

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 30th October, 2003

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

NOTICE OF MOTION

REVIVAL OF BURA IRRIGATION SCHEME

Mr. Wario: Bw. Spika, naomba kutoa Arifa ya Hoja ifuatayo:-
KWAMBA, ikieleweka wazi kuwa mradi wa kilimo wa Bura uliwafaidi watu wa tabaka mbali mbali kote nchini, ikifahamika kuwa kuwepo kwa mkataba wa AGOA kunatarajiwa kufufua viwanda vya nguo; ikieleweka wazi kuwa mradi wa Bura kwa sasa umesambaratika na kufilisika; Bunge hili linaomba Serikali kutenga pesa za kufufua mradi huu wa Bura chini ya National Irrigation Board (NIB).

ORAL ANSWERS TO QUESTIONS

Question No.578

VIOLATION OF PATIENTS' HUMAN RIGHTS

Mr. Speaker: Is Mr. Omingo not here? We will leave his Question until the end. Let us move on to the next Question.

Question No.714

MEASURES TO STOP BRAIN DRAIN IN LOCAL UNIVERSITIES

Mr. Oparanya asked the Minister for Education, Science and Technology:-

- (a) whether he is aware that many university lecturers are leaving this country for better paying posts in other African countries; and,
- (b) what he is doing to stop this brain drain.

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

(a) Yes, I am aware that a number of university lecturers and professors have left our public universities for greener pastures in other African countries as well as to local private universities.

(b) In view of this, a task force has been appointed to look into the terms and conditions of service for all university employees with a view to improving their remuneration package. The task force will gather relevant information on salaries of academic staff in the eastern and southern Africa

regions with a view to proposing a competitive salary package for our university lecturers.

Mr. Oparanya: Mr. Speaker, Sir, for many years, salaries of academic staff at our public universities have been very low. Previously, the Government appointed three committees to review the terms and conditions of employment of university lecturers. I am surprised that after appointing these three committees, the Assistant Ministers wants to go ahead and appoint another task force. What will this task force do that the other three committees have not recommended?

Dr. Mwiria: Mr. Speaker, Sir, first of all, the recommendations of the previous committees were done many years back. They did not take into account the prevailing economic circumstances. Secondly, this particular task force will go beyond the East Africa region; it will go to South Africa and Botswana. We know that many of our professors are going to those countries. It is also important to know the remuneration packages offered in those countries so that we can make our package even more competitive. Therefore, this task force is quite different from previous committees. I do hope that it will not take the task force more than three months to come up with its recommendations.

Prof. Oniang'o: Mr. Speaker, Sir, this is just another task force which will spend a lot of money and come up with nothing new to help lecturers. Could the Assistant Minister tell us how much money will be spent on this task force? What new findings will this task force come up with which they cannot get through networking and the internet?

Dr. Mwiria: Mr. Speaker, Sir, I should actually correct the impression that this task force is one of those ineffective task forces we are used to. This is a kind of research study that is being done by the Kenya Institute for Public Policy Research and Analysis (KIPPRA). Therefore, this task force will not involve a lot of members. It will only involve one or two researchers. It is true that they can get the information through networking. However, there is nothing better than solid evidence. I would like to assure hon. Members that it is in our interest to resolve this problem. We realize that our professors are very badly paid. For example, once the new salary package for primary and secondary school teachers is implemented, a principal of a secondary school will earn Kshs44,000 compared to a Deputy Vice-Chancellor (DVC) of a public university who earns only Kshs38,000 and an assistant lecturer who earns Kshs14,000 per month. A PI teacher will earn more than Kshs15,000. Therefore, we all agree that this is something that is not acceptable. I can assure hon. Members that it is in our interest to resolve this issue as quickly as possible.

Mr. Oparanya: Mr. Speaker, Sir, the University Academic Staff Union (UASU) has called for a strike on 10th November, 2003. What is the Assistant Minister doing to avert this strike because it will affect learning at our public universities? Who are the members of this task force that the Assistant Minister has formed?

Mr. Speaker: Dr. Mwiria, you said it is KIPPRA?

Dr. Mwiria: Mr. Speaker, Sir, yes, KIPPRA is a research institute. On the issue of the strike, we are making every effort to ensure that it does not happen for the sake of both the lecturers and our young people in our public universities. We are making plans to talk to them. In fact, I have made in-roads and I hope that we will begin to talk with them with the aim of averting the strike.

Mr. Speaker: Next Question, Eng. Muriuki!

Question No.779

LOSS OF CONFIDENCE IN PUBLIC SCHOOLS

Eng. Muriuki asked the Minister for Education, Science and Technology:-

(a) whether he is aware that many head teachers and teachers in public primary schools send their children to private

cademies, thereby making *wananchi* lose confidence in public primary schools; and,

(b) what he is doing to correct the situation.

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

(a) I am not aware that many head teachers and teachers of public primary schools send their children to private academies.

(b) There is no situation to be corrected as every citizen of this country is free to take their children to schools of their choice, provided that the children are not being denied education.

Eng. Muriuki: Mr. Speaker, Sir, I think this is the height of hypocrisy.

Mr. Speaker: Order! Order! Please, use a better term!

Eng. Muriuki: Mr. Speaker, Sir, that language is withdrawn.

Where I come from, practically all the teachers and the head teachers have their children learning in academies. I do not think it is in order for the Assistant Minister to tell this House that she is not aware, whereas it is actually an obvious fact, at least in Nyandarua District where I come from. Could the Assistant Minister clarify the situation? Has there been any survey done and data analyzed? It is very wrong for us--

Mr. Speaker: Order, Eng. Muriuki! We are not debating! It is Question Time!

Eng. Muriuki: Mr. Speaker, Sir, with your permission, let me just make one point. Whereas I agree that anybody can take his or her children wherever they want, if the people we have put in charge of public schools have no faith in the same schools, how can *wananchi* have faith in them?

Mrs. Mugo: Mr. Speaker, Sir, I do not know about Nyandarua District, but I know in many other parts of the country, including my own constituency, there are many children who study in public schools. I would like to add that the standard of our education is qualitative. We have regular inspections of our schools. Moreover, the teachers always get in-service training, and it is not true to say that parents do not have confidence in our schools. Schools are even overcrowded. All over the world, even in the developed countries you will find certain individuals sending children to private schools just because that is their choice. But it does not mean that the quality of education in public schools of those countries is low. Even in the United States and Britain, there are private schools, and it would be interfering with people's rights to force to them take their children to particular schools. Our schools are of good quality.

Dr. Ali: Mr. Speaker, Sir, is the Assistant Minister telling us that teachers in public schools can send their children to private schools while they are teaching children of other Kenyans?

Mrs. Mugo: Mr. Speaker, Sir, there is absolutely nothing wrong with that. Teachers and head teachers are free citizens of this country and are free to send their children to schools of their choice.

Eng. Muriuki: Mr. Speaker, Sir, in my district, 75 per cent of all national entrants come from academies, which are private schools. In essence, it is not true that public schools are offering the same standard of education as the academies. That is why teachers and head teachers are taking their children to the academies leaving the poor *mwananchi* to have the inferior education and in turn not being able to send their children to national or provincial schools. If the headmasters and--

Mr. Speaker: What is your Question?

Eng. Muriuki: Mr. Speaker, Sir, is it in order for the Assistant Minister to mislead this House that the quality of education is the same in public and private schools, whereas we have facts, like in my district, where more than three-quarters of the children who have been going to national schools for the last five years have all been from academies?

Mrs. Mugo: Mr. Speaker, Sir, I believe the hon. Member is aware of the amount of money we are injecting into our schools to improve the standard of education in this country. This improvement can even be seen. I think private schools also play a major role in supporting education in

this country, and there is absolutely nothing wrong with parents sending their children there. It does not mean that the quality of education in the public schools is low. If that was the case, then we would not find private schools in Britain, America, Germany and many other countries. I think the hon. Member is misleading this House. We cannot tell the teachers where to send their children.

Question No.796

REJECTION OF COTTON
GRADE II BY GINNERIES

Mr. Mbai asked the Minister for Agriculture:-

- (a) whether he is aware that cotton ginneries only bought cotton Grade I from Masinga Cotton Farmers in the year 2002, while Grade II is still in farmers' stores; and,
- (b) what urgent measures he is taking to ensure that Grade II is bought by ginneries.

The Assistant Minister for Agriculture (Mr. J. Nyagah): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that cotton ginneries only bought cotton Grade I from cotton farmers in the year 2002 while Grade II was carried forward in the following year to avoid mixing the two grades during marketing.

(b) The Ministry, in collaboration with ginneries, has been training farmers on proper picking and storage of both grades and marketing them separately.

During the year 2003 the buying of the two grades is being done simultaneously and, to date, a total of 20 tonnes of Grade I and four tonnes of Grade II have been bought from Masinga Constituency and the buying is on-going.

Mr. Mbai: Mr. Speaker, Sir, I would like to thank the Assistant Minister for that answer. Cotton is one of the main cash crops we have in Masinga and other dry areas of this country. Could the Assistant Minister tell us the standard price of cotton Grades I and II, because some ginneries are exploiting farmers down there? There are some who are buying cotton Grade I at Kshs21 per kilogramme, while others are offering Kshs23 per kilogramme for Grade I.

Mr. J. Nyagah: Mr. Speaker, Sir, the cotton industry was liberalised some years ago, and so it is a free market. What the Ministry has been trying to do is to encourage ginneries to pay prices that make marketing sense to the farmers. At the moment, on average, depending on a farmer's proximity to the ginnery, the price of Grade I cotton is up to Kshs23 and Grade II, down to Kshs9 per kilogramme. It depends on where the farmer is located. We are encouraging ginneries which are all private companies, to try and raise the prices so that our farmers get a better deal. We are not satisfied with the prices that the farmers are getting.

Mr. Twaha: Mr. Speaker, Sir, there was this mirage that the Government, in its efforts to revive the economy, was going to give free inputs to the coffee farmers. Could the Government consider extending the same services to the cotton farmers, with regard to inputs, especially pesticides which are very expensive?

Mr. J. Nyagah: Mr. Speaker, Sir, a few years ago, the first thing we did as a Ministry to encourage the growth of this industry was to provide free seeds. That was the first step we took and we continue to do that in some areas where cotton is being grown. Because of the private nature of the industry and given the budgetary constraints, we are not in a position to do what the hon. Member is asking, although we appeal to pesticide producers to make prices reasonable.

Mr. Mwenje: Mr. Speaker, Sir, at the moment, international funding organizations are willing to assist farmers to stabilise the prices by giving them money. Could the Assistant Minister look for money to stabilise the price of cotton, even if it means looking for it from the IMF, World Bank and all local organizations so as to see to it that farmers are actually funded? As the hon. Member has said,

at the moment the prices are too low.

Mr. J. Nyagah: Mr. Speaker, Sir, given that the industry was ignored for so long, we are now trying to work on the Cotton Policy Paper which will be brought to this House. This will go a long way in addressing the constraints of this very critical industry and even enable us go overseas and look for ways to finance the farmers. At the moment, because of the manner in which the industry has been run, it is very difficult but we are totally committed to helping the farmers.

Dr. Galgalo: Mr. Speaker, Sir, the Assistant Minister said in his answer to part "a" that he was able to buy Grades I and II cotton in the year 2002, so as to avoid mixing them up. He further said that in the following year, he was able to buy both grades simultaneously. Why is it that in the first year, there was a risk of mixing the two grades while in the second year, he was able to buy them simultaneously?

Mr. J. Nyagah: Mr. Speaker, Sir, I also stated that we have been teaching farmers on the need to get back to farming. At first, when the industry was revitalised, farmers were mixing up grade I and II, and cheating ginneries. The effect of that is that the ginneries refused to pay them on time, and caused other problems that we know. In order to help the farmers in a long-term manner, it was decided by the ginneries that it be done that way. However, we overcame that problem during this buying season.

Question No.408

HEALTH FACILITIES FOR
BUTE/BUNA HEALTH CENTRES

Dr. Ali: asked the Minister for Health:-

- (a) if she is aware that Bute and Buna Health Centres in Wajir North Constituency have no vehicles and adequate staff;
- (b) if she is aware that the said health centres have no electricity, the solar panels are not functional; and,
- (c) what action she is taking to provide the said facilities as well as drugs to the health centres and other dispensaries in the constituency.

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

(a) I am aware that Bute and Buna Health Centres in Wajir North Constituency have no vehicles and adequate staff.

(b) I am also aware that there is no electricity in the above facilities. The Ministry has placed an order for the non-functional parts through UNICEF. The defective ones at the two centres will be replaced before the end of November, 2003.

(c) The Ministry is in the process of recruiting additional clinical officers and nurses. Once this is done, additional officers will be posted to the two health centres. The two health centres receive regular drugs from KEMSA Depot in Garissa. The Ministry will provide a vehicle to serve the two health centres during this financial year.

Dr. Ali: Mr. Speaker, Sir, I wish to thank the Assistant Minister for the answer. While this problem is still on, when will the Assistant Minister provide vehicles which he says will take care of the two health facilities?

Mr. Konchella: Mr. Speaker, Sir, out of the 40 ambulances which we are going to receive at the end of this month, or early November, these two health centres will be given first priority.

Mr. Y. Haji: Mr. Speaker, Sir, in view of the fact that most of the health centres in northern Kenya are suffering from lack of vehicles, and in view of the long distances involved, would the Assistant Minister consider planning ahead now and provide transport for all the health centres in that

area?

Mr. Konchella: Mr. Speaker, Sir, the Ministry has identified the need for vehicles in the hardship areas especially for hospitals. We have prioritised the issue of vehicles for these health centres. Those vehicles that had been requested by the MOH are going to be issued this financial year.

Dr. Ali: Thank you, Mr. Speaker, Sir. Could I get an assurance from the Assistant Minister that once there is recruitment of clinical officers and nurses, these health centres will be considered?

Mr. Speaker: Could you please repeat? Order, Members!

Dr. Ali: Could I get assurance from the Assistant Minister that, once there is recruitment of nurses and clinical officers, these two facilities will be considered first?

Mr. Konchella: Mr. Speaker, Sir, I want to assure this House that, that is what the Ministry is planning to do. To add on to that, we will be adopting affirmative action in future whereby any recruitment of clinical officers or members of staff, will be based on the needs of the hospitals, so that we can recruit young people from the area to specifically man the health facilities of the area.

Question No.785

AMBULANCE FOR KAPKOROS
HEALTH CENTRE

Mr. Salat asked the Minister for Health:-

(a) if she is aware that an ambulance for the Kapkoros Health Centre in Bomet District has mysteriously disappeared; and,

(b) when the ambulance will be brought back to the centre.

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

(a) The Land Rover ambulance for Kapkoros Health Centre has not mysteriously disappeared, but it is currently grounded at Longisa District Hospital. The vehicle, GK 921X Land Rover, has been inspected by the Bomet District Mechanical Engineer and found to be uneconomical to repair and hence recommended for boarding and disposal.

(b) The vehicle will not be returned to the health centre as it is uneconomical to repair, and it is, therefore, awaiting authority for boarding and disposal.

Mr. Salat: Mr. Speaker, Sir, for that ambulance to have been there in the first place, it ought to have been serving a purpose. Is the Assistant Minister willing just after answering this Question, to give Kapkoros Health Centre another Land Rover?

Mr. Konchella: Mr. Speaker, Sir, we will consider this request in the next financial year. However, Kapkoros Health Centre can utilise the services of Bomet District Hospital which has two ambulances. One of them is short wheel and the two facilities are only 25 kilometres apart.

Mr. Speaker: Next Question, Mr. Twaha!

Question No.797

COMPENSATION FOR MR. FAMAU

Mr. Twaha asked the Minister for Environment, Natural Resources and Wildlife:-

(a) if he is aware that Mr. Twahir Ali Famau, a former employee of the Ministry of Environment, Natural Resources and Wildlife in Lamu District, lost his eye while on duty in 1996;

(b) if he is also aware that to date, Mr. Famau has not been compensated; and,

(c) when he will be compensated.

The Assistant Minister for Environment, Natural Resources and Wildlife (Prof. Maathai): Mr. Speaker, Sir, I beg to reply.

(a) Yes, I am aware that Mr. Twahir Ali Famau establishment No.910/25271, who is a former employee of my Ministry in Lamu District, lost his eye while on duty on 9th January, 1996. Unfortunately, the incident was not immediately reported to the Ministry's headquarters or the District Labour Office for necessary action. It was, however, later reported on 9th November, 2000 without the necessary supporting documents.

My Ministry requested for the supporting documents on 26th January, 2001 and the same were received on 8th October, and the necessary forms were prepared and forwarded to the Minister for Labour and Human Resource Development on 15th May, 2002 for the processing and payment of the compensation.

(b) No, I am not aware. My Ministry has facilitated all that is within its powers to enable the payment of compensation to Mr. Famau.

(c) The matter was forwarded to the Workman Compensation Section which falls under the Ministry of Labour and Human Resource Development.

Mr. Twaha: Mr. Speaker, Sir, I think that the Assistant Minister is aware of the principle of collective responsibility. This was an employee in her Ministry. So, if there is any processing that needs to be done, it is upon her Ministry to make sure that her employees are compensated when they suffer injury.

Prof. Maathai: Mr. Speaker, Sir, we will look into the matter. However, I think that it is now upon the Ministry of Labour, and Human Resource Development. We have no idea why the matter has not been settled.

Mr. Twaha: Mr. Speaker, Sir, I brought this Question to this House about three months ago. An inter-ministerial Committee between the Ministry of Labour, Human Resource Development, and the Ministry of Environment, Natural Resources and Wildlife to should be formed to research on the problem and come up with proper answers. Is the Assistant Minister in order to refer the Question to another Ministry on the Floor of the House?

Mr. Speaker: You are quite right, Mr. Twaha! Prof. Maathai, you should liaise with your colleague in the Ministry of Labour, and Human Resource Development and sort out the problem.

Prof. Maathai: Yes, Mr. Speaker, I will undertake to do so.

Mr. Speaker: Thank you. Next Question, Mr. Kipchumba!

Question No.384

INDEBTEDNESS OF PROGRESSIVE SOCIETY

Mr. Kipchumba asked the Minister for Co-operative Development and Marketing:-

(a) if he is aware that Progressive Farmers Co-operative Society borrowed Kshs2.5 million in 1994 from the Co-operative Bank of Kenya and has to date paid Kshs4.47 million and the loan now stands at Kshs7.5 million; and,

(b) if he could assist the farmers to have the loan balance waived.

The Assistant Minister for Co-operative Development and Marketing (Mr. Kenneth): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that Progressive Farmers Co-operative Society borrowed Kshs2.5 million from the Co-operative Bank between 1992 and 1994. The amount that has been paid to the Co-operative Bank is Kshs2,934,000 and not Kshs4.47 million.

(b) I have spoken to the Co-operative Bank and if the hon. Member can ask the society to

arrange for an appointment with the bank, he and I can facilitate to see how much can be waived.

Mr. Kipchumba: Mr. Speaker, Sir, while I appreciate the sentiments of the Assistant Minister, I would like to inform him that the farmers paid Kshs2.9 million because, initially, they were being paid by the Kenya Co-operative Creameries (KCC). Since the KCC stopped paying them, they have not been able to clear the outstanding loan balance. I would request the Minister to consider waiving the remaining loan, as was the case with the Agricultural Finance Corporation (AFC), so that the farmers can proceed with their normal business.

Mr. Kenneth: Mr. Speaker, Sir, the Co-operative Bank is a commercial bank that has its own rules and it lent this money on a commercial basis. As I said, they have agreed that they could waive certain things because they have restructured this loan in the past. I think the most important thing is for the hon. Member to ask the society to seek an appointment with the bank so that he and I can join them as facilitators to see how we can help the society.

Mr. Speaker: That is a very sensible way to go about it. Very well, I think I will leave it at that.

Mr. Omingo's Question for the second time!

Mr. Omingo: Mr. Speaker, Sir, I am sorry for coming late.

Question No.578

VIOLATION OF PATIENTS' HUMAN RIGHTS

Mr. Omingo asked the Minister of State, Office of the President:-

(a) under what circumstances the following patients were picked up from Akemo Valley Maternity and Nursing Home Hospital with bullet wounds;

- (i) Evans Mokua Onsongo;
- (ii) Darius Orege Auka; and,
- (iii) Wilson Nyangwara;

(b) what the justification was of such an act; and,

(c) what he is doing to bring to justice the officers who carried out the act in total violation of the patients' human rights.

The Assistant Minister, Office of the President (Mr. Tarus): Mr. Speaker, Sir, if my records are correct, I think we did answer this Question some time back.

Mr. Speaker: When was this?

The Assistant Minister, Office of the President (Mr. Tarus): It was on 21st of October, Mr. Speaker, Sir.

Mr. Speaker: Mr. Omingo, was the Question answered?

Mr. Omingo: Mr. Speaker, Sir, I think the Assistant Minister must be imagining he answered the Question. I was actually out of the country and this Question was deferred until today.

Mr. Speaker: Are you sure it was answered?

The Assistant Minister, Office of the President (Mr. Tarus): Mr. Speaker, Sir, I was seeking confirmation. I can go ahead and answer it.

Mr. Speaker: You must be alert at all times and Mr. Speaker must be properly informed.

The Assistant Minister, Office of the President (Mr. Tarus): Yes, Mr. Speaker, Sir.

Mr. Speaker, Sir, I beg to reply.

(a) The three patients were suspects who were injured in the course of obstructing police from executing their duty. They are alleged to have attacked police officers who were escorting recovered animals from Gucha to Trans Mara District. They were arrested and taken to the said hospital by the

police and were simply being transferred to a Government district hospital.

(b) The three were transferred to Gucha District Hospital for security reasons.

(c) The officers acted lawfully in regard to the suspect patients. The matter of bringing to justice the officers concerned does not, therefore, arise.

Mr. Omingo: Mr. Speaker, Sir, this is a scenario which used to happen in the past when we were at war with the Maasai, but now we are very good neighbours. That notwithstanding, the police brutality in the hospital leaves a lot to be desired. The police actually went into the hospital and plucked the patients from there while on a drip. Could the Assistant Minister tell this House whether an allegation of obstruction of police could justify that inhuman act on Kenyans who were actually in pain with arrow wounds on their bodies?

Mr. Tarus: Mr. Speaker, Sir, definitely, it would not be in order for the police to drag people out of a hospital. May I inform the House that we shall investigate the matter. If it is found that, that was exactly done those officers will be appropriately disciplined.

Mr. Angwenyi: Mr. Speaker, Sir, the Assistant Minister says he will investigate the matter and yet he has given an answer that part "c" of the Question does not arise. I wonder which is which. Be that as it may, if these people were suspects, have they been taken to a court of law since they were plucked out of the hospital?

Mr. Tarus: Mr. Speaker, Sir, in view of the sentiments expressed by the hon. Members, I do recognise the importance of proper investigation being carried out in order for us to take appropriate action.

Mr. Speaker: So, what do you propose?

Mr. Tarus: Mr. Speaker, Sir, I propose that we go ahead, get the facts and take them to court.

Mr. Omingo: Mr. Speaker, Sir, I do not expect the Assistant Minister to be derailed from his actual course of promising to investigate the matter and reporting his findings to the House. Could I ask through you, that he investigates and reports to this House because this Question is a property of the House?

Mr. Tarus: Mr. Speaker, Sir, perhaps for record purposes, it should be clear that the patients were actually charged with an offence of obstructing police officers while executing their duties. I did say that, in view of the available information, we need to corroborate these facts in order for them to be charged appropriately. The police force warrant of arrest for one Mr. Wilson Nyangwara is still in force and we hope to conclude the matter in due course.

Mr. Leshore: Mr. Speaker, Sir, the Assistant Minister keeps coming here to say that he is investigating issues. Despite the fact that we raised the issue of the rape cases of Samburu women in this House, British soldiers are harassing my women. He keeps saying that he is carrying out investigations. When will he investigate the matter?

Mr. Tarus: First of all, I think those women deserve protection from the hon. Member because he is saying "my women". That notwithstanding, we must follow the process of law. Without investigations, we cannot just arraign anybody in court. Unless we have sufficient evidence, we cannot arrest a person.

QUESTIONS BY PRIVATE NOTICE

LOCAL RESIDENTS ACCESS TO TURKWEL DISPENSARY

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

(a) Is the Minister aware that Turkwel residents are denied access to the medical dispensary at Turkwel by police?

(b) Is he further aware that over 16 children and eight adults have lost their lives as a result?

(c) What urgent measures is the Minister taking to rectify the situation?

The Assistant Minister, Office of the President (Mr. Tarus):

Mr. Speaker, Sir, I beg to reply.

(a) No, I am not aware that Turkwel residents are denied access to the medical dispensary at Turkwel by police. However, I am aware that local Turkwel residents who were residing within the KenGen Turkwel compound were denied residence within the compound for security reasons.

(b) I am not aware. No such report has been brought to the attention of the relevant Government office for intervention.

(c) Security arrangements in place will remain in force. Those in need of medical treatment at the KenGen Health Centre at Turkwel have been and will continue entering the Turkwel KenGen compound for treatment.

Mr. Moroto: Mr. Speaker, Sir, the answers given by the Assistant Minister are totally misleading this House. Last week, there was a Question which was brought here and the Minister for Energy answered it very well. It is the same problem occurring now. The Assistant Minister is saying that those people were residing within the KenGen Turkwel Compound and yet we know very well that those people who were neighbouring the permanent settlement there were moved and up to now they have no place to settle. Could he now tell us where and when he will settle these people? Since he said that he is not aware of the deaths which occurred during this period, could he give a date when I will take him round so that he can count the graves? We can go round so that he can see these graves around there.

Mr. Tarus: Mr. Speaker, Sir, first of all, I want to remind the hon. Member that I do recall when we visited the Turkwel Gorge Project and the KenGen station together with him. We heard the sentiments expressed by the people on the ground. It is true that they had settled on the KenGen compound. The basic issue is that whenever there was a problem, execution of security measures would be complicated by the presence of the people within the KenGen compound.

With regard to settlement of the same people, they have their areas where they moved from. It is only fair that they move back to those places. Nobody has denied them the use of the facility. The issue here is the question of whether they were allowed to use the dispensary or not and nobody has denied them the use of the facility.

With regard to the issue of deaths, I expected these issues to have been reported to the police station or to the relevant Government offices to facilitate investigations and Government intervention. Even if I am going to visit that area, I do not expect to count graves. I expected action to have been taken on the basis of the matters being reported to the relevant authority.

Mr. Lesrima: Mr. Speaker, Sir, it is very clear that KenGen displaced the Pokots. I also attended a meeting with the Assistant Minister to discuss security issues with regard to Turkwel and community relations. Could the Assistant Minister consider employing a Pokot and a Turkana community relations manager to deal with community relations issues? Clearly, there is tension there and if it is allowed to continue, the Government cannot win. Could he consider improving community relations between the Pokot and KenGen so that power supply to the country is not compromised?

Mr. Tarus: Mr. Speaker, Sir, those are very good suggestions. But one must take into consideration several other factors. However, we shall liaise with the hon. Members with a view to establishing the best method of handling the conflict in the area.

Mr. Rotino: Mr. Speaker, Sir, when we visited the Turkwel Gorge Project together with the Assistant Minister, this same problem was raised by the community; that the relationship between KenGen and the Pokots is sour. The Assistant Minister then promised that he was going to look at the

relationship between the Pokots and the Turkana, especially on health care matters. It is true, and even the Assistant Minister heard it himself that the Pokots are denied access to the medical facility. He promised that he was going to look into it and up to now, the problem has not been resolved. That is why this Question has been raised here. Could the Assistant Minister consider revisiting his promise and make sure that the Pokots have access to the medical facility? When is he going to do it?

Mr. Tarus: Mr. Speaker, Sir, a promise once given has been given. We cannot revisit it. All we need to know is who is failing to implement Government policies on the ground. We shall go in that direction and I am very sure we shall be able to resolve that problem.

Mr. Rotino: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to ask us about who is going to implement Government policies while it is his own Ministry which should?

(Members applauded as Mr. Awori entered the Chamber)

Mr. Tarus: Mr. Speaker, Sir, I said that instructions have been given for that problem to be resolved. I have given an undertaking that the Ministry will find out why that problem is persisting and yet it was supposed to have been resolved.

Mr. Moroto: Mr. Speaker, Sir, I am not satisfied with the answer given by this Assistant Minister and it seems as if he is very arrogant. He went to the ground and saw how people suffer there. In Turkwel, there are two medical facilities. There is a private dispensary which belongs to KenGen. Secondly, there is a public medical facility owned by the Government of Kenya and it is not even within that compound. This is where my constituents are denied access to. Could this Assistant Minister tell me when he is going to remove the security personnel from there to allow our people access to the facility? Alternatively, we will do it ourselves.

Mr. Tarus: Mr. Speaker, Sir, first of all, let me correct the impression for purposes of record. I think if there is anybody who is arrogant, it is the last Government that implemented the Turkwel Gorge Project. The problem has been persistent since the establishment of the Turkwel Gorge Project. So, I want to say---

(Loud consultations)

Mr. Speaker: Order! Order! It is very good to score political points. That is the whole game of multipartyism. I think the Assistant Minister occasionally is justified to "rub salt" into the inefficiencies either real or imagined of the past Government. But when it comes to the issue of life and death of the people of Kenya, then political posturing must be kept out of the way. Personally, I do not understand and cannot comprehend why, if true, the police would stop sick people from accessing health facilities.

Mr. Tarus: Mr. Speaker, Sir, I was going to respond to that and I am sorry, if I have gone beyond. I undertake to assure that no Pokot, Turkana or any Kenyan will be denied access to the medical services in Turkwel.

Mr. Speaker: Very well!

Mr. Rotino: On a point of order, Mr. Speaker, Sir. It is a serious matter.

Mr. Speaker: Sorry! You must now sit down, Mr. Rotino! I know it is serious. I hope the Assistant Minister realises it is serious. Quite frankly, I hope that no policeman will stop sick people from accessing health facilities. I hope it is not true.

Next Question, Mr. Osundwa!

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

(a) Is the Minister aware that a *matatu* carrying 17 passengers plunged into the swollen River Sasala on Mumias-Kakamega Road on 4th October, 2003, and that there were only four survivors?

(b) Is he further aware that local divers have retrieved only three bodies as strong currents frustrated their search efforts?

(c) Could he deploy Kenya Navy divers to retrieve the bodies since the relatives of the unaccounted for passengers are only relying on local divers who are demanding payment for each body retrieved?

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

(a) Yes, I am aware of the said accident. However, the factual position is that the *matatu* had 18 and not 17 passengers; 14 adults and four children. Thirteen passengers survived and five died.

(b) The local divers retrieved all the five bodies of those who died; that is, four adults and one child.

(c) The deployment of the Kenya Navy does not arise because all the dead bodies were retrieved.

Mr. Osundwa: Mr. Speaker, Sir, I arrived at the accident scene an hour after it had happened. In fact, I helped in the rescue efforts. I even called the Press. We counted five bodies. The Assistant Minister is basing his figures on the day the accident happened. But, on the second day, two more bodies were recovered. On the 10th of this month, another body of a child, about seven years old, whose parents come from the Assistant Minister's constituency, was recovered. When you add those eight bodies to the number he claims survived; that is, 13, it gives us 21 passengers. Could the Assistant Minister tell us the carrying capacity of that *matatu*?

Mr. Speaker: Do they have a carrying capacity?

Mr. Tarus: Mr. Speaker, Sir, I am aware of the official capacity of the vehicle. That is 18 passengers. If there were excess passengers, that is an offence on the part of the owner of the vehicle.

Dr. Godana: On a point of order, Mr. Speaker, Sir. That is very serious! The Assistant Minister, in his earlier answer, said that the factual position was that the *matatu* was carrying 18 passengers. Now, he says that the official capacity is 18 and if it carried more, that is a criminal offence.

Is he in order to tell us that? It seems that what he told us is not the factual position. He is not sure! Which is which?

Mr. Tarus: Mr. Speaker, Sir, I would like to take the sentiments expressed by the hon. Members for purposes of assisting this country. If the hon. Member had information that the vehicle had more than 18 passengers, it is only reasonable that I take those facts for purposes of resolution of that problem.

Mr. Bahari: Mr. Speaker, Sir, many times, when a disaster happens in this country, we find ourselves ill-prepared and, as a result, many lives are lost. What has the Assistant Minister done to ensure that Kenyans are prepared for disasters?

Mr. Tarus: Mr. Speaker, Sir, perhaps, when we will establish a disaster management authority, which is on the way, we will be able to establish structures up to the grassroots level, to address some of those unexpected disasters.

Mr. Speaker: Last question, Mr. Osundwa! I have a rather lengthy Communication from the Chair.

Mr. Osundwa: Mr. Speaker, Sir, every year, that spot claims lives of my people. There are

many commuters who work in Kakamega and live in Mumias. Could the Government consider erecting bumps at Makunga Market to curb those accidents?

Mr. Tarus: Mr. Speaker, Sir, we shall do exactly that.

Mr. Speaker: Order hon. Members! Maybe, hon. Members can take their seats because it is going to take a little longer. I have a rather lengthy Communication from the Chair. Would you like to take your seats?

An hon. Member: There is one more Question!

Mr. Speaker: Do we have another Question? I am sorry, Mr. Mukiri. Where are you?

CENSORSHIP OF PORNOGRAPHIC
TV PROGRAMMES

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

(a) Could the Minister state why a programme going by the name "Channel O" broadcast by DSTV-Multichoice and reproduced by Kenya Television Network (KTN) should not be subjected to censorship for showing pornographic materials?

(b) What machinery has the Minister put in place to stop pornographic materials finding their way into this country?

The Assistant Minister for Tourism and Information (Mr. Gumo): Mr. Speaker, Sir, I beg to reply.

(a) The Minister is not satisfied that the programme going by the name "Channel O" is being aired during the day and not subject to censorship for showing pornographic materials. If that programme is going to be aired, it should only be after 9.30 p.m., to safeguard our morality.

I am sorry the glasses I am wearing are not mine. I misplaced mine. I have borrowed these ones. So, I hope you will excuse me.

(b) The Minister recently re-launched Kenya Film Classification Board (KFCB), which has been mandated to enforce censorship laws under Cap. 222, in order to safeguard public morality.

We are going to be tough on those type of indecent materials. We request hon. Members to support the new KFCB and not politicise the actions we take.

Thank you.

Mr. Mukiri: Mr. Speaker, Sir, unfortunately, the written answer that I have received from the Assistant Minister does not make sense to me! I do not know whether it is a sentence! I think the Assistant Minister may have lost my Question!

An hon. Member: Read it!

Mr. Mukiri: Mr. Speaker, Sir, should I read it?

Mr. Speaker: Yes.

Mr. Mukiri: It reads:-

"The Minister is not satisfied that the programme going by the name "Channel O" is being aired during the day and not subject to censorship for showing pornographic materials" With that kind of an answer, even if the Assistant Minister had his glasses, it would not make sense! The Assistant Minister missed the Question. I asked whether that programme passes the test of morality. It does not matter whether it is being aired during the day or at night! What is immoral during the day cannot be moral during the night.

Mr. Speaker: Order, Mr. Mukiri! Just a moment! It is Question Time! Mr. Gumo, the hon. Member is asking: "Are you satisfied that the programme is moral?"

Mr. Gumo: Mr. Speaker, Sir, I do not know what is not moral. Maybe, he could explain to me better. He is just saying that, that programme is not moral. He should tell me which programme he is talking about!

(Loud consultations)

Hon. Members: "Channel O!"

Mr. Gumo: Mr. Speaker, Sir, "Channel O" is a channel which airs many programmes and not only one.

Mr. Mganga: Mr. Speaker, Sir, the KFCB has always existed to censor films for public viewing. But whenever a television station is licensed, it must provide for its own internal censor board, to make sure that all the films and programmes that are broadcast are fit for transmission at a given time. But what we are seeing of late, in some channels, especially the KTN--- Sometimes, in some dancing programmes, ladies are almost naked and they are being shown during the day. Could the Assistant Minister confirm to this House that he will take firm action, and be tough as he has said, and make sure that all the television stations have internal working censor boards, to ensure that no pornographic material is ever aired during the day or at night?

Mr. Gumo: Mr. Speaker, Sir, I agree with the hon. Member and we are taking very tough measures. Recently, the Minister took very tough measures when some programmes were aired by Nation Television, and the Government has been taken to court. As you are aware, these days, some programmes are transmitted directly and it becomes very difficult to censor them. But we have to enforce the rules through the television stations themselves, so that they can censor their programmes before they air them.

Mr. Sasura: Mr. Speaker, Sir, I would like to remind the Assistant Minister that in his first answer, he clearly said that the he is not satisfied with some films aired by this channel. Could he, kindly, tell us the role of the Kenya Film Censorship Board (KFCB) if these films are aired by licensed television stations and are not directly transmitted by DSTV-Multichoice? What is the role of the KFCB if it does not censor these films?

Mr. Gumo: Mr. Speaker, Sir, I am sure that most hon. Members are aware these days films are transmitted through satellite, and it becomes very difficult for the KFCB to censor them. So, we can only tell our children to sleep early.

(Laughter)

Anyway, we will tell television stations, which are part of us and run by people who are parents like us, to censor some of these films themselves.

Mr. Angwenyi: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to tell us to ask our children to go to bed early? Pornography is pornography. Whether pornographic materials are aired for a few children who do not sleep early to see or grown ups like me--- I do not want to see pornography except when the lights are off.

(Laughter)

Mr. Gumo: Mr. Speaker, Sir, pornographic films are not meant for children below 18 years of age, and I am sure that the hon. Member is over 18 years old. So, he can either watch these films or switch off his television set.

Dr. Ali: On a point of order, Mr. Speaker, Sir. The Assistant Minister has just said that pornographic materials should be watched by those who are over 18 years of age. This is the case, and yet "Channel O" airs these materials at 7.00 a.m. Is he aware of that? Is the Assistant Minister in order to mislead this House?

Mr. Speaker: Mr. Assistant Minister, have you ever watched that channel!

Mr. Gumo: Mr. Speaker, Sir, by the way, I am not at home at 7.00 a.m., but children are

supposed to be in school by 9.30 a.m. In any case, I have said that most of these programmes are transmitted through satellite. Hon. Members are aware that we are awake here in Kenya when people in the United States of America (USA) are asleep and vice-versa. That is the problem. I have said that we will tell television stations to ensure that they do not air programmes which are not suitable for our people.

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

Mr. Speaker: I am sorry!

(Mr. Omingo stood up in his place)

Sit down, Mr. Omingo!

Mr. Mukiri: Mr. Speaker, Sir, Kenyans elected this Government so that it could remove immorality from their sitting rooms. The Assistant Minister has said that he may be unable to stop some of these television stations from broadcasting pornographic materials. Under Cap. 222, which he has quoted, the KFCB has powers to issue a certificate of approval to every programme broadcast in this country. Could the Assistant Minister assure us that, from today henceforth, the Kenya Television Network (KTN), the Kenya Broadcasting Corporation (KBC) and all the other television stations will stop broadcasting a programme going by the name "Channel O" broadcast by DSTV-Multichoice? It is immoral!

Mr. Gumo: Mr. Speaker, Sir, the KFCB has tried to stop these television stations from airing pornographic materials. I have said that this Board was taken to court and the case is still pending in court. Dealing with this matter might not be as easy as the hon. Member thinks. Hon. Members are aware that this case might take a very long time to be concluded now that judges are not---

(Laughter)

(Several hon. Members stood up in their places)

COMMUNICATION FROM THE CHAIR

EXECUTION OF MANDATE OF SELECT COMMITTEE ON DEATH OF DR. OUKO

Mr. Speaker: Order! Order, hon. Members! You must sit down now! I know I still have a few Ministers who would like to issue Ministerial Statements, but I would like to make the following Communication from the Chair.

Hon. Members, on 26th March, 2003, the National Assembly adopted a resolution to constitute an *ad hoc* Select Committee to investigate and report to the House the circumstances that surrounded the death of the late Dr. J. Ouko, M.P. In addition to naming the composition and time frame within which the Select Committee was to report its findings, the resolution also mandated it to exercise the powers under Section 14(1) and (2) of the National Assembly Powers and Privileges Act, Cap. 6 of the Laws of Kenya. On 31st July, 2003, the House resolved to waive the application of the provisions of Standing Order No.161 to enable the Committee to receive evidence in public.

Pursuant to Parliamentary traditions and practices, Committees are required to adhere to procedures which have been tested over time. For example, Committees have the right to summon witnesses to give evidence or produce documents. The examination of such witnesses, however, is the preserve of the hon. Members of the Committee who have solely been given the mandate by the House. The evidence is not to be led by counsel hired to assist Committees. That responsibility is

exclusive to the hon. Members of the Committee. The foregoing obviates the need for prior recording of statements by the police, which would necessarily happen once the report is adopted by the House and as a result of the Executive ordering action on the resolution of the House.

The Select Committee to investigate the late Minister's death held its first sitting on 7th April, 2003 at which Mr. Eric Gor Sungu, M.P., was elected the Chairperson. To date, the Committee has held 18 sittings and has had a three-day retreat in Mombasa.

Hon. Members, it has not been the tradition of the Chair to comment on the work of Committees prior to presentation of their reports. Neither has the Speaker used this forum to give procedural or operational advice. However, on this occasion, it is apt that I should do so with regard to the operation of this particular Select Committee.

As I have mentioned, Select Committees are constituted and operate in keeping with the procedures of the House, which we all know comprise, in the main, those which are written in Statutes, specifically the Constitution of Kenya, the National Assembly Powers and Privileges Act, the Standing Orders, conventions, traditions and rulings from the Chair. Thus, no Committee should operate outside the foregoing, save as the House may specifically authorise. The Committees, being the microcosms of the House, are always expected to conduct themselves with decorum and dignity at all times.

My attention has been drawn to recent utterances in the Press relating to the work of the Select Committee on the late Dr. Ouko and attributed to the Chairperson of that Committee. The utterances have been reported on at least five different occasions. On one occasion, complaints and accusations of the dismal performance of this Committee were heaped on the Speaker and all the staff of the National Assembly. For instance, the Chairperson is reported to have said the following in the *Sunday Standard* of 28th September, 2003 on page 9, and I quote.

"The murderers of Dr. Ouko have teamed up with a clique in Parliament to frustrate the work of this Committee but we are determined too, and I assure Kenyans that this time we are heading to the bottom of the matter."

In the *Daily Nation* of 27th October, 2003 on page 6, it is reported:

"However, the hon. Sungu is said to have become adamant about the facilities his Committee wanted and threatened to move a Motion of no confidence in the Speaker."

There are several statements that I have not quoted, including one that appeared in the Press this morning.

This trend of operation is out of step with our known practices. It would hardly be said to serve the interest of the Committee or, ultimately, of this House in our corporate resolve to unravel the circumstances surrounding the death of the late Minister. The facts demonstrate that all the necessary facilities, or most of them, anyway, in terms of personnel, services, facilities and funds have progressively been availed to the Committee. The following are the facts:-

So far, 18 sittings of the Committee have been facilitated by my staff.

At least two sittings facilitated by the staff did not take off due to lack of quorum.

None of the 18 sittings, except the first one, has registered attendance of more than ten hon. Members.

An amount of Kshs22 million has been set aside for the work of the Committee on the basis of a budget drawn by the Committee itself.

At the request of the Committee, and following physical inspection, five offices and two Committee Rooms have been provided for the work of the Committee at County Hall. They have also been furnished with the necessary equipment and furniture.

The Government has availed 31 police officers while the Parliamentary Service Commission has provided ten officers to this Committee.

The Government has availed two vehicles for use by police investigators. The vehicles are

being fuelled and serviced by the National Assembly.

The National Assembly has availed a van for use by the investigators.

The Government has beefed up the personal security of hon. Members of the Committee by providing a police officer per hon. Member, in addition to the one they already have, identified by the hon. Members.

(Loud consultations)

Order! Please give me a moment!

Summonses have been drafted and I have certified them. They will, when needed, be used pursuant to the provisions of the National Assembly Powers and Privileges Act.

The Parliamentary Service Commission and I have directed that the Committee hires a legal counsel from the funds allocated to it, provided always that procurement regulations in force are followed to the letter.

Hon. Members, I do not intend to go further into the goings-on at this Committee. Suffice it to say that I have repeatedly, and I now do it again, urged the Committee to move on with its work and utilise the available resources. In the same vein, I will urge it to exercise restraint and focus on its core business, which is to embark on the work to gather evidence. I am informed that witnesses have indicated their willingness to appear before the Committee. Let the Committee, therefore, hear them and, ultimately, submit its report. The National Assembly will continue to service it and facilitate its work to the extent possible within the resources made available to the National Assembly.

From the Floor of this House, I direct that the Committee and the staff charged with the responsibility of making it work must now proceed and execute the mandate given by the House to the letter without further side shows.

Thank you.

(Applause)

The Minister for Roads, Public Works and Housing (Mr. Raila): On a point of order, Mr. Speaker, Sir. I want to seek a clarification.

Mr. Speaker: What clarification and from whom do you seek it?

The Minister for Roads, Public Works and Housing (Mr. Raila): From you, Mr. Speaker, Sir.

Mr. Speaker: If it is from me, then I am sorry.

(Laughter)

MINISTERIAL STATEMENTS

FATE OF KILIFI CASHEWNUTS FACTORY

The Minister for Co-operative Development and Marketing (Mr. Ndwiga): Mr. Speaker, Sir, last week, following a request by Mr. Khamisi, the Chair directed that I bring a Ministerial Statement on the fate of Kilifi Cashewnuts Factory (KCF).

The KCF is located in Kilifi District of the Coast Province. It was built in 1975 by the Kenya Cashewnuts Limited (KCL) with a capacity to process 15,000 tonnes of cashewnuts. It serves the Coast Province cashewnuts farmers, both directly and indirectly through their co-operative societies and Kilifi District Co-operative Union (KDCU).

However, commercial production of cashewnuts dates back to 1939 when the processing of

the same was done by the co-operative societies until 1975 when the factory was established. As at 1982, the factory shareholding by the Government was 65 per cent while 35 per cent was held by the co-operative movement. The Government's ownership was through the National Cereals and Produce Board (NCPB), the Industrial and Commercial Development Corporation (ICDC) and the Industrial Development Bank (IDB) while that of the co-operative movement was through KDCU. Initially, the National Cereals and Produce Board (NCPB) was the major agent in procuring cashewnut for the factory. However, from 1990 the management of the cashewnut factory decided to buy directly from appointed agents and some co-operative societies. In view of the importance of cashewnuts as a major cash crop for the majority of farmers in the coastal districts of Kilifi, Kwale, Malindi, Lamu and a co-crop marketed by most marketing co-operative societies in that region, the cashewnut factory played a strategic role in the development of the cashewnut industry and the livelihood of the many cashewnut farmers. It is, therefore, not surprising that, apart from the Government shareholding in the factory, the rest was by farmers through the co-operative movement.

Mr. Speaker, Sir, by 1992, the Government shares with a market value of Kshs142.40 per market share, totalled to Kshs78 million, while the union shares were valued at Kshs42 million. When the Government decided to divest from the factory, Kilifi District Co-operative Union (KDCU) exercised its pre-emptive rights and acquired the Government's 65 per cent shares in an arrangement that was signed on 29th October, 1993. Later on, the Kenya Planters and Products Limited and the Cashew Development Investments Limited joined the factory as shareholders, under circumstances which are not clear. On 30th December, 1996, KDCU was lent Kshs2 million allegedly for the purchase of cashewnuts from farmers by Kenya Planters and Products Limited, for which some union officials signed blank transfer forms for all the union shareholding in Kilifi Cashewnuts Limited. Although this loan is said not to have been repaid, the arrangement, no doubt, could not have been in good faith as it was fraudulent. The transactions were secretly done without involving the co-operative movement shareholders and the Ministry of Co-operative Development, except a few KDCU officials who were manipulated to facilitate a flawed acquisition of the factory from the *bonafide* shareholders. Amid heavily demoralised shareholders and cashewnut farmers, in general, the cashewnuts factory closed down in August, 1997, occasioning the laying off of the employees and denying cashewnut farmers their major source of income and foreign exchange for the country from the processed cashewnuts exports. The cashewnut marketing co-operative societies predominant in the province were rendered dormant and the once robust cashew industry brought to its knees.

Mr. Speaker, Sir, the cashewnuts factory closed down with an unserviced Barclays Bank loan of Kshs95 million, whose security was the Kenya Cashewnuts premises. In February, 2000, Barclays Bank of Kenya appointed a receiver manager and advertised the property for sale in order to recover the loan which, together with interest, had allegedly accumulated to Kshs200 million. KDCU filed an injunction in court against the sale until the ownership of Kenya Cashewnuts Limited was determined. However, as the matter was still in court, the bank entered private negotiations with Millennium Management Limited and sold the property for Kshs58

Mr. Speaker, Sir, it is clear that the acquisition of the cashewnut factory from KDCU was irregular, fraudulent and not with good intentions. I have further learnt with concern that the management team at the factory is at the moment busy cannibalising the machines which will make the revival of the factory more costly. In order to arrest the situation and forestall any further loss of public property, my Ministry has from today, taken over the premises of Kilifi Cashewnuts Factory. I will give further updates on the matter in due course.

Thank you Mr. Speaker, Sir.

The Assistant Minister for Foreign Affairs (Mr. Wetangula): Thank you, Mr. Speaker, Sir. Two weeks ago the hon. Kembi-Gitura demanded a Ministerial Statement from my Ministry on the issue of issuance of visas at the British High Commission.

There have been a number of complaints from Kenyans, particularly students, on the delays and other complications on the issue of visas, both application, processing and issuance at the British Consulate in Nairobi. Some of these are occasioned by the strict procedures to which the applicants are subjected, and the significant increase in the number of applicants for visas by Kenyans wishing to travel to the United Kingdom (UK) for various reasons.

Mr. Speaker, Sir, the Government has raised this concern with the British authorities at the highest level possible. I have also on several occasions held consultations with the British High Commission with a view to finding ways of easing the long queues and delays experienced by Kenyans. Following these discussions, assurances have been given that practical administrative steps have been taken to streamline the procedures and minimise the time taken in processing these visas. Some of the existing requirements for issuance of visas have also been reviewed in order to improve the process. In this respect, the measures already taken include the following:

1. In July, 2003, the British Consulate introduced a drop-box system. This entails that the applicants drop their forms at the boxes posted at the High Commission and await the interviews in two weeks' time. Those cases which are found to be in order are then invited for the interview, while those whose applications suggest some doubts are called for further investigation.

2. The High Commission has increased the number of staff in its Consular office to facilitate this.

3. It has authorised those who intend to travel to the UK, on short notice or on normal visits of less than six months, to use their travel agents in processing their visas instead of going to queue at the High Commission.

Mr. Speaker, Sir, all these actions have realised a reduction of pending applications by 70 per cent. I am further assured that they are contemplating the physical expansion of the consular offices by putting up a fully equipped and staffed extension block. Further to this, we, as a Ministry, have also consulted with the High Commission. There have been complaints of Kenyans who pay money for visas and when they are turned down they do not get their refunds. We are trying to find a situation where, when they are turned down, appropriate refunds should be made because the amounts paid are quite astronomical.

Thank you, Mr. Speaker, Sir.

Mr. Kembi-Gitura: Mr. Speaker, Sir, I am grateful to the Assistant Minister for the statement that he has given. However, when I raised the issue of visas, I had specifically wanted to know why students who come on holidays, like the way they will come in December, are denied visas to go back to the UK. They are registered in universities and they have paid their school fees. We have many cases where students come here on holidays, but they are denied visas when they want to go back to the UK. This is causing a lot of inconvenience to parents and other interested persons.

In fact, I must say that the statement is quite unsatisfactory in more than one aspect, and the one referred to by the Assistant Minister. Everyday, the British High Commission receives so many applications and once payments are made by the applicants, no refunds are made if a visa is denied. It appears as if the British Government is funding its Consular Office in Nairobi on the application for visas that are not granted. So, I would like a clarification on those two issues on what the Ministry is doing to ameliorate the position?

The Assistant Minister for Foreign Affairs (Mr. Wetangula): Mr. Speaker, Sir, I have already said that we have indicated to the British High Commission that it will be necessary for appropriate refund to be made to those who fail to get visas, because it is unjustified for the money to be retained if visas are not granted. Secondly, I have talked to the British High Commission on the issue of students who have come back to the country for holiday and then are denied visas to go back

to the UK. The British High Commission's reaction was that it has no evidence to that effect. Therefore, I would like to urge any hon. Member, or any member of the public, who has such a case to bring it to our attention, so that we can deal with it on a case-to-case basis. We cannot just deal with a blanket allegation that is not factual.

Mr. Speaker: Do you still insist, Mr. Omingo?

Mr. Omingo: Yes, Sir.

Mr. Speaker: Well, be very brief then, because it is now 4.00 p.m.

Mr. Omingo: Mr. Speaker, Sir, I will be very brief. Indeed, the British High Commission treats people applying for visas to go to its country more or less like a "cash cow". It has adopted the "money in, no money-out" policy. I would like to seek a clarification from the Assistant Minister regarding a case that he knows about. A young man called Omita Otieno enrolled at a college in the United Kingdom (UK). He came back to the country to pick up his wife and children but visa for his return to the UK was not granted, yet his personal belongings, including his certificates, are still in the UK. This is one of such cases, and I am sure the Assistant Minister knows about it. So, to be very specific, what is he doing about the case of Mr. Otieno?

The Assistant Minister for Foreign Affairs (Mr. Wetangula): Mr. Speaker, Sir, the hon. Member has previously brought this case to my attention, and I did instruct my officers to deal with it and bring back the results to me. I would like to take this opportunity to invite him to pay a visit to my office and see how far we have gone with the matter.

Mr. Speaker: Very well, let us have the last Ministerial Statement from Mr. Githae.

APPOINTMENT OF KACC DIRECTOR

The Assistant Minister for Justice and Constitutional Affairs (Mr. Githae): Mr. Speaker, Sir, two weeks ago, the Member for Kasipul Kabondo, Mr. Owidi, requested for a Ministerial Statement on the delay of the appointment of the Kenya Anti-Corruption Commission (KACC) Director, and I beg to issue the same.

Section 16(1) of the Anti-Corruption and Economic Crimes Act creates the position of a Director, who will be the Chief Executive Officer of the Commission, and who will be responsible for its direction and management. The Commission will have four Assistant Directors to assist the Director in the execution of its functions. The Director and the Assistant Directors will be persons to be recommended by the KACC Advisory Board and approved by the National Assembly for appointment to their respective positions by the President. Section 9(1) of the Act empowers the Director to appoint one of the Assistant Directors as Deputy Director.

The KACC Advisory Board initiated the process of recruiting the Director and the Assistant Directors of the Commission by advertising the vacancies in *The Daily Nation*, *The East African Standard*, *The People Daily* and *The Kenya Times* of 28th October, 2003. The advertisement was again published in yesterday's editions of these publications. The deadline for the receipt of application is 8th November, 2003. Subsequently, the KACC Advisory Board will meet to short-list and interview the qualified candidates. The names of the successful candidates will then be forwarded to Parliament for approval before formal appointment by the President.

The KACC Advisory Board has programmed itself to complete this process by 1st December, 2003. It is also noteworthy that the President formally appointed the 11 members to the KACC Advisory Board for a period of five years with effect from 11th August, 2003. Section 2(1) of the First Schedule of the Anti-Corruption and Economic Crimes Act provides for three months within which the KACC Advisory Board is to recommend the filling of the vacancies of Director and Assistant Directors. Therefore, there has been no delay in the appointment of the Director.

REMUNERATION OF KACC DIRECTOR

The Assistant Minister for Justice and Constitutional Affairs (Mr. Githae): Mr. Speaker, Sir, yesterday, Prof. Oniang'o sought a Ministerial Statement on the proposed salary package of the Director of the KACC, which she said was higher than the salaries of the President of Kenya and the Prime Minister of Canada, and 1,000 times higher than the salary of a policeman. I would like to state as follows.

Mr. Speaker, Sir, there is yet no agreed remuneration package for the KACC Director. The on-going recruitment process seeks to attract the best persons for the jobs in line with the KACC mandate as provided by the Anti-Corruption and Economic Crimes Act. According to Section 8(5) of the Act, the terms and conditions of service of the Director and the four Assistant Directors shall be determined by the KACC Advisory Board. The KACC Advisory Board will negotiate for salaries commensurate with qualifications and experience of the successful candidate.

The salaries of all the KACC staff will, however, have to be competitive, considering that unlike in the case of other public servants, Section 6(1) of the First Schedule of the Act precludes them from engaging in any other income-generating activities. In the case of the Advisory Board members, their allowances shall be in accordance with Section 6 of the Second Schedule of the Act, as determined by the Minister for Finance in consultation with Parliament.

Therefore, there is no truth in the allegation that the proposed package for the Director exceeds that of the President, that of the Prime Minister of Canada, and that it is 1,000 times higher than that of a policeman. Thank you.

Prof. Oniang'o: Mr. Speaker, Sir, I just needed clarification that these jobs have, in fact, already been advertised. However, it really does not make sense that the advertisement of the vacancies, which had been appearing in all the daily newspapers, was without any proposed remuneration packages. The general impression created by that omission is that the Assistant Minister is, in fact, short-changing us by trying to avoid answering that question. Could he assure the public that these positions, which will be paid for using public funds, will, in fact, be within the acceptable framework of salaries for public servants? We are aware that giving people a lot of money with the intention of preventing them from engaging in other jobs does not justify these levels of salary or prevent them from engaging in corruption.

Mr. Speaker: Mr. Assistant Minister, what are you going to pay them if you employ them, if you do not know their salaries?

The Assistant Minister for Justice and Constitutional Affairs (Mr. Githae): Mr. Speaker, Sir, the salaries will be negotiated with the candidates. So far, no candidate has been identified as the application deadline is 8th November, 2003. The issue of salaries will be addressed after the candidates have been short-listed. As of now, the only guiding principle is that the successful candidates will not earn less than their current salaries.

Mr. Owidi: Mr. Speaker, Sir. I thank the Assistant Minister for finally giving an answer after two weeks. In the advertisement, they say that persons applying for the post of the director must have a postgraduate degree and 20 years experience in the public sector, and not private sector. At the same time, if you look at the requirements under the law, it simply says that one must have knowledge in law, public administration, accounting and financial matters. Why are they raising the level of qualifications? Are they trying to cutoff some people, so that they give the job to an individual? Could the Assistant Minister assure the House that, that is not the case?

(Applause)

The Assistant Minister for Justice and Constitutional Affairs (Mr. Githae): Mr. Speaker, Sir, the qualifications specified by the Act are the minimum. The purpose of those high qualifications are to enable the Commission to obtain the best candidate in the Republic of Kenya. I can assure this

House that the Commission has not identified any person. It has no person in mind and all the people who will apply and have the right qualifications will be called for interviews. The best candidate will be recommended by this Parliament to be appointed by the President.

(Several Members stood up in their places)

Mr. Speaker: How long do you want us to go on this? Maybe, I will give one chance to one Member from the Opposition side and end with Mr. Weya. That is it! Whose line Ministry is it within you? Is it Mr. Mganga?

Hon. Members: Mr. Samoei!

Mr. Speaker: Okay! By acclamation, it is Mr. Samoei!

Mr. Samoei: Mr. Speaker, Sir, while I admit that the Assistant Minister is trying his best to get the best person for that challenging job, I think, as a country, we must not, at any one point, shut out potential candidates by raising qualifications. In my opinion, 20 years of experience in public service is an exaggeration of the need for experience.

(Applause)

Such a person would actually be due for retirement. A person who is 45 years old or thereabout is actually due for retirement. I want the Assistant Minister to take the sentiments of this House in good faith, and realise that the best person is not necessarily somebody who has worked for 20 years in public service.

The raising of the qualifications is not there in the law. When this House passed the law, it set out the criteria for appointing the director in a very explicit way. I think it is not correct and prudent for the Advisory Committee to attempt to amend the law. Therefore, in my opinion, the sentiments of this House are that the Assistant Minister should put a reasonable period of experience.

Secondly, by saying that a person must have worked in public service for 20 years, have experience in law and a postgraduate degree or diploma, it looks like there is somebody who has been identified, and they are only trying to match all those things to the individual.

(Applause)

Mr. Speaker, Sir, that job should be taken by the best Kenyan available, but others should not be shut out.

Mr. Muite: Mr. Speaker, Sir, you have repeatedly told this House that when a Ministerial Statement has been read, it is only clarifications which can be sought. Are you satisfied that Mr. Samoei is actually seeking any clarification? Is he not making a contribution as if it is a debate?

An hon. Member: Yes, he seeking a clarification! Are you teaching the Speaker?

Mr. Speaker: Order, hon. Members! Quite frankly, I have said and I repeat: When a Minister has made a Ministerial Statement, you seek clarification. Otherwise, you should ask a Question or move a Motion. But when a Member wishes to know from the Assistant Minister why qualifications demanded in the advertisement are higher than those set by the law, that is a valid clarification.

(Applause)

But nevertheless, taking into account what I have said, I would like to ask Mr. Weya to proceed!

Mr. Weya: Mr. Speaker, Sir, could the Assistant Minister assure this House that Justice Ringera's curriculum vitae was not used to tailor the requirements?

Mr. Speaker: Order, Mr. Weya! How does Justice Ringera come into this?

Mr. Weya: Mr. Speaker, Sir, he is in the grapevine.

Mr. Speaker: Order! Please, Mr. Weya and all other Members, save this House from being dragged down into mud. When you say he is in the grapevine, may I tell you that this House has not sunk to the level of a grapevine. It is much higher than that and I will not accept that. We will, therefore, totally ignore what you have said.

Do you have any further comments? That is it!

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

Mr. Speaker: No! No further

contributions on this!

Mr. Obwocha: Mr. Speaker, Sir, this House does not discuss the conduct of judges unless it is on a substantive Motion. I am trying to bring a valid point of order to your notice.

Mr. Speaker: Order! Who has given you the chance? Will you sit down!

(Laughter)

Mr. Githae, please, proceed!

The Assistant Minister for Justice and Constitutional Affairs (Mr. Githae):: Mr. Speaker, Sir, the Act only gives the minimum qualifications. I can assure this House that 20 years of experience is not much. There are many educated Kenyans with postgraduate diplomas, degrees and doctorates. Kenya is an educated nation. So, there will be no problem at all in getting qualified candidates.

Mr. Speaker, Sir, I would like to assure this House once again that those qualifications were not tailor-made for anybody.

Mr. Speaker: Very well! Mr. Obwocha had five minutes! Are you happy?

Mr. Obwocha: Mr. Speaker, Sir, thank you for allowing me to say something on a point of order. When we draw your attention to some of these issues, they are, indeed, valid for the attention and order of the House. The issue that Mr. Weya has just raised about Justice Ringera, as I know in our Standing Orders, you cannot discuss a Member or a judge without a substantive Motion. So, the point of order I was trying to raise was valid, although I did not catch your eye.

Mr. Speaker: Order! In fact, it is invalid for more reason than catching my eye. First of all, that issue was disposed of by the Chair before you stood up! If I have disposed of a matter, we do not deal with it again. So, that is it!

Next Order!

BILLS

First Readings

THE HIV/AIDS PREVENTION AND CONTROL BILL

THE REFUGEES BILL

*(Orders for First Readings read -
Read the First Time and ordered
to be referred to the relevant
Departmental Committees)*

Second Reading

THE INSURANCE (AMENDMENT) BILL

*(The Minister for Finance on 29.10.2003)**(Resumption of Debate interrupted
on 29.10.2003)*

Mr. Speaker: Hon. Obwocha was on the Floor and if you are still interested you have five more minutes.

Mr. Obwocha: Thank you, Mr. Speaker, Sir. I was on my last leg in making my contribution to the Insurance (Amendment) Bill.

I was on Clause 17(b)(4) which states as follows:-

"A premium cheque collected by an agent or a broker, which shall be in the name of an insurer, received by him shall be deposited with, or dispatched and received by the insurer before the commencement of the insurance cover:

Provided that the commission payable to the broker or agent shall be paid within fourteen days of receipt by the insurer of the premium cheque."

[Mr. Speaker left the Chair]

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

Mr. Temporary Deputy Speaker, Sir, precisely what we are saying is as follows: That when an insured person signs a form with either the agent or a broker, when he gives a cheque or pays cash, that is the point at which the contract between the insured and insurer should start. All these other businesses between the agent, broker, underwriter or the insurance company is none of our business. If you want to insure your vehicle, then you have to take an insurance cover for your vehicle at the point which you fill the form or pay your money. So, I would have expected the Minister for Finance, in trying to amend this Insurance Act, Cap 487, to have looked at the issues that have been affecting us. Those issues arise because the brokers and agents are not honest. Our money is not reaching where it should and the money that is being paid by the insurance companies on behalf of those victims does not reach the beneficiaries. This is the issue we wanted the Minister for Finance to address.

Mr. Temporary Deputy Speaker, Sir, I would have expected him if he wanted this Insurance (Amendment) Bill to be acceptable to all the stakeholders, to have held consultations with all the stakeholders before bringing these amendments because these are casual amendments as far as I am concerned.

Mr. Temporary Deputy Speaker, Sir, finally, with regard to these ambulance chasers, who are the lawyers, I was saying that some of us support the two-tier cheque system where the lawyer is paid his fees and the money for the victims or the beneficiaries is delivered to the beneficiaries through the insurance companies cheques, so that the lawyers do not hold up these cheques. I can tell you we have problems on the ground. In Kisii, there is a lawyer who is an ambulance chaser. He has received payments for victims but he has refused to pay the beneficiaries. The Law Society of Kenya (LSK) has not taken action against this lawyer despite the many reminders we have sent. This lawyer operates under the name of Khan and Katiku Associates. It is not "Katuku", and so hon. Katuku should not

look at me. It is "Katiku". It is not the hon. Member.

The Temporary Deputy Speaker (Mr. Khamasi): Order, Mr. Obwocha! Can you address the Chair!

Mr. Obwocha: Yes, I should address the Chair, Mr. Temporary Deputy Speaker, Sir.

Action should be taken by the LSK against this lawyer because he has refused to respond to many queries that have been brought by beneficiaries of victims of road accidents in that area. The LSK must discipline the lawyers. It is not only judges who are corrupt; some of the lawyers are very corrupt. This is one of the analogies I was giving yesterday of this woman who saw a tombstone written: "Here lies a lawyer and an honest man". She was wondering how two people can be in the same grave, that is, a lawyer and an honest man.

(Laughter)

Some of the lawyers who are corrupt must be dealt with.

With those few remarks, I beg to support this Bill.

Mr. Nderitu: On a point of order, Mr. Temporary Deputy Speaker, Sir. Could I be in order to ask the Minister to respond since there have been so many issues which have been addressed?

The Temporary Deputy Speaker (Mr. Khamasi): Yes, definitely, I cannot see any hon. Members who want to contribute to this Bill so far, because none has stood up and caught my eye. In that respect, I will then call upon the Mover to reply.

The Assistant Minister for Finance (Mr. Katuku): Thank you, Mr. Temporary Deputy Speaker, Sir. I would want to start by thanking hon. Members who have got the opportunity to contribute to this Bill. The contributions were very encouraging. I want to assure hon. Members that most of their sentiments will be taken on board when it comes to the Committee Stage and also at a later stage when we will be dealing with matters to do with this insurance sector.

Mr. Temporary Deputy Speaker, Sir, however, I would want to touch on specific issues. One is especially to do with the issue we have raised in Clauses 3 and 4, to do with the qualifications of directors and senior management officials of insurance companies. Hon. Members have expressed support on this issue. A few have also expressed different opinions on this. However, I would want to assure hon. Members that the provisions of the clauses are in line with the Banking Act which requires qualifications for directors in the insurance sector to be enhanced to ensure that we do not get inexperienced persons running this crucial and important sector of our industry. The experience shows that most of the insurance companies have collapsed because members of the board who run these insurance companies are not competent and as a result, you find most of them end up collapsing and that is why we have proposed these changes, to ensure that we have competent people with the relevant qualifications on issues to do with insurance matters.

Mr. Temporary Deputy Speaker, Sir, on the issue of the Chief Executive, we have also come up with measures to ensure persons running insurance companies are competent enough to protect the interests of the people insured, by ensuring that they have the relevant qualifications to be able to run these institutions. That is why, in line with comments raised by hon. Members---Some members have expressed fears that some of the people running insurance companies have had no training. I want to assure hon. Members that my Ministry will continue supporting this sector by strengthening training institutions.

With regard to the Insurance Institute of Kenya, a Bill is being drafted to give the body legal recognition. We need to give the institution legal recognition and a mandate to deal with professionals in the insurance sector. The Insurance College which was established back in 1992, is offering diploma courses in the insurance industry and we are pushing further to get more people trained in this field so that they can participate in this industry with more knowledge.

Mr. Temporary Deputy Speaker, Sir, some hon. Members raised the issue of training. They said that we do not have experts in actuarial science and we rely more on experts from Europe. I want to assure this House that our public universities--- University of Nairobi especially, is currently leading with over 100 undergraduate students pursuing this particular course. Those who expressed fears that we do not have experts should rest assured that we are encouraging more people to take up these courses so that we can be self-reliant, rather than depending on people from outside the country.

Some hon. Members raised issues concerning Clauses 5 and 6 which talk about the submission of quarterly accounts and publications of the annual accounts. I remember hon. Nyachae suggested that the period should be extended from what we had proposed, that is quarterly, to six months. The experience we have in the industry is that a period of six months would be too long. We feel that we need to get these reports quarterly because, according to practice, once one submits these reports, one is given 45 days to submit the final report and, of course, that almost comes to five months or so. If we extend the period to six months, I feel we will not be able to achieve what we are trying to achieve through the amendments. I want hon. Members to understand why we are pushing for these insurance companies to be submitting their reports quarterly. I want to assure hon. Members, because some of them thought that we may not have competent or enough staff to scrutinise these accounts, that we have competent staff in the Ministry, and especially under the Commissioner of Insurance, who are able to handle these reports. We are not anticipating cases whereby the reports will not be looked at.

I want to thank hon. Members for supporting the aspect of inspection which we have brought in under Clause 9. It aims at strengthening the inspection of all registered institutions and improving performance in the insurance sector. We do not want to have situations where people pay premium and they do not benefit from it at the end of the day, or when they face risks. We want to ensure that this is done with the prudence that is required. In terms of penalties and measures to be taken, we want to assure Kenyans that we are working towards a situation whereby every claim will be paid promptly without further delays, to ensure that policy holders benefit from their policies.

Hon. Members have raised many issues concerning this Bill, and without going into details of what each and every hon. Member said, I want to say that we are doing everything possible. Some hon. Members suggested that annual reports by the insurance companies should be published not only in newspapers, but also they be announced over the radio, so that many people can benefit. We are going to look at all the issues raised and address them at the Committee Stage through the Finance Bill. We will try to address the fears registered by the hon. Members.

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

(Question put and agreed to)

*(The Bill was read a Second
Time and Committed to a Committee
of the whole House)*

MOTION

EXTENSION OF CKRC MANDATE

Mr. Muite: Mr. Temporary Deputy Speaker, Sir, I beg to move the following Motion:-
THAT, pursuant to the provisions of Section 26(5) of the Constitution of Kenya Review Commission Act, Cap. 3A of the Laws of Kenya, this House resolves that the period and mandate of the Constitution of Kenya Review Commission be extended to 30th June, 2004.

Mr. Temporary Deputy Speaker, Sir, the fact that this House is debating this Motion is conclusive evidence of the commitment of the National Assembly of the Republic of Kenya to ensure that the people of Kenya, indeed, realise their dream of having a new Constitution. That is why we are seeking to extend the mandate of the CKRC. If we do not, as a House, extend the mandate of the CKRC, the CKRC, the reform process as a whole and the Constitutional Review Conference would, by operation of law, die a natural death on the 30th of November, 2003. But it is the wish of this House to do everything in its power to ensure that the people of Kenya do, indeed, realise their long-held wishes of having a new Constitution.

In moving this Motion, I would ask for the extension of the mandate of the CKRC and, therefore, of the Bomas Constitution Review Conference. I would ask that this act of extending the mandate be taken by all and sundry as evidence of the commitment towards giving this country a new Constitution. We should not, therefore, continue to hear those doubting Thomases, who keep doubting the commitment towards having a new Constitution. Let us bury those doubts completely. Let us, in fact, regard the issue of this country having a new Constitution as a foregone conclusion. Let us now shift the focus of our attention towards how best we can make the document that we are going to give this country a good document, and one that will provide a sound foundation for this nation and for future generations. The contents of that document is what we should be focusing on. It should be a sound document; in fact, one which will be implementable and affordable. How can we do that as quickly as possible? Those are the issues we ought to be addressing our minds to from now henceforth. We want a good document that will provide a sound foundation. We want a document that is going to be implementable and affordable by us as a nation.

Mr. Temporary Deputy Speaker, Sir, this House has a special responsibility to provide leadership in the resolution of these issues. I have said before, and I want to repeat it on the Floor of this House, that it is Parliament which enacted the Constitution of Kenya Review Commission Act in order to provide for the constitutional and legal framework, within which the people of Kenya would be able to rewrite their Constitution. So, Parliament is an important institution because it is performing one of its most important functions this afternoon, and that is extending the life of the CKRC, and therefore, extending as a necessary consequence, the life of the Constitutional Conference. That is a very special function that only Parliament can perform. As we rewrite the Constitution, we need to do so within the framework of the existing Constitution. The existing Constitution provides for the supremacy of Parliament. That is why it is only Parliament that can extend the life of CKRC and the conference. When Parliament enacted the CKRC Act, it did not cede its authority and supremacy to anybody or any other organization.

I mention this, Mr. Temporary Deputy Speaker, Sir, because it has been a matter of extreme sadness to see the contempt with which hon. Members of this House have at times been treated at the Bomas of Kenya. As you know, there are three groups in Bomas of Kenya. First, the Members of this august House constitute one-third of those attending the conference. The second one-third is composed of district delegates, while the remaining one-third comprises of the civil society, religious sector and special interest groups. What is unique about the one-third constituted by the Members of this House is that it is only the Members of this House who are in Bomas as a result of being mandated through universal suffrage by the Kenyan people. It is only the Members of Parliament who have been elected directly; through one man, one vote; one woman, one vote; one person one vote, and not the other two groups. When we talk about the sovereignty of the Kenyan people in constitutional making, what we mean is that as regards to the concept of the new Constitution, Parliament cannot dictate to the Kenyan people. The sovereignty is in the Kenyan people, the conference in itself is not a sovereign constituent assembly; and this needs to be borne in mind.

Mr. Temporary Deputy Speaker, Sir, it is my appeal that when we resume the Bomas of Kenya conference in January, Members of this august House should be treated with respect. Some of

us have been very sad to see hon. Members of this House being shouted at, subjected to mob justice and not being accorded the opportunity to make a contribution. Some of those people who are doing the shouting are some of those people who contested and lost in the last general elections against Members of this House. Others are the ones who have their eyes on the coming elections. Let us not permit parochial personal interests to impact negatively on the quality of the document which we are going to produce. Parliament, as an institution, is important and has the mandate to extend the life of the CKRC or that of the conference. The conference itself is an important organization or institution because it is through it that we will be able to give Kenyans the new Constitution that they want. The Government of the day itself is an important institution because, if you look at Section 31 of the CKRC Act, the Budget of CKRC and the conference is, in fact, produced and given by the Minister for Finance. He is the one who approves that Budget, in consultation with the Parliamentary Select Committee. So, these three institutions; the Government of the day, Parliament and the conference, need to work together harmoniously, pulling in the same direction so that we can give this country a quality Constitution, which is going to stand the test of time.

Mr. Temporary Deputy Speaker, Sir, I would say that to some extent, Members of Parliament have themselves to blame because of the treatment they have been accorded at Bomas of Kenya. This is because they have always not acted as an institution. Some of them have gone there to play power games, therefore, opening the room for them to be treated the way they have been treated; being subjected to mob justice. I would like to appeal that the period between now and 12th January, 2004, when we go back to Bomas of Kenya, we as Members of Parliament, should rethink very carefully what sort of leadership we are going to offer at the conference. Let us rethink whether we cannot, in fact, reconstitute and approach the conference in a similar way as we did in the 1997 Inter-Party Parliamentary Group (IPPG) forum.

Instead of the various power groups using proxies in the Bomas talks to advance particular and partisan political agenda, why can the Members of Parliament not convene in an IPPG-like situation, and address some of these difficult issues that have to be addressed and resolved, instead of fighting through proxies at the Bomas of Kenya? Let the Member for Eldoret North, who is going to second this Motion, and the hon. Member, for example, for Imenti South, sit face-to-face. We have sitting arrangements and conference rooms at County Hall and Continental House; let them sit the way we used to sit in 1997 in the IPPG forum. I admit that I was wrong, because I was one of those who vehemently opposed the IPPG initiative, but in retrospect, I see the wisdom behind it! Let Members of Parliament sit down and address these issues because, KANU as a party cannot be wished away. It constitutes the biggest Opposition in this House. Therefore, their views and wishes on some of the contentious issues being discussed in Bomas of Kenya will have to be accommodated. FORD(P), the LDP and the NAK factions of the NARC Government are also important parties in this House. If we sat and addressed those issues, we would be able to compromise on them, so that we come to the point where KANU will say: "*Haidhuru*, we have not got everything we wanted, but we can live with that". And the Government of the day can say: "We may have not got everything we wanted but, at least, we have not lost everything". Consensus is what constitution making is all about!

Mr. Temporary Deputy Speaker, Sir, if this House was to reach a consensus on the contentious issues that have made it impossible for us to move ahead quickly, we would then be able to provide better leadership. Let us do that between now and the time we go back to Bomas. Let us ensure that we do not go beyond 30th June next year. This extension is up to June next year. The hon. Member for Kabete Constituency does not want to stand here again to ask for any further extension. So, the responsibility is particularly ours. If we do not resolve these issues, I can assure you we will take a longer time. We may expect to complete the review process by 30th March, 2004, but if we do not come to a consensus on some of these very contentious issues, we will not complete it. I have been at the Bomas of Kenya and can tell you that if these issues are not resolved, then we are, perhaps,

staring in the eyes of another two years before we can come up with a new Constitution through the avenue of Bomas. This is something we must shirk away from.

The other issue is that even as we go back to the Bomas of Kenya, it is the responsibility of this House to give guidance on the cost of implementing a new Constitution. Can we afford it? This is a relevant issue which we have to address and resolve. All the institutions that we want created in the new Constitution, what will they cost? Can we afford them? Is the Constitution that we are debating implementable? These are issues on which hon. Members need to give leadership.

So, I want us to take the position that by June next year, this country will have a new Constitution. Instead of engaging in contentious debates, talking to each other through the media and fighting our little power games through proxies - the delegates are being used as proxies by some individuals - the principals should sit down, discuss the issues in an Inter-Parties Parliamentary Group (IPPG) situation and come to a consensus, so that we can give this country a new Constitution expeditiously. We want to shorten the time within which we will give this country a new Constitution. We want to bring down the cost of giving this country the new Constitution. Above all, we want a quality document, which will lay a firm foundation for this country and for generations to come. We do not want to have a situation from where a bad document will be produced.

Therefore, my plea is that we now as elected leaders, refocus our minds on strategies that will ensure that this country will have a quality and sound document, which will provide a firm foundation. The new Constitution should be implementable and affordable. Those are the issues that we should now be addressing. We, as leaders, should ask ourselves: What are the strategies for ensuring that we achieve a document that will resolve the issues at hand?

The hon. Member for Eldoret North, Mr. Samoei, who contributed tremendously towards building the consensus on the issue of adjourning the Bomas of Kenya process from 17th November to 12th January, 2004, showed a lot of maturity, and will second the Motion.

Mr. Samoei: Mr. Temporary Deputy Speaker, Sir, I stand to second this Motion.

The history of making a new Constitution in Kenya is quite elaborate and very well known to many Kenyans. It has been a very long bumpy road. The people of Kenya expect to have a new constitutional dispensation. They believe that it is through a constitutional framework that guarantees good governance, protects the interests of all communities and provides room for economic activities that we can forge ahead as a country. The aspirations of the people of Kenya to have a new Constitution cannot be over-emphasised. There was a time last year when a new Constitution for Kenyans was just days away. Unfortunately, it has taken us another one year without delivering a new Constitution to the people of Kenya.

Mr. Temporary Deputy Speaker, Sir, today, we are asking this august House to extend the period and the mandate of the Constitution of Kenya Review Commission (CKRC). This is the primary body that manages the effort to try and put together a new Constitution for the people of Kenya. By extending the period and the mandate of the Commission to 30th June, 2004, we know very well that we are extending the time the people of Kenya will pay for the Commission and the other subsequent bodies, including the National Constitutional Conference, in order for us to have a new Constitution. This will cost the Kenyan public money. Even as we make this decision, we realise that, indeed, we are asking the people of Kenya to dig deeper into their pockets in order to get a new Constitution. It is time we realised, as leaders, that it is in the interest of the economy of this country, the effort and energy that has been put into the process of making a new Constitution, that we expedite this exercise. The people of Kenya need a constitutional framework that serves their interests and makes transacting business easy.

In the past, the CKRC has not provided enough stewardship to the bodies that have been put under its management. The National Constitutional Conference is one such body. We have wasted a lot of time in trivialities and things that we should not have dealt with. In extending the life of the

Commission, it is good to note and tell the people who are charged with the responsibility of running it that Kenyans are paying for every minute, hour and day that we spend doing wrong things. It is not in the interest of the Kenyan taxpayer to continue paying money for a Commission that is not focused on what it is supposed to achieve. I hope the Commission will take up its duty with due diligence, so that through its stewardship, Kenyans can have a new Constitution in the shortest time possible.

In recommending the extension the Commission's period and mandate to 30th June next year, the Select Committee went through a soul-searching exercise. It will be imprudent for those of us in the Select Committee to come back to this House and request another extension of the period and mandate of the Commission. Personally, I will not be part of an effort to try and extend the life and mandate of the Commission for another day. Kenyans have waited long enough to have a new Constitution. The conference and, indeed, the whole effort towards getting a new Constitution has been dogged by games; unfortunately, games introduced to the whole process by the very people who were the champions of the constitutional review process. Mr. Temporary Deputy Speaker, Sir, the people of Kenya entrusted to us this process as the leaders of this country. They did expect that we, as leaders, would keep our word to deliver a new Constitution in the shortest time possible. Unfortunately, there are people who now believe that the whole exercise of a new Constitution was about a person, or a political party, and that it is no longer necessary. It is such people who make the business of reviewing the Constitution almost an impossible. We have heard persons saying the whole business of reviewing the Constitution was about the former President and his party. Now that he is no longer in power, we should do away with the whole exercise. The same people now want to tell Kenyans that it is not necessary to review the Constitution.

Mr. Temporary Deputy Speaker, Sir, in extending the life of the Constitution Review Commission of Kenya (CRCK) to next year, we are, at the same time, sending a strong signal to those people that, indeed, the resolve of Kenyans to have a new Constitution is still intact as it was last year.

As the hon. Mover of this Motion said, we, as political leaders, should take up our responsibilities seriously and provide the necessary stewardship of this effort towards a logical conclusion. Unfortunately, political parties and factions of political parties have become part of the games and sideshows that are played at the Bomas of Kenya. These games are, indeed, orchestrated by the same people who are supposed to provide the stewardship and leadership of the process.

Mr. Temporary Deputy Speaker, Sir, we are unfairly blaming delegates at the Bomas of Kenya because they are being used by the very people who pretend that they actually want a new Constitution, when they have used every opportunity to delay the process, caused sideshows and, in fact, attempted to derail the whole process.

Mr. Temporary Deputy Speaker, Sir, I believe that when we go to Bomas of Kenya in January, we will not come back to this House unless we have delivered a new Constitution to the people of Kenya. It is with that realization that we did resolve to extend the time of Bomas III conference to January, 2004. I also believe that without any more sideshows and stop-gap measures, we will deliver a new Constitution to Kenyans.

Mr. Temporary Deputy Speaker, Sir, two wrongs never add to a right. Any attempt to derail this process, at this point in time, does justify allegations that this process has not taken off for a long time because certain people were trying to derail it. We are here because Kenyans sent us here and it is our duty to deliver a new Constitution. We hear of incidents of people saying that it might be expensive to put together a new Constitution and that will cost the taxpayers colossal amounts of money. The price of good governance can never and will never be compromised. If people believe that it is expensive to have good governance, I do not know whether they are suggesting to Kenyans that we can continue with bad governance. Whatever it costs for the people of Kenya to have good governance, it is worth the money we will pay. So, I believe that it is our duty to put together a document that is workable, that represents the aspirations of the people of Kenya in their diversity, and

one that will guarantee the governance that the people are expecting from those who are governing. No amount of intimidation as to how much it will cost, will cow anybody to slow down on delivering a new Constitution to Kenyans.

Mr. Temporary Deputy Speaker, Sir, there are people who focus on our differences. All this business of saying there must be a referendum is a result of anticipation of differences. The spirit of the Act was that we were going to build consensus. The Act, in fact, did envisage that there would be differences. However, the Act in its entirety, if you read through, it encourages dialogue and consensus building. If we focus on how we will agree, we will succeed. However, if we focus on how we will differ, we will never succeed. This is because there will never come a time that all of us will agree on the same thing. We are a diverse country; different people, but we are one united by a document that we want to review.

Even before we talk about issues of a referendum, we should give a chance to dialogue and consensus building. That is the spirit that we should encourage; that is the way we should go. It is incumbent upon us as members of different political parties to talk to each other and try and reach out to each other. I am urging our colleagues in Government that we, as a political party, are ready for dialogue. I would wish that we get time to, in fact, build consensus amongst the political leaders, so that we can find areas of agreement and shorten the period within which we will deliver this new Constitution.

I am saying this against a background of what we have seen at the Bomas of Kenya. There has been heckling, name calling and power games, all introduced there to delay this exercise. I want to commend the delegates at the Bomas of Kenya because they have stood firm. In fact, as opposed to the accusations that have been made against them as booing hon. Members, in fact, it is the different factions of hon. Members which encourage them to heckle at others. We, as hon. Members, should provide leadership. The delegates at the Bomas of Kenya are willing to listen to hon. Members if we are ready to encourage consensus building on issues that we think or hold different opinions.

Mr. Temporary Deputy Speaker, Sir, all is not lost. We can still create consensus and dialogue amongst ourselves and deliver a new Constitution to the people of Kenya. I agree with the Minister for Justice and Constitutional Affairs when he says that at some point we need a political settlement. That is what is lacking. I would like to agree with him, that if we as political leaders are willing to sit down, and look each other in the eye and talk straight to each other, we can reduce the areas of disagreement and create a consensus and deliver a new Constitution to the people of Kenya.

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

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

Mr. Temporary Deputy Speaker, Sir, we made a conscious decision as Parliament to allow the people of Kenya to drive this process. It will be most unfortunate, if at this point in time we try to renege and exaggerate the importance of one sector of the delegates against the other. I do not think it is in the interest of the success of the Constitutional Review Process, for us as hon. Members of Parliament as we sit at the Bomas of Kenya, to say that we are much more important than the other group of people who constitute the delegates at the Bomas of Kenya. I do not agree, because we made a conscious decision as Parliament to have a "people driven process". We then said we wanted "Wanjiku's" views to be heard. It would be unfortunate for us, at this point in time to say that we made a mistake, and that "Wanjiku" does not understand anything and, therefore, she is not worth to be heard. I do not think we are going to send good signals to the people. We made a conscious decision;

we legislated in this House; we made the people to drive this process, and we must live with the process, guide it and ensure that we deliver a new Constitution that is "people driven", whatever that means!

Mr. Temporary Deputy Speaker, Sir, I believe very strongly that given a chance, minus the power games and side shows, it is possible for us at the Bomas of Kenya to deliver a new Constitution to the people of Kenya. I would like to ask the Government to show commitment to this process. They should provide the leadership. If we say that we are looking for a political statement, we are yet to be invited to a meeting to say: "Gentlemen and ladies, let us try and create a political settlement". We are waiting for that opportunity. I think that responsibility lies squarely with the people in Government, if indeed, they want to live up to their pledge to the people of Kenya, that there will be a new Constitution.

Mr. Temporary Deputy Speaker, Sir, we have come a long way, and I am very sure that soon the people of Kenya will be looking at us as their political leaders to help in the process of delivering this "baby", that they have waited for, for a very long time. We must be prepared as a Parliament and political parties to assist in this process and make sure that we deliver a new Constitution to the people of Kenya.

With those many remarks, I beg to second.

(Question proposed)

The Minister for Foreign Affairs (Mr. Musyoka): Thank you, Mr. Temporary Deputy Speaker, Sir. I would like to join in the eloquence of both the Mover and the Secunder of this Motion, in agreeing to this Motion.

Mr. Temporary Deputy Speaker, Sir, as a Member of the Parliamentary Select Committee on the Constitutional Review Process, I want to say that this is a very good decision. As hon. Samoei has said, it was painstakingly taken after a bit of soul searching. When we first went to Bomas of Kenya, several years ago, I remember I said that we did not want to engage in an act of Constitution making process in perpetuity. The people of Kenya have waited very long to have a new constitutional order. Therefore, within what Mr. Muite has clearly elaborated as the claim to supremacy by this House, I think we have also to recognize that every delegate was properly at Bomas of Kenya, and being a Kenyan, one is entitled to be there.

Mr. Temporary Deputy Speaker, Sir, I think the supremacy of this House is contained in the legislation that made it first and foremost possible for the delegates to be at the Bomas of Kenya, namely through the Constitution of Kenya Review Commission Act. Therefore, this House, in proper exercise of its legislative mandate, put in place Bomas I and Bomas II. I do not think we need to be complaining about it in any way. It is true that a third of the membership at Bomas of Kenya comprises hon. Members of this august House. But I think also we should not demean the relevance and importance of the other delegates. All the 638 delegates are important.

Mr. Temporary Deputy Speaker, Sir, I consider myself as the goodwill ambassador of the Bomas of Kenya process. As the Minister for Foreign Affairs, I found that although I should be there, most of the time I was out of the country. And because we live in a very fast globalizing world, the world has been watching Kenya. On the one hand, the world has been applauding the peaceful transition, and the very significant contribution in terms of democracy that this country has made to the world today. In fact, I do not think this country is second to any country in the world in terms of delivery of democracy. Everybody in this continent and elsewhere is proud of Kenya. I am certainly proud to be a Kenyan. Let us, therefore, give significant meaning to that pride; not just purely chest thumping when things are going wrong at home. Therefore, as a goodwill ambassador to the Bomas process, I have had an occasion to feel ashamed because of what my two friends have referred to.

There have been times when one has even heard of allegations of money being used. Friends, we cannot really come up with a Constitution unless it is done in a unanimous way. The Constitution will not be a NARC Constitution, and neither will it be a KANU, Safina or whatever other party's Constitution. It will be a Constitution for the people of Kenya. Therefore, I want to make an appeal that we deliver on the promises that we made, some of us in Government. Certainly, commitment on the part of Government cannot be doubted. We would like to have a new Constitution for the people of our country.

Mr. Temporary Deputy Speaker, Sir, I think time has now become extremely of the essence. As a lawyer, I am sure you do understand and do agree with me - I agree with Mr. Samoei - that I would find it extremely difficult to go back to my constituents and explain to them that we would want to give further extension of time after 30th June, next year. I want, therefore, to pay tribute to Prof. Ghai and his Commissioners, who have worked in some great difficulty. Sometimes, I think those friends would have considered resigning, but all of them are great Kenyans. They have even had their differences amongst themselves. I know there are times when we have sat with Prof. Ghai and tried to put them together with his first and second Vice-Chairmen and other Commissioners. I think at this particular time they are all united.

Mr. Temporary Deputy Speaker, Sir, they want to go down in the annals of our country's history as people who brought about a new Constitutional order for this Country. Kenyans have been crying for political justice among other justices over the years. Economic justice is important though political justice is needed at this particular time. I dare suggest that it is urgent and incredibly important. This can only be realised if the people of this country could see in a new Constitution, their best interests taken care of.

There are communities in this country which have considered themselves marginalised. Their issues to do with basic human rights are not sufficiently addressed under the current Constitution. The communities have got many other fears; some are afraid of being dominated by others. This is a golden opportunity to the people of this country to write their history into the future with confidence. We cannot do this unless we have a new mood at the Bomas of Kenya on 17th January, 2004. Let us stop blaming the delegates. If we cannot provide political leadership as Members of Parliament, what do we expect of the delegates? Every delegate was sworn to act as a proper delegate at Bomas of Kenya, therefore, at that level, we are all equal.

I know that there have been lots of arguments about "people driven Constitutional review process." We do not hear much of that these days. One wonders why? I must ask myself that question. I thank God that I am still on the same side; the Government side. I remember I used to argue from this same podium on the need to have a supreme Parliament; on the needs of Parliament to give guidance to Kenyans. The people of Kenya spoke to the Commissioners and gave their written submissions. We only need to ensure that what they presented to the Commission is given effective interpretation and meaning in the final document to show that we stand the test of time.

Mr. Temporary Deputy Speaker, Sir, the world has been watching the NARC Government which promised to give Kenyans a new Constitution in the first 100 days of being in power. There was some contradiction with that because there was a document that some colleagues had not seen: That was very serious. I remember that the church leaders came to talk to us. I went to Ufungamano and I remember that hon. Mr. Nyachae was there. We signed a paper that we would give the people of this country a new Constitution within six months of being in power.

Let us be men and women of our own words because Kenyans have been watching us. Let us not give them excuses. We should not come back here to seek extension for the mandate of the Commission. Therefore, I hope that when we come together in the month of January, we will all be able to speak in one voice. The only time we need to speak in tongues is when we are praying. However, we have been speaking in different tongues at Bomas of Kenya. That is what we must

avoid when we come together because our own credibility has been fading away.

As I said, the people of this country give priority to political justice but are not able to get it. The Government is committed and I know that I am speaking on behalf of many of my colleagues, for instance, for the Minister for Justice and Constitutional Affairs, who is here.

Mr. Temporary Deputy Speaker, Sir, the Government is committed to delivering a new Constitution. Let us as a Government, remain true to that. Let us not give indications sometimes that some of us are dragging our feet or, are looking at petty sectional interests. We cannot come up with a new Constitution if we start looking at our tribes. The tribe we should be looking at is the Kenyan tribe. Issues are there and we have been wrestling over the creation of various positions. This is not the most important thing. Let us look at the Constitution in a holistic manner and score another first for Kenya.

As I said, in terms of democratic practice, we score a first. I therefore, want to applaud President Kibaki because of the spirit of this year's Kenyatta Day, when the world saw that Kenya was not another Zambia. I speak this, not slighting our Zambian friends. However, we all know what happened in Zambia after President Kaunda's term expired. President Chiluba came in and wanted to do maximum harm to former President Kaunda. He said that after 27 years, he was not a Zambian citizen. Today, President Chiluba is in trouble because President Mwanawasa whom he put in power has got a different opinion of President Chiluba himself.

Mr. Temporary Deputy Speaker, Sir, I have in mind that what Kenyans saw on Kenyatta Day, former President Moi going to Nyayo Stadium and later consulting with President Kibaki, gave an indication of national healing. Earlier this year, when we had a national day of prayer, that is what we wanted to pray about. I am not here to plead for former President Moi. However, I am here as a Kenyan to say that when right things happen, we should as Members of Parliament, and as leaders of our people, stand up and say "this is the way forward." This country needs national healing. I believe that if we continue with political dialogue, we will save tax payers money. I know that the Minister for Justice and Constitutional Affairs has already received a recommendation from Prof. Makau's Committee on Truth, Justice and Reconciliation. What we need is to have truth and reconciliation right from the Floor of this House. However, if we want to dig into peoples's past mistakes, crucify and hang them, believe me, they will also be having their own supporters. We will then not be doing justice to this country. Let us look into the future with confidence. The best place to bring peace and reconciliation will be at Bomas of Kenya when we deliver a new Constitution to the people of this country; when every Kenyan will feel that under the law, he or she is properly protected. Let us realise the rights and obligations of other Kenyans whenever we speak.

Therefore, there must be rules in every game. On day one at Bomas of Kenya, everyone, as usual, was there shouting at each other. Others were staging "side shows" as hon. Mr. Ruto would call it. The next day, I went to my Constituency, and in the act of breach and disregard of what was going on at Bomas of Kenya, since some of us are Members of Parliament, we carried the debate from Bomas of Kenya to Mwingi North Constituency, smearing all kinds of bad words on my brother hon. Mr. Balala. I think that is wrong. There are rules in that conference. When we meet in January, let us stick to the rules of the conference. If there are matters to be discussed within Bomas of Kenya, let them be discussed there. Of course, there must be room for political differences and points of opinion; perhaps even principle disagreements, however, let it not degenerate into calling people names and things that would bring disrepute to this country.

Mr. Temporary Deputy Speaker, Sir, I am grateful from what I am hearing now. Everybody is now keen about resuming Bomas of Kenya talks and expeditiously delivering a new Constitution to this wonderful country.

Thank you.

Mr. Y. Haji: Mr. Temporary Deputy Speaker, Sir, I rise to support this Motion. Not that I

am very enthusiastic about it, but because I am a Member of the Select Committee, and I am also dictated by the principle of collective responsibility. I am further convinced by the eloquence and the sincerity of hon. Mr. Musyoka, and believe that if all the Government Ministers talked the way he talked at Bomas, most of the fears people have in this country would be removed.

It is a known fact that all parties during our campaigns used the Constitution as a platform. KANU as well as NARC promised Kenyans that after the elections, there would be a dispensation of a new Constitution. I think that the current Government went further and said that within 90 days, they would institute a new Constitution.

First and foremost, as leaders, we should be committed to the process of constitutional making. There are over 600 delegates who have been mandated by their own people to represent them at the Bomas of Kenya, with the view of coming up with a new Constitution. It would be very sad if day after day, we will have nothing to talk about but a new Constitution. We have a lot of things to do in this country. There is a lot of pending work to be done and unless we have a new Constitution in place, it will be very difficult for us to move forward.

Mr. Temporary Deputy Speaker, Sir, it should be known that this question of postponing the constitutional review process every now and then is not conducive for the well being of this country because we promised 30 million people that there would be a new Constitution. We have allowed people to converge at the Bomas of Kenya so that they can discuss the views that they collected from their respective areas, but that does not seem to be happening. The making of this Constitution has generated a lot of ill feelings. It has almost driven us to tribal corners which Kenyans had almost forgotten. Every time people meet at the Bomas of Kenya there is hue and cry because one community feels that they are being marginalised or some individuals think they are more important than the people of Kenya. I want to state here that the Constitution of Kenya is more important than any other single person in this country because we all come and go. We do not know whether some of us will be here tomorrow; only God knows. What we know is that if we make a Constitution which can stand the test of time, it will stay until the end of the world when all of us in this House will have gone.

I want to urge those in authority to reflect and remember that they must deliver their promises. I am saying this because during the previous regime there were some people in this House who were threatening to go to the streets as if other people today cannot go to the streets. We can go to the streets. We can mobilise people because it is legitimate and the right thing to do if people feel that they are being negated to nothing when they have the right to think about their country.

I said from the onset that I am only dictated by collective responsibility. I would like to state here that we shall not accept any other extension. There will be no further extension of the constitution-making process. For those hon. Members here who are not in the Select Committee, I think the House has the right to know that we agreed that if it is possible, the constitution-making process should end by March. We have only extended it up to June and we do not expect anybody to come back after that date to demand for a further extension.

Let nobody use delaying tactics of saying that after the Bomas talks this matter will now be taken for referendum. The referendum has already been done. The Commission went round to every part of this country, they sought the views of the people. To me, that was a referendum being discussed at Bomas. After the Bomas talks we should come straight to the House and pass the Bill.

Since there are so many people who are interested in contributing to this important Motion, I beg to support.

Mr. Ethuro: Thank you, Mr. Temporary Deputy Speaker, Sir. I rise to support this Motion. I want to support this Motion for the sake of this nation. My heart is heavy because the history of constitution-making in this country has been wrought with a lot of difficulties. It was very clear that the last regime was not interested in a new Constitution. It was very clear that the last regime was interested in amassing powers in the office of the Presidency. It was very clear that the last regime did

not care about institutions. It was interested in one person having all powers. Kenyans revolted.

Before some of us even came to Parliament, many hon. Members from this side of the House used to come to our offices when we were in the NGO world, looking for funding to support constitution-making and we supported them. It saddens me that in this day and age, when I sit with many of them, they do not want a new Constitution. If they want a new Constitution, they want it on their own terms. It is a shame!

I am reminded of a football match. When you are out there spectating, you always think the player could have played this way or that way so that he can score a goal. Now that we are the players, Kenyans are watching. We have spoken before and it is on record that we want a new Constitution within 100 days. Now we have gone into the next year. As the ruling party and as a Government, we owe it to the people of Kenya to be honest. We do not need another IPPG. We want the Bomas process. Many people were happy including the clergy to hear that we want Wanjiku. I think it was wrong just to demand Wanjiku. We should have said we wanted Wanjiku and Ekwe. All the tribes of Kenya should have been in that coalition. The moment we said it should be Wanjiku, somebody thinks it should always be Wanjiku. It should be Wanjiku, Atieno, Nekesa and Ekwe who should be in this process.

We have engaged our Atieno's and Wanjiku's in the process and they gave us a draft Constitution. The problem of the Constitution of Kenya is not outside Parliament; it is caused by factions of NARC and the Opposition Party, KANU. It is only FORD-People who have not stated their position. If we want to build up our status, the Government should take leadership because now we are ruling. We are the Government. I want to be extremely blunt. Unless we address our problems, we will continue doing side-shows that have brought us this far in constitution-making.

Now that Mr. Raila has said that he is not interested in the Memorandum of Understanding and the premiership, I hope other people will have no target. I am sure they are even thinking that we should have continued on November 17th and finished the constitution-making process. There is nothing wrong with demanding a position. Ekwe Ethuro as the MP for Turkana Central would want to aspire for the highest office in this land. That ambition should not be questioned. Mr. Nyachae just campaigned the other day for the Presidency and he is here with us. There is nothing wrong with that. This is a game we contest and when we get a winner we should support our President.

The award that was given to His Excellency President Kibaki should have been shared with the former President Moi because it took the two of them to give us a new dispensation, just like it happened when Mr. Nelson Mandela and President De Klerk were given the same award. I want to associate myself with the sentiments of the Minister for Foreign Affairs that we want to bring together the past and the present. We cannot isolate any person. Twenty four years of President Moi's rule cannot be wished away. We need to recognise that. I am happy that during Kenyatta Day our President demonstrated that we can work together. We have a good President. There is no doubt about that. We also have the benefit of history. We have seen many good people perform differently, once they get into that office. It is not because they are wrong, it is just because of the trappings of power, by its nature. As they say, absolute power corrupts absolutely.

In the new Constitution we want to invest in institutions, basically that of the Prime Minister. We even forced the former President in Safari Park to admit that the presidency has excessive powers. Now we do not seem to be saying that those powers can be managed properly. Never! Let us share power. I am not advocating for anybody but I think we can discuss. We may want to look at the way the new draft has given powers. That is a fair point, but that is not enough reason to stall the process.

Mr. Temporary Deputy Speaker, Sir, I am happy to be part of the ruling party because I want a new party that is giving promises to Kenyans that will be delivered. Kenyans are watching. If we have made mistakes this year, please let us not extend them to the third year. I want to agree with Messrs. Muite, Ruto, Haji and Musyoka who spoke before me. I do not expect Mr. Muite to come

here, seeking another extension of the term beyond 30th June. We have heard them.

Mr. Temporary Deputy Speaker, Sir, this extension should even have been up to March. But I think as Mr. M. Haji said, the Parliamentary Select Committee decided to give sufficient time so that nobody will come back to this House to seek for another extension. Let us deliver the new Constitution to Kenyans. Some of us, as minority communities in this country, feel that the current Constitution does not address those kind of issues. There are important issues that we believe the new Constitution will address and we will be able to make advances in this country with the rule of law. The draft Constitution has given Kenyans an opportunity to negotiate the contract between the governors and the governed.

Mr. Temporary Deputy Speaker, Sir, on the issue of the referendum, I am surprised. In the last Government, there were sufficient people to criticise the Government; both the clergy and politicians. But now it seems, when you criticise, you are treated like a demon. You are even condemned in public like Lucifer. But I want to submit that the freedom fighters of yesteryears can become the demons of today. We should remain alive to that fact. When they change positions, even those ones who were quiet like us yesterday will become the champions of today.

I say this because I know many Members on this side of the House are committed to Constitution making and I still want to believe that the Government is committed to the new Constitution. There are always many fine words, but it is actions that will determine whether what we say is what will happen. Let us not promise, we promised during the elections. We are in Government, we should deliver. Period! Let us give Kenyans new hope.

(Applause)

Mr. Temporary Deputy Speaker, Sir, it is a fact that we seem to be losing popularity as a ruling party by the day. I think it is these kind of promises that are making Kenyans start asking questions. But I want to believe that even the clergy should not be provoking the President to say that he is in charge. That is a very terrible statement by the Head of State. Who is doubting that the Head of State is in charge? He is in charge! We do not want the clergy to provoke our President to say he is in charge. We know he is in charge and he was elected the President. We did not elect any other person. But I expected the clergy to remain always with the poor and the wretched of the earth any time because they have to keep the Government on its toes. That is why we have a Parliament. I am, therefore, asking our people to remain sober. Let us not jump into the band wagon. Let us just say, because we have a new Government, things will be alright.

I want to appeal to our colleagues in the Opposition to keep the Government on its toes. They should not celebrate with us yet. We have established a tradition in this country that we can be able to criticise without being murdered, and we can also pinpoint the problems on the Government side without looking over our shoulder. We do not want a repeat of that. When hon. Members claim that the police are watching them, it is very serious.

We want a new political dispensation where the District Commissioner (DC) is no longer controlled by a powerful political clique. I have seen some DCs still fighting people on the basis of party lines. I come from Turkana District and we have one constituency which is represented by KANU. The DC there wants to fight the Opposition because he is in NARC, and we refuse that. This is a new dispensation. We want to do so well. We want to assure Kenyans that we do not need to fight anybody and that everybody will join the ruling party on his own volition without being coerced. Let us demonstrate our commitment that we were not looking for a new Constitution as an excuse to remove former President Moi from power. We have said it and Kenyans are watching us. As we keep extending the constitutional process, they start believing that it is true. They say: "They were not interested in a new Constitution. They were interested in coming to power. Now that they are in

power, they say the Constitution can wait."

Mr. Temporary Deputy Speaker, Sir, I want to conclude my remarks by appealing to my colleagues on the Government side. We have a unique chance in the history of this country to be a Government that promises and delivers within the specified timeframe. We want to demonstrate to Kenyans that governance does not have to be clumsy and that we can govern in a way where we can have definite work plans and deliver on what we promise Kenyans.

I want to believe that Kenyans do not want to go back to the era where we promoted the least competent person to the highest office on the basis of ethnicity. We have a chance as NARC to accommodate each and every community in this Republic. Let us not squander that chance. Let us not fight tribal warfare. Let us not see individuals in this House in terms of where they come from. Let us nurture a culture. If you feel Mr. Ethuro is not toeing the line, do not condemn him in public. Come and talk to me, maybe I will tell you why I am not toeing the line. Maybe your line has disappeared, I cannot see it any more. Let us talk! Let us give Kenyans a chance. We do not want a lot of politicking. We have wasted many years politicking in this country at the expense of the economy.

(Laughter)

Mr. Temporary Deputy Speaker, Sir, we still have issues of land and once we have enacted a new Constitution, then we can address the issue of land. In my view, that is the other important issue that is awaiting consideration by the Kenyan leadership.

With those few remarks, I beg to support.

Mr. Nyachae: Thank you very much, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity. First, let me declare that I am a member of the Select Committee, and that I am part and parcel of the Motion before this House. Therefore, naturally, it should be expected that I support this Motion.

The reality of the matter is this: Whether we needed to have a new constitution this year; and we were going to resume on 17th November, the time that was left was less than 13 days, before the expiry of the mandate of the Commissioners. Therefore, the question of extension was going to be absolutely necessary. We should not be debating about the issue of extension. What we should be considering here is time; whether the time of extension we have given is too long or too short. But the extension was going to be there. There is no way we could have completed the deliberations and have a new Constitution between 17th and 30th November!

Mr. Temporary Deputy Speaker, Sir, I think it is right for all of us to talk about having a new Constitution tomorrow. But I have been left wondering for sometime now, and I will continue wondering until I get an appropriate answer: Are we really considering - and I am not debating the Constitution here - I believe that we need more time, even ourselves! Whether you are a Member of Parliament or a delegate, you need more time to consider the issues and chapters that have been drafted and placed before us. What would be the practical implication? The practical implication seems to be ignored. We might come with the document in this House, pass it, and when it comes to the actual implementation, you are stuck with the document!

I will give you an example. I challenge the Minister for Finance, even the Minister for Justice and Constitutional Affairs and all the economists in this House, to give us an indication of the financial implication of the structures that are being proposed. I believe that what we are doing is something based on what we would like to see, not knowing whether we can implement it successfully. These are the issues. When we talk about national, regional, and all sorts of governments down to the location, they will require finances. Where will those finances come from? The national government gets finances from taxation. We will also expect regional, district and locational governments to get money from taxation, either through the national government or direct taxation on their own. Where is the

money going to come from? I do not know whether Kenyans know that, in the whole of East Africa, including the Horn of Africa, Kenya has the highest taxation levels. The taxpayer in this country pays more taxes than any other taxpayer anywhere in this region. Can you afford to add more tax because you need those structures to be seen that you are a manager of a provincial, national or district government? Those are the issues that we have to consider.

Mr. Temporary Deputy Speaker, Sir, I think when we discuss the Constitution, we must not forget that we have a Constitution. That is why we are seated in this House. What we are trying to do is to check the weak and wrong parts of our existing Constitution and correct them. We are not looking for a new Constitution because we have a crisis in this country. We are not looking for a new Constitution to rectify a war that we have been having. We are looking for a management Constitution during peace time. In that case, I would like to give you an example of India. When India realised that they needed to do something about their Constitution--- I am not suggesting that time! Let this House not misunderstand me. They had sufficient patience to be convinced that they were doing the right things. In the general debates to rectify their Constitution in peace time, it took them eight years. That is because they were amending their Constitution during peace time. I am not suggesting that we must not have a new Constitution as soon as possible.

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

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

I would like the new Constitution completed as soon as possible and, in fact, I have stated that by the first quarter next year. I stated that with a qualification that, if you want it by the first quarter, then personal and power interests that exist outside Bomas of Kenya, must be left outside. That is the only way we can look at the document itself!

There is a lot of talk and politicians like ourselves have started a debate as to whether we want a referendum or not. Some are saying that there is no need. Let us not assume that the mandate we were given as Members of Parliament here, gave us mandate to decide everything for the people without consulting them. It is very important to understand that every step we take, we monitor the thinking of the people out there. If you decide that you want a referendum after the Bomas of Kenya conference, come to this House and take a decision here, then go back to your constituency and the people there say they do not want it, what do you do? The people of that region would have said they do not want it in a referendum. Do you want to pass something here which is not wanted by the people? It will be a stalemate. You are not going to force Kenyans. At least, for now, Kenyans are tolerating the Constitution that we have at the moment. They are not complaining about it. They are complaining about the implementation, management and loopholes in the present Constitution.

For example, if you decide on issues of land or natural resources and say they are national, and then the regions say those resources are theirs and they do not want the Constitution, what will you do? We may not find it necessary to send the whole document to the people. But we must know that there are specific areas which, obviously, do not have the consensus of Kenyans. Already, that is very clear out there. What will you do? No hon. Member can rise here and tell us that he or she has never visited his or her constituency after the Bomas II talks to consult his or her constituents over what they want, and what they do not want. This is the case, and yet some people keep on telling us that Wanjiku has talked. Wanjiku gave her views to the Commissioners. If Wanjiku said everything, why did the Government call the Bomas I and II talks? The two conferences had to be held at Bomas of Kenya because there were some issues which we had to deal with.

Mr. Temporary Deputy Speaker, Sir, while I support the extension of the period and mandate of the Constitution of Kenya Review Commission (CKRC), let us also ask ourselves what we have so far got out of the Bomas I and II discussions. We should also ask ourselves what the implications of each chapter we have discussed are.

As a former Minister for Finance, I would like to inform this House that I foresee serious financial implications arising from the implementation of the new Constitution. Could we do some homework on that matter? Will we come up with a Constitution which will create this and that office, and then come June, the Minister for Finance comes here and tells us that he requires a lot of money which he does not have to run the Central Government and regional governments? The Minister cannot raise that amount of money unless the Government cuts the throats of Kenyans because there is a limit as to how much it can tax a person. We are already worried about the poverty levels of our people. This is the case, and yet some people want new levels of Government to be included in the new Constitution which will lead to *mwananchi* being taxed more. So, we should not serve our interests first, but those of *wananchi*. Where are we leading our people to? Will we produce a constitution which will punish and impoverish *wananchi*, or will we produce a Constitution which will bring peace and progress to this country? These are some of the questions we should ask ourselves. We are here because of the people of Kenya, and we should serve their interests and not our personal interests.

I would like to reiterate that the extension of the period and mandate of the CKRC is absolutely important. Even if the mandate of the Commission was to expire earlier than 30th June, 2004 it is a fact that the extension is necessary. To manage a document of that nature, analyze it and debate it effectively, the extension period of six months the Select Committee has sought is, in my view, still short. But I am not saying that we should have another extension. The Select Committee, in conjunction with the House Business Commission and the CKRC, must have reached a consensus that this Motion should be brought before the House. Mr. Temporary Deputy Speaker, Sir, I strongly support this Motion and request this House to support it too.

Mr. M. Kariuki: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to contribute to this Motion.

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

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

I would like to say that the need for a new Constitution cannot be gainsaid. Indeed, every Kenyan looks forward to a new Constitution any time from now.

When I look at the recent changes made in the Judicial Department, and particularly the probe of judges, I feel that the new Constitution is long overdue. One of the recommendations made to the CKRC was, indeed, an immediate overhaul of the Judicial Department. It was important that there was transition in this Department and this would entail ensuring that all judges at some point resigned and reapplied for their jobs. A probe has been carried out on judges and there is need to change them.

I have been informed that some judges were appointed this afternoon. I feel very sorry for the NARC Government for treading on the same path that the KANU Government trod for many years. The NARC Government has picked judges the same way the KANU Government did. It was hoped that the change in the Judicial Department would involve vetting of the candidates to be appointed judges to ensure that we get the best judges. We were told that there would be wider consultations before new judges were appointed. Questions have been raised about the integrity of some people

who were appointed judges and sworn in this afternoon. I hope we can create vetting procedures in the new Constitution, so that we do not make the same mistakes we are making now. It is futile to try and change a bad product using the same old mechanisms which created it. If we appoint judges without Parliament vetting them and consulting widely among the stakeholders, then all we are doing is being involved in an exercise of whitewashing an old and useless product. I do hope that the NARC Government will not repeat this mistake. I also hope that the next appointment of judges will see Parliament being empowered, or at least being requested, to vet those people who have been nominated for appointment. We also hope that members of the public will be invited to make comments about the character and integrity of the candidates to be appointed judges. This has been a very disappointing day for me. Having learnt lessons for over 40 years, I thought that the appointment of new judges today would have reflected a new direction in the Government of NARC in terms of vetting and scrutinising the candidates.

Mr. Temporary Deputy Speaker, Sir, let me emphasis two points which have been made here. One of them is consensus. It is true that to create a lasting Constitution, it is important that we endeavour to create a consensus. I am aware that the review Act has provisions for a referendum. Where the delegates cannot agree and build a consensus then two thirds of the delegates will be required to go to a referendum. The focus should be on creating a consensus. I am aware that some of the fundamental provisions which are being put in the new Constitution are meant to protect the minority. If we go by a referendum, the majority will always carry the day. In a democratic Constitution, it is the duty of the majority to guarantee the rights of the minority. I think there is a danger in rushing to a referendum. I would like to say that to enable us avert a situation where we will have to go to a referendum, even minorities should learn to negotiate their way with the majority, so that a consensus can be reached. This is because in the absence of a consensus, the people who are likely to be oppressed by a referendum are the minority groups. So, I do hope that everyone will realise the need to reach a consensus.

One of the impediments to reaching a consensus at the Bomas of Kenya has been distrust. There has been a lot of distrust among ethnic groups. People have come with fixed minds that a particular ethnic group should be fought and another one should be dispossessed of either power or property. It is this parochial agenda which has created problems. Unless we build trust, we cannot reach a consensus. Trust is a prerequisite for reaching a consensus. I think it is important that we spend the remaining two or three months to try and reflect on the goings on in Bomas II. I must say that Bomas II was a big disappointment to Kenyans, because all that we read in the Press was delegates fighting daily either for their allowances to be increased or for their factional interests. I thought that January was a very busy month for Kenyans as examination results are normally out around this time and everybody is busy looking for school places for their children. The 12th of January, 2003 is a worrying date. The resumption of the talks should, probably, have been at the end of January when parents have settled issues pertaining to school fees and business licences. Unless we build trust among ourselves as Kenyans, we will not build a consensus.

On the issue of the cost, as has been mentioned here, it is possible to operationalise a new Constitution in phases. If we develop insight into the costing element of the various chapters of the Constitution, it will be possible to say that at a certain point in time, this country can meet a particular cost and thus operationalise a particular part of the new constitution in, say, about two or three years. Many constitutions have been made and have not been operationalised on the same day. It is possible to do it in phases.

In situations where we are not able to build a consensus, it is possible to defer an issue, so that in a year or two, we build a consensus. In the absence of this, then we can go for a referendum. I have seen many countries where issues have been deferred, the society has been able to build a consensus on particular issues and it has not become necessary to have referendums. Therefore, the question of

costing can be handled in such a manner. Let us look at every chapter, evaluate the cost implications and then say that at this point in our economic development, we cannot sustain a particular structure that we want to create.

I know that during Bomas of Kenya II when we went into committees there was not much input from the delegates. This was, perhaps, why the issue of money and side shows took centre stage. Most of the delegates found that they had nothing useful to say in addition to what they had already said in the provinces and during Bomas of Kenya I. However, I think there is need even at the committees stage to build a consensus. In the Judicial Committee, where I am a delegate, we built consensus on some of the most riveting issues. If a suspicious mindset about other delegates is removed, we should come up with some useful compromises at the committee stage.

Mr. Temporary Deputy Speaker, Sir, I feel disadvantaged because of the manner in which the Bomas committees are operating. We are running all committees simultaneously, and even if somebody has useful input to make in one committee, he is constrained to remain in his committee to make a useful contribution. We also have mischievous delegates who look for the moment when there are few delegates to slot in issues. I have in mind the issue of recalling Members of Parliament. It was mischievously handled during a time when MPs were not present. A few delegates who had remained behind passed that resolution. They thought they were settling a score with MPs. This kind of mischief does not augur well for the completion of the new Constitution. A constitution on which a consensus has not been developed among all groups is bound to fail in the end and could be tragic. I, therefore, hope that when we go for Bomas III, there will be an element of trust and mischief will take a back stage.

I have been extremely concerned about the stewardship of the Chair of the Constitution of Kenya Review Commission (CKRC), particularly during Bomas II. If there was any rumour monger then, it was the Chairman himself. The side shows that were being conducted were fanned by the Chair himself. We would see something in the Press that had not come from the conference but from the Chair. I remember that in our Judiciary Committee, we had serious problems as the Chairman of the CKRC made allegations about our Chair in the Press. When we called upon him to substantiate, he did not do so. The Chairman, therefore, has a challenge to conduct himself in a manner that inspires confidence amongst delegates. If the Chair becomes a rumour monger, then the entire conference is going to be scuttled.

Mr. Sungu: On a point of order, is the hon. Member in order to make adverse comments about a person who cannot defend himself in this House?

The Temporary Deputy Speaker (Mr. Ethuro): It is fair! Mr. M. Kariuki, proceed!

Mr. M. Kariuki: Thank you, Mr. Temporary Deputy Speaker, Sir for protecting me.

These are hard facts that everybody knows about. The Chair of the Judicial Committee, Prof. Kibwana, is here and that was an incident that was in public domain. I do not need to substantiate the obvious; everybody knows about it. What I am appealing for is that all of us have a duty to conduct ourselves in a manner that inspires confidence.

The issue about the sideshows is part of the aspect that I am complaining about. It is time Parliament took charge of this process. I agree with Mr. Muite, that we have not played our role as leaders. We have let delegates humiliate us and failed to provide leadership to the conference. I think that at the end of Bomas II we were humiliated, frustrated and tired of the process, and yet at the end of the day blame for any failure will lie with us. Kenyans know that they elected MPs to be their representatives, and if the process collapses, the blame will come to us. I, therefore, embrace the proposal put forward by other contributors here, that we should begin to consult at this level, as leaders and Members of this House, across parties and build a consensus. If we build a consensus at this level, you can be assured that most delegates will follow their MPs, and I am sure that this way Bomas of Kenya will be a more reasonable place. We hope that in the coming days, the acrimony and

the hostile atmosphere that marked Bomas II, will not be experienced. I thought that extension by a shorter period would have put the Commission on its toes. We are opening our gates too wide by giving the Commissioners until the 30th of June. This is bound to be abused unless we are keen to know what they do at every stage. I thought that 30th March, 2004 would have been a better date so that there is pressure on the Commissioners to finish this business. I wonder whether the budget that has been allocated to this commission will last up to 30th June, 2004.

Last but not least, let me say that the power to legislate is vested in this House. There has been a lot of misconception at the Bomas of Kenya that the National Constitutional Conference is a sovereign organ in the constitution making process. However, the truth of the matter is that the current Constitution is very clear that the sovereign organ in constitution making, or any legislation, is this House. We cannot abdicate our responsibility, for at the end of the day whatever Bomas of Kenya is going to decide on, has to be brought here. I must say that I have persistently raised the point that until and unless we effect an appropriate amendment to Section 47 of the current Constitution, this Parliament does not have the power to introduce a new document in the name of a Constitution. Our powers are limited to amendments. I do hope that before the final document is brought here, appropriate amendments to Section 47 of the current Constitution will be brought to give way and power to Parliament to enable it to endorse the Constitution that will be obtained from the Bomas of Kenya.

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

Mr. Kipchumba: Thank you Mr. Temporary Deputy Speaker, Sir. From the onset, I wish to state that I support the extension of the mandate of the Constitution of Kenya Review Commission (CKRC) to 30th June, next year. We all realise that we did, in fact, waste a lot of time during Bomas II. However, I believe that it was necessary for both delegates and hon. Members to ventilate so that they would all realise that we need a new Constitution. Therefore, Bomas II, in my opinion, was not lost. It was a preparing ground so that when we meet next year, we will come up with a new Constitution.

Mr. Temporary Deputy Speaker, Sir, I think it is important to note that the process of Constitution making is like a very big river; you could try temporarily to change its course, but, ultimately, it will flow into the lake. What I have seen in Bomas of Kenya is that the process of Constitution making will never be stopped by anybody irrespective of whether he or she is an hon. Minister or an hon. Member. The process must go on. It is just a matter of time before we have a new Constitution. I would urge all hon. hon. Members to support this process.

Mr. Temporary Deputy Speaker, Sir, I have a lot of respect for members of the civil society, especially those who are now members of the ruling coalition today. However, most of them were elected to this House because of their commitment to ensure that this country gets a new Constitution. But if they were to contest today, probably, they will not even be elected as councillors because their resolve for a new Constitution is questionable.

It is time we requested the President to control some hon. Ministers who issue irresponsible statements. The likes of Mr. Michuki must be told that the new Constitution was not meant for former President Moi, but, indeed, for all Kenyans. I agree with all hon. Members that if the ruling coalition and the Opposition are committed to a new Constitution, why can we not have a new Constitution as soon as possible? If we are all committed, I do not know why we cannot have a Constitution by June, next year. We all know that this Government was, in fact, elected on the promise that it will deliver a new Constitution within the first six months. However, six months down the line, we do not have a new Constitution. In fact, some are saying that we should ask *Wanjiku* whether she still needs a new Constitution.

Mr. Temporary Deputy Speaker, Sir, last year, KANU was being accused of not supporting a new Constitution. In fact, KANU did say that it wanted experts to review the Constitution. However,

most Kenyans said they wanted a people-driven Constitution. So, we should not accuse KANU of not supporting the process to write a new Constitution. That is why we went to Bomas of Kenya to negotiate for a new Constitution.

Mr. Temporary Deputy Speaker, Sir, Constitution making is a very expensive process. In fact, by extending the mandate of the CKRC to June next year, we hope the Government has enough resources. As my colleagues said, we do not want to be told to extend the mandate of CRCK after June because it will cost the taxpayers a lot of money. We all know that our economy is not doing very well. The process of Constitution making is both a political and a legal one. Unfortunately, many of us have used it more as a political than a legal instrument. Therefore, it is my humble appeal that we all hasten this process. We should not take more time than necessary because Kenyans are looking at us to deliver the promises we made during the campaign. Therefore, the faster we finish this process, the better for the NARC Government to re-organise itself and deliver the many promises they made to Kenyans.

Mr. Temporary Deputy Speaker, Sir, all politicians must be committed to this process of making a new Constitution. However, we must realise that the Constitution Kenyans want is for posterity and that will serve them for many generations to come. As my colleague said, we are making the Constitution at a time when there is peace in this country. Other countries write their constitutions when there is war. We must be proud that we have a peaceful chance to write our Constitution. Some people say we have taken five years, but it does not matter the time we have taken so long as Kenyans get a new Constitution.

Mr. Temporary Deputy Speaker, Sir, I want to remind many hon. Members that Kenyans are, indeed, our judges. They know who is committed to the process. In fact, I would have expected that we extend the mandate of CKRC, probably, even up to September, next year so that CKRC will not have an excuse. However, considering that Kenyans want a new Constitution as soon as possible--- I agree with my colleagues that the new Constitution might take three or four years before it is implemented. This is because we have regional bodies which will cost a lot of money. I do not know whether the Government will be in a position to fund those bodies immediately. Some of them are not even economically viable. We should not cheat ourselves that all that is in the Constitution will be operational within a very short time.

I want to reiterate here that if all of us are, indeed, committed to this process, we will have a new Constitution within the next three months. I know we will agree on all contentious issues during Bomas III conference.

Many Members of Parliament complained that the delegates booed them, but that was because we do not provide the leadership that is required. It is time that we stopped waiting for the delegates to provide direction. Let Members of Parliament provide the required leadership, so that we can conclude the review of our Constitution. Our job, anyway, is to legislate. We have abdicated our responsibility, because we are doing a total overhaul of the Constitution; we are getting a new constitution. So, this time round, we have allowed other Kenyans to come on board. However, we must not abdicate our responsibility of ensuring that we lead the process as the other delegates provide support. Of course, all delegates are equal but, at the end of the day, it is our responsibility to ensure that we get a new constitution.

Mr. Temporary Deputy Speaker, Sir, the economy of this country will not grow unless we have a stable constitution that will protect the life and property of every Kenyan. The economy of every country depends on good laws. Many hon. Members will agree with me that one of the reasons why the judges were removed from office was, of course, due to the fact that there was rampant corruption in the Judiciary. There is no investor who will go to a country where there is rampant corruption. If today you invested in a certain country, lost your property and you are not paid, you will not want to go back to that country. Therefore, the Judiciary must be seen to lead in terms of ensuring

the economic development of this country.

In conclusion, I would like to, humbly, request the Government to provide leadership in the ongoing constitution-making process. You cannot expect--

QUORUM

Mr. Wamwere: On a point of order, Mr. Temporary Deputy Speaker, Sir. I want to bring it to the notice of the Chair that the House has no quorum.

The Temporary Deputy Speaker (Mr. Ethuro): It is true that there is no quorum. So, I order that the Division Bell be rung.

(The Division Bell was rung)

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Ethuro): Hon. Members, we have not managed to raise a quorum. Therefore, the House stands adjourned until Tuesday, 4th November, 2003, at 2.30 p.m.

The House rose at 6.40 p.m.