

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday 8th November, 1995

The House met at 9.00 a.m.

[Mr. Speaker in the Chair]

PRAYERS

ORAL ANSWERS TO QUESTIONS

Mr. Speaker: Mr. Nthenge! Question No. 818!

Question No. 818

PAYMENT OF MR. SOVE'S PENSION

Mr. Speaker: Is Mr. Nthenge not here? We will leave his Question until the end. Let us move on to the next Question by Mr. Njehu Gatabaki!

Question No. 845

BORROWING BY LOCAL AUTHORITIES

Mr. Gatabaki asked the Minister for Finance whether he could facilitate international borrowing of funds as well as soliciting for donor funds by local authorities, specifically to finance infrastructures, that is, rehabilitation, construction, design, supervision, technical assistance, training facilities, equipment and institutional support, by accepting to guarantee such loans and facilitating the contractual agreements on grants.

Mr. Speaker: Mr. Keah, the Question is No. 845!

The Assistant Minister for Finance (Mr. Keah): Mr. Speaker, I am sorry, I am a little bit late but I now beg to reply:-

Yes, the Minister for Finance has not only facilitated international borrowing but has actually signed several agreements in respect of donor funded projects in the Local Authorities throughout the country. A few examples are:-

The Nairobi Third Water Project, the Murang'a Kisii and Bungoma Sewerage Projects, the Nakuru Sewerage Project, the Urban Development; Small towns Projects and the Environment and Urban Development Training Project. Thank you.

Mr. Gatabaki: Thank you Mr. Speaker, Sir. I wish to thank the Assistant Minister for answering the Question. However, in view of the Government's increasing incapacity or inability to borrow internationally because of its declining credibility, could the Government allow local authorities like Kiambu County Council to borrow commercially from international organisation? That is the purpose of the Question because the Government is not capable and the donors have withheld aid. Could the Government allow the small towns to borrow internationally from money market?

Mr. Keah: Mr. Speaker, Sir, I think it is grossly unfair of the hon. Member to say that the Government is unable to borrow internationally. This, I refute in the strongest of terms. The Kenya Government has capacity and capability to borrow internationally and to date the Government continues to do so as evidenced by the several times the Minister of Finance has come to Parliament to seek authority so that the Government can borrow from outside..

Mr. Speaker, Sir, Kiambu County Council, or any county council for that matter, can borrow internationally as I have just explained. We borrow from the African Development Bank in respect of county council, and if Kiambu County Council wants to borrow internationally all they have to do is to follow the law as

laid down by this Government under the Local Authorities Act, Chapter 265 and also under the Minister for Finance Act, Chapter 422. This is provided for. I wonder what is irking the hon. Member?

Mr. Muite: Mr. Speaker, Sir, the Question by the hon. Member for Githunguri is very important indeed and I would like, through you, to ask the Assistant Minister, whether he will agree to bring to this House appropriate amendments. Hon. Members are aware that Local Authorities can borrow provided they go through the Ministry of Local Government. They have to borrow under the arm of the Ministry of Local Government. That is what we are trying to disengage.

Can the Assistant Minister consider bringing appropriate amendments so that any legally constituted local authority, Kikuyu Urban Council included, can be able to go directly to the international market, negotiate on its own and borrow in order to carry out activities in the area of its jurisdiction without having to come under the very constrictive terms of the Ministry of Local Government? That is what we are seeking.

Mr. Keah: Mr. Speaker, Sir, my response to the hon. Member's supplementary question is this: The hon. Member is at liberty, being a Member of this hon. House, to bring any appropriate amendments to the Laws of Kenya, if he so wishes. In so far as any local authority is under the arm and the jurisdiction of the Government of the day, it would be tantamount to abdicating our responsibilities if that, at this point in time, were to happen. We still have to guarantee such a loan. But if such guarantees were not required by the international community and the hon. Member brings such amendment and it is passed by this august House, he is at liberty to do so.

Mr. Speaker: Final question, Mr. Achieng Oneko.

Mr. Oneko: Mr. Speaker, Sir, it is true that lately, donors are unwilling to channel funds through the Government because of misuse of funds that have been given by donors for projects in this country.

Mr. Speaker, Sir, in that case, it is imperative that the Government should amend the law relating to funds to various projects and to local authorities.

Mr. Keah: Mr. Speaker, Sir, I want once again to refute this misleading notion being given in this august House locally and internationally that the Government is unable to borrow or to be given grants due to mismanagement.

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

Mr. Speaker: Order! Overruled.

Question No. 820

UPGRADING OF TRADING CENTRE

Mr. Mumba asked the Minister for Local Government when Mtwapa Trading Centre in Kilifi will be upgraded to an urban centre.

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

The Kilifi County Council and the DDC should submit recommendations to the Ministry of Local Government for consideration by the Local Government Boundary Commission.

Mr. Mumba: Mr. Speaker, Sir, while the Kilifi County Council and the DDC are pursuing this line of action, what has prompted me to ask this Question is the fact that Mombasa leaders have recommended to the Omamo Commission that Mtwapa be annexed into Mombasa so that Mombasa can become a city, but Kilifi leaders have said "no" to this recommendation. Instead, Kilifi leaders have recommended that Mtwapa becomes an urban---

Mr. Speaker: Order! Just a moment, Mr. Mumba. If that is what transpired in a Commission appointed outside there, are you making this House an extension of that Commission, to have a contrary view?

Mr. Mumba: Mr. Speaker, Sir, my supplementary questions is as follows: Will the Assistant Minister assure this House that while Kilifi County Council and Kilifi DDC are making these recommendations, the steps being taken by the Local Government Boundary Commission will not negate their action?

Mr. Wameyo: Mr. Speaker, Sir, I am the Chairman of the Government Boundary Commission. If the request is put to us we will consider it by visiting the area concerned and listening to the views of the residents of the area.

Question No. 835

DEVELOPMENT OF MAKUTANO TOWN

Bishop Njeru asked the Minister for Local Government:-

- (a) whether he is aware that Makutano Town is lagging behind in development due to continued wrangles between the old and new allottees of the plots available in this town; and,
 (b) what steps he is taking to resolve the issue.

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

- (a) I am not aware and therefore, part "b" does not arise.

Bishop Njeru: Mr. Speaker, Sir, every time the Assistant Minister stands up to give reply to Questions, he always says that he is not aware. However, the Assistant Minister should make inquiries so that he becomes aware of what hon. Members are asking about.

Makutano was started back in 1963 and this land was surrendered by the people living in the area and one of the oldest men, Mr. Kibuchi is still alive. Can the Assistant Minister now agree that they have refused to allocate these plots to these people because they want to give the plots to new comers from other areas but not to those who have been there before.

Dr. Wameyo: Mr. Speaker, Sir, if the hon. Member could substantiate that new comers have been brought in from other areas, then action can be taken, but it is difficult to go by just a statement.

Mr. Mbui: Mr. Speaker Sir, there are two Makutanos in two separate districts. There is Makutano in Embu which is now developed and Makutano in Kirinyaga which is not developed. Can the Assistant Minister tell us why Makutano in Kirinyaga has not been developed if proper procedure---

Mr. Speaker: By the way, what is Makutano, Mr. Mbui?

Mr. Mbui: Mr. Speaker, Sir, Makutano is a trading centre. One side is in Embu while the other side is in Kirinyaga.

Can the Assistant Minister tell us why the Makutano market in Kirinyaga has not been developed and the owners of the plots are not allowed to construct permanent buildings there? Can you tell us why this is the case since this area falls under your Ministry?

Dr. Wameyo: Mr. Speaker, Sir, as I have stated, I am not aware. If I am given specific information that there is somebody who has been told not to construct a building, then I will find out.

Mr. J.N. Mungai: Mr. Speaker, Sir, either the Assistant Minister wants to mislead the House or he does not want to answer the Question at all. Now that the Assistant Minister has been made aware by the hon. Member representing that area that there are wrangles in this local authority, can he promise this House that he is also going to make an effort to investigate the situation, take action and report back here? We are here to take care of the citizens.

Dr. Wameyo: Mr. Speaker, Sir, I will definitely investigate and take action on condition that I am given specific information.

Bishop Njeru: Mr. Speaker, Sir, I quite agree with the Assistant Minister that he is going to carry out investigations. Makutano in Embu has already been developed and the boundary is only a tarmac road on the left. The question is: Why have you not ordered the allocation of the plots in that area since it was re-planned and all the documents have been sent to the Commission only to be told that the Ministry of Local Government has refused to avail these documents so that the allocations can take place? Can you assure us that you are going to order the allocation of the plots to the right people, but not to those being brought in from outside the district?

Dr. Wameyo: Mr. Speaker, Sir, when plots have been allocated, the names of the allottees are sent to the Ministry of Lands and Settlement and not to the Ministry of Local Government.

Question No. 692

STAFF FOR HEALTH CENTRE

Mr. Murungi asked the Minister for Health when the Ministry will post medical personnel and provide drugs and other services to Kothine Health Centre, which has been built and completed by wananchi of Igoki Location on self-help basis.

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

The Ministry of Health has no plans to take over or post personnel to Kothine Health Centre because the facility is operated by the Presbyterian Church of East Africa (PCEA) under the auspices of Chogoria Hospital.

The facility is functioning properly as a Church dispensary and not a Health Centre.

Mr. Murungi: Mr. Speaker, Sir, I am very disappointed by this answer. I visited this dispensary in

August this year and found that it was not properly functioning. The Health Centre was built by the wananchi and for a long time, it was left lying fallow; there was no activity there. The PCEA hospital in Chogoria has rented the facility at a nominal price and it is charging the wananchi exorbitantly for treatment.

In the light of this information, could the Assistant Minister consider taking over the facility because the original intention of the people was to have a Government supported Health Centre and not a Church rented Health Centre?

Mr. Criticos: Mr. Speaker, Sir, I do agree with the hon. Member that the wananchi built this Health Centre. As we all know, if there is a request like that, the hon. Member should approach the DDC and if the DDC approves it, we are willing to take over the project.

Mr. Maore: Thank you, Mr. Speaker, Sir. Could the Assistant Minister give an undertaking over this issue because this Question has not been directed to the DDC, but to the Ministry of Health through the National Assembly? Can the Assistant Minister now state when he will post the medical personnel to this Health Centre because, of late, the Government has been in a hurry to have very many DOs and not Medical Officers of Health (MOH)?

If you really mind about the people's welfare or wish to take the Government services closer to the people, when are you going to post the [Mr. Maore] medical personnel to that Health Centre?

Mr. Criticos: Mr. Speaker, Sir, as I said earlier, it is up to the District Development Committee (DDC) to approve that. After that, obviously, it will depend on financial constraints and whether it has been budgeted for in this financial year or not. But obviously, it has not been budgeted for in this Financial Year. However, if it is approved by the DDC the dispensary will be budgeted for in the next financial year. I must point out that we are talking about a dispensary and not a health centre.

Mr. Speaker: Mr. Munyasia's Question.

Question No. 882

AMENITY WARD FOR HOSPITAL

Mr. Speaker: Mr. Munyasia is not here? We will leave his Question for now. Mr. Mbui's Question.

Question No. 861

SURRENDER OF KARI FARM

Mr. Mbui asked the Minister for Research, Technical Training and Technology under what conditions the Ministry surrendered the Kenya Agricultural Research (KARI) Farm at Wanguru.

The Minister for Research, Technical Training and Technology (Dr. Onyonka): Mr. Speaker, Sir, I beg to reply.

This Question relates to an issue that dates back to the 1960s. The land in question was handled at the time by the then Ministry of Agriculture, under which the then Department of Research and the National Irrigation Board (NIB) operated. The two Departments were working together for quite some time. But by the 1970s it was decided to separate the two and so part of the land in question, that is about 190 acres, was set aside for research. But it is also important for me to clarify that the two units, the NIB and the Department of Research, did engage in certain interesting activities whereby they were exchanging either land or buildings. Eventually, land was identified at a village called Kirobo and part of it was committed to research while the other portion was left for the NIB. Later the Provincial Administration got involved in this matter. Apparently, there were some people to be settled and because of the separation of the Departments which took place this matter is no longer being handled by my Ministry. We do have our portion of the land which we have been using for research. As regards as to what exactly happened to the remaining portion of the land, I really do not know. As far as we are concerned, a portion of that land was given for research and it is still being used for research. However, there was an additional portion of the land which, of course, was under the management of the NIB, which is under the Ministry of Agriculture, Livestock Development and Marketing.

Mr. Mbui: Mr. Speaker, Sir, I thank the hon. Minister for that lengthy answer. Maybe the Minister has not been made aware of exactly what is happening with this land. The KARI land is very much required by

Kirinyaga people for their research. However, we know that the land has been demarcated and given to powerful individuals in Central Province. If the Ministry, which has been left with only 10 acres, still requires that land, can it ask for repossession of it because it was not used for the purpose it was required for?

Dr. Onyonka: Mr. Speaker, Sir, the matter would require that I get into consultations with the Provincial Administration to find out exactly what is happening on the ground. What we have in our records may not reflect exactly what may be happening right now on the ground. So, to be able to give the hon. Member what one would consider a definitive answer I will need more time to ascertain the facts from the ground through the Provincial Administration.

Mr. Speaker: Dr. Onyonka, so you are asking for deferment of the Question?

Dr. Onyonka: Not really, Mr. Speaker, Sir, but I could actually supply the hon. Member with additional information.

Bishop Njeru: Mr. Speaker, Sir, I quite agree with the Hon. Member because the answer he has now shows the Minister was misled by a person who knew very well what the Question referred to. The KARI land is near Kiroko Village, as he said. Originally it was 200 acres and was set aside at that time by the community from Ndia Division. The NIB was given 48 acres and now we are asking about the land which was left to KARI, with which the Provincial Administration interfered a few years back. People from Kadongo area were located here. When corruption came in KARI stopped carrying out research on the land, of which now only 10 acres remain - the other about 180 acres has been taken away. I come from that area and I was there when the---

Mr. Speaker: Order, Bishop Njeru! Put your question.

Bishop Njeru: Can the Minister carry out research and come up with an answer that will satisfy this House as to whether there is such land in Mwea?

Dr. Onyonka: Mr. Speaker, Sir, I think I have made my point that, as far as my Ministry is concerned, that part of the land which was set aside for research is still with us. But the remaining piece of the land was actually left in the hands of the then Ministry responsible for agriculture and the Provincial Administration.

Mr. Mbui: On a point of order, Mr. Speaker, Sir. Is there any need for the hon. Minister now to come up and mislead the House when he had given us a very good answer? He offered to come back with a proper answer. I have got a letter from his Ministry to the Provincial Administration. Can he do a proper research and confirm whether there is 200 acres of land under KARI for research work? There is an outcry by Kirinyaga people with regard to this research station.

Dr. Onyonka: Mr. Speaker, Sir, the information I have given is about 198 acres. If the hon. Member does not agree with me I promise to go back and obtain up to date information on the situation on the ground.

Mr. Speaker: Very well then; Mr. Orengo's Question.

Question No. 741

DAMAGES TO DAIRY CO-OPERATIVE

Mr. Orengo asked the Minister for Co-operative Development:-

(a) whether he is aware that on several occasions in the month of April, 1995, the District Co-operative Officer (DCO), Siaya District, and his officers at Ukwala Division made attempts to seize a milk cooler and a generator belonging to the Jera Dairy Co-operative Society without any lawful or justifiable cause and that in the attempts they ended up destroying property and damaging premises belonging to the Society; and

(b) whether he will ensure that the Government does not interfere with the property belonging to the Society as that would violate the right to property as guaranteed by the Constitution.

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

(a) I am aware that on 11.4.95 the Chairman of Siaya District Agricultural Committee (DAC), who is also the Siaya District Commissioner (DC), did send two members of the DAC, namely the DCO and the District Livestock Development Officer, to repossess the milk cooler from this dairy society. This was because, as the hon. Member is aware, production of milk in this particular Society has gone down. Therefore, the Government took action to repossess the milk cooler. I have told the hon. Member many times that he should concentrate on telling the people to increase milk production in that particular area. That is what wananchi in the area need to do.

Mr. Orengo: Mr. Speaker, Sir, the Minister is misleading the House. The milk cooler did not belong to the Government. This was a donation from the Scandinavian countries and it was a package. The Jera

Co-operative Society was given not only a milk cooler but also several bicycles and a van, which van was registered in the name of the co-operative society. So, the Minister should tell this House why the Government decided to seize the milk cooler which belongs to Jera Co-operative Society.

Mr. Munyi: Mr. Speaker, Sir, the milk cooler belongs to the Government. It was a donation given through the Government. Therefore, he should not mislead the House that it did not belong to the Government.

Mr. Oburu: Mr. Speaker, Sir, can the Minister tell this House what legal authority the Government has over the property of a co-operative society in order to seize it without a court order? Does the Government have a right to seize a co-operative society's property without a court order?

Mr. Munyi: Mr. Speaker, Sir, this property did not belong to the co-operative society. If you are given something and an agreement has been signed between the Kenya Government and the donors, then it has to be done in a legal way. That is the action which was taken.

Mr. Muite: Mr. Speaker, Sir, given the importance of the co-operative movement in this country as a vehicle for economic development and, since people have got to pool together because of our poverty, is the Minister aware that, indeed, it is his officers who are killing that vehicle for economic development because of unwarranted interference with the co-operative societies? Instead of giving them advice, the Co-operative Officers, in conjunction with the Provincial Administration, take over the co-operative societies, thus, killing them through mismanagement.

Mr. Munyi: Mr. Speaker, Sir, hon. Muite is trying to mislead the House. The co-operative movement has gone right to the people, and they want it. There are areas like Kericho, Tharaka-Nithi and even Kiambu where the co-operative movement is doing very well. Therefore, I would like to tell the people in Siaya to come forward and increase milk production.

*(Several Members, including
hon. Nthenge stood up)*

Mr. Speaker: Order! Order, Mr. Nthenge! You cannot just walk to the microphone and begin talking. I will give the last chance to hon. Murungi.

Mr. Murungi: On a point of order, Mr. Speaker, Sir. Is it in order for the Minister to mislead the House that the co-operative movement is doing very well in Tharaka-Nithi when we know that all the property of the Meru South Farmers Union has been advertised for sale for non-payment of loans to the Co-operative Bank? This was reported in the Press, including the *Daily Nation*, two weeks ago.

Mr. Munyi: Mr. Speaker, Sir, co-operative societies are doing very well. We do not go by Press reports. What I have stated here is the truth.

Mr. Speaker: Next Question, Mr. Maore!

Question No.758

GRADING OF NTONYIRI ROADS

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

- (a) when Lare-Kathelwa-Kangeta; Lare-Antumbetwe-Kiongo; Lare-Athiru; Runjine-Kawiru; Mutuati-Antubetwe-K'iongo; Kawiru and Lare-Muringene roads were last graded; and,
- (b) if he could permanently avail bull-dozers and graders for Nyambene in order to maintain the 600 kilometres road network in the district.

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

(a) (i) The Lare-Kathelwa-Kangeta road which is D486 has not been graded. In any case, we promise the hon. Member that this road will be graded before the end of this financial year.

(ii) The Lare-Antubetwe-Kiongo is not maintained by the Ministry because it is unclassified. It belongs to the local county council.

(iii) Lare-Athiru-Runjine-Kawiru is Rural Access Road No.2, which is unclassified and, as such, it is does not fall under our grading programme. This road was last improved under Minor Roads Programme in 1985.

(iv) Mutuati-Antubetwe-Kiongo-Kawiru is classified as E831 and was last graded in January, 1992.

(v) Lare-Muringene is Rural Access Road No.1 which falls under Minor Roads Programme and does not qualify for grading because it is not classified. It was last improved in 1985.

(b) The Ministry allocated two graders to Nyambene District in July this year, but both are out of order. However, Kshs284,000 was issued to the district in October, 1995 to facilitate the repairing of the graders. The Ministry does not have sufficient bull-dozers for allocation to all the districts. As such, this equipment is allocated on provincial basis for use in the respective districts on an agreed schedule.

Mr. Maore: Mr. Speaker, Sir, if you listened to the Assistant Minister's answer, the two roads that have been mentioned as classified were last graded 10 years ago. He says the other roads are Rural Access Roads. He knows very well that rural access roads fall under a programme within his Ministry. I do not know whether rural access roads belong to another Ministry out there in Ntonyiri or somewhere else. Can the Assistant Minister confirm or deny to this House that the Petroleum Levy funds that they have been collecting in a very big way and without delay have been allocated to various districts, including Nyambene District; but after the allocation, a phone call from the headquarters tells the officers concerned not to spend the money, then the money ends up being held there, I do not know for what purpose, but eventually, it is recalled? Can the Assistant Minister confirm or deny that his Ministry is not utilising the Petroleum Levy Fund for the maintenance of roads? If it has, out of the 600 kilometres of road network in Nyambene, which two or five kilometres has he graded in the last 24 months in Nyambene District?

Mr. Mwamzandi: Mr. Speaker, Sir, if the hon. Member is asking a supplementary question about the two classified roads, I would agree with him that, actually, nothing has been done, particularly on D486. However, I have assured him that we are going to allocate money for this road to be done. With regard to the other question that I agree or deny that monies allocated are retained and nothing is done, I would tell the hon. Member that this financial year, we have set aside Kshs1,770,000, but this is for Nyambene, Meru and Tharaka-Nithi districts. Because these districts are supervised by one engineer---

Mr. Maore: On a point of order, Mr. Speaker, Sir, I am not talking about Meru and Tharaka-Nithi districts. Those are separate districts and he knows how and why they were created. I have asked about Nyambene district.

Mr. Mwamzandi: Mr. Speaker, Sir, if the hon. Member listened carefully, I said that it is because these areas are supervised by one engineer and this money was set aside for that purpose. In Nyambene, roads interlock with roads in other districts and so you will find that Kagaini-Machegegi Road is in Tharaka-Nithi as well as in Nyambene [**Mr. Mwamzandi**] District, the hon. Member's area. Kiegoyi-Kiayaga-Nyambene Road is also found in his area. Kiangai-Muthina Road is also in Nyambene. Kaero-Mutuati---

Mr. Murungi: On a point of order, Mr. Speaker, Sir. Last week when hon. Mwiraria asked about the roads which the Ministry is grading in Meru District, the Assistant Minister read the same roads that he is reading here for Nyambene District. Can the Assistant Minister now tell us which roads he is grading in Nyambene District and forget telling us about the roads in Meru and Tharaka-Nithi Districts. You better know the geography of this country!

An hon. Member: The officers in his Ministry misled him.

Mr. Mwamzandi: Mr. Speaker, Sir, the roads I am talking about are rural-access roads. I said that in Nyambene District we have Kiegoyi-Kiayaga, Kiangai-Muthina and Kaero-Mutuati Roads. The others are interlocked.

Prof. Mzee: Mr. Speaker, Sir, noting that the roads in the Assistant Minister's District, Kwale, are the worst maintained in this country, and noting that money has been allocated for grading roads including the money got from the petroleum levy, can the Assistant Minister assure this House that the money which has been allocated for road maintenance and repair is used for this purpose and not pocketed by the civil servants and streams of consultants?

Mr. Mwamzandi: Mr. Speaker, Sir, the hon. Member talked about the poor state of roads in my District. If all the money was allocated to Kwale District, the other districts would complain but we are trying to see that roads are maintained countrywide.

With regard to misappropriation of funds allocated for road maintenance as the hon. Member has said---

Mr. Speaker: What he is asking you is that since you come from Kwale District, are the monies voted for Kwale being used effectively for the grading of roads?

(Applause)

Mr. Mwamzandi: Mr. Speaker, Sir, that is why I was saying that in case he has identified a case of theft anywhere he should inform me so that I can take action.

Mr. Speaker: Very well. Next Question. For the second time, Mr. Nthenge's Question.

Mr. Nthenge: Mr. Speaker, Sir, first of all I would like to apologise for arriving here six minutes late and I hope I am excused. With that, I wish to ask Question No. 818.

Mr. Speaker: You are indeed.

Question No. 818

PAYMENT OF MR. SOVE'S PENSION

Mr. Nthenge asked the Minister for Finance:-

(a) why Mr. Jonah Mulwa Sove, EST/10735/87, APN GC 28349, who retired from the Ministry of Environment and Natural Resources in February, 1983, was not paid his pension in lumpsum as per his request; and,

(b) when Mr. Sove will be paid his monthly pension arrears from March, 1983, to date.

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

(a) First of all, Mr. Jonah Mulwa Sove was paid a compassionate gratuity of Kshs 16,354.35 on 19th May, 1983. The cheque number was 042797 of 19th May, 1983 and this cheque was sent to C/O District Forest Officer, P.O. Box 2, Machakos who was the employee's Head of Department.

(b) Mr. Sove was not entitled to a payment of monthly pension as he was employed on non-pensionable terms of service.

Mr. Speaker, Sir, here the answer given to the hon. Member states "on temporary terms". That is an error which I have sought to correct.

He was employed on non-pensionable terms of service. His retirement benefits which were payable under Regulation 28 of the Pensions Regulations (Cap. 189) were thus paid.

Mr. Nthenge: Mr. Speaker, Sir, Mr. Sove was employed like any other civil servant and this technicality of being employed on non-pensionable terms was not known to him and to date he is still waiting for his pension. Would the Assistant Minister, therefore, rectify the mistake likely to have been made by somebody somewhere and then pay this officer who is an old man his pension.

Mr. Keah: Mr. Speaker, Sir, the employee was employed by the Ministry of Natural Resources then. We, in the Pensions Department, receive facts as contained in the Ministry and based on the records available in the Pensions Department, the employee is not entitled to a pension because he was employed on non-pensionable terms.

Mr. Manoti: Mr. Speaker, Sir, it is a common practice that most people who have retired travel to Nairobi to follow up their dues in the National Social Security Fund (NSSF) and this takes them so many months to get their money paid to them. Can the Assistant Minister now make arrangement to ensure that before somebody leaves office, he is paid his dues so as to assist him when he goes home.

Mr. Keah: Mr. Speaker, Sir, we are all very conversant with employment procedures both in the public and private sector. Whereas much and a lot is done to ensure that expeditiously the funds or the money due to the employees are paid to them particularly the pensions, gratuity, *et cetera*, I agree that we will do everything possible to enhance the speed with which these payments, due to retiring employees, are paid.

Question No. 882

AMENITY WARD FOR HOSPITAL

Mr. Speaker: Mr. Munyasia is not here? His Question dropped.

(Question dropped)

QUESTIONS BY PRIVATE NOTICE

BLOCKING OF KISUMU-AWASI ROAD

Mr. Achieng'- Oneko: Mr. Speaker, Sir, I beg to ask the Minister for State, Office of the President the following Question by Private Notice although I have not been provided with a written reply.

(a) Will the Minister explain why Kenya Police blocked the Kisumu/Awasi Market Road on 31st October, 1995, thereby causing a two hour delay to the movement of traffic, which affected an Honourable Member of this House, who as a result failed to attend to the functions of Parliament in time?

(b) Could the Minister assure the House that similar inconvenience to the public will not be repeated in future?

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

First of all the Question came in only yesterday and there was no time to prepare a separate answer to give to the hon. Member.

An hon. Member: You could have produced a photocopy of your written answer.

The Assistant Minister, Office of the President (Mr. Awori): We will do that.

There was no road block as such as alleged by the Questioner. However, no vehicle was allowed to overtake this convoy. There was a convoy of national security vehicles going to Awasi, and the reason for that cannot be divulged, I am sorry. Mr. Speaker, Sir, because of that, people were not allowed to overtake the convoy, and from Kisumu to Awasi it is about 30 Kilometres. That cannot take two hours. It was only something like half an hour. It is likely that my friend, the hon. Ramogi was behind the convoy. I can only apologise for the inconvenience for that half hour.

Mr. Achieng-Oneko: Mr. Speaker, Sir, records show that Members of Parliament spend 200 hours a month on Kenyan roads to visit their constituencies and also travelling from their homes to Nairobi. That is almost half a month of the days which is a very long period. Could the Minister take into consideration, in a situation like that, the inconveniences to MPs when they are travelling in various roads in Kenya?

Mr. Awori: Yes, I will take that into consideration but may I suggest something to my friend. We live more or less in the same direction and I see hon. Orenge also from the same direction. Why can we not band together forgetting our political differences and have an eight-seater plane? It will take us safely, quickly and then we come. This is all that I can suggest to my friend.

Mr. Obwocha: Is the Assistant Minister aware that MPs who travel to their respective constituencies, even when we have the "MP" number plate, are stopped by the police on the way?

Mr. Awori: Mr. Speaker, Sir, in fact the purpose of the "MP plates" is to warn the police on the road not to inconvenience MPs.

Mr. Muite: The Assistant Minister has accepted the hold-up of the hon. Achieng'-Oneko, but does he accept the humiliations that all Opposition Members are subjected to by the police even when they are being arrested? Could he now direct the police that even as they arrest Opposition MPs, they should comply with the Police Act which requires a policeman to salute an MP? Why are Opposition MPs not saluted even when they are being arrested?

Mr. Awori: Mr. Speaker, Sir, in fact, I have never been saluted by any of these policemen and it does not reduce any of my dignity. In fact, it may be a requirement but I do not think it is a law.

Mr. Speaker: Next Question!

Mr. Maore: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to refute something that is very clear in the Police Act, that every cop who goes to Kiganjo College is taught that the saluting act is not an act of goodwill from the policeman but it is in the Police Act?

Mr. Awori: Mr. Speaker, Sir, I will remind them but I still say that it does not bother me when I am not saluted.

Mr. Farah: On a point of order, Mr. Speaker, Sir. It is not a question of pleasing him or somebody else, we have the Police Act. We are merely stating that the police should conform to that Act. Is the Assistant Minister telling us that they do not do it because he does not like it himself? Shall they conform or not?

Mr. Awori: I do not know what answer my friend requires, but I had already answered that point. It is just that he was so anxious to stand up that he did not listen. I said that I am looking into [Mr. Awori] the matter and I will ensure that happens.

Mr. Speaker: Next Question, Mr. Nyanja.

DEATHS FROM CONTAMINATED WATER

Mr. Nyanja to ask the Minister for Local Government by Private Notice:-

(a) whether he is aware that about three people have died in Nairobi's Eastlands, in the last one week, after having taken contaminated water; and

(b) if the answer to "a" above is in the affirmative, why the water was contaminated, yet the Nairobi City Council claims that it treats water supplied to the residents; and

(c) what action the Minister is taking to rectify the situation.

Mr. Speaker: Is Mr. Nyanja not in the House? Well, Question dropped. Next Question, Mr. Mutahi.

(Question dropped)

CANCELLATION OF CO-OPERATIVE MEETING

Mr. Mutahi: Mr. Speaker, Sir, I beg to ask the Minister for Co-operative Development the following Question by Private Notice.

(a) Why was the Special General Meeting of Mukurwe-ini Coffee Co-operative Society, which was scheduled to be held on 1st November, 1995 called off at the eleventh hour?

(b) Is he aware that the 13 officials of the Society have been implicated in the report of the Committee, appointed to probe the Society, and that they are in office illegally?

(c) Could the Minister order that the Special General Meeting to be held by mid-November, 1995, and that the findings of the Probe Committee be made public?

The Minister for Co-operative Development (Mr. Munyi): Mr. Speaker, Sir, I did explain to you and the hon. Member that we are still waiting for information from Nyeri. Therefore, I will answer this Question next week.

Mr. Speaker: Would you like it to be answered next week?

Mr. Mutahi: Mr. Speaker, Sir, the only request I would like to put to the Minister is that these people might be buying time and I am told that they have already camped around Nairobi to either see you for KK (*Kitu Kidogo*), or the Commissioner, so that they do not call this meeting. Could the Minister make sure that the---

Mr. Speaker: Order! Order, Mr. Mutahi. You must use decent and acceptable language. Nobody sees any Minister of any MP for purposes other than hon. purposes. I will not allow any Member to use indecent language.

Mr. Mutahi: Mr. Speaker, Sir, I think you got me wrong. I am talking about those people and not the Minister.

Mr. Speaker: Yes, but you are saying that they hanging around Nairobi to see the Minister for purposes of KK (*kitu kidogo*).

Mr. Mutahi: Yes, but I know you cannot accept---

Mr. Speaker: Can you substantiate that?

Mr. Mutahi: Mr. Speaker, Sir, I know that these Committee members do not live in Mukurweini now but they have camped around wishing to see the Commissioner or the Minister---

Mr. Speaker: Order! Order, Mr. Mutahi. I have said and I will continue to say that hon. Members must use hon. language in this House from now on. Anyway the Question is postponed to next Tuesday.

Next Order!

(Question deferred)

MOTIONS

OFFICE OF OMBUDSMAN

THAT, in view of the fact that the Government is committed to the principles of transparency, accountability and good governance in the management of public affairs, and considering the high and egregious levels of corruption, tribalism and nepotism currently rampant in our society, this House urges the Government to establish the office of OMBUDSMAN with autonomy and strength to check these vices.

(Mr. Raila on 1.11.95)

(Resumption of Debate interrupted on 1.11.95)

Mr. Speaker: Who was on the Floor? Mr. Kariuki had three minutes to go, is he present? If he is not present I will then recognise the hon. Member for Kikuyu.

Mr. Muite: Mr. Speaker, Sir, in supporting this Motion, I would like to appeal to my colleagues on the

other side to see that supporting this Motion by the other side is really doing very good public [Mr. Muite] relations work for the Government. The Government stands to gain more by establishing an Ombudsman Office and by supporting this Motion than even the Mover or this side of the House. Very many times, the Government says that certain actions that are taken by public officers are not authorised by the collective institution of the Government. If we had the institution of Ombudsman, he would be able to investigate the conduct of individual members of the Government who take the law into their own hands, who take certain conducts, who take certain actions that reflect very adversely on the Government as an institution. The Government takes the blame because of the conduct and actions of certain public officers. It is very difficult to conceptualise the basis for objecting to the setting up of these important institutions. I can see the hon. Attorney-General smiling and looking at me because really the establishment of this office will assist very greatly in the sort of complaints and blames that the office of the Attorney-General takes quite often, totally most of them are unjustifiable because his office may not have authorised this conduct. It does not support wrong-doing by individual members of the Government; by individual public officers. It is the interest of the Government that wrong conduct by any of its own officers be investigated so that the public can know that on this particular occasion, this DC or police officer, Permanent Secretary or any public officer was acting on his own and he had not been authorised by the Government. Now that is an immediate benefit that will accrue to the Government. In other words, instead of the Government being blamed generally for something that they did not know, they will get an opportunity of demonstrating to Kenyans that, indeed, on this particular occasion they did not know and did not authorize this. Merely because certain predecessors of the present Attorney-General opposed the creation of the Office of Ombudsman is no basis for the present Attorney-General to object to the creation of this important institution now. As a lawyer, the Attorney-General should be the first one on that side of the Government to, indeed, support the creation of this important institution so that when wrong-doing is done, we can all know because of certain investigations, that the Government did not as an institution authorize this particular conduct.

[Mr. Speaker left the Chair]

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

Mr. Temporary Deputy Speaker, Sir, there would be no much complaints. Unless an Office like this one is created so as to give members of the public an opportunity to go to an independent institution in the confidence and knowledge that independent investigations will be carried out, these complaints will persist. At the moment, people have become so cynical and everyday we are asked "did you report to the police" and quite often the wrong doing has been by the police itself. So, one cannot go to report to the very people that one is complaining about. If this Office is created and given Constitutional independence, and a man or woman of integrity appointed to that Office, Kenyans will begin to have faith in the Government so that if they have got complaints against anybody in the Government, against any matter, they can take it to this institution for independent and objective judgement.

Mr. Temporary Deputy Speaker, Sir, if the Government has got nothing to hide, it should support the creation of this Office. Unless, of course, the Government wants to sweep everything under the carpet; unless the Government really wants to say that whatever wrong-doing is done on its behalf has been authorised by, they should support the creation of this Office.

Mr. Temporary Deputy Speaker, Sir, in the most civilised democracies, there is always the Office of Ombudsman. Even the new democratic countries like Zambia have this institution. So why are we lagging behind at a time when we, as the nation, are getting a bad image from the donor communities? When we are not being given credit in the area of our political and constitutional reforms, this is one area in which this Government can score very high marks as far as donor communities are concerned by showing that we have appointed and agreed to the creation of this important Office of Ombudsman so that if there is any Kenyan or member of the public who has got complaints about the conduct of anybody in Government, whoever he is, that matter can be investigated and the results made public.

I would urge, very strongly, that the Government supports the creation of this important Office. This Motion comes at a very appropriate time after this Government had announced that it was appointing a Human Rights Commission. It was given a very wide coverage in the local media that the Government has agreed to the creation of a very important Human Rights Commission. That was just before the Paris Club Meetings. Shortly, after the Paris Club Meetings, then we heard that this was a misunderstanding and that what the Government was talking about was only the creation of a KANU Human Rights Committee, and yet we had been told that it was a national Human Rights Commission. The Human Rights Commission that had been promised Kenyans has been shelved just the promises that we had been given, as Kenyans, on the New Year that the Constitution will be

amended. This too has been reneged.

So in this context of not setting up the Kenyan Human Rights Commission and of not moving forward with the Constitutional reforms, this Government should at least demonstrate its good faith and commitment to transparency by agreeing to the creation of this important Office of Ombudsman. I would say that what law provides is one thing and the practice is quite another thing. I can see from the face of Attorney-General that he is going to support this Motion, I can see that this Government is going to agree to the creation of the Office of Ombudsman now.

Mr. Temporary Deputy Speaker, Sir, what I am asking for is that we look beyond the creation of this Office and ask: When this Office is created, can we at least depart from appointing to that Office the same worn out and tired faces who are going to be appointed on the basis of their allegiance to particular individuals. For a change, have consultations with the Opposition so that we can agree on a man or woman of unquestioned integrity to manage this very important Office.

Mr. Temporary Deputy Speaker, Sir, with those few words, I do urge my colleagues on the other side to support this Motion.

The Assistant Minister, Office of the President (Mr. Sunkuli): Mr. Temporary Deputy Speaker, Sir, this request for the Office of the Ombudsman is not a very recent thing. It is basically a brain-child of a certain school of thought in the University of Nairobi in successful years. I have attended a very bright lecture in administrative law that touches on this question of Ombudsman and I have always liked to treat it as an academic subject. Why should we create an Office that performs the duty which is performed by other offices in this country?

There is absolutely no reason to duplicate functionaries that are going to undertake the same purposes. I think that the purpose of the Office of the Ombudsman is being served adequately by other offices.

Mr. Temporary Deputy Speaker, Sir, the purpose of the Office of the Ombudsman, according to the Mover of the Motion, is to advance transparency. I presume that the focus is on corruption. I want to air my views on corruption, I think it must be stated here and now that corruption is a Kenyan problem, not a KANU problem. It is actually almost the problem of the Third World. This is a very important distinction to make because some people assume that corruption exists because KANU is in power. The logical conclusion of that is that there exists some people in the Opposition who, when they come to power, corruption will fiddle away. As much as the Government has been trying to fight corruption, it still exists as a Kenyan problem and it does not exit only in some sections of the Government, but also in the areas that are not controlled by the Government.

Mr. Temporary Deputy Speaker, Sir, in the age of liberalisation, we have very little control by Government, for instance in areas of commerce and industry where you do not require a Government permit. Non-governmental Organisations are recipients of foreign money that they hold for and on behalf of the Kenyan public.

Mr. Temporary Deputy Speaker, Sir, the focus should not be on corruption in Government, but it should be on corruption by those who hold monies on behalf of the public but which are not necessarily Governmental Organisations.

Mr. Temporary Deputy Speaker, Sir, I would like to say that when you look at the way the NGOs are operating in this country that is when you realise that corruption is not a KANU problem. It is a problem that Kenyans have and we must learn and trace the roots of this problem, which is lack of patriotism by our colleagues in the Opposition. In fact, if you do not acknowledge that to be the problem, you have not understood the Kenyans mind. Majority of our people, especially those in Opposition have not learned to love this country. They have not learned, first of all, that is the essence why countries like U.S.A. have prospered. I have been to USA, fortunately, and I have now come to know that the only thing that we can copy from them is their patriotism. They love their country and they have realized that at some point you must surrender your own particular interest for the purpose of the common good. And what everybody tries to do is to throw soil on the Government so that it looks black as hon. Otieno-Kopiyo said. But that does not address the essential issue, that in fact we need to build Kenya together. The role of building Kenya is not just on the Government, it is on everybody. It is important to go to the root of this problem; that the lack of patriotism is what brings up corruption. It is not the existence of this Government or the other. Tomorrow, one of you might be---

Mr. Maore: On a point of order, Mr. Temporary Deputy Speaker, Sir. I really do wish to acknowledge the wit of the Member on the Floor. Is he in order to persistently attack and accuse the Opposition of lack of patriotism as if it is an issue on the Motion?

The Assistant Minister of State, Office of the President (Mr. Sunkuli): Mr. Temporary Deputy Speaker, Sir, I am tracing this bug of corruption to lack of patriotism. I am saying that it exists not just in Government. The other day, for instance, a Bishop was appointed to go to Kajiado, and the reason is not that he

is competent at all; the reason is that those who are in charge of appointing Bishops in the Church of the Province of Kenya (CPK) want their own tribesman to go there. That is a form of corruption.

Dr. Kituyi: Mr. Temporary Deputy Speaker, Sir, while in many instances we are able to take a lot of vitriol and unfounded allegations from this Assistant Minister, can he substantiate the claim he is making, that the appointment of the Bishop for Kajiado was on the basis of tribalism?

The Assistant Minister, Office of the President (Mr. Sunkuli): Mr. Temporary Deputy Speaker, Sir, all I said is that those who are appointing belong to the same tribe as that who was being appointed. The only logical inference, if you look at the operations of the National Council of the Churches of Kenya (NCCCK) and see who is heading the NCCCK, and see where the donations of the NCCCK are going, you will realize the extent to which corruption has affected the Non Governmental Organisations (NGOs).

Mr. Muite: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the Assistant Minister to insinuate that the appointment of the Bishop for Kajiado was based on tribalism when he knows or he ought to know that the Bishop elect of Kajiado was actually elected by the faithful of that diocese, both Maasais and the Kikuyus? Is he in order to continue saying that the Opposition is not patriotic when he knows that it is out of patriotism that the Opposition is asking this Government to curb the high level of corruption? That is what has ruined this country; the Kamlesh Pattnis and the others.

The Assistant Minister, Office of the President (Mr. Sunkuli): In the recent past, Mr. Temporary Deputy Speaker, Sir, one would have thought that Members of the Opposition were Rwandese nationals rather than Kenyan Nationals. Patriotism for them must be a focus on their country; that the prosperity of their own country rather than the prosperity of other countries should come first and foremost. The hon. Member himself was running a Trust that was called Mwangaza. How much of that money went to other non-Kikuyu areas? It is absolutely clear that we need to address corruption as a Kenyan problem and not a KANU problem.

Mr. Muite: On a point of order, Mr. Temporary Deputy Speaker, Sir. This is a very serious allegation coming from an Assistant Minister who is actually a lawyer, he has gone to the University, a former Magistrate. Can you call on the hon. Assistant Minister to substantiate by laying on the Table of this House evidence of what money the Assistant Minister is suggesting was given by any donor to Mwangaza Trust? Can he substantiate that allegation?

The Assistant Minister, Office of the President (Mr. Sunkuli): Mr. Temporary Deputy Speaker, Sir, for what reason did Mwangaza Trust exist? One of the objectives of Mwangaza Trust was to procure funds for some development in this country. Is he saying that Mwangaza Trust did not, therefore, fulfil its purpose of trying to get funds? I want to say that it is, therefore, very clear that the Office of the Ombudsman will not solve the problems of Kenya.

Mr. Muite: On a point of order, Mr. Temporary Deputy Speaker, Sir. The Assistant Minister made a very categorical statement that Mwangaza received funds and he wants to know whether it was spent on any non-Kikuyu areas. He made a categorical statement that Mwangaza received funds. I have a personal interest and I ask you to ask the Assistant Minister to lay on this Table documents to show that Mwangaza received any funds from any donors or withdraw that serious allegation. The Assistant Minister is not substantiating.

The Temporary Deputy Speaker (Mr. Wetangula): Order! Order, Mr. Sunkuli! Is it not common knowledge that Mwangaza Trust was dissolved and we cannot disparage or defame a non existing organisation? Carry on. He cannot withdraw, he has not defamed anybody. Mwangaza Trust does not exist. Carry on.

The Assistant Minister, Office of the President (Mr. Sunkuli): Mr. Temporary Deputy Speaker, Sir, we need to ask ourselves quite a number of questions. Kenya is being a christian country and basically it means that majority of Kenyans are christians. Since corruption is a sin, we should ask ourselves; what institutions need to be strengthened to ensure that corruption is killed at birth? Is it not a fact that we are not concentrating on the spiritual teachings of Kenyans that is making us deviate from the norms that we require for building our society? Is it not important to keep asking ourselves whether those organisations that are intended to kill corruption, are functioning well? Or is it because they are also prevaricating away from their duties to perform the duties of others? Is it not the same duplicity I am referring to, that the church is also performing other duties other than the purposes of the church and as a result, its faithful are not in fact adhering to justice and morality?

Mr. Temporary Deputy Speaker, Sir, I oppose the Motion.

Dr. Kituyi: Thank you very much Mr. Temporary Deputy Speaker, Sir, for giving me a chance to say one or two things on this very important Motion. If we lived in a country where virtue was profitable, common sense will make us . . . But since we live in a country where theft, bribery and boastfulness are marks of success, and are celebrated, any issue that is brought before the House for consideration in the national interest is treated with contempt and childishness. And we reduce important matters of state to trading vitriol across party lines.

The person who has been on the Floor before me is a learned man. He is a lawyer, he is a former magistrate. He is supposed to be one of the better ones on that side. But if he sees that qualification to be good enough on that side requires that he takes leave of his senses ---

The Temporary Deputy Speaker (Mr. Wetangula): Hon. Kituyi, we are not debating the conduct of hon. Sunkuli.

Dr. Kituyi: I will now debate the substance of Sunkuli's contribution as a way of showing that it is unfortunate that Government responds to a serious matter like this by abuse and insinuation against the conduct of other hon. Members of the House---

The Assistant Minister, Office of the President (Mr. Sunkuli): Mr. Temporary Deputy Speaker, Sir, the purpose of the hon. Member on the Floor is to oppose. But is it not in order to say that we abused anybody here? Can he not read the HANSARD?

Dr. Kituyi: Mr. Temporary Deputy Speaker, Sir, if you say that an organisation which was led and exclusively included Members of this august Assembly, was established to finance ethnic interest and you are incapable of substantiating that and you glide on and think this is not abuse, then you need to have some lessons in the English language.

Now, I want to turn to more serious matters. At this particular time, the top-most leadership of this country is on its way to Auckland to a summit of the Commonwealth. At this summit, we are going to be party to international declarations about respect for human rights, about our desirable fairness in international conduct and domestic conduct. We are going to talk about our abhorrence of war and genocide. What we want to talk on international platforms should reflect our conduct at home. For a long time, this country has been aware of the growth in the culture of fairness around the world. At least the leadership of this country has been invited to see an opportunity to respect fairness and culture of fairness as a foundation for democratic governance. The culture of fairness is the establishment of alternative avenues of empowering the weak, alternative avenues of picking fairness among those who are victims of court systems, among those who have no access to court jurisprudence.

Mr. Temporary Deputy Speaker, for two centuries, the world has known that the only existing institution to complement courts in seeking fairness in matters that are not even crimes is the institution of the Ombudsman. And here we are virtually surrendering to the reality that a government is going to defeat a Motion to establish an important institution primarily because it is coming from the Opposition. The last time this matter was seriously discussed before this House was in 1985 when the then Member of Parliament for Ikolomani, who had moved the Motion for an Ombudsman, proceeded to vote against his own Motion because Government intimidated him. It was said that we have to change our hearts if we want fairness. Now, it is about time the Attorney-General started educating the Government of this country that we are in the business of making good laws and then the churches and other institutions of moral instruction can come with the business of making good hearts. We do not sit here and make bad laws and ask people to change and have good hearts to implement justice.

Mr. Temporary Deputy Speaker, I am an hon. Member of Parliament, I have gone to school many years, I even have a Ph.D But, I have had two very personal experiences in the recent past which showed me what the common man in this country goes through. For five years, I have been going to the Lands office and I have refused to see any senior officer, I have refused to say who I am, but for five years I have been seeking to have a file of a plot; a small parcel of land, but for five years, the clerk has refused to give me that file because I have not paid a bribe. It took me one and a half months to get a car registered because, I needed to make an informal donation to a Harambee.

Mr. Temporary Deputy Speaker, it is a reality that a lot of wananchi in this country are being told let the children learn.

The Assistant Minister for Information and Broadcasting (Mr. Nassir): On a point of order, Mr. Temporary Deputy Speaker, is it in order for the Member of parliament who is--- I hope he is a lawyer also.

Hon. Members: He is not!

The Assistant Minister for Information and Broadcasting (Mr. Nassir): Mr. Temporary Deputy Speaker, he said that he was asked to pay money and he could not get hold of the man who said so to take him to court.

Dr. Kituyi: Mr. Temporary Deputy Speaker, like you can see the hon. Nassir, just wants to be seen here. If you are incapable of understanding what I was saying, I am sorry I am not responsible, but I pray for you.

Mr. Temporary Deputy Speaker, I think it is important that we stop thinking of defending party interests when we are in this august Assembly. For the just governance of man, we are to ask ourselves, what justice does a street child in Nairobi have access to? For the just governance of man, what justice does the poor man who is struggling to pay what remains of a loan on his land have, if he is obliged to pay a bribe before he obtains a permit

and he cannot go to court and say somebody has asked me to pay a bribe? Why should it be in the interests of a Government which at the time of PGM prostrates itself as a friend of democracy and fairness? When it is going to meet donors, it polishes its doves and roles them out and holds back its hawks? Why should that Government find it against its interests to establish an institution which is not going to investigate their past crimes which are very many but, it is going to assist the voiceless who have no access to fairness; it is going to empower society in the belief that we can have somebody to listen to us? There are very many in this country who are voiceless, there are very many who need somebody to listen to them. We have very many victims of domestic violence who have no access to any form of justice. We have very many victims of impoverishment living below the sewage line in Mathare who need somebody that is compassionate and can listen to them. We have very many former political prisoners who have been tortured in a very shameful way and they are too scared to go to any court about it, and they need an institution they can turn to and say that, they have been victims of unfairness.

Mr. Temporary Deputy Speaker, Sir, as a people in leadership we are supposed to see it as our responsibility, that we have to open an ear to these people, that we have to give them a sense of hope, that we have to give them a chance to believe that they belong to this country. If we treat such a matter, such a serious national concern with contemptuous vitriol and exchanges about other tribes having fallen, we are descending beneath the level which the electorate would expect us to live at. I know eventually from what I have heard from the other side, the Attorney-General is going to oppose this Motion. It is unfortunate, this Attorney-General, would support Ombudsman in any country in the world. I am sure he would even support it in Kenya, if he was not Attorney-General. But, there he is, instead of advising them on what is important, he lets them advise him on what he should say when he knows it is not right. When will the "voice of reason" rise through the charade of threat and intimidation? When will the moral voice in us, as leaders, traverse the limits of job security so that we tell the world what we really believe in, that this country cannot embark on a democratic path, that this country cannot grow as a democracy, unless leaders are ready to abandon the security of thinking "I have to protect the status quo because the alternative is not properly known"? When are we going to call ourselves the National Assembly, if hon. Members on the Government side are going to oppose Motions primarily because they come from Opposition Members of Parliament? And yet at the start of every Session we have rituals of solidarity where we promise that we are going to work and deal with the national agenda, as national leaders, and that we are going to lower the blinkers of partisan and ethnic divide. How much do we remember what we say at the start of Sessions? How much do we remember of our national commitment, if an institution that is to be appointed by Government, that is to be housed by Government, that reports to Government, is to be shot down just because it is brought to this House by the Opposition?

Mr. Temporary Deputy Speaker, eventually, let these people kill the Ombudsman Motion, let it wait until they are out of power, we will bring it back and indeed there is no stopping it, Kenya will have an Ombudsman. Under the next Government, Kenya will have an Ombudsman, and those of you who have something to hide, will find that you have nowhere to run. But, for heavens sake, let hon. Members be honourable, let them find reasons why they think an Ombudsman is wrong for this country, let them stop cheating Kenyans that Ombudsman is going to compete with institutions of justice like courts. If those who want to oppose have no substance to bring other than to spew out ethnic vitriol, instead of pretending that they are incapable of thinking even whatever they think, let them forever shut up and we might mistake them for being more intelligent than they are.

With those few remarks, I beg to support.

Mr. Shamalla: Mr. Temporary Deputy Speaker, Sir, perhaps before I make my contribution, I would like to draw your attention to the fact that, the debate, such as the one we have, is still a privilege of this House. Therefore, the papers should not, in their view, comment on it. I am saying this because a day after this Motion was introduced here, the *Nation* newspaper took the matter further by making a comment through an editorial. I do not think that, that is in keeping with the rules of this House.

Dr. Lwali-Oyondi: On a point of order, Mr. Temporary Deputy Speaker, Sir. Can the hon. Member state the Standing Order that prohibits the newspapers or members of the public, for that matter, from commenting on any Motions that are being debated in this House?

Mr. Shamalla: Mr. Temporary Deputy Speaker, Sir, my sympathy is with the hon. Member raising that point of order. A matter that is a property of this House is not for comment by the newspapers. I would like to request my colleagues, those behind this Motion, to be very serious about--

Dr. Lwali-Oyondi: On a point of order. This matter needs proper clearance and a ruling from you. The hon. Member has just stated that Members of the public or the Press whenever we debate in here, members of the public or Press cannot comment on them. That has never been the case. Could you just clarify to him so that everybody and the nation, at large, cannot be threatened by this Member?

The Temporary Deputy Speaker (Mr. Wetangula): He has not threatened anybody. Has he?

Mr. Shamalla: Thank you, Mr. Temporary Deputy Speaker, Sir. I would like to repeat what my colleagues have said about this Motion. I would wish that we were serious on a matter that is serious, by its nature.

The issue of Ombudsman, wherever it has been accepted, has been adopted, for very good reasons. It plays an important role in arbitrating problems pertaining to the citizens of those countries.

Mr. Temporary Deputy Speaker, Sir, If we were to think of an Ombudsman within our own structures here, we must first ask, what role is it going to play? What support are we going to give it as Kenyans? An Ombudsman, will not come in as an Institution of the Opposition, or as hon. Muite said as a credit for KANU Ombudsman will come in as one of the organs that will serve a purpose to Kenyans. If we are going to have an organ, it must be respected.

I would like my colleagues in the Opposition, to say categorically that they will treat an institution of Ombudsman, with greater respect that they are able to accord to the other institutions that we have in this country.

(Applause)

Mr. Temporary Deputy Speaker, Sir, I have in mind the institution of our judiciary, that is there to arbitrate between right and wrong. I would like to ask my colleagues, do we treat that institution with the respect that it deserves? My learned colleague hon. Muite is not here, but I would like to ask him, by dragging a magistrate into the Law Society for discipline, is that respect that he is according to that institution? By even refusing to accept the decision of our courts, however high, is that the respect we accord to those institutions? If then we have Ombudsman tomorrow, or I hear already a decision has been taken that it must be occupied by such a person and not such a person, whom the Opposition would like to suggest to in that organization? As long as we accept that we have tribalism in this country, as long as we accept that we have nepotism in this country, no institution of Ombudsman will be of use to Kenyans.

The spirit of Ombudsman is a good one. However, the timing for Kenyans is the wrong one. Now, we have to wait and fight, eradicate tribalism and nepotism. We have to cultivate respect for our established institutions, including the most important of all, the Presidency. Since we do often see that respect is not displayed by my learned colleagues. What respect would you see in the Ombudsman that you cannot see in the Presidency? What would you do with the Ombudsman, when you feel it is better to rash to Rwanda to go and observe what we already know? And I think they are on the way to Australia, New Zealand. I am afraid, I belonged to them one day. I do not regret and I do hope that my colleagues there, one of these days, will see light. Thank you.

The Temporary Deputy Speaker (Mr. Wetangula): Order, before I give the next speaker a chance, an issue was raised by hon. Dr. Lwali-Oyondi, regarding what hon. Mr. Shamalla said, as to whether newspapers are free to write editorials and comments about proceedings of this House. I will reserve the ruling and the Speaker himself will guide the House on the issue at an appropriate time.

Prof. Anyang'-Nyong'o: Mr. Temporary Deputy Speaker, Sir, I rise to support this Motion. I was very surprised when hon. Sunkuli was talking, and he was saying that the way to end corruption, is for us to be more religious. I think religion is a matter of morality. Corruption too is morality, but corruption also deals with criminality. What we are concerned about in Kenya is not so much the petty morality of people who may steal a banana on the street when they are hungry, but we are much more concerned about "official corruption" in Government and the State. It is this official corruption that occupies the attention of Committees of Parliament like the Public Accounts Committee and the Public Investment Committee. And what the hon. Raila is trying to do, is to make it administratively easier for the Government to deal with the official corruption, track it, record it and eliminate it. Because we have realised from the ordinary machinery of the Government, the police, the Auditor-General (Corporations), the Controller and Auditor-General, and the Attorney-General's office, that these offices are tailored to do certain things about misappropriation of funds, misgovernance and so on. But they do not see the picture, as a whole, and they do not singularly try to deal with those cases of official corruption that may come up in various branches of Government or which the public itself may notice.

Mr. Temporary Deputy Speaker, Sir, we Members of Parliament very frequently get letters from individuals working in public corporations, or individuals working in the Government or the public, complaining about corruption, and it would be good if there was an office in Government to which these things could be addressed which would be specialised in dealing with these things. The Government has recently put in place an Anti-corruption Unit. This is a right step towards having an Ombudsman. It would defeat the purpose of the Government, if having made that step, it then reluctantly says that "we shall not come to a conclusion of having a

properly institutionalised office."

I have just gotten a fax from a well known academician in Sweden who happens to know me and who has somebody who is in Sweden and respects the public of Kenya. He is very ashamed of what is happening in the Kenyan Mission in Sweden. He says that there have been several reports in the papers there, of the Mission being involved in contravening certain Geneva Conventions regarding duty-free privileges and so on.

He says that there have been reports that at the Ambassadors residence, there have been some scuffles of his excellency the Ambassador not paying his workers. This is something which leads to industrial disputes in a foreign country and this paints a bad picture of Kenya. He says that when some Kenyans have gone to this mission to present petitions, there have been scuffles and so on. Now, he writes to me as a Member of Parliament. I would like to hand this over to an independent institution like an Ombudsman to look into this case objectively so that the good name of Kenya overseas can be preserved and protected. This is the kind of thing that an Ombudsman would do. Now, of course the Swedes and the Scandinavians have Ombudsman offices but when they look at our country they find that we do not have such an office. That is why this decent academic addressed me. I would rather he had addressed an Ombudsman who would deal with this case objectively because when I raise the case, I am quite sure that the Front Bench here may think that I am doing it for partisan reasons because I am a Member of the Opposition whereas I am doing it in very good faith as a Kenyan who would like the name of our country upheld and preserved. That is one good example of why we need an Ombudsman to deal with such cases. But if I come nearer home, we know for certain that you cannot be judge, executor and prosecutor at the same time. When it comes to branches of Government that are supposed to implement justice and those branches of Government are also accused of injustice, we need yet another independent institution. I am referring to the Judiciary. I know that quite often when we talk about the judiciary, we are told we should not do so in this House. But it is a reality that Kenyans do complain of under-hand activities; of a judgement being delayed and justice being delayed. Unfortunately, as hon. Sunkuli himself recognised, human weaknesses to make a quick buck through holding an official position do also tempt men and women on the bench. Now they could be helped if there was an Ombudsman office to whom people could quietly report and say "Look, could you Mr. Ombudsman investigate this case." Surely, we would be putting the Attorney-General in a difficult position because these are his fellow hon. friends and people more or less serving side by side with him and an independent different institution will come in with investigations and recommendations on what to do when men and women on the bench go beyond mere temptation to actual commission of a crime by accepting a bribe. That is a very important issue and I think the Government should look at it seriously and sympathetically and ensure that this office is established in good faith to protect those institutions of the State that are important in having a Government where checks and balances work.

Mr. Deputy Speaker Sir, there is what is called Parliamentary democracy. There is also what is called Presidential democracy. In our country we have the latter. In other words, you have a Parliament but in a state where Presidential powers are so enormous, so awesome that quite often they make Parliament rather minuscule in making sure that Government works properly. In a state like ours where Presidentialism is so present, there is even more of an urgent need for an Ombudsman. If an Ombudsman is used in countries like Scandinavia where we really have Parliamentary Democracy, it is even more important to have it in a system like ours where Presidential powers are awesome and where quite often, the representatives of the people cannot represent people effectively because the Executive branch is too strong. That is why on the side of the House to which I firmly belong, I just need some political tourism on this side, we have been calling for a thorough constitutional review because I think that the time when we needed Presidentialism in this country is now gone. We have come to a point where we should try and move towards more institutionalised Parliamentary democracy. If we have a much more institutionalised Parliamentary democracy, problems of corruption will be lessened because what happens on this House is that somebody goes and does something which is untoward, something which is wrong, then he appeals for the protection of the Presidency then people fear coming to the precipice of Presidential power and a man or woman will get away with a crime simply because they have invoked the name of the Presidency.

Mr. Temporary Deputy Speaker Sir, this thing has retarded our democracy, it has retarded development in this country, it has made so many people abuse offices to the extent that official corruption is becoming institutionalised in Kenya. Official corruption; this is the practice of benefitting unfairly from occupying an office in Government, an office in the public sector and people even carry it even further; an office in the private sector because you can abuse the law and get the protection of Presidential power.

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

The Assistant Minister for Finance (Mr. Keah): Thank you Mr. Temporary Deputy Speaker, Sir for being so generous to me and giving me two minutes. I will be very brief indeed. Firstly, I oppose this Motion because in my view the issue here is not one of having an Ombudsman in Kenya. The basic thing that we have to

do is to correct ourselves in terms of the respect that we have for the institutions of this land. Until and unless we are able to correct the ills of having a culture of lack of respect for our own institutions, even the Ombudsman when elected or in whatever aspect, will not on his own be able to curb corruption. He will not be able to curb all those ills that those who have spoken in favour of this Motion are advocating.

Mr. Temporary Deputy Speaker, Sir, we have institutions in this country which, if properly functional, can do the work of the Ombudsman. We have Parliament which is supreme; that can do the work of an Ombudsman. We have the Commissions that are appointed from time to time; Commissions of several people together which in my view operates a lot better than just one Ombudsman. Even the Ombudsman may have to an Ombudsman to "Ombuds" the Ombudsman. I do not know whether that is understandable but that is really going to the basics of the culture that I am talking about.

Mr. Temporary Deputy Speaker, Sir, I oppose the Motion.

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, I beg to respond on behalf of the Kenyan Government.

First of all, I want to thank the hon. Member of Parliament, who is also my Member of Parliament in Lang'ata, for having brought this Motion. As he rightly stated, during the Moving of the Motion, this is a matter that has been under consideration for quite sometime, in the history of this nation. He did, indeed, refer to the Ndegwa Commission of 1971, which saw the justification for it and which also observed that the appropriate time for creating this institution needs to be considered by the Government.

Then, we had the Waruhiu Commission in 1980 which again left it to the Government to bring it at the appropriate time. We also had the Sessional Paper number five of 1974, which went into the details of this institution, and which again, said that the timing of the bringing of this institution was important and that the Government should consider the timing. Therefore, the Constitutional Paper at that time did mention that it was not appropriate then to bring the institution. Reference has been made to the debate in this august Assembly, thereafter, in 1985, when the Government again thought it was not appropriate then to bring this institution. Whether or not to establish this institution, is not so much a legal but a policy matter. Therefore, that is why I am thanking the hon. member who brought this Motion because from time to time, we have to consider these important issues as to whether or not to establish these institutions like Ombudsman. From time to time, we should consider whether this is the time to do so or not. Therefore, he has brought this Motion at this time to remind us to continue considering whether it is the appropriate time for us to create this institution.

What we have to consider are many issues - I am saying this as a person who has been on the forefront of establishing the institution of Ombudsman not just here, but all over the world. What we have to consider is whether, this is the appropriate time for bringing the Ombudsman issue in Kenya. There are many matters that have to be taken into account. As it has been stated, this institution emanated from Sweden. The first Ombudsman institution was established in Sweden in 1809. This institution has developed in Sweden, Scandinavian countries and many other countries, not just in Europe, but also in Africa. The history, powers and functions of Ombudsman are those confined mainly to unfairness, abuse of the administrative decisions and malpractices in the administrative systems. It is important to bear in mind these limited functions of the Ombudsman. These functions were ably referred to by the Mover of the Motion and his Seconder, and other hon. Members who have contributed to this Motion. But having referred to the proper functioning of the Ombudsman, when they begin giving examples of what the Ombudsman is all about, and what he is going to do, I want to state clearly that the proper functioning of the Ombudsman has not been understood. Quite clearly, the functions have not been understood. Therefore, it is important first of all, to understand the functions of the Ombudsman, and even more so, the limitations of the Ombudsman, as it has developed all over the world. This should also be clearly understood in this country.

The office of the Ombudsman cannot deal with issues which relate to personnel matters concerning public servants. A number of hon.

Members who have contributed to this Motion, have mentioned that when that office is established, the issues of the appointment of civil servants, and how it is done on tribal basis and so on, including disciplinary matters concerning civil servants will be considered by the Ombudsman. The fact of the matter is, if you do take into account the various legislations relating to Ombudsman, even in Europe and elsewhere, personnel matters and other issues concerning public servants are expressly excluded.

In this country, personnel matters relating to public servants are dealt with by the Public Service Commission (PSC). Therefore, what we should be calling for really, is that the PSC should be strengthened to be able to deal effectively with any civil servant who does not measure up and who abuses his authority and so on.

I would like to remind this august Assembly that the PSC is an institution created by the Constitution itself. The PSC is a constitutional institution. If you have to establish the Ombudsman, and we forget the

experiences of other countries and say that we want our Ombudsman to deal with appointments and discipline of public servants, and any complaints against public servants, you will be creating an institution by an Act of Parliament, and the issue which will arise now is this: Can an institution created by an Act of Parliament, in essence, supervise an institution created by the same Constitution? So, apart from the practises of these issues internationally, the fact of the matter is, that we can not do so here now, because there will be that inherent conflict between the institution created by an Act of Parliament and the institution created by the Constitution which is the PSC.

We have talked about corruption. It is specifically mentioned in the Motion itself, and a number of Speakers from both sides have also mentioned that this institution is necessary, because of the prevalent theft, bribery, corruption and so on, in the society today. The fact of the matter is, that the institution of the Ombudsman cannot deal with this type of corruption effectively. If we have to deal with these issues of corruption, bribery, fraud, theft and so on successfully, what is required, is to strengthen our police force. The police force is also mentioned in the Constitution. The police force also operates under an Act of Parliament, and the police force is charged with the duties of dealing with these issues. I do accept that they may not be performing as they ought to perform, but if we really are serious in dealing with these issues of corruption, bribery, fraud and so on, we need to increase the capacity of the police to investigate these types of cases. In a number of cases now, particularly if they are dealing with the issues of corruption, fraud, bribery, computer crimes and so on, they require a certain level of expertise in investigation, instead of creating another institution to deal with the same things. So, our efforts should be geared at making our police force work more efficiently, properly and raising their capacity to do this type of work.

Our efforts should be geared towards enabling the Judiciary to work efficiently and properly, giving it the necessary resources to ensure that not only are crimes properly investigated, but those who are found guilty, are properly brought before the court and punished for it. So, when we are talking about corruption, that is where our efforts should be geared to at this point in time.

When we talk about tribalism and nepotism, again, this is a matter that has to be tackled, not just even in at the legislative level, though at the creation of another institution. This is a matter which we the leaders in this House should deal with because we are, in fact, the main promoters of tribalism, nepotism and fraud. We should deal with ourselves first before we can effectively go and wipe out the evils of nepotism and tribalism. What am I saying? I am saying this, that the institution of Ombudsman, wherever it has developed, has confined itself to issues of abuse of administrative power, maladministration and so on. I am also saying that wherever it has developed, the Ombudsman has been given the powers to make recommendations to the appropriate institutions and so on. Therefore, unless we have those, the issue of Ombudsman cannot deal with issues of criminality. In fact, when we talk about the abuse of the administrative power, we are talking about that abuse that is less than a crime. So, the Ombudsman's role is confined to that narrow area, and in that narrow area, of course, as I have said earlier, I have been very supportive of this institution. Now the issue here is: Is it the appropriate time? Can the Ombudsman work effectively here?

In all these countries, the Ombudsman has been very, very effective in his job because of various factors. He has been very effective in his job because the other institutions of the state are able, capable and have been given the resources to work properly within the area of their mandate. If it is the Judiciary, it has been given the resources to be able to hear those cases expeditiously and so on. If it is the police, it has the technical expertise, it has the capacity to be able to investigate all types of cases, and if it is the Public Service Commission, it is working properly. All these institutions are working properly, in an enabling democratic environment of respect for other people's opinion, of tolerance, of restraint and so on. When all these things are working properly, then, the institution of Ombudsman works effectively. If the institutions are not working to their full capacity, or institutions are not working to their full capacity if other culture is not there, then, we are saying that we will bring an institution which will itself be affected by the limitations of the other institutions which are also operating. Therefore, we will not really be solving the problem, but we will, in fact, be compounding it. Therefore, it appears--

Dr. Lwali-Oyondi: On a point of order, Mr Temporary Deputy Speaker, Sir. The Attorney-General is in essence, saying that the institutions of Government are not working properly. Why is he not taking steps to correct them?

The Temporary Deputy Speaker (Mr Wetangula): Dr Lwali-Oyondi, obviously, that is not a point of order!

The Attorney-General (Mr Wako): Mr Temporary Deputy Speaker, Sir, what I am saying is simply this, that in order for the institution of Ombudsman to be able to work properly, then, we must, first of all, strengthen the existing institutions, particularly the police. By strengthening, I mean give it the necessary

resources and training in order to investigate properly the complicated types of economic fraud, corruption, *et cetera* that are facing the country. By strengthening it, I mean giving it the necessary implements to be able to move around and investigate crimes properly.

We must also give more resources to the Judiciary so that they can not only hear cases expeditiously, but so that they cannot be prone to the temptations of other people on the issues of corruption and so on. Give them proper remuneration and so on. We must also be able to strengthen the Public Service Commission and so on. We must be able to improve all them, if this institution is going to work properly. Otherwise, we will be imposing another institution called Ombudsman, which will not be as effective as you think. It will also have the same limitations that other institutions have and, therefore, we will not be solving the problem. We will be like a person who does not want to analyze the problem and he thinks that by putting in place the institution of Ombudsman, he is solving the problem that we have.

Prof. Anyang'-Nyong'o: Mr Temporary Deputy Speaker, Sir, I would like to raise a point of order. Is the hon. Attorney-General in order to imply that when civil servants are well paid, we do not need an Ombudsman while we know that in, Sweden civil servants are very well paid and yet they have the institution of the Ombudsman?

The Attorney-General (Mr Wako): Mr Temporary Deputy Speaker, Sir, I thank the hon. Member for raising that point because it shows that he clearly misunderstood what I was saying. What I was saying is this, that we shall be able to solve this problem if all the other institutions are working properly. It is only when these other institutions are working reasonably properly that the institution of Ombudsman can be effective, but without that, we will be superimposing an institution on other institutions which are not working to their capacity. Therefore, the issue question that we have to ask today is: Is this the appropriate time? Therefore, I thank the hon. Member of Parliament for having brought this Motion today, so that we can re-examine it, we may even bring it next year or some other time. But at this point in time, I stand to oppose this Motion because---

Mr. Mak'Onyango: On a point of order, Mr Temporary Deputy Speaker, Sir. Is the Attorney-General in order to imply that simply because our institutions are not working properly, it is, therefore, not an appropriate time for us to come up with yet another institution that might seek to make these institutions work properly?

The Attorney-General (Mr Wako): Mr Temporary Deputy Speaker, Sir, the institution of Ombudsman even in the Scandinavian countries depends on the operations of other institutions. It merely makes recommendations and, therefore, the issue here is that, if we really want to deal with things effectively, then, let us make the existing institutions work more effectively. That is the point I am trying to make.

Therefore, at this point in time I oppose this Motion because:-

(a) It appears there is misunderstanding as to the proper role of the Ombudsman, judging by the type of examples that have been given in this House;

(b) The national institutions are there to deal with it. They should be strengthened and, then, maybe the institution of Ombudsman can be useful at that stage; and

(c) Issues of tribalism and nepotism are not issues that can be dealt with by whatever institutions we establish effectively. Issues of nepotism, tribalism and so on are issues which are in the minds of people and, therefore, it behoves each one of us, as a leader in this country, to remove those negative attitudes of nepotism and tribalism.

With that, Mr Temporary Deputy Speaker, Sir, I beg to oppose this Motion.

Mr. Raila: Thank you Mr. Temporary Deputy Speaker, Sir. I wish to thank all the hon. Members who have spoken on this Motion. I would like to thank particularly those Members who have supported this Motion. I am also grateful to the Attorney-General for his comments. I do sympathise with the Attorney-General because he is at times forced to take positions or to support principles which contradict his own convictions. I know that in his heart of hearts, he actually supports the creation of the office of an Ombudsman. The Attorney-General, on the 29th of May 1992, addressed a meeting and said that it was time that an office of an Ombudsman was created. On 31st May, 1992, he was quoted by the *Nation* in an editorial and said:

"The Attorney-General, Mr. Wako on Friday revisited the issue of an Ombudsman and said that the Government may have to set up the office. He said that he gets a total of 50 letters daily from Kenyans in the rural areas seeking all manner of assistance. Such letters, Mr. Wako indicated, could be dealt with by an Ombudsman."

So, the Attorney-General knows very clearly what role an Ombudsman is supposed to play. In attempting to oppose this Motion on the basis that the Mover did not understand the role of an Ombudsman, the Attorney-General is trying to duck the issue. The powers of Ombudsmen wherever they exist are not uniform. The Swedish Ombudsman is the most powerful. It has got a lot of powers. It even examines the rulings of the

courts there. It even has the powers to check into the workings of the churches of Sweden. In UK we have several Ombudsmen. There is the Parliamentary Commissioner for Administration who is the Chief Ombudsman to whom all Members of Parliament refer questions that they have received from members of their respective constituencies. There is also the National Health Services Ombudsman. They also have a Pensions Ombudsman. So, to say that the Movers are not clear about the role of the Ombudsman is to mislead this House.

Having said that, I want to touch on the point of corruption. An hon. Member said that corruption is not a KANU problem. That it is due to lack of patriotism. We distinguish between two types of corruption; the illegal corruption and the legally sanctioned corruption. Corruption exists virtually in every country of the world.

The difference is the type of action taken when it is discovered. In the US for example, when they discovered that the then Vice-President, Mr. Spiro Agnew (?) had solicited commission from a contractor while he was a governor in Arizona before he became the Vice-President, he was forced to resign from his position as the Vice-President. The difference therefore is that in the US, when it is discovered, action is taken to correct it whereas in this country we have the officially sanctioned corruption where a senior Government official commits an act of corruption, it is exposed, he denies it and there ends the matter. I did ask a question that "what choice does a matatu driver who is ferrying 25 passengers have when he starts at a police road-block and he is asked by the police to give something small (*kutoa kitu kidogo*)?" What kind of choice does he have knowing very well that if he does not do so, the PSV is going to be impounded, his passengers are either going to be forced to sleep outside in the cold or he pays this *kitu kidogo* and then he is allowed to go through? Can the Attorney-General really tell this House that the police can actually do something about it if it is the police themselves who are soliciting bribes at the road-blocks? So, to say that the police have got the capacity to deal with the kind of corruption we are talking about is again just to try to evade the issue.

We have an international organization called Transparency International that has been formed to lobby against business dishonesty and corruption. This organization has applied for the registration of its branch here in Kenya but that registration has not been effected by the Office of the Attorney-General. About nepotism and tribalism, we keep on talking time and again about it. I have one case which I want to raise here. The Bomas of Kenya which is a parastatal organization is situated in my Lang'ata constituency. It is an institution which is supposed to protect and advance our cultural heritage. The Board of Directors of the Bomas of Kenya consist of 10 members, out of which five are from one ethnic community. The Chairman, the General Manager and three other members of the Board are Kambas. Five members out of ten are from one ethnic community. This is a national institution that is charged with advancing our cultural heritage. If there was any need for more representation across the board in any national institution it is at the Bomas of Kenya. It is not only that. The problems associated with tribalism abound in that institution. Most of the junior officers are from the same ethnic community. The General Manager uses the Corporation's vehicle to go and ferry goats from his farm in Ukambani to come and sell to that same institution. On one occasion he employed one of the staff to look after the goats he had brought to sell to the institution. He was told that if these goats were stolen something---

The Assistant Minister for Agriculture, Livestock Development and Marketing (Dr. Misoi): The hon. Raila Odinga has made very serious allegations against a public servant that he ferries goats using institutional transport. Can he substantiate?

Mr. Raila: I was going to substantiate. The vehicle's registration number is KAB 852 B. The officer himself is called Mr. A.K. Mbuvi. These goats were being kept at the compound of the Bomas of Kenya and a staff member was deployed to look after them. He was told that if those goats were stolen, he would lose his job. This fellow was mauled by a hyena in January this year. He lost all his limbs and nose, he was taken to Kenyatta National Hospital where he spent four months. When he was discharged from the hospital, this Mr. Wesonga is now a beggar because he was dismissed because he had lost the use of his limbs. He has not been compensated yet he lost his limbs while looking after goats which had been brought by the General Manager. To whom is Mr. Wesonga to take his complaints? Where would he direct his complaints? I am saying that enough evidence has been adduced in this debate to show that the institution of Ombudsman is long overdue in this country. The argument has been advanced and which had been advanced before, that functions of the office of the Ombudsman are already being carried out by other institutions in the country does not hold water. We are saying that if that were the case, other countries who have introduced this office would not have done so. Tanzania and Uganda would not have done so. If you look at the article in today's *East African Standard* newspaper page 4, it is talking about high level corruption in Thailand. That they are actually considering the introduction of the Office of the Ombudsman in Thailand.

So, Mr. Temporary Deputy Speaker, Sir, at this time when this Government is talking day and night about introducing transparency, accountability and good governance in the management of public affairs, it is a shame that the Attorney-General should stand before this august House to oppose such a Motion. It shows that

the Attorney-General is actually saying one thing and doing another thing. Internationally the Attorney-General is known as a human rights lawyer. But the action of the Attorney-General has shown that in fact he does not believe in what he professes.

Mr. Temporary Deputy Speaker, Sir, with those few words, I beg to move. Thank you.

(Question put and negatived)

The Temporary Deputy Speaker (Mr. Wetangula): Order hon. Members! Order Mr. Ogeka! Hon. Members, the end of that Motion is not the end of the Business of the day.

(Applause)
Next order.

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

*[The Temporary Deputy Speaker
(Dr. Ombaka) took the Chair]*

MOTION

FRESH POPULATION CENSUS

Mr. Ogeka: Thank you, Mr. Temporary Deputy Speaker, Sir. I beg to move the following Motion:- THAT, in view of the great concern and criticism by a cross section of the people and institutions on the latest population census held in 1989 and given the importance of accurate data for planning and development, this House urges the Government to carry out a population census, snap or otherwise, prior to any major national activities, such as constituency boundary reviews, general elections and five year development plans.

Mr. Temporary Deputy Speaker, Sir, the population census carried out in 1989 starting on August, 24th and 25th mid-night, was pronounced and properly propagated to take two days. It took a longer time to announce the results. The results were finally announced after three and half years, that is on 11th of March, 1994.

On the on-set of the census which was very significant to all the Kenyans, the leaders included, we had cross-sections of concerns. At one stage or the other I have enjoyed the joint concern of the political think-tank in this House. They showed a lot of steam, questioning certain sections of the 1989 census. The census which was conducted by a very competent Kenyan statistician, John Kikovali, I think took off professionally on a very enthusiastic ground. But two days after the census had taken off, there was a sluggish move which ended up under-cutting quite a big section of the statisticians who were carrying out their job competently. As a result we ended up with an under-coverage and over-coverage. As a result of the declaration on the 11th of March, 1994, and the concerns of most of us in this House, most of the Kenyans along the streets, I took a lot of concern to review and remain answerable to the Kenyans on the population census. Are we going to treat their concern with the seriousness it deserves? Are we not answerable to them? And I am calling upon this House jointly that let us look back, scrutinise factors for and against and come out to accept or deny the criticisms of the Wananchi. The criticisms were echoed by amongst many others the Head of State of this country, who publicly declared that the population census of 1989 was out of form, rubbish and good for nothing. I think it is our national concern as patriots that such statement deserves to be scrutinised.

I have looked at the population census of 1989 in three perspectives, one, from the professional point of view. I took a lot of concern and visited the Institute of Population Studies of the University. I have also shared my views with the Kenya Bureau of Statistics, so that I can know what they think about it, and a cross-section of the Wananchi to find out what is really their concern. Starting from the very book which is the total compilation of the census of 1989, professionally there was an under-coverage, particularly in the affluent areas. The first two days when the census took place - take the posh estates in Nairobi - they remained awake for two nights and having seen no statisticians they instructed their watchmen not to allow anybody to come in. As a result, quite a portion of the Kenyan population was not covered.

The second areas were the high risk areas like the slums. They knew known that the census would take place within two days. When it reached the third day without seeing anybody, they were concerned and declared

that they had not been counted. These areas became fairly dangerous for the people who were taking the statistics to come out and reach the people in order to carry out the census.

The third but not the least factor, are the arid and semi-arid areas. Sincerely, Kenyans were very concerned in the first two days as the mass media had declared that the census would take place. After the second day, even the arid and semi-arid areas became very difficult to reach and take stock of the people that were in these areas.

I am echoing the concern that has been put squarely across by the professional staff on the problems that they encountered during the five days when they carried out the population census. In some areas, it was clearly reported and made known that enumerators stopped work after only three days: For what reason? Let me be on record; for one thing it was not clear whether the enumerators would be paid beyond two days. That was officially made clear and it took place before it was confirmed. Basically, the area where I come from, that is Muhoroni, enumerators did not complete their work until after the fourth day.

The problem between the Chiefs and the DOs as to whether they should be paid came up, but many enumerators failed to turn up. That did not happen only in Muhoroni; it happened all over the Republic. So, most enumerators stopped working after only three days, resulting in under-coverage. In major urban areas, there was the problem of non-availability of people during the day. Why? Their main concern was to go to work. Having failed to carry out the work at night, they resorted to doing it during the day. When they visited these houses during the day, they found that there were no people in those houses. These are the views of professionals who are accepting the criticisms and the concern of Kenyans that the 1989 Population Census had some short-comings. This tends to undermine the accuracy of the data in determining equitable distribution of Parliamentary, Civic and administrative seats or otherwise. These criticisms carry a lot of weight.

Mr. Temporary Deputy Speaker, Sir, if we fail to reveal the 1989 Census with regard to these short-comings, then I think we are giving a raw deal to the very people whom mandated us to take corrective measures where they are not fully satisfied.

Besides the professional criticism, the professionals came up with a Post Election Enumeration Survey which they carried out in September/October, 1990 as a follow up to the 1989 Population Census. This Post Election Enumeration Survey, coupled with an analysis which I am coming to, came up with the finding that the 1989 Census was far from meeting the truth of the correctness of the figures that we required for our planning. The final bit of it from the professionals which was totally non-political and not based on any alignment to any party or otherwise, was done in the interest of the entire nation. If you allow me, I will refer to this book, which is known as the Kenya Population Census 1989 Vol.I. On Page 113, the last Paragraph reads as follows:

"An analysis of 11 districts of Busia, Bungoma, Kisii, Nyandarua, Nyamira, Kericho, Bomet, Narok, Baringo, Kilifi and Nairobi has since indicated both under-coverage and over coverage. Accordingly, adjustment will be made where the variations were statistically significant. Analysis is under-way in all the remaining districts and the necessary adjustments will be effected when the analysis is completed".

Mr. Temporary Deputy Speaker, Sir, I am tabling this Volume in this House. This Volume was given to us by nobody other than, the Head of the 1989 Population Census. Only 11 districts were covered. That was not the end of the work, but the analysis was to be continued in all the districts in the Republic so that we could effectively find out where there was an under coverage and take corrective measures. This was in the interest of nationalism and accuracy of data for effective planning and development. If this has been done, I challenge the Minister in charge to competently inform this House, that the analysis has been carried out in all the other districts and corrective measures taken and put accurately to allow effective implementation. If that has not been done, the Minister in charge of this Ministry owes this House and the Republic at large, an apology for coming short of his responsibility. This is carried in this book which is non-Opposition, non-ethnic based, non-political biased. It is calling for total patriotism for the effective development of our country. I put it to the Minister concerned to please adequately, tell this House, exactly the fate of the analysis which was to be done to update and effect corrective measures on what had gone wrong.

I would like now to turn to the statistical analysis by the institutions I have visited. First, it was really biased in certain cases whether politically motivated or otherwise, but I think for the sake of our survival and service to this country, we must be above parochial politics. We must serve the country with open hearts, come out adequately and address issues as they come before us.

I will tell you the reasons which led to these realisations to come about. Were they politically motivated because the people who carried out the Census failed to at least understand how they came about? The Abasuba who appear as a community in this book had their number over rated. The Abasuba population increased between 1979 and 1989 by 15 per cent, compared to the Luo, amongst whom they live, whose rate of growth was 3.1 per cent. Was this due really to a higher mortality rate or otherwise? You wonder how an enclave of a

community surrounded by others, could multiply by 15 per cent, when the other group with whom they share the environment, rose only by 3.1 per cent. Let us go further. According to the professionals, in Kisii both the mortality and fertility rates are higher compared to the mortality and fertility rate among the Kalenjin. Between 1979 and 1989 in the Kisii, the population increased by 2.9 per cent while the Kalenjin area, the rate was 12 per cent. This is highly questionable. Was there an over coverage, an exaggeration or what really happened? If a blunder was made, could it be looked into?

Between 1979 and 1989, the Tharakas, besides the other Meru lot, in spite of the fact that they have come out distinctively as a community in Meru had a growth rate of 22.6 per cent. In a country where the general population increase is 3.5-4 per cent, you have a single community with 22.6 per cent increase. Under normal conditions, such an increase would only occur as a result of mass movement of people from other areas to that area, which most likely will have been a consequence of an industrial investment. Was there an industrial investment in Tharaka-Nthi? Not only that, the smallest community, the Elmolo, which has been treated as an endangered species during that Census, had their growth rate moving up from a minus because they were diminishing, to 19 per cent. I challenge the Minister to confirm whether this data is correct or not. The Maasai, with all due respect, had their growth rate moving from 2.7 per cent to 15.6 per cent. These are big discrepancies and, at least, something somewhere was wrong. We were carried off or taken from the rail by political ambition or other considerations. If we need adequate planning for our country, we must be guided by the truth. It may not be a 100 per cent truth, but let it be moderate truth. There was too much exaggeration of the figures.

Mr. Temporary Deputy Speaker, Sir, we belong to tribes whether we like it or not. A mother is a mother and we can never denounce her. A tribe and tribalism are two different philosophies. I condemn tribalism as much as I condemn nepotism. But a tribe has to exist! When you go to upper Somalia you will find the Hawai, the Ogaden sub-tribes and so on, but they all belong to one tribe. My dear friends' communities, which have been represented here since before Independence, are now not represented here. To begin with there is no tribe like "Kalenjin", but there are tribes known as the Nandi, Kipsigis, Maragoli, Teso and others. You deserve to adequately protect your community and register your concern for their existence. I think the absence of the Nandi as a community from this population census book is not justifiable. The community was reflected in the same book in 1969 and 1979, but in 1989 it did not exist! It deserves to know its number and its growth rate.

I am challenging what is said in this book which belongs to all of us, under a very healthy environment. A group like the Abasuba, which never existed in the previous population census, now exists. I am grateful because we have now been added an extra district as a result of the existence of the Abasuba - that is development in administration. I challenge this census and ask this House that we resolve to go back to wananchi to ask them whether the President was right in correcting the census figures or doing otherwise. Let us in this House scrutinise the last population census.

With those comments I beg to move.

Mr. Orenge: Mr. Temporary Deputy Speaker, Sir, I beg to second this Motion. This is a very important Motion. I intend to deal with only one aspect of it since I have only 10 minutes to speak. Hon. Ogeka has adequately covered many areas relating to the need for a national census, particularly because the last census was not an accurate one. It was a shoddy job and, therefore, there is need to recommend to the Government to hold another population census, which must be done periodically and in accordance with the law.

The aspect that I want to deal with is related to the issue of governance and representation. Population is very important in so far as governance and representation are concerned. If we read the relevant law you will agree with me that people and populations matter. He who is elected the President of this country must attain the largest simple majority of voters. There is a rider to that, that he must obtain at least 25 per cent of the vote in at least five provinces. I am saying this to emphasise the fact that population matters and people count in governance.

Also in the distribution of constituencies, or delineation of boundaries in so far as constituencies are concerned, the Constitution is very clear. Section 42(3) reads:-

"All constituencies shall contain as nearly equal numbers of inhabitants as appears to the Commission to be reasonably practicable".

If the Commission desires to depart from that fundamental principle, the two primary concerns are the density of population and population trends. So, when the Electoral Commission (EC) carries out the exercise of dividing this country into various constituencies, the population of any given area is important and it matters. In fact, the last part of this subsection (3) reads:-

"For the purposes of this subsection the number of inhabitants in any part of Kenya shall be ascertained by reference to the latest census of the population held in pursuance of any law".

So, when Cheson's Commission undertakes its work it must use the last population census as a starting

point. Hon. Ogeka has pointed out very clearly that the last census was a sham. Indeed, the President himself declared it so, that it was a sham. Now, when we talk about governance, how have the numbers translated into the manner in which the present Government was formed? The figures are as follows:

A hundred KANU Members of Parliament were only able to garner 1.4 million votes. The representation of the KANU side accounts only for 1.4 million Kenyans. The Opposition parties with 88 seats, which were won during the last general elections, had 3.4 million votes. So, the EC, in carrying out the last exercise of dividing this country into constituencies, ensured that this country can never be ruled by the majority. But there is no way that a Government which is voted by only 1.4 million voters should rule a country which voted decisively for the Opposition. This is rigging and if the EC does not carry out its work in accordance---

The Assistant Minister for Agriculture, Livestock Development and Marketing (Dr. Misoi): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for hon. Orengo to allege that it is not proper for a Government which was elected by the majority to rule this country?

The Temporary Deputy Speaker (Dr. Ombaka): He is perfectly in order, Dr. Misoi. That is not a point of order! Proceed, Mr. Orengo.

Mr. Orengo: Mr. Temporary Deputy Speaker, Sir, the guilty are afraid and when the hon. Member was making that point he was clearly afraid of saying what he has said. But my point stands, that because the EC did not use the principles set out in the Constitution we have ended up having a Government which is a minority one. This is not the first time I am making this point in terms of the number of people who voted for the Kanu Members of Parliament.

Therefore, for the EC to do its work properly and to ensure that we have proper representation and governance we need to have an accurate population census, so that the EC can do its work properly on the basis of numbers. Even in the Presidential election, it is quite clear that the majority of the people of this country voted against the present Government. There is no basis upon which this Government should stay in power, if we are to operate under the principle of democracy and majority rule. It is the people who count, not goats or land. The fact of the matter is; until we have a proper election, based on majority rule, this Government that is governing this country is not, in my view, a legitimate government. It is a government which has rigged itself to power because of not having garnered the majority of votes in the last elections.

So, from that perspective, it is important that we carry out a proper census to make sure that constituencies which have many people are adequately represented. I am thinking of constituencies like Kisumu Town, Molo, Mathare and others in Western, Central and Nyanza provinces, including Kisii. These areas are under-represented. At the time of Independence, Elgeiyo Marakwet had only one constituency, if my memory serves me right. However, through a process of rigging, Elgeiyo Marakwet now has four constituencies when Siaya district, which has got a bigger population in terms of inhabitants, has got five constituencies. If you look at the population and the administrative area, Siaya district is far larger than Elgeiyo Marakwet district and from the reasons why they were given these constituencies, it is quite clear that they departed from the principle of making use of numbers or the population.

Mr. Temporary Deputy Speaker, Sir, there is normally an argument that those who represent a larger area should be given more constituencies, even if there are less people. I think what should be done is that those Members of Parliament who represent larger areas should be given a little bit more allowance to enable them to travel around in those constituencies. However, this should not be an excuse for them to depart from the principle of one man, one vote. I believe that in the next process when we have constitutional talks, if ever they will come, this is an area which must be looked into and analyzed. Nigeria had many upheavals because of inaccurate censuses which had been politicized to show that certain communities were larger than others. Hon. Ogeka has demonstrated that in the last census, there was an attempt to ensure that some communities which have small populations suddenly had very large populations. I am sure that this was done deliberately.

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

(Question proposed)

The Assistant Minister, Office of the Vice-President and Ministry of Planning and National Development (Mr. R.O. Oyondi): Thank you very much, Mr. Temporary Deputy Speaker, Sir. I stand to give the Government position on this Motion. My Ministry and the Government accepts the Motion with very minor amendments. Hon. Members will appreciate that the Government has a long history of carrying out successful population census in the country at appropriate times. The first census was conducted in 1948. Since then, we have had regular census exercises which have been conducted over the years as follows: 1962, 1969, 1979 and

1989. The 1989 census was the fifth to be conducted. These regular census exercises have been undertaken because the Government appreciates the importance of accurate population census data as a tool for planning and development. It is from such data that the Government is able to know:

- (1) The size, composition and distribution of the population.
- (2) Current trends and levels of fertility, death and immigration rates.
- (3) The composition of the labour force.
- (4) The rates and patterns of urbanization.
- (5) Social amenities which are available to the population.

Mr. Temporary Deputy Speaker, Sir, the census exercises have been and will continue to be conducted or to be undertaken in the country following accepted demographic procedures of census taking, such as mapping, mid-term demographic surveys to test organisational capability of putting the necessary equipment into place. The 1989 population census was conducted on the basis of these principles and experiences from previous census exercises. For instance, between 1979 and 1989, which is a substantial period, several demographic and socio-economic surveys were undertaken. These include, among others, agricultural and production survey in 1986/87, labour force surveys in 1986 and 1988, fourth child nutrition surveys in 1987 and demographic and head surveys in 1989. The results of these surveys which are published together with annualized population projections derive from previous census exercises and provide fairly accurate and reliable information necessary for planning and development.

Now, given the fact that the Government is committed to carrying out population census exercises regularly and, given the fact that other activities between census exercises continue to take place so as to ensure that population data is a reliable tool for planning and development, I would like to propose an amendment to the Motion by deleting the words "and criticism" appearing in the first line and all the words immediately after the word "concern" appearing in the fourth line to the end, and that the following words be inserted immediately after the word "census" appearing in the fourth line; "as soon as it is practicable".

The Temporary Deputy Speaker (Dr. Ombaka): Hon. Oyondi, there is no such word as "concern" on the fourth line.

The Assistant Minister, Office of the Vice-President and Ministry of Planning and National Development (Mr. Oyondi): Mr. Temporary Deputy Speaker, Sir, I mean all the words after the word "census" appearing in the fourth line be deleted and that the following words be inserted immediately "as soon as it is practicable". The amended Motion should read as follows:-

THAT, in view of the great concern by a cross section of the people and institutions on the latest census held in 1989 and given the importance of accurate data for planning and development, this House urges the Government to carry out population census as soon as it is practicable.

The other reason why the Motion should be amended is because the Motion as it is, failed to appreciate the fact that the carrying out of census of the population successfully is a technical exercise which is time consuming as it entails a complete national coverage of the population. The exercise involves a vast amount of organization and preparatory work with some aspects of the preparation being put in motion a number of years before the enumeration data. Equally, analyzing data after enumeration takes considerable amount of resources and time. Financially, the census of the population is a costly exercise to the Government. For example, the 1989 population census cost the Government a staggering figure of Kshs 240 million while the one of 1999 is estimated to cost over Kshs 1.2 billion. A substantial proportion of this cost has to be sought from a friendly country abroad through negotiations which take time to conclude.

Lastly, it should be appreciated that Kenya is a member of the International Community and its Conventions. The United Nations recommends that countries should try to have their population census taken close to the zero years for the purpose of comparison of the global population. Kenya has conducted the last three population census in 1969, 1979 and 1989 because we believe that a period of ten years is ample time to capture changes in the distribution and the structures of the population and conform to the United Nations recommendations.

With these few words, I beg to amend the Motion and I want to call upon hon. John Koech to second the Amendment.

The Assistant Minister for Finance (Mr. arap Koech): Mr. Speaker, Temporary Deputy Sir, I would like to second the Amendment.

It is an obvious fact that the last population census was not accurate but I think I should clarify the very erroneous impression that the census figures seemed to have been inflated in some areas. When I look through the census figures, there are mistakes all over the country and these mistakes are equally distributed. So, I think we should not come up with an impression that the population census seemed to have been "doctored" to favour

certain areas. If there were general mistakes, they are general mistakes and it has been put very clearly by the Mover of the Amendment that the Government is concerned about this particular issue and the question of correcting the mistake is going to be done. So, the Government will be prepared and make sure that this mistake is corrected.

Now, there are also some very wrong impressions which have been created by hon. Orenge that we have a Government which was voted in by the minority. Now, when the last General Elections were conducted, the fight was between several parties and if you have got five candidates in one constituency it is obvious that whoever may win in that constituency may have less numbers of voters compared to the total number of votes which are in that particular constituency. As far as democracy is concerned, it was not said that Kenya has got to be a two party state. If the fight was between two parties things would be different but there was a situation where many parties were competing to have one candidate win the General Elections. To give an impression that we have a minority Government is wrong. KANU is leading among other parties. We are leading. When you consider Ford-K they have got less votes than KANU. If you consider the Democratic Party of Kenya they have got less votes than KANU and the same applies to Ford-Asili. The question of all the time Members of Parliament singing that this is a minority Government should not come up. The reality is that the fight has been among parties and not among two parties. So---

Prof. Anyang'-Nyong'o: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. Assistant Minister to deceive this House that KANU is not a minority Government when it is known that in parliamentary democracies where you get a government by "the first past the goal post", it is quite normal for a ruling party to be in power with a minority vote. You need not be apologetic about it. It is a principle of first past the goal post.

The Temporary Deputy Speaker (Dr. Ombaka): Prof. Anyang'-Nyong'o, that is a point of argument and not a point of order.

The Assistant Minister for Finance (Mr. arap Koech): Thank you, very much for saving me. I did not expect somebody of the calibre of hon. Prof. Anyang'-Nyong'o to raise such a point of order.

Mr. Kariuki: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is hon. Prof. Anyang'-Nyong'o in order to---

The Temporary Deputy Speaker (Dr. Ombaka): I have ruled Prof. Anyang'-Nyong'o out of order.

Mr. Kariuki: He used the words "to deceive this House".

The Temporary Deputy Speaker (Dr. Ombaka): He is out of order. I have ruled him out of order.

Mr. Kariuki: He should be out of the House.

The Assistant Minister for Finance (Mr. arap Koech): The point I was trying to make is that the impression has been created by the Opposition is that we are a minority Government. We are leading as far as votes are concerned. KANU was in the lead and I think it was a general agreement that whichever party leads, it is the one which forms the Government and that is a fact. Now, it is very difficult to have a situation with many parties where a single party gets 50 per cent of the votes. In the democracy which we have accepted in this country, **[The Assistant Minister for Finance]** KANU is on top and we are still going to be on top.

We have also a general misconception that during the last General Elections there were some areas where there were more voters than the actual population. This is wrong.

Mr. Temporary Deputy Speaker, Sir, I remember in my Constituency, if the population census was taken properly, then there would be more than 300,000 voters but it is very difficult for some people to comprehend that in a place like Chepalangu there are many people. I think the misconception is that a few of us from the other side do not know Kenya. That is the problem. Now, when are these people going to learn Kenya and know the truth about this country?

Mr. Temporary Deputy Speaker, Sir, what is spoiling us in this country is ignorance. We may think that in Nyanza there are many people but in the Rift Valley there are no people. It is wrong. You can imagine how dangerous the situation will be when people like those ones in the Opposition come to power because when it comes to the distribution of the national cake, they will be thinking that where we live there are no people. When are we going to have our people who are learned know about Kenya? If these people are learned they should know that in Chepalangu there are very many people but what they are trying to disseminate to the people is totally wrong. I am calling upon the hon. Members to know Kenya. I am requesting them to study the geography of Kenya the way they studied at the university. They should know that in this country the population is not only concentrated around Nairobi and Kisumu.

Other areas in this country have a larger concentration of people when it comes to the question of review

of the constituency boundaries. If you look at some of the constituencies in North Eastern Province, they are as big as Nyanza Province. How do you expect one Member to represent a constituency equal to another one represented by about 20 MPs? We should not think that the population should be the only or the main criteria in determining constituency boundaries. We have the population, and the people from North Eastern Kenya have got the right to be represented including those in Lodwar and Turkana. They have the right to feel that they are part and parcel of this nation. If we do not allow these people to be represented and to be developed, then we are sitting on a volcano.

Mr. Munyasia: On a point of order, Mr. Temporary Deputy Speaker, Sir. I do not know if the hon. Member is one of those MPs who do not know Kenya. Is he in order to mislead this House that there is any constituency in North Eastern Province that is the size of Nyanza Province? Could he name that particular constituency that is as big as Nyanza province if he really knows Kenya?

The Temporary Deputy Speaker (Dr. Ombaka): Mr. Munyasia, that is not a point of order. He is stating his opinion, misconceived it maybe but he has the right to state it.

The Assistant Minister for Finance (Mr. arap Koech): You can see the amount of ignorance even when he rises on a point of order. That is enough to show that the hon. Member does not know this country. What he should have done, is to wait for me to finish and then he expresses his opinion but I want to advise him---

An hon. Member: Point of information, Mr. Temporary Deputy Speaker, Sir.

The Assistant Minister for Finance (Mr. arap Koech): I am well informed and so I do not need this information.

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

The Temporary Deputy Speaker (Dr. Ombaka): Let it be a point of order, Mr. Mbeo.

Mr. Mbeo: Is the Assistant Minister in order to claim that Opposition Members do not know Kenya when it is common knowledge that the KANU Government does not allow us to travel all over? We know Kenya more than they do.

The Assistant Minister for Finance (Mr. arap Koech): Since this is a very straight forward thing and the Government has accepted to do something about the census---

With those few remarks, I support the amendment.

(Question of the amendment proposed)

Mr. Nthenge: Mr. Temporary Deputy Speaker, Sir, I think all of us here think alike but we are a bit shy of telling the naked truth. The naked truth is that if my mother dies, it is not a woman who has died, but the mother of Mr. Nthenge.

Mr. Temporary Deputy Speaker, Sir, the truth is that we all want the correct census in Kenya to be known whether we are in the Government or in the Opposition. We all belong to this nation and we would like to know how many people live in a certain area whether in Turkana, Machakos or at the boundary of Kenya and Ethiopia: it does not matter. We want to know how many people are there. The amendment kills the Motion cleverly because it says "as soon as it is practicable". When is it "practicable?" The Minister should have told us, for example, it will be practicable after six, eight or twelve months. That is being practicable so that he looks for the money and then we do it because everybody knows. It is not a secret that the 1989 Census results were questioned by everybody and therefore, the best thing is to have a census which is not questionable. The fact remains that when you are planning anything like a party, you would like to know whether you are planning for a party of 10 or 100 or 1,000 people and that is what exactly the Government does. The Government is a planner, it plans for elections, food and many things and therefore, the knowledge of how many people live in a certain area is very important for any proper planning. I would like to urge the Government to be serious on this thing because it is not brought with any malice. It is for the good of everybody in the nation. Census is one of the national issues where everybody would like to know how many we are in Kenya as a whole or in just a certain part of Kenya, whether we are in the Government or the Opposition. The Mover and the Seconder of the amendment were with me in thinking. But whoever advised them is killing the Motion not for the good of hon. Keoch or Dr. Lwali-Oyondi. Some of the civil servants, I am sorry to say, at times have certain problems and their problem is that they are not responsible for the population. We in this House are elected Members and when I speak I am doing so for Kamkunji people and the rest of Kenya. When hon. Keoch speaks, he does so for my constituency and his constituency and everybody because he is an elected Member and that is why he is respected wherever he goes and he is referred to as an "honourable" Member. It means we are slightly above the ordinary people whether you like it or not, whether some civil servants like it or not, because we are given that status by the people

of this country. The people go to somebody, because sometimes others say that they are looking for jobs. A person like hon. Mulinge who retired from the army does not want to work since he has all he wants. But people request him to lead them and talk for them. So, Kathiani people go and kneel down before him and beg him to be their representative. Not everybody in this House is looking for a job. There are some of us who are beyond that and it is just that people want us to represent them. Some of them are scholars like the Member interjecting now.

He can get a job internationally, he has a doctorate. He is a learned man and so is the Temporary Deputy Speaker and so are many others here. We are here in a special capacity of leading our people for the good of the nation. When we reduce ourselves to ordinary debaters, it hurts me because we are not here to debate as debaters only, as if we are learning in a secondary school what debate is. We are here to look for the truth and for the best interests of our own people. This nation has to know its population so that they can plan good representation, feeding, education and many other services. We are here for that purpose and that is why I am asking Mr. R.O. Oyondi and hon. Koech to think, because this falls under their Ministry. They should tell us how this will become a reality because we only want to know how many people really live in his constituency. He is not sure but he has got an idea. We are scientific and it is a scientific exercise to know how many people are there in the country so that we can go to hon. Zakariah Onyonka and tell him to plan in a certain manner for these people. Now, if we ask him to plan, he will ask, "for how many people?" We would become shy and say "we are not sure, but we think---".

We should not be thinking and guessing because science is an exact study. These are arithmetical things which need data without which you cannot do it right. So, I am urging the Government and particularly the Ministry concerned, to avoid such mistakes.

I have been in politics for a long time, and I have heard of terms like "as soon as possible, as soon as it is practicable and so on." Those are terms which are used cunningly. Let us not quarrel because we are here for serious business. Let us use definite terms like "as soon as we get the money which we are looking for, we shall conduct a population census and so on." That will make a lot of sense to all of us. We are looking for money for population census because we require the correct data. When one works with incorrect data, one does not get the right answer. Therefore, it is worthy to have right data, right from the beginning. If the foundation is wrong even the builders will tell you that you cannot build a good house. The planner will want to plan when he has the correct data to establish the number of people he is planning for.

Mr. Temporary Deputy Speaker, Sir, I am, therefore, urging the Government to take this issue of census population very seriously because within a very short time, we are going for a general election. We would not like to see Dr. Lwali-Oyondi being over loaded when hon. Nthenge is carrying a very light burden. Let us try and get an equilibrium so that we have the same number of people represented in this House. I would hate to hear, for example, that there is an area or a tribe which is not fully represented because their hon. Member is given a vast area whereby he cannot easily meet his people. He should meet his people, not after one and half years, but as often as possible, just like the other hon. Members.

I have been a member of the Electoral Commission. As a member of the Electoral Commission, we knew constituencies of the country and we asked our secretary at that time, hon. Mbela, to provide us with two types of data. That is: the vastness and population of every place, so that we could balance everything.

It is impossible for people in any country to be evenly distributed density wise. Nairobi and other urban areas are thickly populated but in semi-arid areas people are thinly populated but they all belong to Kenya.

Mr. Temporary Speaker, Sir, with those few remarks, I beg to oppose the amendment.

The Temporary Deputy Speaker (Dr. Ombaka): Hon. Members to ensure the maximum time for the debate on the Motion. I want to put the question on the amendment immediately.

*(Question that the words to be deleted
be deleted, put and agreed to)*

*(Question that the words to be inserted in
place thereof be inserted, put and agreed to)*

Hon. Members the Motion as amended now reads:-

THAT, in the view of the great concern by across-section of the people and the institutions on the latest a population census held in 1989 and given the importance of accurate data for planning and development, this House urges the Government to carry out population census as soon as it is practicable.

(Question of the Motion as amended proposed)

Prof. Anyang'-Nyong'o: Mr. Temporary Deputy Speaker, Sir, I beg to oppose the Motion as amended. When the hon. Koech was speaking and was making the point that KANU is not a minority Government and that they are leading, he was just making a "password" point. The truth is that as I was saying in my point of order, in a competitive electoral process, can form a Government by counting a plurality of votes and that those who go past the goal-post first and have the plurality majority can form the Government. But in terms of population, they can indeed come from a minority voting population. It is a simple fact that does not stop them from forming a Government. So the KANU Government should not always get jittery about a simple population voter fact, when it is said that in a plurality of votes, they do, indeed, represent the minority. That is just a fact and it does not stop them from governing because the rules says that they can govern although they have got minority voting population. So, I think as a matter of fact, we should stop squabbling about that issue.

Secondly, when we come to drawing electoral boundaries, surely it is more important to represent demography rather than represent geography. We know that we have to take into account geographical boundaries, but surely when people begin taking geographical boundaries much more significantly than people, then you are getting the equation wrong. That is why I think that although in the North-Eastern Province the constituencies tend to be larger, that in itself should not be taken to mean that should be more important than the number of people who live there. So where you have more people there should be more concern for those people being represented than continuing to lay emphasis on geography.

Mr. Temporary Deputy Speaker, Sir, the other thing I wanted to say is: Why is it that we are sceptical about 1989 population census? We are sceptical about the 1989 population census because of what hon. Ogeka says: that censuses are important in terms of giving accurate data for planning and development. We do not just take population census but there are other types of census that we take. We take census like commercial census, census of industrial production, census of urban distribution and so on. If one type of census gives wrong data then it affects other censuses. For example, were I to ask the Minister for Foreign Affairs and International Co-operation, how many workers were there in Poland in 1949 and I also ask him how many street children were there in Mombasa in 1979, if he goes to the Polish data, he will get an accurate information, but if he comes to ours the information will not be accurate. That is very important in terms of urban planning. If urban census does not go along with the population census then indeed, we cannot plan our urban areas properly.

Mr. Temporary Deputy Speaker, Sir, the other types of census, I want to talk about is census of industrial production.

ADJOURNMENT

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

The House rose at 12.30 p.m.