell the hon. Member that as at June, 1997, the work was already done and money received was worth over Kshs21 million in one of the co-operative societies.

**Mr. Onyango:** Mr. Temporary Deputy Speaker, Sir, if the Minister is alleging that the co-operative societies have not collapsed, can he tell us the names of the co-operative societies in those locations?

**Mr. Munyi:** Mr. Deputy Speaker, Sir, all what I can say is that of late, the total number of fish, which has been coming from Lake Victoria has drastically gone down.

**Prof. Ouma:** Thank you, Mr. Deputy Speaker, Sir. The Minister is talking about Lake Victoria and fish, but I want to talk about societies away from the Lake. What hon. Onyango has said is not only true in Nyatike, Karungu and North Kadem. Generally, the co-operative societies in South Nyanza in particular, are in "intensive care unit", if they are still alive. Most of them are "dead", but those ones which are remaining are in "intensive care unit" under the care of the Minister. Could the Minister, if he has been looking after these co-operative societies properly, tell us what he has identified to be the main disease "killing" them and what prescription he is going to give to stop them being in "intensive care unit" and "dying?" Could he tell us what the disease is, that is killing these co-operative societies and what he will prescribe for them?

**Mr. Munyi:** Mr. Deputy Speaker, Sir, it is good that Prof. Ouma has talked of "intensive care unit". I do not deal with that, but I am aware that there are some co-operative societies whose officials have not been very active. I would be grateful if he could give me some suggestions and I will take action.

**Dr. Otieno-Kopiyo:** Mr. Deputy Speaker, Sir, the Minister is either intentionally misleading the House, or he does not know the difference between head or tail of the Question. The issue is not about the amount of fish in Lake Victoria declining. It is about Nyatike Constituency, which is just a small portion of the Constituencies covering the Lake Victoria gulf. He is being asked which of these societies are thriving and which specific ones made Kshs21 million as of June 1997.

**Mr. Munyi:** Mr. Deputy Speaker, Sir, I want to tell the hon. Member who thinks that I do not know Lake Victoria very well, that I have been to Homa Bay and all these other places. What I am saying is that there are some co-operative societies which have not been very successful. Some of those societies, to be specific, are in Nyatike. But as far as the co-operative societies are concerned in the area which he has mentioned, I have no doubt, they have been doing very well.

**Mr. Mbeo:** On a point of order, Mr. Deputy Speaker, Sir. I happen to have travelled last week to a place right next to Nyatike Constituency, in Suba District. What I saw there was very appalling. I saw, with my own eyes, that there are no more fishing co-operative societies. They have all collapsed and the reason is the same from one corner to another; that the co-operative officers are all corrupt, they are busy taking money from the fishermen in such a manner that they are no longer able to operate effectively.

Mr. Deputy Speaker, Sir, it costs a fisherman Kshs35 per kilo to procure fish from the lake. They are now selling it at Kshs25 to an Asian in Kisumu, at a loss, through collaboration of the Ministry's officers. Could the Minister now undertake to look into the co-operative societies issue in Nyanza Province and more so, Nyatike as well as Suba and Homa Bay Districts to ensure that the corrupt co-operative officers are disciplined and that the

co-operative societies are brought back to their normal and usual active roles?

**Mr. Munyi:** Mr. Deputy Speaker, Sir, that is a very good suggestion from the Member. Therefore, I have already agreed to take action to see to it that this matter is looked into.

**Mr. Onyango:** Mr. Deputy Speaker, Sir, is it in order for the Minister to avoid answering my Question? I asked him to name the co-operative societies in Nyatike Constituency. Could he tell us which co-operative societies got Kshs21 million?

**Mr. Michuki:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the hon. Gatabaki to walk between the Chair and the Member who is on the Floor without bowing to the Chair?

**Mr. Deputy Speaker:** I did not even realise!

**An hon. Member:** Let the Minister answer the Question.

**Mr. Munyi:** Mr. Deputy Speaker, Sir, we have got Muhuru Bay Fishermen's Co-operative Society, North Kadem Co-operative Society, South Kadem Co-operative Society, and all these are in Nyatike Constituency.

**Mr. Deputy Speaker:** Next Question!

### QUESTION BY PRIVATE NOTICE

#### DELAY IN THE COMPLETION OF CONTAINER FERRY SERVICES

**(Mr. Rotino)** to ask the Minister for Transport and Communications:-

(a) Why did the Kenya Ports Authority pay Kshs524 million for Container Ferry Services (CFS) project which was not completed?

(b) What steps are being undertaken to recover the money from the contractor for breach of contract?

(c) What steps is the Authority taking to have this project completed in order to improve efficiency at the Port?

**Mr. Deputy Speaker:** The Question is deferred to next week on Tuesday on request by the hon. Member. Next Order!

### POINT OF ORDER

#### AMENDMENT TO CONSTITUTIONAL AMENDMENT BILL

**Mr. Raila:** On a point of order, Mr. Deputy Speaker, Sir. I would like to seek the guidance of the Chair regarding section 47(4) of the Constitution which says:

"When a Bill or an Act of Parliament to alter this Constitution has been introduced to the National Assembly, no alterations shall be made in it before it is presented to the President for his assent except alterations which are certified by the Speaker to be necessary because of the time that has elapsed since the Bill was first introduced into the National Assembly."

Mr. Deputy Speaker, Sir, the Bill that is just about to be moved by the Attorney-General is about the amendment of the Constitution and the guidance that I would like to seek from the Chair is whether I am in order in understanding that no amendments to this Bill can be moved before this House and that the House is therefore going to be required, according to the Constitution, to merely rubberstamp the Bill as drafted. In other words we cannot alter this Bill. Is my interpretation correct?

**Mr. Deputy Speaker:** Did you need to take so long to make your point? Of course, the words mean what they mean! We can only go by the ordinary and natural meaning of the words and it is simple, to my understanding, to everybody's understanding and I am certain it is to your understanding, that a Constitutional Amendment Bill such as has been presented, can only be adopted or rejected by the House in the form it is in.

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

**Mr. Deputy Speaker:** Are you sure you have a serious point of order?

**Dr. Otieno-Kopiyo:** Yes, Sir. In that case, then, why do we not shelve debate on it, if it is a *fait accompli*? What is the purpose of bringing a Bill to the House for debate when we have no power to amend or introduce new ideas to it?

**Mr. Deputy Speaker:** You have the power to do the ultimate, to pass it or reject it! Next Order!

**BILL***Second Reading*

## THE CONSTITUTION OF KENYA (AMENDMENT) BILL

**The Attorney-General** (Mr. Wako): Mr. Deputy Speaker, Sir, I beg to move that the Constitution of Kenya Amendment Bill, 1997, be now read a Second Time.

Mr. Deputy Speaker, Sir, there have been a number of figures floated about; that we have had 31, 33, or 35 Constitutional amendments since Independence. I have gone through this exercise very carefully and I hope I am right, that this is actually the 30th Constitutional Amendment Bill since Independence. In other words, since Independence, we have had numerous amendments. We obtained our Independence in 1963. This country has been in existence as a sovereign State for 34 years and on the average, literally every year we have had a constitutional amendment. I, therefore, very much hope that this is the last minor amendment we shall make to this Constitution and that the next Bill will either be a new Constitution, or alternatively will be a Bill which will contain comprehensive amendments or alterations to the current Constitution. That is, if the Bill which is before this House is passed and a Constitutional Review Commission Bill is established and does its work and that within two years this House gets the recommendations to adopt them.

So, Mr. Deputy Speaker, Sir, this Bill, as we all know, arises out of the IPPG recommendations which were adopted by this august National Assembly on 17th September 1997. They are in the nature of minimum amendments to the Constitution, because the IPPG in its wisdom, and I do agree with it, felt that the issue of the reform of the Constitution is so important that it must be given time; the people of this country must be adequately consulted and given the opportunity to express their views on the various provisions of the Constitution.

Mr. Deputy Speaker, Sir, I will not waste a lot of time but I will go straight into what is proposed.

The first amendment is a new Clause 1(A) which appears on page 1,027 and it states:-

"The Republic of Kenya shall be a multi-party democracy."

We do know that at the time of Independence Kenya was indeed a multi-party state. But soon thereafter, and for many years, Kenya became a *de facto* one-party state and not a *de jure* one-party state. In other words, although the constitutional provisions were there for a multi-party state, and, therefore, it was really a multi-party constitution, for a number of years the *de facto* situation on the ground, was that we had one party called the Kenya African National Union. So for a number of years, although we had a *de jure* constitution which permitted a multi-party state, in fact Kenya was a *de facto* one-party state until in 1982 when this House passed an amendment which created Kenya as a *de jure* one-party state. This is the situation that continued until December, 1991, when again this august National Assembly passed an amendment deleting Section 2A and, therefore, making this country once again, a multi-party state and on 31st of December, 1991, a party called FORD was the first one to be registered under the new *de jure* multi-party state that had been passed by Parliament just before Jamhuri, in 1991. I am outlining this because that is part of our history. We have tested a bit of multi-party, and a bit of the *de facto* one-party state and we have---

**Mr. Kariuki:** On a point of order, Mr. Deputy Speaker, Sir. If all of us have the same Order Paper that I have here, I think there is a mistake because we are discussing The Constitution of Kenya (Amendment) Bill and the attachment here is talking about The Constitution of Kenya Review Commission Bill. There is a problem here.

**Mr. Deputy Speaker:** There is no confusion, I think it is you who is confused, hon. Kariuki. Order No.7, the Constitution of Kenya (Amendment) Bill which we are discussing, after all would not possibly have the attachment you are referring to, by virtue of being a Bill to amend the Constitution which is not susceptible to amendment on the Floor of the House. So, if you look at the attachments, although they are notices from the Attorney-General for amendment, they relate to Order No.8; The Constitution of Kenya Review Commission Bill, which is also technically at the same stage with the first one, which is at the Second Reading stage.

**Mr. Kariuki:** Mr. Deputy Speaker, Sir, thank you for your explanation. I thought you said that I may be confused but I think that we were entitled to the explanation which you have just given.

**Mr. Deputy Speaker:** Which one?

**Mr. Kariuki:** What you have just said, to clear the issue.

**Mr. Deputy Speaker:** Were you here when Mr. Raila raised a point of order earlier?

**Mr. Kariuki:** (*Inaudible*).

**The Attorney-General** (Mr. Wako): Thank you very much, Mr. Deputy Speaker, Sir. I was trying to outline our history since Independence as far as multi-party, one-party, *de jure* and *de facto* situations are concerned, and the IPPG taking into account that history, decided that we have had enough experience to be able to say that from today

henceforth, if this constitutional amendment is passed, Kenya shall be a multi-party democratic state. So, we are taking a bit of our history into account.

Mr. Deputy Speaker, Sir, if you look across the border, Uganda had a different experience. They always had a multi-party democracy and then they went into dictatorship and now, because of that experience which has been said, they do not want, at least, for the time being a multi-party state; they want a no party state. Again, that is their experience. Mr. Deputy Speaker, Sir, if this Clause is enacted, we shall allow the multi-party democracy to grow. In 1991, we gave birth again to a *de jure* multi-party state. So, you can in a sense say that a baby was born at that time. I am saying this because a number of legal scholars have said that multi-party states in Africa today are like a child being born. When a child is being born, he has to learn how to walk and when he is in the process of learning how to walk, he can go one step and fall down and then rise again and, therefore, what we are witnessing in Africa today, are multi-party democracies being born but they are still children who are learning to walk and, therefore, occasionally, they will fall down and stand up again and then fall down and stand up. I am saying that as far as Kenya is concerned, we have had an experience of multi-party democracy and therefore, we cannot be compared to a baby which has just been born and, therefore, learning to walk. As far as this matter is concerned, Kenya has learned how to walk but that does not mean that Kenya cannot grow and cannot mature in the practice of multi-party democracy. We are no longer babies and we should no longer be able to walk one step and fall down. We should be able to walk and we should be able to run. But we still need to grow and mature in the multi-party democracy.

*[Mr. Deputy Speaker left the Chair]*

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

Mr. Temporary Deputy Speaker, Sir, note that this clause says "multi-party democratic state." I think this is a recognition of the fact that a multi-party state is not in itself a democratic state. You can be a multi-party state without being a democratic state. Only the other day, I believe the former President Mwalimu Julius Nyerere of Tanzania was lamenting that one time when he was the President of a one-party state and the late Mobutu Sesse Seko was a President of more than 100 political parties in Zaire, the Western Press was touting Mobutu as a democrat and Mwalimu Nyerere as a dictator. He was lamenting other day.

Mr. Temporary Deputy Speaker, Sir, it was amended the other day. So, really this goes to show that a multi-party state may have a number of political parties, but it does not necessarily mean that it is a democratic state and that is why you need to "marry" the two concepts of multi-party and democracy. These two need to be "married" together and co-exist in happiness and peace if we are to have a vibrant and dynamic nation.

Mr. Temporary Deputy Speaker, Sir, talking about multi-parties, as a whole, I think it is useful to note that the failure of the Weimar Republic in Germany and of the Fourth Republic in France was attributed to too many political parties which were more or less equal in strength. A number of scholars have said that, that contributed substantially to the failure of the Weimar Republic of Germany and to the Fourth Republic of France. They have argued that the existence of a large number of parties which were more or less equal frustrated the establishment of viable Governments which were able to take decisive measures.

Mr. Temporary Deputy Speaker, Sir, permit me to read just a bit from a book called *Democracy* which I borrowed from the United States of America Library which we have here and which is very useful. I would recommend to all of you that this library has very many books which one can borrow and read; on page 56, it says:

"Coalition Governments composed of two or more parties especially parties that are diverse not only would be weak, but would also tend to act irresponsibly due to the diffusion of responsibility among member parties. Each partner in the Government would try to avoid responsibility on the difficult issues and blame the other partners for unpopular decisions. Moreover when composed of several parties, coalition Governments would rarely reach consensus and, therefore, it has been found in conclusion that democracy and responsible Governments are normally established in those countries where there is multi-party but where you have up to two or four good strong parties and not a proliferation of parties".

Mr. Temporary Deputy Speaker, Sir, this book continues to say, and I would like to emphasise this: "That, of course, there is a role for minor parties because these minor parties normally put pressure on the big parties to respond to the will of the people".

But what is important is that this book is also the underlying the importance of what one may call the political and democratic culture. It states:

"For a multi-party democracy to succeed, the country must have the right political culture and

democratic culture".

Here, I quote: What is the political culture? It says:

"Tolerance is part of that political culture. Accommodation is part of that culture. Consensus building is part of that political culture and these are critical characteristics to the success of a democratic multi-party state".

Mr. Temporary Deputy Speaker, Sir, it continues to say:

"In addition, we must have a civic culture which is actually a culture of restraint, moderation and a culture of listening to other people's views".

The book then quotes a specific instance here which says as follows:

"That this may imply that people stand patiently by when somebody is espousing their views and also in the alternative imply that those espousing their views may well be required to act in a restraint manner.

"In other words, they should not espouse their views in a manner that would incite and that would be confrontational if democracy is to succeed and more so democracy in a multi-party state".

The other quality stated is as follows:

"There should be a modicum of difference and respect to the authority".

Mr. Temporary Deputy Speaker, Sir, what I am stating here is on page 68 on the book on democracy. I would like to emphasise this because it is obvious that for a multi-party democracy to succeed, it must be nurtured, particularly at our level now which is just starting. It must be allowed to grow and it must be accompanied by the cultivation of the right political or democratic culture which I have just outlined. Unfortunately, law can only go so far to enable the right political culture or democratic culture to be cultivated and to grow. Most of it will depend also on the changes of our own attitudes and changes in our own behaviour, particularly public behaviour in the manner that we speak and expound our views to the population.

Mr. Temporary Deputy Speaker, Sir, when we are saying that Kenya will be a multi-party democratic state, we must bear in mind that for this to succeed - I do agree that if Kenya was to become a vibrant and dynamic nation - then we must also have a flourishing multi-party democratic state. It would be obvious from what I have said, quoting other sources, that what I had stated earlier in moving the Statute Law Maintenance (Amendments) Bill applies with even equal force now. That, we should go back to the positive features of our traditions and in particular that tradition where the elders sat, freely discussed and reached conclusions which were in the interest of the society as a whole. We will capture that state because I can see that, actually, in the spirit from the Western world; writers are saying it is part of the main force that is laying a firm foundation for the growing of a multi-party democratic state.

Mr. Temporary Deputy Speaker, Sir, I think I have talked enough on Section 1(a) that the Republic of Kenya shall be a multi-party democratic State. It is this which will contribute in an effective way, in creating a vibrant and dynamic nation.

Mr. Temporary Deputy Speaker, Sir, I would like to go to what is proposed to be amended under Section 7. It is proposed that we delete these words from Section 7 of the Constitution of Kenya:

"...and shall form the Government of the political party which nominated him as a candidate for Presidency."

Those words are being deleted. The Constitution, as it is today, provides that if the President is elected, he can only form a Government of the political party which nominated him. I agree with the wisdom of the Inter-Parties Parliamentary Group (IPPG) recommendation, that the President should be given a free hand. Therefore, that restriction or limitation that confines the President to form a Government only of the political party which nominated him is now being removed if this Bill is enacted. What does this mean in practice, because there have been a number of comments on this particular issue? It means that after the election, the President will have quite a number of alternatives; about five.

One of them, of course, would be just to form a Government of the political party which nominated him, particularly if he thinks or the results show that, that political party has a majority in the National Assembly. He can go ahead and form that Government. He can also form a coalition Government. A coalition Government, by the very nature of the word itself, means a coalition between two or more political parties in the formation of the Government. Obviously, the two or more political parties, before they form the Government, must discuss and agree on what the policies are going to be.

The same applies to a Government of national unity. It first means that all the parliamentary political parties represented in the National Assembly will be part of the Government. Again, this must also involve discussions among the political parties concerned. It cannot be that the President can himself just move and form a coalition Government without consulting the other political parties which are going to participate in that coalition.

Mr. Temporary Deputy Speaker, Sir, a coalition or an alliance does not mean a union of two or more political

parties which have merged into one body, nor does it mean a merger of the political parties involved into one body. A coalition Government leaves political parties intact. Political Parties retain their legal status. They retain their distinctive nature with their separate legal nature. With their separate distinctive and legal nature, they are coming together purely to form a Government. They do not merge into one. They remain intact as they are.

Mr. Temporary Deputy Speaker, Sir, in a number of comments made on this issue, I have noticed that there is some confusion between a coalition Government, a coalition or a Government of National Unity, and the so-called defections. I have read a very good article by a prominent lawyer who thinks that a coalition Government means defection, and therefore, as much as Section 40 of the Constitution of Kenya deals with defection, you cannot have a coalition government without merging the political parties into one unit.

Mr. Temporary Deputy Speaker, Sir, I beg to disagree, with utmost respect, on that interpretation. If you clearly look at Section 40, defection is moving from one political party to another. It is not one political party serving the Government of another party.

So, let us not confuse the Government of National Unity or Coalition Government with defection, as it can be formed without an amendment of Section 40. I can go at length to interpret this issue but I do not want to waste Members' time. But if it turns into a controversial issue, I will be prepared to give a detailed lecture on it in my reply.

Mr. Temporary Deputy Speaker, Sir, it has also been said that whoever is elected as a President, may then pick somebody from another party to serve in his or her Government. That is possible. But it has to take into account that Kenya, is now a multi-party State. This is why you will see under Section 16 of the Constitution, there is proposed amendment to add words: "Subject to any provision of any written law". This is the section under which the President appoints his Cabinet. When I moved the Statute Law (Repeals and Miscellaneous Amendments) Bill, you will recall I specifically mentioned that under the proposal which covers the National Assembly and Presidential Elections Act, a person can serve in the Government which is not of his political party, after getting approval from that political party. Therefore, if somebody is elected the President, and feels that someone outside his party is competent and should be utilized for his talents and experience, then that person has to get the backing of his party before he can serve in the Government. So, that clause is there.

Mr. Temporary Deputy Speaker, Sir, let us not have confusion as expressed in a number of commentaries on this subject. We have tried to disseminate that information, but nobody appears to be listening. I hope they will understand today, that the amendments being proposed are the ones which will strengthen multi-party democracy, instead of undermining it. There was also an article written by some religious organisations which says that the words "subject to the provisions of any written law", were suspect, as it meant that there will be another law which is superior to the Constitution. They say, by the use of those words, it meant there would be another law superior to the Constitution, but which they do not know.

Mr. Temporary Deputy Speaker, Sir, anybody who has had some rudiments of law, possibly, comes to that conclusion. First of all, if this Bill is enacted, it will be in conformity with the general principles under which Parliament makes legislation. Parliament makes legislations under the authority and power of the Constitution. Therefore, when you say subject to the laws, it exactly means that Parliament will be enabled to make those laws. As we know, the laws enacted by Parliament are subject to the Constitution and Section 3 of the Constitution says,

" Any Law that is contrary to the Constitution is null and void."

Secondly, this place, is itself part of the Constitution and it will enable whoever is exercising that power to exercise it in accordance with the laws of the land.

Thirdly, we may have noticed, if we read through this Constitution and there are so many examples which I do not want to go through, this Constitution, just like any other Constitution, is replete, with these phrases in the various sections of the Constitution. Phrases such as "subject to the laws of the land" or "subject to the laws that may be prescribed by Parliament" and so on. It is replete with those type of phrases and all they mean is that, we are giving you a constitutional power, but in executing this constitutional power, it, must be done in accordance with the laws that Parliament may in its wisdom, pass. And there is nothing strange in that one. In fact, this is what is happening here.

Mr. Temporary Deputy Speaker, Sir, with the enactment of Section 7, it will then tie in well with what is proposed under the National Assembly and Presidential Elections Act. This will mean that when the President is appointing his Cabinet, if he wants to appoint a person other than a person from his political party, then there must be concurrence of that person's political party, in the appointment. I hope I have made it clear and if not, I will continue to make it clear in my reply.

Mr. Temporary Deputy Speaker, Sir, I then come to Section 33 of the Constitution. There has been a number of allegations here, that the President's powers have been left intact, by the Inter-Parties Parliamentary Group (IPPG) recommendations. Of course, when they say that, they completely forget the fact, for example, the detention powers have been removed. They also forget that the instrument through which the President acts; the police, Chiefs Authority Acts and so on, their powers has been curtailed. What is proposed under Section 33 is yet another example where the President's powers have been curtailed.

Mr. Temporary Deputy Speaker, Sir, currently, Section 33 provides that "There will be Nominated Members of Parliament who shall be appointed by the President from amongst persons of course who qualify to be Members of the National Assembly." If you compare that with what is proposed, you can see that the President's discretion has been limited shortly. You will see, for example, the purpose of the amendment is mainly twofold. It is, first of all, meant to enable political parties also to nominate Members of Parliament. Therefore, after the General Election, when it is held, the Electoral Commission will then certify that the strength of the political parties in the House is as follows: Then, in accordance with strength of the representation in this House, they will certify and say that each political party is supposed to nominate so many persons for appointment as Nominated Members of Parliament. That proportion will be there.

Mr. Temporary Deputy Speaker, Sir, when those names are forwarded to the President, he has no alternative, but to appoint the persons so nominated by the political parties. This is a limitation on the wide discretion that the President had in appointing nominated Members of Parliament. It is also important here that in the nomination and in the appointment, the principle of gender equality must be observed. In my interpretation, that means that at the end of the day we must have six male and six female nominated Members of Parliament. That is why there is some role given to the Electoral Commission because sometime these figures can be very problematic. Maybe, some political parties are supposed to nominate three people, others five people, in other words, odd numbers. What is 50 per of five? It is two and half. But can we have half a person? We cannot. Therefore, the Electoral Commission has been given some roles to ensure consultation with the political parties so that at the end of the day when the names are being submitted to the President, they reflect the principle of gender equality. We have what is proposed is sub-clause 5.

"The names of the nominees of parliamentary parties shall be forwarded to the President through the Electoral Commission who shall ensure observance of the principle of gender equality in the nominations".

We did not want to subject the Head of State in wrangling because we thought that, that can be dealt with at the level of the Electoral Commission.

Mr. Temporary Deputy Speaker, Sir, I will move on very quickly to---

**Mr. Ndicho:** On a point of order, Mr. Temporary Deputy Speaker, Sir. We are all aware that when the IPPG talks were going on, there was a very big crowd of the disabled persons at the Parliament Gate and they appealed to all hon. Members to ensure that they were also included in the nomination. Would I be in order to ask the Attorney-General that at that stage when he is considering the principle of gender equality, he also considers the nomination of disabled persons?

**The Attorney-General (Mr. Wako):** Mr. Temporary Deputy Speaker, Sir, he is quite in order. It is not so much an appeal to the Attorney-General, but an appeal to the political parties which will do the nomination because as it is rightly stated, the nominated Members are there to represent special interests. I, for one regard the disabled persons as a group of special interests. It may interest you to know that I am very pleased that we did set up a task force to review all the laws relating to the disabled persons, not just the laws, but the policies and administrative measures that can be taken to ensure that they also enjoy their lives just like any other abled person. If the hon. Member was here yesterday, I did say that there are some task forces which have completed their task and which have submitted their reports, but this House is yet to debate the Bill.

I am pleased that the task force which was composed mainly of disabled persons of all types and chaired by a judge who is himself disabled, has already submitted its final report. Also they made my task even easier by submitting a draft Bill on persons with disabilities. I very much hope that the next Parliament will debate, as amongst its very first legislation, a Bill entitled; The Persons with Disabilities Bill. Therefore, when you talk about the disabled, I agree with you that the disabled are amongst the special interests and, consequently, all the political parties have a grave responsibility to ensure not only the gender equality, but also to take into account the special interests such as the interests of the disabled persons.

Mr. Temporary Deputy Speaker, Sir, I will now go to Section 41 of the Constitution which deals with the Electoral Commission---

**Mr. Shikuku:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I think the Attorney-General should refer to the clauses on the Order Paper because Clause 6 is supposed to amend Section 41 of the Constitution.

**The Temporary Deputy Speaker (Mr. Wetangula):** I believe, Mr. Attorney-General, you meant Clause 6.

**The Attorney-General (Mr. Wako):** No, I meant Section 41, but the correction, as I understand it, is that, before I say Section 41, I should say Clause 6. Is my understanding correct?

**Mr. Shikuku:** Yes.

**The Attorney-General (Mr. Wako):** Very good.

Clause 6 deals with amendments proposed to Section 41 of the Constitution. The purpose of the amendments are mainly threefold, one, is to set the upper limit on the number of members of the Electoral Commission which shall now be 21 members who shall be Kenyan citizens. The current Constitution does not set the upper limit, but only says that the Electoral Commission shall be composed of not less than four commissioners. Literally, the appointing authority can appoint as many as he wants. Here is yet another example of where the presidential powers and discretion are being limited. He is being told that he cannot now appoint more than 21 members.

Mr. Temporary Deputy Speaker, Sir, the understanding of this matter is contained in the IPPG Report on constitutional and legal matters. The President appoints additional 10 commissioners from a list - that is the understanding I want to affirm - of names submitted to him by parliamentary Opposition parties. So that the totality of the commission of 21 members will be composed of members through whom the Opposition political parties have had an input. I must again, emphasise the fact that the members so appointed will, of course, be subjected to the codes that this House may pass. It is important that the members so appointed do not see themselves espouse the interests of any political party which was instrumental in nominating them for appointment. The members appointed must--

**Mr. Raila:** On a point of order, Mr. Temporary Deputy Speaker, Sir. The Attorney-General is referring to a report while moving this Bill. In this Bill, there is no mention of 10 members being appointed by parliamentary Opposition parties. Is he really in order to allude to that because it is not in this Bill which is going to become an Act?

**The Attorney-General (Mr. Wako):** Mr. Temporary Deputy Speaker, Sir, I think I am in order to state that the understanding of the IPPG was that and that, the purpose of the Bill is to ensure that there is a maximum of 21 members appointed by the President.

Mr. Temporary Deputy Speaker, Sir, if I may proceed, the amendment also proposed that the chairman and the vice-chairman shall be persons qualified to be judges or who have served as judges in Kenya. I think this is just alluding to what has been the practice up to now, that all the chairmen of the Electoral Commission appointed since Independence have all been very senior judges or people who qualify to be judges.

Mr. Temporary Deputy Speaker, Sir, the other amendments are to secure the efficiency and the effectiveness of the Commission.

**Mr. Nyagah:** On a point of information, Mr. Temporary Deputy Speaker, Sir. I would like to ask the Attorney-General to look at page 1028, Section (v) which states:-

"The names of the nominees of parliamentary parties shall be forwarded to the President through the Electoral Commission, who shall ensure observance of the principle of gender equality in the nomination".

I am saying so because we want to make it quite clear that these names will be forwarded to the President by the political parties through the Electoral Commission. That alludes to the point that hon. Raila was questioning.

**Mr. Raila:** On a point of correction, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker (Mr. Wetangula):** Under what Standing Order do you stand on a point of correction?

**Mr. Raila:** On a point of information, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker (Mr. Wetangula):** Order, Raila! The Attorney-General is moving the Bill and you will have an opportunity to contribute. I do not see why you should raise hell on a very minor issue. I know hon. Nyagah is giving information on nominated Members of Parliament and not the electoral commissioners.

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

**The Temporary Deputy Speaker (Mr. Wetangula):** You are out of order! Proceed, Mr. Wako!

**The Attorney-General (Mr. Wako):** Mr. Temporary Deputy Speaker, Sir, the proposed amendment to Section 41(10) is subject to the Constitution and without prejudice, to subsection 9 which states:-

"The Electoral Commission in its operations shall not be subjected to any personal authority. Parliament may provide for orderly and effective conduct of the operations and business of the commission and for the powers of the commission to appoint staff, establish committees and regulate their own procedures".

Mr. Temporary Deputy Speaker, Sir, as you already have noted under the Statutes Law (Repeals and Miscellaneous Amendments) Bill, we have a number of schedules to the National Assembly and Presidential Elections Act which concern the conduct of the commissioners themselves and the staff of the Electoral Commission and the regulation of their own procedures. I think it is Schedule 2 and 3. So, this ties in again with what is proposed under the National Assembly and Presidential Elections Act.

Mr. Temporary Deputy Speaker, Sir, when somebody made a comment on this section, he felt that we had over-stretched ourselves; we had gone beyond what IPPG commended, but I say, to go beyond what IPPG recommended is good. It is worse to go under, but to go beyond is good. So, that cannot, in any way, be construed as



criticism.

Mr. Temporary Deputy Speaker, Sir, under Clause 7 we are also proposing amendments to Section 42(a) of the Constitution. We are now making it a constitutional duty for the Electoral Commission to promote free and fair elections. Prior to this, the Electoral Commission had a constitutional responsibility on matters of supervising and controlling elections, be they presidential, parliamentary or civic. Obviously, it was implied that in that exercise, it would be done to ensure that the elections were free and fair. It was an implied thing even before, but here we are now making it express, that the Electoral Commission shall, among its constitutional duties, promote free and fair elections. To make it, as lawyers would say, clear beyond any reasonable doubt so that we do not just leave it to implication or by innuendo. We are also giving them a constitutional duty to promote voter education throughout Kenya.

Mr. Temporary Deputy Speaker, Sir, Clause 8 repeals subsection 5 of Section 44. Now, subsection 5 of Section 44, is the one which forbade appeals from the Election Court to the Court of Appeal. By the repeal of that section, one can appeal on the decision of the Election Court to the Court of Appeal. Therefore, if this Bill is enacted, it will tie in very well with what is proposed under the Statutes Law (Repeals and Miscellaneous Amendments) Bill which provided for the hearing of election petitions by one judge, if it is a matter of parliamentary elections, and by three judges, if the election of the President is being challenged. But more important, it provided for appeals for the decisions of the Election Court to the Court of Appeal. So, the enactment of this is very important. If we pass the Statutes Law, (Repeals and Miscellaneous Amendments) Bill, it will be proper. If we do not pass this one, then the other one, if passed, will be *ultra vires* the Constitution. So, it is important that this Bill is passed.

Mr. Temporary Deputy Speaker, Sir, on Clause 9 Section 82, there has been a lot of clamour that our Constitution omitted the word "sex" unlike other constitutions of the world. In other words, the clause which forbids or outlaws discrimination on the ground of colour, social status and other things. The word "sex" was not included. Some people have said that, that means one can discriminate on the ground of sex and be within the constitutional limits of our Constitution. That actually, is not true, because other sections of the Constitution specifically mention that one cannot be discriminated on the grounds of sex. It is important in this major section to include that as a ground for non-discrimination. The word "sex" is really included as a ground for non-discrimination under our human rights provision of the Constitution.

Mr. Temporary Deputy Speaker, Sir, the last one is important. Chapter five deals with the protection of fundamental rights and freedoms of the individual. In the whole of that Chapter, when it came to the issues of interpreting the violations of human rights and the Constitution as a whole, the law as it is now was that the highest court that could handle that was the High Court of Kenya. As of now, the highest court in this country is not the High Court of Kenya but the Court of Appeal. I think this came about because during the days of the East African Community, the highest court within Kenya was the High Court. Therefore, it was thought that matters of interpreting the Constitution of Kenya and human rights violation which are protected under Chapter Five of our Constitution were matters which must be confined within the sovereignty and the territorial limits of Kenya. Therefore, the High Court was to interpret those matters and that those matters should not be subjected to the Court of Appeal which covers the entire East Africa. So, it may have served a purpose at that time. But then, when Community collapsed and we no longer had the East African Court of Appeal, we did not amend this particular section. So, Clause 10, is now amending section 84 of the Constitution to state as follows:

"A person aggrieved by the determination of the High Court under this section may now appeal to the Court of Appeal as of right."

That does not lie within the discretion of the High Court which heard the case. As of right, a person is entitled to appeal on those grave matters to the highest court of the land - the Court of Appeal. These are the proposed amendments to the Constitution of Kenya. By passing this Bill, we shall be contributing to the holding of free and fair elections and enhancing the position of women as to their rights and participation in the decision making processes in this House. We shall also be enhancing the protection of the fundamental rights of Kenyans in as much as they will now have another avenue of appeal, should they feel that their rights have been violated. They will now be able to appeal to the highest court of this land, which is the Court of Appeal.

With those few remarks, I beg to move.

**The Vice-President and Minister for Planning and National Development** (Prof. Saitoti): Mr. Temporary Deputy Speaker, Sir, I rise to second this Bill whose objective is stated in the Memorandum of Objects and Reasons. The principle object of this Bill is to implement the resolutions of the National Assembly passed on 17th September, 1997, incorporating recommendations to amend the Constitution. I have read this particular clause to bring to the attention of the House the fact that the Attorney-General has brought this Bill in fulfilment of what he was directed to do by this House. It should also be recalled that this Bill is part of that important package of the IPPG. The IPPG package was hammered as a result of very tough bargaining. It is not a package that was agreed on within a very short time. The parties which gathered together to discuss various issues under the umbrella of the IPPG

represented various shades of political persuasion. They came with completely different ideas. There were those who came with the view that the whole Constitution needed to be overhauled before the elections. There were also others who took the view that we should not tamper with the Constitution at this particular time because the time available between now and the elections is not sufficient to be able to discuss any aspect of the Constitution in a very meaningful way. As a result of those discussions, this is what emerged in respect of the Constitution.

I am sure that there are many hon. Members here and other people outside there who may very well feel that this Bill ought to contain more amendments to the Constitution. But as I have just said, this was a compromise position. It was a realistic one and the resolutions were public. But much more, it was a realisation of the fact that this represented an achievement of minimum constitutional amendments, which could actually be effected on an interim basis, to be able to see us through these elections. One consequence of the IPPG is the Bill which was introduced by the Attorney-General yesterday. That Bill proposes the establishment of a Commission which will afford Kenyans of all shades of opinions the chance to make a contribution to the kind of Constitution they would want. Therefore, in discussing this constitutional amendment, it is important to be realistic and to understand that a comprehensive constitutional amendment cannot be effected within a very short time.

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

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

Mr. Temporary Deputy Speaker, Sir, since we became an independent country 34 years ago, whenever there have been demands for change, the route that Kenyans have always followed has not been one of confrontation. We have always followed the route of constitutional and legislative mechanisms. This is what we have always done. Whenever there have been demands for change, Kenyans have always said that we do not want confrontation or violence. Let us go back to the rule of law and, in a constitutional framework, let us effect changes. These changes have served us extremely well. I think we should be proud of that. Indeed, the very important achievement which has been made through this mechanism of constitutional and legislative framework is none other than the smooth and orderly succession in 1978 of His Excellency the President, Daniel Toroitich arap Moi, to the Office of the President after the founding father of this nation left us.

Mr. Temporary Deputy Speaker, Sir, if we had not been following that mechanism of observing or adherence to constitutional and legislative matters, we would never have had a smooth and orderly succession. This is the way we have always done. For all those years, Kenyans have always believed that the best way of solving problems is through consensus. This is the democracy that we have had. Indeed, the same spirit is the one that carried along the hon. Members of the IPPG. The Members of the IPPG were brought in or they got together out of their firm belief and commitment that we do have a mechanism, other than resorting to chaos, which would help us to resolve the problems that we do have.

Mr. Temporary Deputy Speaker, Sir, the Attorney-General has been extremely expository as he has taken us through the contents of this Bill. But at the same time, I also want to make some observations, even at the expense of being repetitious. The first important thing in Clause 2 is the declaration of the fact that Kenya will be a multiparty democratic State. That used to be the case, and we know it, until 1982 when we did become a one-party State. I think we all know the troubles that we went through to be able to revert back to the situation of multiparty democracy. Had we, at that time, effected this proviso that Kenya will be a multiparty democracy, perhaps, we would not have become a one party-State. We would not also have gone through the wastage of energy and resources of this country in order to achieve the political pluralism that we do have in this country. This proviso makes it abundantly clear that, in future, it will not be possible for any political party, merely because it commands the majority in this House, to revert back to the one party State. There could very well come a time when one political party could easily muster, at least, a two-thirds majority in this House, and then decide to make Kenya a one-party State. But with this proviso here, I do not think any political party, at that time and in the future, will ever be tempted into declaring Kenya a one party State.

We believe this is important and most welcome. It comes out of practical experience and we do not want to repeat it. That I think is fundamental. But the important question that we should ask ourselves is: What do we want to achieve by saying that we do want to become a multiparty democracy? The message that we are actually sending out to the Kenyans and to the rest of the world is recognition of the fact that every Kenyan has a right to belief, take a complete different position, decide on what political party he or she wants and so on. It is a recognition that we have a society in which deviant views can actually be tolerated. People are entitled to their different views, and for that

matter, a mechanism is available for them to articulate and express their views. This is basically the whole idea about multiparty democracy.

Mr. Temporary Deputy Speaker, Sir, of course, we know that there are always many other arguments. The reason of having multiparty democracy is that there will always be an Opposition party to keep checks and balances on the Government. I believe that is purely a by-product of what I have just said. I do not personally believe that the role of the opposition party is, at any time, to keep on opposing the Government of the day. I think the maturity of democracy demands that you make criticisms so long as they are constructive criticisms, but not for the sake of it. That I believe is the importance of the Opposition.

Mr. Temporary Deputy Speaker, Sir, let me move on to Clause 3, which in itself--

**Mr. Wamalwa:** On a point of order, Mr. Temporary Deputy Speaker, Sir, I do not wish to interrupt the Vice-President and Minister for Planning and National Development in his contribution, but for the sake of record, he has used the words "deviant" views" twice or three times. I think he meant "divergent views." Deviant is a definite sociological term meaning people who do things contrary to the ordinary.

**The Vice-President and Minister for Planning and National Development** (Prof. Saitoti): Mr. Temporary Deputy Speaker, Sir, I used the word "deviant". I think the word I used is derived from the word "deviation". It is a question of which school of thought you belong to. I have used it, I have seen it in literature and I am fully entitled to use it.

The other important thing which I think is worth mentioning here is the fact that Clause 3 is the one which removes the limitation from the President-elect to appoint Ministers or form a Government only from members of the political party that nominated him. That obviously used to be the case until 1990. What are the benefits and the disadvantages of this? First of all, the advantage of this is the fact that if the President-elect wishes to tap talents from both sides of the House, he has no restrictions. We must accept a very fundamental point, namely, that there can be no one side that can have a monopoly on knowledge. It could very well be that, that particular party that nominated the President, may be lacking in certain aspects and, maybe, the other political party or the other side of the Opposition has an abundance of those talents. The most important thing is to harness the talents of all hon. Members of this House to be able to achieve the goals that the people in this country want.

Mr. Temporary Deputy Speaker, Sir, with the enactment of this Bill, the President, if he so wishes - because, again, it is not mandatory - could very well be elected and then decide he has sufficient talents from his side. But I think the most important thing here is that, he would be in position to tap from the other side if he wishes. We have already been told, as it was contained in the Statute Law (Repeals and Miscellaneous Amendments) Bill, that he will not pick somebody from one political party without the concurrence of that particular political party. This is the important thing, as far as multiparty democracy is concerned, because some Members may say that one of the disadvantages of having this proviso is that the President-elect could very well go and tap the people there and, therefore, use that as one way of destroying the Opposition political parties. There is no ill motive at all inherent in this amendment. The purpose of bringing in this amendment is that there could be a case, in future, when it may be necessary to even bring the whole Parliament together under the umbrella of a government of national unity. There could be a crisis or a state of war and it may be necessary to ensure all the Members of the House or members of different political parties feel that they do have a common cause to deal with.

I think this issue is fairly important. I hope that hon. Members will be able to appreciate that. I know that this particular provision may not have gone as far as what some hon. Members and NCEC Members wanted, namely that we should have a coalition government. But in a way, I think what we have here is something close to a coalition Government. I think it is an important matter and once we have the Constitutional of Kenya Review Commission Bill enacted, the whole issue of a coalition Government will be re-visited afresh after the elections. I have no doubt at all that at that particular time, it will be considered within its context. This is because it will affect very many other things.

The other important area that is contained in this Bill is in Clause 5. It relates to the nomination of Members of Parliament. The amendment proposed here is a recognition of the fact that we are a multi-party democracy. The Parliament that we are going to have will be a multi-party one. To that extent, this clause is making that recognition. It will clearly allow political parties, whether the one that forms the Government, or the other parties in the Opposition, to have a right to recommend nomination of Members of Parliament on a prorata basis. The mechanism is clearly set out here, that every political party will be entitled to a percentage of representation proportionate to its parliamentary seats. I feel this is very important. It is a one step further in democratisation. There is no one who can oppose that provision.

I think the most important issue here is the fact that the qualifications of people to be nominated as Members of Parliament are clearly set out here. It is clearly stated that a person to be nominated shall be one who, if he had been nominated for a parliamentary election, would have been qualified to be elected as a Member of the National

Assembly. That excludes the possibility of any political party merely picking any Tom, Dick and Harry and presenting him or her as its own nominee for nomination as a Member of Parliament. We want nomination of a person who will sit in the House and make meaningful contributions.

**Mr. Mulusya:** Are you sure you are not going to bring Mulu Mutisya back here?

*(Laughter)*

**The Vice-President and Minister for Planning and National Development** (Prof. Saitoti): Mr. Temporary Deputy Speaker, Sir, the most important thing is that while this provision does not deal with this particular specification only, I think it is incumbent upon the various political parties is--- Although we will be bringing in people who are qualified, I hope that we shall also make sure that the people who will be nominated will bring quality debate and dignity to this House. Every political party should not move in a hurry and pick anybody, when he or she does not meet the set requirements. I hope that after the elections, the political parties will do a very thorough search, to ensure that the persons that they are going to recommend for nomination will be men and women of talent, who are going to enhance the quality of debate in this House. If they do not do that, I think they will be failing the Kenyan people.

Another important thing which is contained in this particular provision is the recognition of the gender dimension. As far as women are concerned, we do know, through our census, that women comprise about 51 per cent of our population. So, it is fair that 50 per cent of the nominated Members will be representing the women. I think we would like to see more women here. I am sure that there are many women out there, who are talented and who could come here and add flavour to the deliberations in this House. We believe that Parliament will be able to benefit a great deal by having more women Members of Parliament, than we have here today. Under this provision, such a recognition is made here. There is need for other special groups to be represented. I do hope that the various political parties, in setting out their own recommendations, will also take those factors into account.

Mr. Temporary Deputy Speaker, Sir, Clause 6, which seeks to amend Section 41 of the Constitution, is the one that relates to the Members of the Electoral Commission. This was a subject of great deal of discussion during the IPPG deliberations. The whole subject of the Electoral Commission required a great deal of discussion and reflection.

There was a general consensus that it was important to have an Electoral Commission, whose composition was a reflection of this country, the multi-ethnic aspect of this country and, for that matter, the whole of the political dimension in this country. The Members of the Opposition made claims that the Electoral Commission as presently constituted, reflects only the KANU position. I do not want to make this a subject of debate, but I want to say that this is not the case.

But be that as it may, we felt that on our side, it was important to make sure that Members of the Opposition and other political parties feel that they are also part of this composition. We felt that the composition of the Electoral Commission should become all-inclusive. How is that to be achieved? It will be achieved in this way: Instead of only fixing the minimum number of Members of the Electoral Commission - the Constitution now fixes the number to be four Members in addition to the Chairman - we should fix an upper limit. Previously, there was no upper limit. The upper limit is now supposed to be 21. Now, the question is: How then---

**Mr. Wamalwa:** On a point of order, Mr. Temporary Deputy Speaker, Sir. When I rose on a point of order earlier, and said that for the sake of records, we had better get the term being used by the Vice-President right, argued and talked about the schools that we went to. I do not want to contest that.

But I have with me here the Collins English Dictionary from the Library. It defines the word "deviant" as deviating from what is considered acceptable behaviour. Another meaning is a person whose behaviour, especially sexual behaviour, deviates from what is considered to be acceptable. That is the definition of the word "deviant". I still maintain that the Vice-President and Minister for Planning and National Development meant to use the word "divergent views".

**The Temporary Deputy Speaker** (Mr. Kariuki): Order! That is not a point of order but a point of information.

**The Vice-President and Minister for Planning and National Development** (Prof. Saitoti): Mr. Temporary Deputy Speaker, Sir, I think we should not indulge in a competition of semantics here. I also want to tell the hon. Member here that even that terminology as used, the person with those views also deserves to be listened to. So, within the general context, I think I am right on that.

Mr. Temporary Deputy Speaker, Sir, let me go back again to the composition of the Electoral Commission. What is being proposed here is that the number will now go up to 21 and it becomes the upper ceiling. So, 10 more members of the Electoral Commission will be appointed. I want to give the assurance to this House that these 10 people who are going to be made members of the Electoral Commission will not be appointed as a result of the

initiative of the Government side. It is not KANU that will give the list of the names of the people to be appointed. That is an agreement within the IPPG and we are going to honour it to the letter. We will not go back on the spirit of what was agreed in the IPPG. It is the political parties in the Opposition that will provide a list of the candidates to be appointed by the President as members of the Electoral Commission. I want to make that abundantly clear.

I know hon. Raila was worried about that point. But I want to make it quite clear that indeed, in the wisdom of the members of the IPPG, they saw that point and I wanted to give an undertaking of that from the Government. We have given that particular undertaking, and I think it is up to the various political parties, other than KANU, to start working out their own list. It is for the various political parties to propose these names. The Government side will not be involved in how they will work out the arithmetic and the formula. The Government wants them to submit a list and I think it is wise for them to submit a much bigger list. But they should keep in mind the fact that this is a multi-ethnic country. I do hope that the sort of nominees that they will present will be able to represent the length and breadth of this country. This is the position here.

I believe that with an Electoral Commission whose composition will be all-inclusive in matters of the political parties, and being hopeful that virtually every ethnic group will be represented, then we will have an Electoral Commission that will be able to undertake the job that we want done. There is, however, one rider I want to make here. The fact that the members of the Electoral Commission will have been nominated by various political parties---Let us hope that when they get to the Electoral Commission---

**Dr. Lwali-Oyondi:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for Prof. Saitoti to keep on referring to the "various" political parties when we recommended the parliamentary parties, and not "various"?

**The Vice-President and Minister for Planning and National Development (Prof. Saitoti):** Mr. Temporary Deputy Speaker, Sir, I think I am talking of "various political parties" as contained in this particular Bill. But I think the most important thing here is that once these 21 members are already in business, let us hope that they will see themselves as members of an independent Electoral Commission. We hope that they will sit down in the Electoral Commission and start saying that: "I represent a certain political party," or "this is the view of my own political party." If that happens, then the whole Electoral Commission will be turned into another Parliament. We hope that they will operate above that partisan politics. If they do not do that, they will not be in a position to achieve what they will have been appointed to do. I think that is important. I think that every political party that will nominate members, should be able to impress upon them, the moment they are elected as members of the Electoral Commission, to sit on it as Kenyans. They do not sit there as KANU, FORD(A) or NDP members. They will be sitting as Commissioners and Kenyans.

Mr. Temporary Deputy Speaker, Sir, it is also gratifying to note that this particular Bill has made other provisions to enhance the quality of the operations, or the work, of the Commission. The first one which has been made is the one that relates to the qualifications of the Chairman and the Vice-Chairman. Again, this is looking into the future rather than the present. It is important that at least a provision has been made to the effect that anyone appointed as a Chairman or a Vice-Chairman of the Commission will have to be a person who has held or is qualified to hold the office of the Judge of the High Court or a Judge of Appeal under the Constitution.

Those of us who are laymen as far as law is concerned do know for sure that in matters of elections, especially when it comes to the intricacies of the law, we require people who are fairly qualified to be able to interpret correctly the Constitution and the various statutes relating to matters of elections. Laymen cannot do that unless they are advised. It could very well be argued: "Why make that kind of provision in respect of the Chairman?" Why not just merely have somebody who is qualified?" If he wants to know what certain sections of the Constitution say, he can hire a lawyer. I think the lawyer may very well come and give his own interpretation. He could very well not be a qualified lawyer and it thus will also mean that the Commission will incur further expenses. I believe the best way is to take this critical path, where the persons who are the Chairman and the Vice-Chairman are already qualified. I think that provision is already there. I am a mathematician and not a lawyer. So, I am not going to say that the mathematician should be the Chairman rather than somebody from hon. Wamalwa's profession. So, I hope that the hon. Members will avoid the temptation of academic jealousies as far as this issue is concerned.

Once again, a very important provision has also been made in this Bill under Clause 7. I think all of us should embrace it. It is the one that requires that among the duties of the Electoral Commission will be:

1. to re-dedicate itself to promoting free and fair elections.
2. to promote voter education throughout Kenya.

There is no doubt at all that the two objectives are inter-twined. What we want is for the Electoral Commission to ensure, through its own supervision, that the conduct of the elections which are coming in the near future will be free and fair.

How can the Electoral Commission do that? The first thing that it can do is already embedded in the second

requirement; that is, to educate the voters and Kenyans generally. First of all, it should educate them on the fact that voting is a right enshrined in the Constitution; it is a right of every Kenyan. Secondly, it should educate the Kenyans about what the Attorney General mentioned in the Second Reading of the Statute Law (Repeals and Miscellaneous amendments) Bill; that aspect of the code of conduct. I am sure that the House will recall that we did discuss matters relating to the code of conduct; to be agreed to by every political and every candidate who is going to participate in an election. Every political party and every individual has to agree that they will refrain from indulging in matters of violence. This is because the moment you bring in violence, you deny people the opportunity to exercise their right. This is actually important. But I think the other thing which is important is that the Commission must embark on a major campaign to educate Kenyans that in a democratic society, it is not violence that changes the Government and it is not violence that brings change, but rather, it is the power of the ballot.

We must go further to urge Kenyans not to fall into the temptation of contributing to a culture of violence. Whatever little violence we do have must be eradicated from this country and the Electoral Commission should be on the forefront in urging Kenyans to totally reject the culture of violence because violence is completely contrary to free and fair elections. In the past, this proviso was not there and I do want to thank the members of the IPPG for their foresight in this matter. I think this one places a very major burden on the Electoral Commission in an area where, before, they could very well have decided to embark on it or they could very well have decided not to embark on it. But right now it is a requirement for the Electoral Commission to promote free and fair elections. But I think it is also important here that it must be ahead in terms of promoting voter education. We do have many other bodies, NGOs, who claim that they are giving voters education. Some of them may be genuine and they may very well be imparting the right knowledge. Others, due to lack of proper professional training on the part of the lecturers or the people who are mandated to give this education, probably, instead of giving the appropriate voter education, they end up misguiding the voter. I am not saying that you should remove them, but the most important thing is that the Electoral Commission should be on the forefront and consider this issue as part and parcel of its duty.

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

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

Mr. Temporary Deputy Speaker, Sir, the other proviso which is contained in Clause 9 of this Bill is the one that makes an addition to the fact that every Kenyan, irrespective of his creed colour or gender, should not be discriminated against. I think there was an omission in the Constitution as far as women are concerned. I do not think it was intended so, but it was believed in any case that women are included. I think we all agree that women should not be discriminated against, they should not be denied their rights at all which are enshrined in the Constitution. Once again, we do agree on that one, but again we should do so because we are now at an age where women are playing very important roles, and there is no way anybody is going to run away from the gender dimension. It is an important area as far as matters of public affairs are concerned.

Mr. Temporary Deputy Speaker, Sir, the other important issue which has also been brought here in the form of a provision and which I think we should accept, is the one that also allows the people who are normally aggrieved by the decision of the Electoral Commission or the whole process of election; they end up losing, and then they have to file a petition--- When they file a petition, the High Court is the final judge, and they cannot go any further. What has actually been done here is to ensure that for those who are petitioning for any election results, if indeed the High Court does not hand over the judgement which they want, they now have got access to the Court of Appeal, which I think is important.

Mr. Temporary Deputy Speaker, Sir, I want to say the following in my final remarks, namely, this particular Bill that is amending the Constitution endorses important but few matters that I have just alluded to. It is not exhaustive and it was not supposed to be exhaustive. To have been able to carry out a comprehensive review of the Constitution, we definitely would have required more time than we do have. But it is not even that alone; it would have required the involvement of as many Kenyans as possible. That could not be achieved within the period that we have because, whether we like it or not, we were elected for a period of five years. That is the mandate we were given by the Kenyan people; to be here for five years. There are arguments, and arguments will be there, that we can extend our mandate. I said yesterday that the general Kenyan public will consider it as an abuse of our own power if we sat down here and extended our mandate by more than the period we have been given. I do not believe in that and I will never be a party to that.

Mr. Temporary Deputy Speaker, the Constitution of Kenya Review Commission Bill which was introduced

by the Attorney-General yesterday is the one that will be able to carry on from where this Bill has left. That one will provide the Commission that will be set up with adequate time; a period of two years will be sufficient time for the Commission to be able to collect the views of all Kenyans, study them thoroughly and be able to make a report which will then come back to Parliament, be discussed here and then be brought in the form of a constitutional amendment Bill for this House to decide on its fate. At this particular time, we need to accept this Bill and this being a constitutional Bill and in keeping with procedures, a constitutional Bill is either approved or rejected in the form in which it is presented.

Mr. Temporary Deputy Speaker, Sir, it is upon the Members of this House to accept the Bill as it is, or reject it. But I do believe, and taking into account the encouragement of the Members of the IPPG, whose objective was to ensure that chaos is averted from this country, Members of Parliament will approve this Bill. For the sceptics, I believe we shall still have time for them later on after the General Elections. That is the most important thing. There are those who may very well say that unless some of their demands are met, there should be no elections. But again, I do want to remind those Members that democracy is about give and take. The moment you make a dictation and say that unless "what I stand for is fulfilled, then I am going to cause chaos, and I am going to make sure that the situation or the State is going to be ungovernable", then you cannot in any way describe yourself as a democrat. If anything, you can only be described as a fascist. I do want to appeal to every Member who says that "unless a comprehensive constitutional review is carried out now", in total disregard of what the majority of the Members have sat down and come up with, "then there is going to be chaos, the country is going to be ungovernable", you are not a democrat, but a fascist. I do not think that anybody who actually went through a democratic process wants to go through the disgrace of being described as a fascist. So, as I said yesterday, I hope that our own Members in this House who decided to embark on a furious attack on the IPPG report will change their mind because we are here to serve Kenyans.

Mr. Temporary Deputy Speaker, Sir, Kenyans love their country and they want a conducive atmosphere for it to be built for them. That is what they are looking for. They are looking upon this particular House to lay down the guidelines for a conducive atmosphere, so that they can enhance their political and economic status. We are not here to deny Kenyans what is justified for them and what is right for them. What is right to them is that we need to pass this IPPG package, and then when the General Elections should come, let the Kenyans decide. If they feel that we did make a mistake in formulating this IPPG package, then they are going to throw us out. If they do believe, and I am sure that they do believe, that we did the right thing, they are going to return us here. I hope that those who have been against the IPPG spirit, will be thrown out. As a matter of fact, in case you do not know, before the IPPG meetings were held, there was a lot of tension throughout the country and Kenyans were worried. The moment it came out that the Members of Parliament from various political parties had decided to set aside their political differences and get together to dialogue, it was a very major relief to Kenyans and that relief is still there.

Mr. Temporary Deputy Speaker, Sir, let us read the mood of Kenyans and the electorate properly because they do not want chaos in this country. Kenyans love elections because they want to be in a position to clean out those who have not served them well for five years. They will be able to throw you out. If you have not been close to your constituents, they are going to throw you out! There is no rhetoric which will make you get elected back here by your constituents. If you just go round and sing about matters of reforms and say that you want to create chaos, I am sorry, Kenyans will not be with you; they will throw you out. I am sure the majority of the IPPG members will be here, come the next Parliament. The majority of the sceptics are not going to be returned here by the Kenyans.

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

*(Question proposed)*

**Mr. Wamalwa:** Thank you, Mr. Temporary Deputy Speaker, Sir. I do not intend to take too much time in my contribution because I agree with much of what has been said by previous speakers.

Mr. Temporary Deputy Speaker, Sir, the constitution of a country is the property of its citizens. It is their property and, therefore, they should amend it as the conditions require those amendments and as citizens yearn for those amendments. I congratulate the opposite side in relenting, at last, to the amendments that have been proposed for so long. It used to pain me to hear Members of Parliament saying that, they had been elected and sworn in to defend the Constitution and, therefore, they would not support amendments to the Constitution. I think those views were grossly misguided. Defending the Constitution simply means defending it from being violated by any power or individual. It does not mean that, that constitution should never be amended because the constitution itself prescribes how it can be amended. So, at last, it is gratifying to see "poacher turn game-keeper."

Mr. Temporary Deputy Speaker, Sir, Section 1 which declares that the Republic of Kenya shall be a multi-party democracy, as simple as it sounds, is a very important declaration. At least, this means that in future a situation will not arise where, somebody gets elected by an 80 per cent majority, or a leader enjoys a 93 per cent

approval rating, like Tony Blair enjoys in England at the moment, and then turn round and try to scrap the existence of other parties.

Mr. Temporary Deputy Speaker, Sir, soon after gaining independence, most of Africa believed that there was no time to waste on opposition for the sake of opposition. It was important that Members of Parliament consider burning issues of the day and try to take action on them. Therefore, opposition for the sake of opposition, or unnecessary checks and balances, were a waste of valuable time. At that time, that declaration sounded proper, given the urgency of the problems that faced Africa at that time. But it was a declaration that put too much in the trust of one person who happened to be heading the country at that time. I do believe that a good democratic leader can actually implement democracy even under a one-party system, but there is no guarantee that every leader after him would be as good or be as inclined to honour democratic practices as that one particular leader. So, to make sure that the future of the country is not pegged upon the good intentions of the leader of the moment, it is good to declare, once and for all, that Kenya shall be a multi-party democracy and to change that would mean a constitutional amendment which would be proper.

Mr. Temporary Deputy Speaker, Sir, with regard to coalitions, in most multi-party democracies, there is no clause in their constitutions requiring that a president can form a government from Members of Parliament of various parties. In law, we understand that what is not expressly forbidden is a coalition Government. It is impliedly or tacitly accepted. So, once you have a multi-party system, you know that the eventuality of a coalition is a reality to avoid a hung Parliament and so forth. So, it is not usually necessary that this be spelt out in a constitutional document. But arguments have been adduced in this country that a coalition Government cannot be formed because it is not provided for in the Constitution and, therefore, the provision of this clause removes that misunderstanding and paves the way to avoid any hung Parliament or a minority Government in this country.

Mr. Temporary Deputy Speaker, Sir, what this country has gone through is nothing short of cataclysmic revolution in the sense, first, that the Opposition and the Government got together and responded to the real needs of the Kenyan people at a critical time. In fact, the basis of this legislation is rather unusual because Government Bills are usually brought by the Government of the day to be debated in the House, supported or opposed. But the origins of this Bill was the work of the concerted efforts of both sides of the House and that makes it a very unusual legislation. In a way, I am tempted to say that through the statutory and administrative reforms that we have just approved in this House, and through these constitutional amendments which are by no means comprehensive or complete, we are beginning to write Kenya's history in golden letters.

Mr. Temporary Deputy Speaker, Sir, I believe that out of the next General Election there will be a coalition in this country. My own estimate does not show me that any party is going to achieve an outright victory and a coalition Government is probably what is needed after the kind of experiences this country has just gone through. In fact, I would go further to say that a Government of national unity may be necessary in Kenya after the next General Elections in order to heal the wounds and wipe away the tears of those who have suffered so much.

Mr. Temporary Deputy Speaker, Sir, with regard to the Electoral Commission, the previous section simply stated that the President shall appoint an Electoral Commission of so many people. It did not specify and really no Constitution really ought to go into details of that nature, how the President could appoint those people. The President could have simply asked Members of the Opposition to suggest names that would go into a pool from which he would nominate or appoint members of the Electoral Commission. For me, this amendment again was not strictly necessary. It could have been achieved or what we are seeking to achieve could have been achieved simply by the President asking or inviting political parties to suggest names of honourable and upright Kenyans to form a pool from which he would have nominated an Electoral Commission. But since that was not done, it is good now that the President and the Government have relented and agreed that ten members of the Electoral Commission will come from the Opposition parties.

Mr. Temporary Deputy Speaker, Sir, as far as the Electoral Commission is concerned, it is imperative that the Electoral Commission be truly independent. In this case, it should be truly independent from any interference of any nature from the Provincial Administration. The Civil Service is a very essential part of any country and the Provincial Administration has been part of that Civil Service. In my own opinion, time for the Provincial Administration has run out. The origins of the Provincial Administration were that it was a device by the colonial power to keep very close tabs on the natives through chiefs, DOs, DCs and PCs. In this country it is very interesting because its own development strategy, which is the District Focus For Rural Development, just take that for example, completely ignores the office of the provincial commissioner. Funds from the Ministries go directly to the district and they bypass the province. One is beginning to wonder what the work of a provincial commissioner in Kenya is today. In fact, PCs have become an acronym in this country. If you go further down and ask what a DC does, you will be surprised. If you go any day to a DC's office and ask to see him, you will be told he is chairing the District Agricultural Board. You will ask yourself: "Is this DC an expert in Agriculture; is he a soil chemist, for example?" The answer is: "He is not,



and quite often he is probably an O-level or an A-level graduate or whatever, but he is not a specialist in anything. If it is a question of education, we have district education officers, and in agriculture, there is a district agriculture officer who can deal with it. These are all trained people, experts, and some with tremendous experience. They could do such jobs without a DC chairing their meetings.

Mr. Temporary Deputy Speaker, Sir, we find that there has been undue interference in the electoral process by the Provincial Administration and I am glad that the letter and spirit of these reforms that we are effecting seek to cut out that unwelcome interference from the Provincial Administration. In order for the Electoral Commission to be truly independent, I believe, it should have the power to recruit not necessarily by training but to supervise the police themselves. The police, on election day, should be under the supervision of the Electoral Commission. They should take orders from the Electoral Commission and not from anybody else. In that way, the Electoral Commission would be able to carry out its work without undue interference from other quarters.

Mr. Temporary Deputy Speaker, Sir, then there is the little matter of the remuneration of members of the Electoral Commission. At the moment, members of the Electoral Commission are very well paid. They earn very fat allowances. In fact, I think they are being overpaid. Members of the Electoral Commission can claim their allowances even when they are sleeping in their beds on a Sunday and doing nothing that could be described as the work of the Electoral Commission. I think this ought to be looked into. Let them be well remunerated by all means, but to be paid allowances even on a Sunday, holidays and even when they are working on their own farms, I think, this is taking it a bit too far. It amounts more or less to bribing these people rather than remunerating them.

Mr. Temporary Deputy Speaker, Sir, I would like to touch a little on the nominations of Members of Parliament.

**The Attorney-General** (Mr. Wako): On a point of information, Mr. Temporary Deputy Speaker, Sir. I just wanted to inform the Leader of the Official Opposition that in the code regulating the Electoral Commission which I think is contained in the Second Schedule to the proposed National Assembly and Presidential Elections Act, we have now defined what an Electoral Commission meeting is. This is because prior to that, maybe, the definition of what a meeting was or what it was perceived to be was so wide as to include the very things that you are objecting to. But that has been so far taken care of.

**Mr. Wamalwa:** Mr. Temporary Deputy Speaker, Sir, well, I do thank the Attorney-General for that information. It is most welcome. Like I said, these reforms are going to get rid of a lot of rough edges that have existed until now.

Mr. Temporary Deputy Speaker, Sir, on the nomination of the 12 specially elected Members, the intention of this institution was to give the Kenyan Parliament quality people who had not sought election themselves; experts in certain areas or people from certain minority areas who could not make it to Parliament. I am afraid to say that the history of the nominations has been rather abused. We had people nominated to this Parliament, who are not experts in anything and who did not have any special knowledge that they could impart to the proceedings of this House. We had nominated Members who could not even read or write, and one wonders how these people qualified to be nominated to these positions.

I hope that when the parties make their nominations, they will take into account the fact that there are many qualified and experienced Kenyans who could be useful and contribute meaningfully to the proceedings of this House, but who themselves may not seek elective posts. I am very glad about this amendment which takes cognisance of the need to give special attention to gender; that there are many women in this country who will not seek election but who could be very useful to this House. I can promise that when my own party gets a chance to nominate Members of Parliament, we will definitely pay very special attention to gender.

Mr. Temporary Deputy Speaker, Sir, the question of appeal is again very welcome. For me, the quest for justice really should stop at no point. The quest for the aggrieved party to get redress, for me, is a process that goes up to God. So, this question of "you could not appeal beyond the High Court", and yet the Court of Appeal was there, was denying the aggrieved party redress and resort to an institution which was actually in existence. It is not like when we are talking about Gods who we cannot reach; the Court of Appeal was there and yet somebody who was aggrieved could not have access to it. I think this was a denial of justice.

The Attorney-General tried to explain that the reason might have been because of the previous existence of the Court of Appeal of East Africa. I do not know whether that reason holds any water, because even if the Court of Appeal of East Africa (CAEA) was there, and it was a matter of human rights from Kenya, the judges sitting in the CAEA would apply Kenyan law to give redress to the aggrieved individuals. They would not apply East African law. That is why, before we became a Republic, one here could appeal all the way to the House of Lords and so forth. Even at the International Court of Justice, we hear cases of human rights.

**The Temporary Deputy Speaker** (Mr. Wetangula): ... (*inaudible*). So there was no difference.

**Mr. Wamalwa:** Well, you have to sort that out with the Attorney-General, Mr. Temporary Deputy Speaker,

but I think he was talking about East Africa after Independence. But still, that would not have denied the judges of the CAEA hearing a human rights matter referred to it by Kenyan citizens. They would simply apply Kenyan law to give redress to that individual.

Mr. Temporary Deputy Speaker, Sir, these reforms collectively, as I said at the beginning, are not comprehensive; they may not be satisfactory, but they are a step in the right direction. The fact that the Government has agreed to the amendment of the Constitution, something which the same Government had resisted for so long, I think is also a step in the right direction. I want to exalt Members of Parliament in the Inter-Parties Parliamentary Group (IPPG) and those in the National Convention Executive Council (NCEC), all of whom I have tremendous respect for, that this is our country and this is the Constitution of our country. What we did not manage to do today, we can always do tomorrow.

Thank you, Mr. Temporary Deputy Speaker.

**The Minister for Foreign Affairs and International Co-operation** (Mr. Musyoka): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me the Floor to associate myself with the sentiments expressed by previous speakers. I have just come from New York, and I was able to make presentation of the paper that was, obviously, reflective of the position of Kenyans with regard to international opinion. I took that opportunity to pay special tribute to His Excellency the President and to all those in the IPPG who have actually done this country proud. I was able to inform the international community that this country is on the right track. I was able to also tell the international community that this country has been able to undertake painful economic as well as political reforms. I know, one can argue on whether political reforms are indeed painful or not, but what is important is that the international community and this country hail that spirit.

The principle of constitutional legality has been addressed at length at the consultative fora (IPPG), and I think it even went further than that. The fact that this country is committed to constitutional legality is a matter that does not need re-emphasis.

I want to briefly touch on some of the salient issues that the Attorney-General ably moved, and also congratulate him for his patience and commitment to the process of the reforms. Section 2, for instance, as the Leader of the Opposition has tried to expound, declares that this country shall be a multi-party democratic State. Of course, "shall" is mandatory. I would even like to elaborate further, but I know it could be done at a later stage when Parliament approves the Constitutional Review Bill, which will give Kenyans the opportunity to submit their views before the Commission.

Perhaps, at that stage, I will have the opportunity to argue on the need for a further elaboration of that particular clause, so that we can deal specifically with the secularity issue in this country in view of the fact that we are multi-racial, multi-religious, multi-ethnic and multi-party democratic State. This will be, in fact, for the avoidance of doubt, because the conflicts that you hear raging in Sudan have a lot to do with the principle of secularity. The Sudan Government does not want to hear that: Sudan shall be a secular state. To them, that is an anathema.

It is important that we take precaution as a country, perhaps at a later stage, to be able to declare our stand on this important matter. However, we know that when it comes to the question of the Constitution, we hold this as a sacrosanct document which is supreme law of the land. I know all of us are aware of the fact that the more a law is seen to be inconsistent with the provisions of the Constitution, the more void it is. Therefore, what the Leader of the Opposition has just mentioned amounts to natural justice, which should not only be done, but manifestly be seen to be done. Even in our courts of justice, we end up only at the High Court after the elections, as it is the final authority on election petitions. According to me, I feel that this one is one of the provisions inconsistent with the Constitution. Therefore, it should be void. But, nevertheless, I am happy to see that this matter has been redressed.

I also want to mention that the international community pays tribute to this country, and this is what makes a difference between Kenya and other countries in our sub-region, including other world nations. Of course, no one takes pride in the fact that there are so many conflicts in our sub-region. We all know that there is conflict raging in Congo Brazzaville, and after the disappearance of more than 300,000 men, women and children in the Democratic Republic of Congo, following a conflict there. We are now, unfortunately, witnessing another huge conflict in the Republic of Congo-Brazzaville, which is a stone's throw away from Kinshasa, Zaire. Therefore, we continue to witness instability. I think the international community, and African States for that matter, can learn a lesson from the experience of the Inter-Parties Parliamentary Group (IPPG) spirit. That is why I cannot help, but continue to see that the spirit of the IPPG continues even to the next millennium, because that is what will continue to bring honour and dignity to this country.

There, I had the opportunity to address the Special Session of the United Nations Security Council on the conflicts in Africa, during the present Presidency of the US in the month of September. It occurred to our friends, the Americans, that they call for a special session in order to address the simmering problem of conflicts in Africa. When I had the opportunity to address the Session, I was again able to briefly touch on, without necessarily highlighting

matters of national character, the fact that this country, Kenya, can provide an example in terms of conflicts prevention. We believe in conflict prevention; not necessarily awaiting for a conflict to occur and then trying to resolve the same. Therefore, this gives us, and His Excellency the President, the moral authority to continue in arbitrating some of these conflicts. I think it is very important that we as Kenyans feel proud of the achievement of this Parliament. In fact, as we draw closer to the business before this House, I would urge that all of us feel that we are part and parcel of each other. At the end of the day, we belong to a country called Kenya, and therefore, the need to safeguard national interests and not selfish partisan interests. I think it is a very important matter.

The rest of the world is preparing itself to enter the next millennium. We should also prepare ourselves, as Kenyans, to enter the next century a united country. And, as I said at the beginning, a country that can truly pride itself in matters of Constitutional legality--- The principle of the rule of law is a very essential commodity. I want to pay tribute to the founding fathers of this country. I know that the Member for Butere must have been there in 1965, when they took the opportunity to clearly pronounce themselves and Sessional Paper No.10 of 1965 on African Socialism and its application to development in this country. That is what has kept us going; that spirit of 1965 has kept this country going.

Mr. Temporary Deputy speaker, Sir, through the spirit of the IPPG, it is my humble submission, that we will continue to lead this country in the right direction. Also, when it comes to attempting and preparing the ground for elections, I will personally wish to see that, when it comes to amending the regulations under Cap. 7 on the National Assembly and Presidential Elections, we will try and make it simple. From practical experience, it becomes extremely difficult to be able to organise documents that have to be sworn before a Commissioner of Oaths.

**Dr. Kituyi:** On a point of information, Mr. Temporary Deputy Speaker, Sir. Thank you honourable Minister. I wish to inform you that Sessional Paper No.10 of 1965 on African Socialism and its application to Kenya, basically gave a rhetorical socialist populist veneer to a fundamentally capitalist "greedy" economy. It never imbued this country with the spirit that has kept us together. It went contrary to the social virtues of this country.

**The Minister for Foreign Affairs and International Co-operation** (Mr. Musyoka): Mr. Temporary Deputy Speaker, Sir, I beg to differ with the Member for Kimilili on that. However, he is entitled to his opinion. In fact, he reminds me that what we should be addressing now is the current political and economic order in the world, as it really tries to wrestle with the problems of globalization, and with regard to this continent's marginalisation. We would have continued to cry that we have been marginalised, if we did not do what the IPPG did; get together in moments of crisis. This is what is unique about this country. Kenyans are so sensitive to good life that they refused to believe in isms of that time. I think that was a deliberate attempt to say that we are not capitalists, because our brothers across on the other side were saying we are a man-eat-man society when, of course, Kenyans would say, "you are also a man-eat-nothing society," and that complicated the spirit within our sub-region.

Mr. Temporary Deputy Speaker, Sir, however, what is clear is that we are on the right track and, I was actually saying that I hope that the regulations to Cap. 7 will also be attended to, so that you do not have to get Civic and Parliamentary candidates looking for very expensive Commissioners of Oaths. A lot of these documents are very expensive, making it almost impossible to be able to comply with the provisions of Cap. 7. I know this is outside the particular Bill that we are addressing and I want to whole-heartedly support this. I also call on our friends, the international community, to fully support the spirit of the IPPG.

Mr. Temporary Deputy Speaker, Sir, I want to thank hon. George Anyona, the Member for Kitutu Masaba, for having been so gracious as to bring to me copies of the recommendations by the IPPG. I took the opportunity to distribute them as expeditiously as I could to all our embassies and missions abroad. I want to tell you that investors are very happy with it. If we continue to nurture this spirit, we must also be able to call a spade a spade, and if there are some people amongst us who believe in extremism, we should be able to tell them so. I think it is proper to isolate them so that we have the majority of these Kenyans addressing issues of peace because if we do not do that, they will scare away investors. How else are Kenyans going to address the issues of unemployment and investment because the world today is competing for resources? If we do not want investors in this country, for goodness sake, they will not come. If we do not want tourists to visit the beautiful tourist spots that we have in this country; a combination of sea, wildlife and equatorialism, they will go to South East Asia.

Mr. Temporary Deputy Speaker, Sir, if we want this country to be a lion following the Asian Tigers, we have to be sensible and safeguard our national interests and what is in the best interest of this country. I, therefore, sincerely want to again, congratulate the hon. Members and particularly those who actively participated in the IPPG forum. I know that, in fact, the members of the international community are fully supportive, even as the missions accredited to this country are fully supportive. We want them to continue. We even want them, if they get that opportunity, to talk to the extremists because if we get everybody on board, that is what Kenyans want. Kenyans feel that their basic human rights are threatened. Every time you feel that you cannot sleep because a Member of Parliament writes in a very unorthodox manner to the Secretary-General of the United Nations saying: "There is a

red-light in Kenya and we think there will be a conflict..." It does not make sense and it is a big shame that we should highlight ourselves and be seen to be extremists of that kind.

I want to thank you, Mr. Temporary Deputy Speaker, Sir, and I support this Bill.

**Mr. Shikuku:** Asante sana, Bw. Naibu Spika wa Muda, kwa kunipa fursa hii. Hapa--

**Mr. Raila:** On a point of order, Mr. Temporary Deputy Speaker, Sir. The Chair had ruled earlier on that you are could also give an opportunity to those hon. Members who are opposing this Bill. But what is happening now is that you are only giving those hon. Members who are supporting this Bill an--

**The Temporary Deputy Speaker (Mr. Wetangula):** Order, Mr. Raila! The Chair is in no position to know what is in your mind, whether you are opposing this Bill or not.

Proceed, Mr. Shikuku.

**Mr. Shikuku:** Bw. Naibu Spika wa Muda, waheshimiwa Wabunge wengine wanafikiria wao ni waheshimiwa kushinda wengine, lakini ukweli ni kwamba--

**Dr. Otieno-Kopiyo:** On a point of order, Mr. Temporary Deputy Speaker, Sir. We are not going to have this because last week, when we were debating The Statute Law (Repeals and Miscellaneous Amendments) Bill, the Chair insisted on giving hon. Members with the same views the opportunity to speak and Mr. Martin Shikuku spent all his time abusing us. We had no opportunity to reply--

**The Temporary Deputy Speaker (Mr. Wetangula):** Order! Order, Dr. Otieno-Kopiyo!

**Dr. Otieno-Kopiyo:** I must be heard. Was I nominated or elected to Parliament?

**The Temporary Deputy Speaker (Mr. Wetangula):** Order! Order, Dr. Otieno-Kopiyo! That is absolutely irrelevant. You must know that one of the issues we take into account when we give hon. Members the Floor is first, Opposition and then KANU. Secondly, when we come to your side, we take into account the party leaders. We started with Mr. Wamalwa and now I have given Mr. Shikuku a chance to speak. You are not a party leader, although that is not a criteria, but this is a guidance. If Mr. Kibaki was here and he wanted to speak, he would have taken the first chance before Mr. Shikuku. That is the general principle that we apply here. Then we also apply the issue of gender parity and so on. Besides that, Dr. Otieno-Kopiyo, as I told you, I have no capacity to know whether you want to oppose or support this Bill. That is not an issue to raise here either.

Proceed, Mr. Shikuku.

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

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

**The Temporary Deputy Speaker (Mr. Wetangula):** You are out of order! The two of you are now misconducting yourselves. Dr. Otieno-Kopiyo, would you leave!

**Dr. Otieno-Kopiyo:** No, this is intimidation; I have a right to express my opinion! I am not a nominated Member of Parliament. I was elected to this House.

**The Temporary Deputy Speaker (Mr. Wetangula):** Order! Order, Dr. Otieno-Kopiyo! You are now a stranger; will you leave! For the rest of the afternoon, you are a stranger in this House.

*(Dr. Otieno-Kopiyo left the Chamber)*

**The Temporary Deputy Speaker (Mr. Wetangula):** Carry on, hon. Shikuku!

**Mr. Shikuku:** Asante sana, Bw. Naibu Spika wa Muda. Wengine wetu tumekaa hapa miaka nenda miaka rudi lakini hatujawahi kuona mambo kama haya yanayotokea. Hata hivyo, nina karatasi ambayo ina maoni ya NCEC. Na haya maoni yalikuwa sita tu, lakini wakati huu tunazungumza juu ya minimum constitutional reforms. Tumemaliza habari ya statutes na kadhalika na sasa tuko kwa constitutional amendments. Hii ndiyo karatasi ya maoni tuliyoafikia, kama wanachama wa NCEC, huko Limuru.

*(Dr. Misoi and Prof. Ng'eno consulted loudly)*

**Mr. Achieng-Onoko:** On a point of order, Mr. Temporary Deputy Speaker, Sir. We are asking Members on the opposite side to consult quietly because we are concerned with what is going on.

**The Temporary Deputy Speaker (Mr. Wetangula):** I think Dr. Misoi and Prof. Ng'eno, you have been consulting rather loudly.

Proceed, hon. Shikuku!

**Mr. Shikuku:** Asante sana, Bw. Naibu Spika wa Muda. Inafaa ukweli usemwe.

*(Dr. Misoi stood up in his place)*

**Prof. Mzee:** Why are you standing up?

**Mr. Obwocha:** Kama *manamba!*

**The Assistant Minister, Office of the Vice-President and Ministry of Planning and National Development** (Dr. Misoi): Mimi si *manamba!*

**Dr. Kituyi:** Jambo la nidhamu, Bw. Naibu Spika wa Muda. Hata ikiwa mhe. Misoi amekubali kwamba yeye ni *manamba* kama vile alivyoitwa na mhe. Obwocha, je, inafaa aendelee kuonyesha huo *umanamba* huku akitatiza Mswada ulioko katika Bunge?

**The Assistant Minister, Office of the Vice-President and Ministry of Planning and National Development** (Dr. Misoi): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for hon. Obwocha and Dr. Kituyi to make such outrageous statements that I am a *manamba*? I am an hon. Member of Parliament elected by the people of Eldoret South. I cannot be a *manamba*, unless they are *manambas* themselves.

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

**The Temporary Deputy Speaker** (Mr. Wetangula): You are out of order!

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

**The Temporary Deputy Speaker** (Mr. Wetangula): You are out of Order! Hon. Obwocha, you cannot benefit from your own mischief! Proceed, Mr. Shikuku!

**Mr. Shikuku:** Bw. Naibu Spika wa Muda, ukweli ni kwamba, kule Limuru tulikuwa na watu wote na mmoja kutoka upande wa KANU. Lakini kila mtu alitwa, na mambo tuliyoyapitisha ni---

**Prof. Mzee:** On a point of order, Mr. Temporary Deputy Speaker, Sir. After messing with teachers' salaries, I am wondering whether hon. Kamotho is still a Minister. Why is he sitting on the Front Bench?

**The Temporary Deputy Speaker** (Mr. Wetangula): Order, Prof. Mzee. That is the most frivolous point of order we have had this afternoon. Stop interrupting Mr. Shikuku. Let him make his contribution.

**Mr. Shikuku:** Bw. Naibu Spika wa Muda, pengine waheshimiwa Wabunge wengine hawajui umuhimu wa Katiba. Katiba ni kitu kikubwa. Mimi na wengine waliokufa tulijaliwa kuandika Katiba ya kwanza ya nchi hii. Kwa hivyo, ninajua kile ninachosema. Katiba hiyo ndiyo ilituletea Uhuru. Wakati wa ukoloni tulikuwa na nominated Members wanne. Tulipigania kuongezewa idadi ya Wabunge na tukaongezewa mpaka wanane. Tulizidi kuuliza kuongezewa Wabunge na tukaongezewa mpaka 14 na kutoka hapo, tulipewa Wabunge 31. Wakati huo, Bunge hili lilikuwa na Wazungu watupu, lakini siku hizi kuona Mzungu hapa imekuwa ni shida. Wabunge wengine hapa hawana habari. Wanavuna kile tulichopanda sisi. Na tukisimama, yafaa wanyamaze kimya na wasikize. Katiba ni kitu kikubwa, na hii Katiba ya sasa, katika Kifungu cha pili, inasema: "The Republic of Kenya shall be a multi-party democratic State." Hilo ni jambo kubwa ambalo limekuja kwa sababu mtu mmoja anayeitwa Makhumba aliuawa tarehe 16, Novemba, 1991, katika uwanja wa Kamukunji. Tulienda Kamukunji kuleta demokrasia kwa sababu kulikuwa sheria, na katika nchi hii---

**Mr. Obwocha:** You did not bring multi-partyism; you only restored it.

**Mr. Shikuku:** Bw. Naibu Spika wa Muda, yafaa yule kijana anayezungumza nikizungumza ashike adabu. Siku hiyo, kijana wa miaka 24, Bw. Makhumba, kutoka Butere---

**Mr. Obwocha:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I have a lot of respect for hon. Shikuku, but is he in order to refer to me as a "kijana" at the age of 48 years?

**Hon. Members:** Aah! Only 48 years?

**The Temporary Deputy Speaker** (Mr. Wetangula): Mr. Obwocha, as far as the Chair is concerned, the description of kijana is not unparliamentary and it is purely relative to age.

**Mr. Shikuku:** Bw. Naibu Spika wa Muda, huyo kijana wa miaka 24, kutoka Butere, ni mmoja wa wale waliopigwa risasi siku hiyo. Tulipoteza kijana mmoja kwa sababu tulitaka kuondosha kile kifungu cha Katiba kilichofanya Kenya kuwa nchi ya chama kimoja cha kisiasa. Hiyo sheria ya kufanya Kenya kuwa chama kimoja ililetwa hapa mwaka wa 1982, na maajabu yalifanyika katika Bunge hili. Mswada huo uliwasiliswha hapa na aliyekuwa Mkuu wa Sheria wa wakati huo, Bw. Njonjo. Alipomaliza kuzungumza tu, aliyekuwa Makamu wa Rais wakati huo, Bw. Kibaki, alisimama na kuunga mkono kinaganaga Mswada huo. Haya yote yameandikwa katika HANSARD. Aliunga mkono Mswada huo wa kuhalalisha chama kimoja nchini. Nilimtazama tu, Bw. Kibaki. Tulifikiria ya kwamba tungepata nafasi ya kuzungumza kwa vile wakati huo tulikuwa na chama kimoja tu - *de facto*. Wakati huo tulikuwa tukijadili Mswada wa kufanya Kenya kuwa na chama kimoja, *de jure*. Tukifikiria kwamba tungeweza kuzungumza baada ya mhe. Mbunge kuwasiliswha Mswada huo na kuafikiwa na mhe. Kibaki. Lakini Bw. Spika akapendekeza kuwa Mswada huo usomwe Mara ya Pili kulingana na Kanuni za Bunge. Papo hapo, mhe. Biwott akasimama na kupendekeza mwisho wa majadiliano ya Mswada huo. Ni lazima watu wajue historia yetu na jinsi uchungu wetu ulivyokuja. Tulifungiwa kuzungumza na pendekezo la kusimamisha mazungumzo ya Mswada

huo likapitishwa mara moja. Serikali ya kiimla ni mbaya sana!

Bw. Naibu Spika wa Muda, ninamshukuru Mkuu wa Sheria kwa kusema maneno mazuri hapa. Kwanza, tulikuwa na demokrasia ya vyama vingi na baadaye, tukasema kuwa tulitaka umoja, mapenzi na kila kitu. Waheshimiwa Wabunge wa chama cha African Peoples Party (APP) wakati huo wakiongozwa na mhe. Paul Ngei walihama Upinzani na kujiunga na KANU. Baadaye waheshimiwa Wabunge wa KADU, mmoja mmoja, walijiunga na chama cha KANU. Uhamaji wa waheshimiwa Wabunge kutoka chama kimoja hadi kingine ulianza wakati huo. Waheshimiwa Wabunge wakahama vyama vyao---

**Mr. Obure:** Hata wewe ulihama chama cha KANU!

**Mr. Shikuku:** Mhe. Obure, anasema hata mimi nilihama KADU na kujiunga na KANU. Unaona utovu wa nidhamu wa watoto hawa!

Bw. Naibu Spika wa Muda, ni mimi tu ambaye nilibaki katika chama cha KADU katika Kenya. Nilisema kuwa demokrasia haiwezi kupatikana tukiwa na chama kimoja cha siasa. Nilibaki peke yangu katika Upinzani Bungeni.

Ninakumbuka mhe. Mbunge mmoja alisimama kwa jambo la nidhamu na kuuliza marehemu Humphrey Slade, aliyekuwa Spika wa Bunge; "Bw. Spika, tukiingia Bunge hili, sisi huomba. Na baada ya sala, wewe huinama upande wa kulia wa Serikali na upande wa kushoto wa Upinzani---"

**The Assistant Minister, Office of the President** (Mr. Shamalla): On a point of information, Mr. Temporary Deputy Speaker, Sir. If my memory serves me right, hon. Shikuku, at that particular time, resisted crossing over. Nevertheless, he eventually did cross over. However, hon. Towett did the most honourable thing by resigning and seeking a fresh mandate.

(Applause)

**Mr. Shikuku:** Bw. Naibu Spika wa Muda, ajabu ni kwamba mhe. Shamalla amesimama na kulipotisha Bunge hili, lakini tulimsahihisha. Wakati huo, hakukuwa na sheria hiyo. Sheria ya kumtaka mtu anayejiuzulu Ubunge, ama kukihama chama kimoja hadi kingine, kupigania uchaguzi tena, ilianza mwaka wa 1966, na si wakati huu.

Wakati huo, marehemu Bw. Humphrey Slade, aliyekuwa Spika, aliulizwa kama angetoa heshima kwa mtu mmoja. Alisema - uamuzi wake uko katika HANSARD - angetoa heshima kwa Serikali, Bunge lote na baadaye, kwa mhe. Shikuku. Nilikuwa nimepewa kiti peke yangu katika Bunge hili. Ukweli unadumu. Kitu ambacho binadamu hataki ni ukweli. Niliwaambia watu kwamba hakuwezi kuwa na demokrasia tukiwa na chama kimoja. Nataka kutoa pongezi kwa marehemu Mzee Kenyatta. Yeye alijaribiwa na kuambiwa tuwe na sheria ya kuwa na chama kimoja na marehemu Bw. Oginga Odinga, lakini alikataa na akaacha kila kitu wazi. Tuliendelea katika mfumo wa *de facto*, one-party State.

Lakini katika mwaka wa 1982, Rais Moi na Bw. Njonjo walileta sheria ya chama kimoja, na ikapitishwa vile ambavyo nimeeleza. Tumeendelea na utawala wa kiimla mpaka sasa. Hungeweza kusema. Kama ningesema kitu, kamati ya KANU ya Butere ingekaa chini na kusimamisha uanachama wangu katika KANU. Kamati ya KANU ya Wilaya ya Kakamega pia ingeidhinisha kusimamishwa kwangu. Mwishowe, ningelitwa hapa Nairobi na kufukuzwa kutoka KANU kabisa! Wengine tunapozungumza hapa, tumeyaonja mambo haya. Ungechaguliwa kwa kura 31,000 lakini watu wachache huko Butere wangepewa kama kamati ya KANU na kupitisha kuwa hawakukutaka kwa sababu wamepewa "maagizo kutoka juu". Ulipoitwa hapa Nairobi, ungemkuta marehemu Okiki Amayo akikungojea. Yalikuwa mambo makubwa! Tusiseme maneno hapa na hali hutujui taabu baadhi yetu walizopata. Sisi wengine tumeona taabu sana. Tuliitoka kwa demokrasia tukaingia katika utawala wa kiimla, na sasa tunarudi tena katika demokrasia. Ninamshukuru Mungu na naomba asifiwe.

Sisi wengine tulipata taabu sana. Nakumbuka wakati mmoja niliitwa na kuambiwa ningelifukuzwa KANU. Nilipata watoto ndio waliokuwa wameitwa kuniuliza maswali. Kulikuwa na mhe. Katana Ngala na Bw. Lijoodi. Niliwaambia Mabwana Lijoodi, Katana Ngala na Njoroge Mungai waliokuwa kwenye kamati hiyo ya kunihoji, kwamba wao wote walikuwa shuleni wakati nilipokuwa nikipigania Uhuru. Bw. Lijoodi alisema yeye alikuwa shule, na akaniambia mimi singeweza kusema tena huko Butere. Aliniambia ni lazima nichaguliwe katika lokesheni ndogo. Niliposhinda kwenye lokesheni ndogo, KANU ilisema singeweza kupigania uchaguzi wa lokesheni kwa sababu ningeshinda uchaguzi katika lokesheni na tarafa. Wakati huo, Bw. Lijoodi ambaye alikuwa Mbunge, aliniambia: "Huna haki ya kusema maneno yoyote kuhusu KANU. Sema maneno yako yote katika sub-location yako!! Mimi nilimwambia: "Wewe, kura itakapokuja, nitakwenda Ikambiri na Khayega na hutakuwa Mbunge." Kwa hivyo, nilipopita Ikambiri na Khayega, mhe. Lijoodi hakuwa Mbunge tena, na ndipo huyu mhe. Shamalla akaja hapa.

(Applause)

**The Assistant Minister, Office of the President** (Mr. Shamalla): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is hon. Shikuku in order to suggest that I and Mr. Lijoodi are very much the same, and if it was not for him, I would not be a Member of Parliament today? I accept that hon. Shikuku and myself have had "*ugali*" somewhere on equal terms.

(Laughter)

I agree that he is senior in politics than myself. But is he in order to continue implying that it was real "*ugali*?" Is Mr. Shikuku in order to insinuate that I am not here on merit and that I came here through him?

**The Temporary Deputy Speaker** (Mr. Wetangula): Mr. Shamalla, is it not common knowledge that you first came here with his assistance?

Carry on, Mr. Shikuku!

**Mr. Shikuku:** Ahsante, Bw. Naibu Spika wa Muda. Mimi sina ugomvi na mtu yeyote. Ninaeleza ile taabu niliyopata katika KANU, na taabu iliyonifanya nimwambie Bw. Lijoodi kwamba hangeliona Bunge hili tena. Nilimwambia ningepitia Ikambiri na Khayega, na hapo angepoteza Ubunge wake. Mhe. Shamalla anajua kwamba hayo yote yalitendeka kama nilivyosema.

**Mr. Mulusya:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I am sure you heard it clearly from hon. Shamalla that both Mr. Shikuku and himself ate *ugali* somewhere. There has been speculation that in 1992 both of them went to State House and ate *ugali*. Is it not in order for the hon. Shamalla to say which *ugali* they ate? Is it that one of 1992 or it is an earlier *ugali*?

**Mr. Shikuku:** Bw. Naibu Spika wa Muda, mhe. Shamalla amesema jambo zuri. Mimi nilitangaza habari ya huu *ugali* kwa magazeti, na nikawaambia yale niliyokuwa nimesema na Mtukufu Rais Moi kule kwake aliponiita kwa chakula. Tulikuwa na mhe. Shamalla na yeye amethibitisha kwamba tulikuwa pamoja. Tuliitwa kwa chakula na Mtukufu Rais Moi na mimi mwenyewe nililitangaza jambo hilo. Si watu wa magazeti walioligundua. Tunajua kwamba Wabunge wengi wamekwenda huko kisiri na hawajatangaza. Wakati huo, yale niliyomwambia Mtukufu Rais, mhe. Shamalla aliyasikia kwa sababu tulikuwa na yeye kwa muda huo wote. Nilimwambia Mtukufu Rais kwamba hangepata hata Mbunge mmoja kukoka Mikoa ya Kati na Nyanza. Alinipinga kuhusiana na Mkoa wa Nyanza, lakini nikamwambia kwamba angepata kati ya asilimia 35 na 40 za kura za Mkoa wa Magharibi. And thus it came to pass. These are the words I told the President in his own house, and you can check with him. Kwa sababu Wabunge wengine wanapenda mambo ya kichinichini, wanafikiri kila mtu yuko kama wao. Mimi ndiye niliyetangaza kuwa nilikuwa nimeitwa na Rais Moi. Wabunge wengi wanakwenda kwa Rais Moi bila ya kusema chochote.

**Mr. Obwocha:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Could the "people's watchman", who is very honest, tell us who the third person was? It is alleged that they were three people who ate the *ugali* and two of them have been identified. Could he tell us the third person who was with them, whom we know is a prominent lawyer in town?

**Mr. Shikuku:** Bw. Naibu Spika wa Muda, ninazungumuza kuhusu Wabunge, na si juu ya watu wengine.

**The Minister for Foreign Affairs and International Co-operation** (Mr. Musyoka): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it really up to the dignity of the House to discuss *ugali* here? I am a little at a loss.

**Mr. Shikuku:** Bw. Naibu Spika wa Muda, hakuna ubaya kwa mtu kuongea kuhusu *ugali*. Ni Mbunge gani ambaye hali *ugali*? Kama anakula *ugali* na anajidai hali, kwa Kiingereza, yeye ni hypocrite.

Ningependa kuwaeleza juu ya demokrasia. Demokrasia haiwezi kupatikana. Lakini inaweza kupatikana kwa sababu ya kifo cha Makhumba, ambaye aliwawa. Sasa watu wengi wanataka kupigania uchaguzi unaokuja. Ni nini ambacho wanataka kuifanyia Kenya?

#### ADJOURNMENT

**The Temporary Deputy Speaker** (Mr. Wetangula): Order, hon. Shikuku! You will carry on tomorrow.

Hon. Members, the House is adjourned until tomorrow, Thursday, 16th October, 1997, at 2.30 p.m.

The House rose at 6.30 p.m.