

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Tuesday, 3rd August, 2004

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

### PRAYERS

### PAPERS LAID

The following Papers were laid on the Table:-

The Report of the Controller and Auditor-General together with the Appropriation Accounts, other Public Accounts (Appendices I, II, and III) and Accounts of the Funds for the year 2001/2002.

*(By the Assistant Minister for Finance  
(Mr. Katuku) on behalf of the  
Minister for Finance)*

Annual Report and Accounts of the Kenya Ferry Services (KFS) Limited for the year ended 30th June, 2001 and the Certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for Finance  
(Mr. Katuku) on behalf of the  
Minister for Transport)*

Annual Report and Accounts of Ewaso Ng'iro North Development Authority for the year ended 30th June, 2001 and the Certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for Finance  
(Mr. Katuku) on behalf of the Minister  
for Regional Development Authorities)*

### QUESTIONS BY PRIVATE NOTICE

#### DEATH OF MR. NIMROD SHIANJE

**Mr. Oparanya:** 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 Administration Police Officers attached to Ebushitinji Chief's Camp in Butere Division arrested and tortured to death Mr. Nimrod Shianje on 9th June, 2004?

(b) Is he further aware that the same officers confronted mourners at the deceased's funeral and shot dead Mr. Esau Ochango, critically injuring Mr. Paul Anjiri and Robert Sakwa before confiscating a videotape of the proceedings on 26th June, 2004?

(c) What action has been taken against the officers involved?

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

(a) The cause of death of Mr. Nimrod Shianje on 9th June, 2004 has not been conclusively determined. The doctor's postmortem report revealed that the death was as a result of physical injuries while an analysis of his gastric specimen carried out at the Government's Chemist confirmed that the late Shianje had taken poison. An inquest file No.3 of 2004 has now been opened to establish the actual cause of death.

(b) I am aware that Mr. Esau Ochango was shot dead and Mr. Paul Anjiri critically injured when a group of about 100 mourners on a customary funeral rite procession forced their way into Ebushitinji Chief's Camp.

(c) The two administration officers were arrested and charged with the offence of murder, vide criminal case No.925/326.2004, court file No.19 of 2004. This case was due for mention at the Kakamega High Court on 28th July, 2004.

**Mr. Oparanya:** Mr. Speaker, Sir, what happened is that Mr. Nimrod Shianje was arrested by the two policemen after differing over a lady. They beat and tortured Mr. Nimrod Shianje who in the process died before reaching the police camp. Later, the police took poison and poured it on him in order to cover the manner in which he died.

**Mr. Speaker:** Order, Mr. Oparanya! You are giving evidence. Order, Members! As you have already heard in part (c) of the Assistant Minister's answer that the policemen have been arrested and charged with murder, you could be a very useful witness in the court. Please, avoid that here.

**Mr. Oparanya:** Mr. Speaker, Sir, you know there are two deaths involved; the first one and the second one.

**Mr. Speaker:** Yes, forget about the first one.

**Mr. Oparanya:** Mr. Speaker, Sir, the first case was reported at Butere Police Station and no action was taken after Mr. Nimrod passed away. What measures has the Assistant Minister taken to discipline the Officer Commanding Station (OCS) of Butere Police Station who never took action? Had he taken action in the first case, then, the second case would not have arisen.

**Mr. Mungatana:** Mr. Speaker, Sir, as I have explained to the House, we have conducted investigation. There are two possible causes of death which have not been conclusively determined. When such an issue occurs an inquest file is opened. So, after the determination of the results of the inquests, the necessary disciplinary action will be taken. If it is found from the evidence adduced during the inquest that the OCS was involved, then, he will be dealt with in accordance with the law.

**Mr. Wanjala:** Mr. Speaker, Sir, this is a very serious matter. For the police to kill two people in a village within a span of one week is, indeed, a serious matter. These people were killed by way of torture and use of a gun. Today, the Assistant Minister is telling the House that they have opened an inquest. This is supposed to be a murder case and the suspected policemen ought to have been arrested and charged. What inquest is being done when the circumstances leading to the death of Mr. Nimrod Shianje are sinister? Could the Assistant Minister assure this House that he will take appropriate action against the officers involved in this matter?

**Mr. Mungatana:** Mr. Speaker, Sir, the appropriate action will be taken in accordance with the law. It, therefore, means that we must wait for the inquest to be concluded.

**Mr. Speaker:** Last question, Mr. Oparanya!

**Mr. Oparanya:** Mr. Speaker, Sir, you can see how much interest this Question has generated. I want to request you to extend its time a bit so that hon. Members---

*(Applause)*

**Mr. Speaker:** Will you, please, put your question?

**Mr. Oparanya:** During the second burial, there was a video tape which was recorded by one of the human rights organization. This video tape was meant to be used as evidence during the case, but it has been confiscated by the police. Can I request the Assistant Minister to order the immediate release of this video cassette?

**Mr. Mungatana:** Mr. Speaker, Sir, the evidence that would be required for conviction of the arrested officers--- We will do whatever it takes, and if as he says that, that piece of evidence was confiscated by the police, we shall do whatever it takes to ensure that you have it back.

*(Loud Consultations)*

**Mr. Speaker:** Order, Mr. Mungatana! Mr. Oparanya has told us that the video footage of the series of events in that matter was recorded, and after the police heard that that video tape would be produced in court as evidence, have confiscated the same. Could you return it to the owner?

**Mr. Mungatana:** Mr. Speaker, Sir, I am not aware that we have confiscated the video tape. But now that he has informed us about it now, we shall take action to ensure that that evidence is availed for purposes of record.

**Mr. C. Kilonzo:** On a point of order, Mr. Speaker, Sir. He is saying that he is not informed that the video tape was confiscated by the police, yet it is stated here on the Question. Why is he saying that he has been informed now? Is he in order?

**Mr. Mungatana:** Mr. Speaker, Sir, I am telling the hon. Member that our officers have not admitted to us that they confiscated that video tape. But we shall ensure that that piece of information is availed for purposes of conviction of those who have been charged with the offense of murder.

**Mr. Speaker:** Very well! Next Question by Mr. Shakombo!

#### SHOOTING OF MR. JUMA HAMISI TENDO

**Mr. Shakombo:** 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 on 3rd April, 2004, at about 7.15 p.m., Mr. Juma Hamisi Tendo was shot dead by a Kenya Police constable at Soko Mjinga in Mtongwe Ward?

(b) Could the Minister inform the House what action he has taken against the constable who killed Mr. Tendo in cold blood?

(c) What measures is the Minister taking to ensure that the family of the victim is compensated?

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

(a) Yes, I am aware that police on patrol around Mtongwe, on 4th April, 2004, shot dead Mr. Juma Hamisi Tendo when he and six others, who were found smoking bhang, charged at the

police with a knife when the police attempted to arrest them.

(b) An inquest file No.3 of 2004 was opened following the incident, and it has been forwarded to the Attorney-General for further direction.

(c) The matter of compensation is a civil law matter. However, the family is advised to await the direction of the Attorney-General upon the conclusion of the inquest.

Thank you.

**Mr. Shakombo:** Mr. Speaker, Sir, the law provides that the arresting officer is expected to use sufficient force---

**Hon. Members:** Minimum!

**Mr. Speaker:** Order! Order, Mr. Shakombo! For the record, when you state the law, you must state it correctly. The law requires "reasonable" force.

Proceed!

**Mr. Shakombo:** Thank you, Mr. Speaker, Sir. The Assistant is telling us that when this young man charged at the police constable who was not alone, there were about four or five police constables, with a knife, was it really justified for this particular policeman to shoot and kill Mr. Hamisi?

**Mr. Mungatana:** Thank you for that question, Mr. Speaker, Sir. We are persuaded that there is, in fact, a chance that excessive force may have been used in that particular circumstance. That is why we have opened the inquest file, so that all those who have evidence can present it before the court. Then the Attorney-General will make that decision on whether to charge the officer with the offence of murder.

**Mr. Muchiri:** Mr. Speaker, Sir, can the Assistant Minister admit that the Government was criminally negligent by the shooting of Mr. Hamisi? Can he also assure this House that the Government will compensate the family, even before the inquest is complete? The incident speaks for itself. Therefore, you do not need any other evidence, because it is very clear that he was shot by a negligent police officer, and the Government is, therefore, held liable.

**Mr. Speaker:** Mr. Mungatana, we are actually having this kind of question every week! For how long will it continue?

**Mr. Mungatana:** Not for too long, Mr. Speaker, Sir, because we have undertaken serious reforms in the police officers.

**Hon. Members:** Aaah, no!

**Mr. Mungatana:** If the House will give me time, I will explain. As a matter of policy, the Government of Kenya decided that all police officers, unlike in the past, shall undertake a subject on human rights in their training.

Secondly, we are retraining the officers to have skills in customer care, so that the citizens of this Republic will be treated like the customers, and we will be dealing with them in that era. We are also working on retraining our police force on the concept of community policing. So, we hope that with these reforms, and if this Parliament will allocate enough funding, we shall be able to change what has been happening.

**Mr. Rotino:** On a point of order, Mr. Speaker, Sir. Is it in order for the Assistant Minister to mislead the whole nation that they are in the process of retraining the police officers for the last one year since the NARC Government took up power? They have just been misleading this nation all the time. Is he in order?

**Mr. Speaker:** That is your observation!

**Mr. Ogur:** Mr. Speaker, Sir, is there another way of finding out the truth about incidents when policemen kill people? How do we justify the policeman investigating himself? There is no way we will allow policemen to kill people, quickly open up inquest files and interview

"themselves" so as to justify themselves that they killed somebody because he was smoking bhang. Is there another way out?

*(Laughter)*

**Mr. Mungatana:** Mr. Speaker, Sir, normally when an inquest file is opened, it is not about police investigations only. When an inquest is opened, every person is allowed to go before a magistrate and present evidence so that it is determined who was involved in a crime and that person is then charged. It is not the police who investigate themselves.

**Mr. Munya:** Mr. Speaker, Sir, I remember bringing a similar Question to the House and the Office of the President also opened an inquest file. Does this mean that when a policeman is involved in killing citizens, we open inquest files, but when other Kenyans are involved in a crime we charge them in court? Is this to suggest that when policemen are involved in criminal activities we have to cover them up, but when ordinary citizens are involved in crime, we charge them in court?

**Mr. Mungatana:** Mr. Speaker, Sir, I stated in my previous answer that two Administration Police officers have been charged with the murder. I am just trying to say that in certain circumstances where the case is clear, then the charge of murder is preferred. In cases where the circumstances are not clear, then an inquest file is opened.

**Hon. Members:** On a point of order, Mr. Speaker, Sir!

**Mr. Speaker:** Order, hon. Members. Can we hear him?

**Mr. Mungatana:** Mr. Speaker, Sir, the Criminal Procedure Code actually requires that in any situation where the circumstances are not clear, then an inquest file must be opened. It is not an issue of covering up for any police officer.

**Mr. Wario:** Mr. Speaker, Sir, you have heard the Assistant Minister talk about customer care and human rights training which, in my understanding, is a long-term solution. What will the Assistant Minister do now to stop harassment and killing of innocent Kenyans?

**Mr. Mungatana:** Mr. Speaker, Sir, I would plead with the House to understand that we inherited a force that needs a lot of re-training. I am pleading with the House to help and support us because their doing this will be to the best interests of the nation.

**Mr. Sambu:** On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to admit that this Government is not in charge of the police force, and that the police force is still being controlled by a government which has been removed from power?

**Mr. Mungatana:** Mr. Speaker, Sir, I do not recall having said so. I am saying that we have inherited a system, and we have to be patient with the police force. We have to re-train its officers. Training the police force will not be a one-day affair. We will need to give it time.

**Mr. Shakombo:** Mr. Speaker, Sir, you have heard the Assistant Minister say that inquest files are normally opened in doubtful cases. In this particular case, there is no doubt about what occurred because Hamisi was shot dead and the policeman who shot him dead is known. Why can the Government not put this policeman in custody while it is carrying out investigations?

**Mr. Mungatana:** Mr. Speaker, Sir, the question of arresting and charging that officer will depend on the findings of the inquest. The matter cannot be simplified as the hon. Member would wish.

IMPRISONMENT OF MASTER  
MISHECK MWITI

**Mr. Muriungi:** 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 Master Misheck Mwiti, aged 15 years, a pupil at Ntuui Primary School, is serving a one-year jail term at Kangeta G.K. Prison?

(b) Is he further aware that before his incarceration, the boy had his index finger amputated by one Elijah Muua, who is still a free person?

(c) When will the minor be released from prison and sent back to school?

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

(a) I am aware that Master Misheck Mwiti is serving a one-year jail term following his conviction in a Maua court for assault against one 12-year-old Standard Two pupil by the name of Priscilla Kauri.

(b) I am aware that the father to Priscilla Kauri, the complainant in the assault case, Mr. Elijah Muua, chopped off the index finger of Master Mishek Mwiti. Consequently, Mr. Muua was also arrested and arraigned before a Maua court charged with the offence of assault vide file No.3459 of 2003.

The case is pending before court and the next hearing is on 15th November, 2004.

(c) Master Misheck Mwiti was sentenced to 12 months in prison following his own plea of guilty to the charge of assault, causing bodily harm. He had a right of appeal within 14 days, which he failed to utilise. He is, therefore, due to be released on 9th February, 2005 upon completion of his prison term unless the courts decide otherwise.

**Mr. Muriungi:** Mr. Speaker, Sir, I am afraid I have the wrong answer. The one I have been given is the same one that I had been offered by the Office of the Vice-President. All the same, I will ask my question. Misheck was born on 9th---

**Mr. Speaker:** That is not in dispute.

**Mr. Muriungi:** It is proof of age, Mr. Speaker, Sir. He is less than---

**Mr. Speaker:** Order, Mr. Muriungi. The fact that he is a minor is not in dispute. Is it in dispute, Mr. Assistant Minister?

**Mr. Mungatana:** No, Mr. Speaker, Sir.

**Mr. Speaker:** It is not in dispute that he is a minor. I think it is not also in dispute that he pleaded guilty. Can you proceed from there?

**Mr. Muriungi:** Mr. Speaker, Sir, I thought that there are forms of punishment of minors other than giving them a custodial sentence for one year. Could the Assistant Minister consider giving this minor an alternative form of punishment to incarcerating him for 12 months?

**Mr. Mungatana:** Mr. Speaker, Sir, I would like to agree with the hon. Member that in a situation where a minor is involved in a crime, a probation or an approved school term should have been considered and not a prison term. Unfortunately, in this particular case there was a full hearing. The court convicted the accused person upon his plea of guilty. In keeping with the principle of separation of powers, we cannot interfere with a court decision. We have invoked the provisions of the Criminal Procedure Code for revision, and hope that the Attorney-General will pursue this option. It is not possible for us to order the court on what to do.

**Mr. Speaker:** Order, Mr. Assistant Minister. It is not a question of ordering the court. The House would like to know from the Assistant Minister whether the Ministry actually sends juveniles to ordinary prisons. You have juvenile courts. Do you have borstal institutions for juveniles?

**Mr. Mungatana:** Mr. Speaker, Sir, I have just stated that on the face of the record, there must have been a mistake in the sentencing of this minor because juveniles should not be sent to a prison. They should be sent to a remand home or a borstal institution. The machinery we have now instituted is to seek a revision of the court decision.

**Prof. Oniang'o:** Mr. Speaker, Sir, Kenya is beginning to look very bad in the eyes of the

international law. This is not the first time we have had a juvenile in adult's prisons. Last year a child of about 12 years was put in prison in Kisii for stealing food to feed his siblings. Could this Assistant Minister tell us what the law and policies concerning this issue are, and what immediate measures he can take right now to ensure that Mishek is put in a correctional home instead of staying in an adult's prison?

**Mr. Mungatana:** Mr. Speaker, Sir, I have just informed the House that we have asked the Attorney-General to invoke the provisions of the Criminal Procedure Code and institute sentence revision proceedings. That is what we are doing.

**Mr. Muriungi:** Mr. Speaker, Sir, now that the Assistant Minister has accepted that it was wrong to put this minor in prison, could he tell us how soon he will be released because he is suffering? How soon will this revision be done?

**Mr. Mungatana:** Mr. Speaker, Sir, I undertake to see him released in the course of this month. If not so, we shall have him taken to a proper institution.

**Mr. Speaker:** Next Question, Mr. Choge!

RECONSTRUCTION OF KAPKENER  
PRIMARY SCHOOL ROOF

**Mr. Choge:** Mr. Speaker, Sir, I beg to ask the Minister for Education, Science and Technology the following Question by Private Notice.

(a) Is the Minister aware that a roof covering a block of seven classrooms at Kapkener Primary School in Aldai Division, Aldai Constituency was blown away by strong winds on 15th July, 2004?

(b) Is the Minister further aware that the roof was completely wrecked?

(c) What has the Minister done to provide a new roof, which is estimated to cost about Kshs600,000?

**Mr. Speaker:** Is the Minister for Education, Science and Technology here? Mr. Choge, we will come back to this Question later. Let us hope they come.

Next Question, Mr. Kagwima!

OMISSION OF THARAKA DISTRICT  
FROM KMTC INTAKE

**Mr. Kagwima:** Mr. Speaker, Sir, I beg to ask the Minister for Health the following Question by Private Notice.

(a) Is the Minister aware that Tharaka District has been omitted in this year's intake in Kenya Medical Training College?

(b) Could the Minister urgently correct this omission?

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

(a) I am not aware that Tharaka District was omitted in this year's intake into the KMTC campuses.

(b) A total of five applicants were selected from Tharaka District to join the KMTC campuses in the just concluded exercise whereby selection was based purely on academic qualifications.

**Mr. Kagwima:** Mr. Speaker, Sir, I am surprised that the Assistant Minister has decided to mislead this House with regard to part "a" of the Question. He says he is not aware. However, I would be happy if he had said it was about to be left out in the selection exercise, but he corrected the situation. Last year, I raised a question about recognition of Tharaka District by the Government.

I am happy that the Chair made a ruling that a Minister of State, Office of the President issue a statement, so that all the departments get to know of the existence of that district. After that action, Tharaka District only got five positions for the admission to the KMTC. The district with the lowest slots has got 16 positions. Could he consider taking 11 more applicants, so that Tharaka District get an equal share with the district with the lowest number of positions?

**Mr. Konchella:** Mr. Speaker, Sir, Mr. Kagwima is also misleading the House because Tharaka District got five vacancies. These vacancies were based on the number of applicants. There were only ten vacancies to be allocated to every district in the whole country. So, Tharaka District only got five positions because only five courses were applied for. I would like to inform the House that out of the seven applicants who applied for clinical medicine, one was admitted. There were only 95 vacancies in the country. There was only one applicant for a certificate in health records and he was taken. There was also another applicant for a diploma in health records, and he was also taken. There were 15 applicants for a diploma in nursing, but only one was taken. There were also four applicants for a certificate in nursing, but none was taken because there were very few vacancies in that section. In fact, they were only 11 vacancies in the whole country. We only take those applicants who were not taken the previous year.

**Mr. Mwenje:** Mr. Speaker, Sir, could the Assistant Minister lay on the Table of this House the list of successful applicants from each district? The information I have is that none of the applicants from Nairobi Province were selected.

**Mr. Konchella:** Mr. Speaker, Sir, the House should appreciate the problems faced by the Ministry. The KMTC offers 15 courses in all the campuses countrywide. So, out of these 15 courses, the vacancies available are such that only one applicant can be selected in a particular district. When

they are very few, selection is based on the needs of a particular district. So, if applicants from Nairobi Province are not selected, it is because there is sufficient staff working within those dispensaries and health centres. We will take care of those areas that were left behind previously.

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

**Mr. Speaker:** What is it?

**Mr. Mwenje:** Mr. Speaker, Sir, the Assistant Minister is going round the question. I am only asking him to lay on the Table a list of those applicants who were admitted to the KMTC, so that I confirm that none was taken from Nairobi Province, then I will come up with a further question from there.

**Mr. Speaker:** Mr. Mwenje, do you know what you are doing?

**Mr. Mwenje:** Mr. Speaker, Sir, what am I doing?

**Mr. Speaker:** What you are doing is simply the following; you are commandeering Mr. Kagwima's Question from Tharaka District to Nairobi Province. You can put your question about Nairobi Province!

**Mr. Kagwima:** Mr. Speaker, Sir, the Assistant Minister did not answer the question I raised, that in view of the fact that the other district close to Tharaka District had 16 positions, and Tharaka District is benefiting for the first time in the last six years, could he consider adding eleven more slots?

**Mr. Speaker:** Mr. Konchella, will you be generous to Tharaka District?

**Mr. Konchella:** Mr. Speaker, Sir, we only allocate available vacancies to students who apply for them. If students did not apply for the other vacancies, there is no way the college will admit them because we have instances where, when we admit a student to a course that he or she did not apply for, he or she leaves it before they complete. It is a waste of space for other needy students.

**Mr. Kagwima:** On a point of order, Mr. Speaker, Sir. I think this is a Government of some



reasonable integrity. Last week, I agreed with the Assistant Minister that I request the applicants whether they could take other courses, which I did. I also gave him these details in writing this morning. Now, he says they did not apply for those courses. I do not know what he is talking about. Could he recollect what happened from last week to this morning?

**Mr. Konchella:** Mr. Speaker, Sir, I said 15 people applied for a Diploma in Nursing. Now, all the 15 applicants needed to get a course. Now, Mr. Kagwima says they can apply for other courses which they did not apply for before. So, what I am telling the hon. Member is that unless the particular student goes to the college and admits that he or she is prepared to do that course, there is no way we can just change these courses because students will leave the college before they complete.

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

**Mr. Speaker:** Order, Mr. Kagwima! I think you can follow-up on the other issues. Next Question, Mr. Serut!

#### BAN ON SALE OF UNDEVELOPED LEASEHOLD LAND

**Mr. Serut:** Mr. Speaker, Sir, I beg to ask the Minister for Lands and Housing the following Question by Private Notice.

(a) Is the Minister aware that by virtue of his statement on 3rd June, 2004, with regard to the ban on undeveloped land, no bank is accepting titles of undeveloped land as collateral?

(b) Is the Minister further aware that banks that had accepted titles of undeveloped leasehold land are considering litigation against the Government?

(c) What is he doing to arrest the situation considering that transactions conducted on such land, from the time Legal Notice No.305 of 1994 was applied are legal?

**The Minister for Lands and Housing (Mr. Kimunya):** Mr. Speaker, Sir, I beg to reply.

(a) I am not aware that banks are not accepting titles as collateral by virtue of my Ministerial Statement of 3rd June, 2004.

(b) I am also not aware that banks that had accepted titles of undeveloped leasehold land are considering litigation against the Government.

(c) There is no situation that is out of hand to warrant my intervention, and the only situation that has changed is that the activities of the land speculators have been curtailed.

**Mr. Serut:** Mr. Speaker, Sir, although I do not agree with the Minister, let me appreciate that he has given us an answer. It is common knowledge that the transactions which took place before Legal Notice No.111 of 2003, were legal by virtue of Legal Notice No.305 of August 1994. It is also common knowledge that---

**Mr. Speaker:** Are you debating?

**Mr. Serut:** Mr. Speaker, Sir, given that those transactions were legal, it is obvious now from the Minister's Statement that the transactions which took place, especially for mortgages to the banks, had an initial value. But by his statement now, the value of those properties have been wiped out. What is the Minister going to do to reinstate the value and compensate those who had actually bought those properties which were undeveloped at that time?

**Mr. Kimunya:** Mr. Speaker, Sir, with due respect to the hon. Member, I am not aware of the property he is talking about. I have just said that none of the prudent bankers leased on undeveloped property, which was contrary to the law.

**Mr. Twaha:** Mr. Speaker, Sir, the Minister should be fair and democratic before taking such a decision, which has far-reaching implications. He should bring a Bill to this House for debate and enactment. In a liberalised economy, could the Minister tell us what is wrong with land speculation?

**Mr. Kimunya:** Mr. Speaker, Sir, this House passed a law regulating the transfer of

Government land. All we have done is to follow that law to the letter. I do not think we need to refer to this House to tell it that we are now implementing the law it passed.

**Mr. Muchiri:** Mr. Speaker, Sir, part of the reason why we have a problem---

**Mr. Twaha:** On a point of order, Mr. Speaker, Sir. He did not answer the second part of the question: "What is wrong with land speculation in a liberalised economy?" If people are speculating on shares, cattle and other things, why not land?

**Mr. Kimunya:** Mr. Speaker, Sir, Government land is allocated for a specific purpose; that is development. It is not allocated to people to keep it to gain value, so that they can sell it. That is what we have stopped. We have not stopped people from speculating on their private land or any other property that they have.

**Mr. Muchiri:** Mr. Speaker, Sir, part of the problem that we have with title deeds and land speculation is caused by the delay in the release of the report by the Ndung'u Commission on Land Grabbing. Could the Minister tell us when that report will be released? We have waited for too long.

**Mr. Kimunya:** Mr. Speaker, Sir, the Ndung'u Commission completed its work the other day. So, hon. Members have not waited for too long. We are preparing a Cabinet Paper on the report and after consideration by the Cabinet, we will release it, hopefully, in the next one month.

**Mr. Speaker:** Very well. Last question, Mr. Serut!

**Mr. Serut:** Mr. Speaker, Sir, the Minister did not answer my first question. My first Question was: Given that title deeds for that undeveloped land were given to the banks as collateral, and the banks accepted them on the basis of the lands offices having registered the same in their offices--- Now that the Minister has said that the Government will not be held responsible by those banks which accepted those title deeds as collateral, what is the Government going to do to compensate [Mr. Serut]

them if the chargees and guarantors fail to repay those loans, because nobody would risk buying such land?

**Mr. Kimunya:** Mr. Speaker, Sir, I sympathize with the banks that accepted road reserves as collateral. The defaulter---

**Mr. Speaker:** Order, Mr. Minister! I think you are taking this matter too lightly. Nobody in this House has talked about road reserves. What they have talked about is undeveloped land with a proper title deed. I think we better be very careful! So, what is your response? Do not talk about road reserves because nobody is talking about them.

**Mr. Kimunya:** Mr. Speaker, Sir, the law is very clear on transfers and charging of undeveloped land.

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

**Mr. Speaker:** Can you hear him as well! There will be order here. The Minister must be heard. It is not a contest! This is public policy and we want to understand it properly. So, please, relax.

**Mr. Kimunya:** Mr. Speaker, Sir, thank you for protecting me. The law is very clear with regard to transfer of undeveloped land. In 1994, a Legal Notice was issued that allowed the Commissioner of Lands to collect 2 per cent of the consideration for giving consent on transfer of undeveloped land and consent on charging. That legal notice was in contravention of Section 18 of the Government Lands Act.

The legal notice that I issued last year was to correct that anomaly and remove that illegality from the law. We said that people who will be aggrieved can go to the courts to help in the interpretation of what they did between then and now. But, as far as we are concerned, since we issued that notice, we are not going to allow any transfer or charging of undeveloped land because we want to comply with the law.

**Mr. Speaker:** That is now clear, Mr. Serut! Is that so?

**Mr. Muchiri:** On a point of order, Mr. Speaker, Sir. Is the Minister in order to confuse

issues? Is it not true that all undeveloped land in this country is valueless as per his statement? That is a very serious matter which is being swept under the carpet.

Mr. Speaker, Sir, I think you need to allow more time on this matter. It is a very serious matter in this country. All land that is undeveloped cannot be valued for a bank to give a loan. I am a valuer and I know that. All undeveloped lands that were valued, the banks cannot realise any money from them. I am speaking as an authority in that area. The law that he is interpreting is not known by Kenyans. I do not think there is any law like that!

**Mr. Speaker:** Order, hon. Members! As the Minister replies to that, last week, the issue of title deeds, which some Ministers appear to have no regard for, came up! Last week, we said that the Minister should give a Statement as to the value of title deeds held by Kenyans; as to whether they are protected by the law or they are dependent on the understanding of the Minister? That was the position. Now, the question of undeveloped land has come up. I think, Mr. Minister, you better take this thing very seriously. Could you combine all that and come up with a proper Ministerial Statement about these issues?

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

**Mr. Speaker:** Why do you not want the Minister to speak?

**Mr. Kimunya:** Mr. Speaker, Sir, it is true that the House requested for a Ministerial Statement on when a title is not a title. That Statement will still come before this House. But this Question has come in-between, and we have to answer it as requested by the hon. Member.

**Mr. Speaker:** That is correct. What about the sentiments expressed by your colleagues?

**Mr. Kimunya:** Mr. Speaker, Sir, I beg to comment on the following: Leasehold land issued under the Government Lands Act gives the leaseholder access rights to the land. It does not give ownership of land to the person. The land, at all times, belongs to the Government of Kenya. Those rights are given for a specific period of time and on certain conditions that need to be observed. One of those conditions is that the person must develop that land in accordance with plans approved by the Commissioner of Lands or the local authorities.

One other condition is that the person must pay the land rent on an annual basis. If the people do not pay the land rent or do not meet the development conditions, the lease becomes invalid. That is the situation we are facing because a number of people have confused the leasehold lands with freehold lands. A leasehold land has no value unless somebody has put development on it. This is because it can be revoked by the Commissioner of Lands at any one point for failure of the person to observe the conditions contained in a lease. That is what Kenyans need to understand! That information has always been in the public domain; it is right here in Cap. 280 Section 18 and 3.

Thank you.

**Mr. Sambu:** On a point of order, Mr. Speaker, Sir. Now that the Minister has said that leasehold land is given for a period and must be developed, would I be in order to ask my people now to go ahead and repossess all the land in Nandi Hills which the colonialists have not developed yet they hold a 999-year lease?

*(Applause)*

I am speaking on the authority of the Minister and we will go ahead and repossess the land.

**Mr. Speaker:** Order, hon. Members! Mr. Minister you heard that! You know that ultimately, as the Minister in charge of land in Kenya, you have to put a stop to this uncertainty on the legality of title documents. You must make it come to an end! If you need to have all the legal advice and come up with a proper statement, this House will be happy to do that. However, you know that certain things can lead to terrible repercussions and you can hear what Mr. Sambu is saying. What is your response to him, by the way?

**Mr. Kimunya:** Mr. Speaker, Sir, I would urge the hon. Member to stop inciting his people

and---

**Mr. Sambu:** On a point of order, Mr. Speaker, Sir. I am not inciting, but interpreting what the Minister has said. That the lease is given for a period within which the land must be developed. The leases were given between 1910 and 1920 for 999 years yet there is no single plant of tea there. We will not touch where the tea is, but all the other areas which are not developed. The Government will repossess and allocate it to our people and if it does not do it, then I will do it.

*(Applause)*

**Mr. Kimunya:** Mr. Speaker, Sir, there are two types; I need to get the details from the hon. Member on exactly what land he is talking about. Freehold land is not what I am talking about.

**Hon. Members:** Leasehold!

**Mr. Kimunya:** Mr. Speaker, Sir, I am talking of leasehold land. What we have done, and we are talking about Government land that is given by the Government under Cap. 280 as---

**Mr. Serut:** Mr. Speaker, Sir, I do not know whether the Minister is really in order to mislead the House that once you lease property for 99 years, you become the special owner of that property and the Government is the general owner.

Mr. Speaker, Sir, the Government cannot come in until your lease expires. Please, let him not mislead the House.

**Mr. Speaker:** Order, hon. Members! This matter is of grave importance and I truly think that we should allow the Minister to come with a well reasoned and researched statement. It does serve the House! He has already said that he is preparing it, so give him the opportunity to do so.

*(Loud consultations)*

**Mr. Mwandawiro:** On a point of order, Mr. Speaker, Sir. Throughout this debate, I have been hearing talk of what is legal and not what is just. What is legal is not necessarily just! In this land matter, title deeds have been used to displace the poor. Will the Minister, when he comes here, deal with both matters; what is legal and what is also just?

**Mr. Speaker:** Order, Mr. Mwandawiro! We deal with the law and not morality. Morality has a different field. We are dealing with the law and not morality!

Mr. Minister, could I leave this matter until you are ready?

**Mr. Kimunya:** Mr. Speaker, Sir, the statement I promised the House is, like I said, at an advanced stage of recollection. It is a lengthy document that we will use to educate and ensure that all hon. Members understand all about title deeds. We, therefore, need adequate time on the Floor of this House to actually present it.

**Mr. Speaker:** Very well! We cannot have our cake and eat it.

*(Several hon. Members stood up  
in their places)*

Order, hon. Members! We cannot have our cake and eat it! If you want a proper statement from the Minister, then you must give the latitude to be so within a reasonable time, of course. I hope that the Minister will utilise all the legal resources available to the Government to bring a proper statement because this is a very sensitive matter.

**Mr. Muchiri:** On a point of order, Mr. Speaker, Sir. The House will remember that the Minister had brought that statement but he did not go a long way to sort out the problem. The statement was given on the Floor of this House; I asked for it and it was fairly lengthy but it did not sort out the problem at hand.

**Mr. Speaker:** Mr. Muchiri, we are talking about a forthcoming statement and not a past one. There is a difference between the future and the past! We are talking about the future; the forthcoming statement. I will, therefore defer the Question, I do not know to when.

*(Question deferred)*

AWARD OF TELKOM NGV-VOIP  
PROJECT TENDER

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

(a) Could the Minister inform the House the criteria that was used to award the tender on the supply, engineering survey, installation, testing, commissioning and commercialisation of Next Generation Network - Voice-over Internet Protocol (NGV-VOIP) project at Telkom Kenya?

(b) Why did the Huawei Company offer a 65 per cent discount on its products?

(c) Why did Telkom Kenya management visit the said company in China before the tender was awarded?

**The Minister for Information and Communications (Mr. Tuju):** Mr. Speaker, Sir, I beg to reply.

(a) The tender award for the project was carried out in accordance with existing public procurement procedures as outlined in the Exchequer and Audit Public Procurement Regulations 2001; Legal Notice No.51. The company was rated the best in both the technical and commercial evaluation and was declared the overall winner. The tender committee using the normal tender procedures, therefore, awarded the tender to the company.

(b) The bid price offered by the company at the tender opening was already a discounted amount. The evaluated price was therefore, based on the bid price that was publicly announced at the opening ceremony.

(c) Telkom Kenya management visited the company as part of the Government of Kenya delegation lead by then Minister for Transport and Communications; Mr. Michuki, who had been invited---

**Mr. Speaker:** Order, Mr. Minister! I recollect that this Question was here. In fact, you are reading exactly what you read last week. Was it deferred and if so, for what reasons? Just go to the reasons why it was deferred! Was it deferred?

**The Minister for Information and Communications (Mr. Tuju):** Yes, Mr. Speaker, Sir. It was deferred because I needed more time as I was new in the Ministry. I needed to establish more facts and I have established that this is the factual position.

**Mr. Speaker:** While I understand that you are supposed to familiarise yourself with the tender, you do not have to read what you read last week. Just tell us the new facts you have found.

**The Minister for Information and Communications (Mr. Tuju):** Mr. Speaker, Sir, I am ready for supplementary questions on this one.

Telkom Kenya management visited the company as part of the Government of Kenya delegation led by the then Minister for Transport and Communications; Mr. Michuki who had been invited by the Government of the People's Republic of China.

Mr. Speaker, Sir, other delegates were from the parent Ministry, the Ministry of Finance and the Kenya Railways (KR) Corporation. The objective of the visit was to map out a way forward for Government-to-Government bilateral funding for the Rural Telecommunications Development Programme and improvement of infrastructure.

**Mr. Ndolo:** Mr. Speaker, Sir, I thank the Minister for that answer. Last time, he promised to bring a response to this House on the facts that I tabled in this House. One of the issues was that the

company in question got a tender of selling pirated products. Still, the company is in court. How is this company going to benefit Kenyans from what it produces? *Wuod Tuju, sema!*

*(Laughter)*

**Mr. Tuju:** Mr. Speaker, Sir, I thank the hon. Member for repeating that question. I think the most important issue he has raised was how this company provided a 65 per cent discount. I was able to establish that the amount that was actually quoted, which was announced during the public opening of the tenders, is as the facts are. There is nothing dubious about the 65 per cent discount. With respect to the alleged on-going court proceedings against this company, I have not been able to establish the whereabouts of the court case. It is certainly not in Kenya.

**Dr. Galgalo:** Mr. Speaker, Sir, my brother was not in the Ministry when the said delegation visited China. I know that if it were him, he would not have gone. This company was bidding for a tender which was advertised. Is it common practice that a Minister would visit a company that is bidding for a tender that has been advertised by his Ministry?

**Mr. Tuju:** Mr. Speaker, Sir, I would like to clarify to the hon. Member that the visit to China by the Minister was at the invitation of the Chinese Government. The Chinese Government prepared its itinerary, [**Mr. Tuju**] which the Minister followed. The itinerary included a visit to the Chinese Ministry of Commerce and Transport, the Exim Bank, the China Building and Construction Group, China Network Corporation, France/China Railways Group, Huawei Technologies, which is the company in question, and ZTE Corporation, among others. That itinerary was prepared by the Chinese Government. That is why the Minister went there.

*(Several hon. Members stood up  
in their places)*

**Mr. Speaker:** Order! Order! Let the Minister say what he has to say. If you do not want him to say who invited them or who prepared the itinerary, who would you have preferred to do it?

Proceed, Mr. Minister!

**Mr. Tuju:** Thank you, Mr. Speaker. It is worth noting that the delegation led by the Minister visited the People's Republic of China from 19th to 29th May, 2003, whereas the invitations for the tender were floated on 5th November, 2003, through a Press advertisement, and that the public opening of the tenders took place on 16th January, 2004. So, the visit took place four months after the opening of the tenders.

**Mr. Mwenje:** Mr. Speaker, Sir, this appears to be a good coincidence!

**Hon. Members:** Why?

**Mr. Speaker:** Order! Order! Why do hon. Members all the time impute improper motives on their colleagues? What reason do you have to do that, Mr. Mwenje?

**Mr. Mwenje:** Mr. Speaker, Sir, I am not imputing improper motive on the Minister. I am assuming that it was a good coincidence. Would you not assume so, yourself? You are entitled to do that. My question is: Since the delegation met this company when it visited China, did it have any occasion to discuss this contract at all?

**Mr. Tuju:** Mr. Speaker, Sir, as you correctly said, it is imputing improper motive on the part of this delegation, which went to so many other places, as arranged by the Chinese Government. I have no reason to even imagine that they could have discussed those contracts.

**Mr. Ndolo:** Mr. Speaker, Sir, because of the importance of this tender, could the Minister tell the House whether they can hire other consultants to undertake proper bidding for this tender, or *wuod Tuju ichamo gimoro kanyo?*

*(Laughter)*

**Mr. C. Kilonzo:** On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** Will you sit down? By the way, Mr. C. Kilonzo, you are about to acquire a reputation. So, please, cool down.

**Dr. Khalwale:** On a point of order, Mr. Speaker, Sir. For the last 30 minutes Dr. Murungaru and Mr. Okemo have been engaged in a heated argument and have been exchanging documents. Could they be exchanging documents relating to the Anglo Leasing Scandal? If so, could they give us the benefit of looking at those documents?

*(Laughter)*

**Mr. Speaker:** Order! Order, hon. Members! As I said just a few minutes ago, Mr. C. Kilonzo, who is relatively new in this House, was about to acquire a new reputation. Dr. Khalwale, who has been here for 18 months, has, actually, already acquired a reputation, which is not befitting his status. He is, in fact, becoming very, very frivolous. I have not seen or heard anything that has disrupted the proceedings of this House.

In fact, we would not have known that Mr. Okemo and Dr. Murungaru were in this House. It is you, Dr. Khalwale, who is creating a scene. You should stop creating scenes in the House! Please, sit honourably and in a dignified manner.

**Mr. Tuju:** On a point of order, Mr. Speaker, Sir. Is it in order for Mr. Ndolo to ask me in his mother tongue whether I actually "ate" something out of this tender?

**Mr. Speaker:** What?

**Mr. Tuju:** Mr. Speaker Sir, I challenge Mr. Ndolo to translate what he said in Dholuo.

**Mr. Speaker:** Did he speak in Dholuo here?

**Mr. Tuju:** Yes, Mr. Speaker, Sir.

**Mr. Speaker:** Mr. Ndolo, did you speak in Dholuo?

**Hon. Members:** No!

**Mr. Speaker:** Order! Order! I am asking Mr. Ndolo! By the way, as you answer me, do not try to do what some people are used to doing, which is denying what they have said because, unfortunately, here, unless outside this House, I have the HANSARD. So, did you or did you not speak in Dholuo?

**Mr. Ndolo:** Mr. Speaker, Sir, I am not in the habit of denying something when I have done it. I said that and I apologise for that.

**Mr. Speaker:** What did you, actually, say?

**Hon. Members:** In Dholuo!

**Mr. Speaker:** Not in Dholuo, but the interpretation of it.

**Mr. Ndolo:** Mr. Speaker, Sir, it is very difficult to interpret what I said in English. Maybe I could, first, state it in Dholuo.

**Mr. Speaker:** Order! The only thing I can tell you here is that we are running a National Assembly and not the assembly of Luos.

So, you should speak here in a language that is understood by all hon. Members, which is either English or Kiswahili. When you go to an assembly of Luos, speak in Dholuo. That is the end of the matter.

**The Assistant Minister for Lands and Housing (Mr. Ojode):** On a point of order, Mr. Speaker, Sir. I thought the Chair would say that there is no local assembly here, and not a Luo assembly.

**Mr. Speaker:** He spoke in Dholuo, and not locally!

**Mr. Tuju:** Mr. Speaker, Sir, I take great exception to what was said by Mr. Ndolo.

**Mr. Speaker:** What did he say?

**Mr. Tuju:** Mr. Speaker, Sir, he was, essentially, undermining my integrity. He said that I have given the answer I have given because I have been financially compromised on this matter.

**Mr. Sungu:** On a point of order, Mr. Speaker, Sir. This is the august House and the two gentlemen happen to come from the same location in Nyanza. Why are they importing Asembo matters into the House? These are very small matters.

**Mr. Speaker:** Order, hon. Members! This is absolutely disgraceful; that, an hon. Member chooses to use a language which we cannot understand to insult another hon. Member. How low do you want to sink this House? Mr. Ndolo, will you, please, stand up and apologise to this House?

**Mr. Ndolo:** Mr. Speaker, Sir, I apologise. He is my cousin. I am sorry.

**The Minister for Co-operative Development and Marketing** (Mr. Ndwiga): On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** Order, Mr. Minister! I am afraid, I have finished with that. I will not follow an hon. Member who has apologised. There is nothing beyond an apology. That is the end of the matter.

Next Question, Mr. Choge!

RECONSTRUCTION OF KAPKENER  
PRIMARY SCHOOL ROOF

**Mr. Choge:** Mr. Speaker, Sir, I beg to ask the Minister for Education, Science and Technology the following Question by Private Notice.

(a) Is the Minister aware that a roof covering a block of seven classrooms at Kapkener Primary School in Aldai Division, Aldai Constituency, was blown away by strong winds on 15th July, 2004?

(b) Is the Minister further aware that the roof was completely wrecked?

(c) What has the Minister done to provide a new roof, which is estimated at about Kshs600,000?

**The Vice-President and Minister for Home Affairs** (Mr. Awori): Mr. Speaker, Sir, I want to apologise on behalf of the Minister for Education, Science and Technology, for his inability to be in the House.

Mr. Speaker, Sir, I beg to reply.

(a) Yes, I am aware seven roofs at Kapkener Primary School were blown off by strong winds on 15th July, 2004.

(b) Yes, I am further aware that the roofs of the seven classrooms, mostly comprising of lower classes, were completely destroyed although the walls remain intact.

(c) The Ministry does not have contingency plans to help in such emergencies. The Ministry expects the community to come in and help.

However, on my own behalf, I would like to invite Mr. Choge to visit me and we will arrange for a donor to help in fixing up that roof.

*(Applause)*

**Mr. Choge:** Mr. Speaker, Sir, I want to thank the Vice-President and Minister for Home Affairs for that answer, particularly the last bit. However, in view of the answer he has given, could he tell this House categorically that there is no free primary school education in this country?

**Mr. Awori:** Mr. Speaker, Sir, I categorically state that there is free primary school education in this country.



**Mr. Bifwoli:** Mr. Speaker, Sir, the Vice-President and Minister for Home Affairs has said that the community should look for money to repair the roofs. At the same time, he has said that there is free primary school education. Is that not a contradiction? Given the fact that Harambees have been banned, how will the community raise money to repair the roofs?

**Mr. Awori:** Mr. Speaker, Sir, I am not aware that Harambees have been banned.

**Mr. Karaba:** Mr. Speaker, Sir, every other day, we get reports about roofs of classrooms having been blown off by the wind. It is true that Harambees have been banned? What is the Government's stand on Harambees? Could the position be clarified?

**Mr. Awori:** Mr. Speaker, Sir, there was loud consultation in the House and I did not understand the hon. Member. However, let me attempt to answer what I thought he asked. In the Ministry, from time to time, there is a maintenance account, where money can be sent on an emergency to help in maintenance. Secondly, there is no law which stops the Harambee movement. It is just that people have misunderstood the fact that an hon. Member cannot preside over a Harambee because he is a public officer. That is what the law states.

**Mr. Kembi-Gitura:** Mr. Speaker, Sir, I am very happy that this Question has been answered by the Vice-President and Minister for Home Affairs, who is the Leader of Government Business. This incident happened on 15th July, 2004. The Constituencies Development Fund (CDF) Act provides for an emergency fund. If the money had been released, Mr. Choge could have found some money to help the situation. When will the Government release the CDF money to enable us deal with emergencies like this? There is a provision for this in the Act.

**Mr. Awori:** Mr. Speaker, Sir, the CDF money will be released any time from now. In fact, we passed the Vote of the Ministry of Finance last week. So, money will soon be getting into the hon. Members' accounts any time from now as long as they have opened their bank accounts and fulfilled the criteria of the CDF.

*(Loud consultations)*

**Mr. Speaker:** Order! Order, hon. Members! We cannot hear.

**Mr. Choge:** Mr. Speaker, Sir, where would the District Education Board (DEB) source funds for the construction or rehabilitation of the primary schools?

**Mr. Awori:** Mr. Speaker, Sir, I think I answered that question. The DEB is part of the community. I have already offered my young friend, Mr. Choge, to see me, so that we can arrange for a donor to fix the roofs. His interest is to ensure that the roofs are fixed and I intend to do just that.

**Mr. Speaker:** Order, hon. Members! I am afraid that I must now defer all the Questions which have not been asked this afternoon to tomorrow morning!

## ORAL ANSWERS TO QUESTIONS

*Question No.046*

DISMISSAL OF CHIEF SIMON NJOROGE

*(Question deferred)*

*Question No.521*

COMPLETION OF KIBWASTUIYO

WATER PROJECT

*(Question deferred)*

*Question No.540*

REGULATION OF OVERSEAS TRAVEL BY CABINET/ASSISTANT MINISTERS

*(Question deferred)*

*Question No.627*

UPGRADING OF MR. DAVID  
NTELLA M'IKIARA

*(Question deferred)*

*Question No.518*

RESETTLEMENT OF PEOPLE DISPLACED FROM MALKAMARI GAME RESERVE

*(Question deferred)*

*Question No.647*

INTRODUCTION OF SIGN LANGUAGE ON LOCAL TELEVISION BROADCASTS

*(Question deferred)*

*Question No.065*

STREET LIGHTS FOR KEROKA TOWN

*(Question deferred)*

*Question No.266*

TOTAL INDEBTEDNESS OF GATUNDU  
NORTH COFFEE FACTORIES

*(Question deferred)*

**Mr. Speaker:** That is the end of Question Time! I have several hon. Members who want to seek Ministerial Statements. I also know that there are several Ministers who want to issue Ministerial Statements. I will begin with the Minister for Foreign Affairs!

*(Loud consultations)*

Order, hon. Members!

*(Mr. Waithaka stood up  
in his place)*

Who is that standing over there? Mr. Waithaka, sit down! I have asked the Minister for Foreign Affairs to issue a Ministerial Statement on the position of the Kenyan hostages in Iraq. I, therefore, expect the House to remain quiet, at least, for once.

Proceed, Mr. Minister!

## MINISTERIAL STATEMENTS

### HOSTAGE CRISIS IN IRAQ

**The Minister for Foreign Affairs** (Mr. Mwakwere): Mr. Speaker, Sir, I beg to make a Ministerial Statement on the hostage crisis in Iraq.

On 21st July, 2004, drivers who were working for a company known as "Kuwait and Gulf Link Company" were arrested in Iraq. The company operates from Kuwait and is registered in that country. Among the seven people who were taken hostage were three Kenyans, namely Ibrahim Hamisi, Salim Khamisi and Jalal Awadh, all of whom hailed from Mombasa District. The hostages are still in the hands of the captors. I will give a chronology of events which will culminate to what I have just said.

When we heard of their capture, we immediately informed our Embassy in Saudi Arabia, which is accredited to the State of Kuwait. Our Embassy is based in Riyadh. Immediate action was taken on Thursday, 22nd July, this year. But as you know, Thursdays, and Fridays are the equivalent of Saturdays and Sundays in our country. So, it was not possible to get a visa immediately on Thursday and Friday is not a working day. So, we obtained our visa to travel to Kuwait on Saturday, 24th July, this year and our officers travelled to that country on 25th July. Those officers have been, and are still there up to this minute. We had to establish why drivers were captured and whether there was any role which Kenya was expected to play to ensure their release. The conditions which were given by the captors did not require Kenya to fulfil any of them. This is because the conditions were that we should withdraw our troops from Iraq; if we had any observers, they should get out of Iraq, and any Kenyan company operating in Iraq should cease operations forthwith. Our country does not have troops in Iraq and we took a neutral position right from the beginning of the crisis in Iraq. We do not have military or civilian observers in Iraq. We also do not have a Kenyan registered company or its associates operating in Iraq. At that juncture, we were left with no alternative but to intensify interaction between ourselves and the company which employed those Kenyans, and the other embassies which had their nationals also taken hostage; that is India and Egypt. Our officers on the ground held meetings and continued to interact with them on a daily basis to find a way forward to ensure that our nationals were released.

I would like, at this juncture, to explain why I did not go on air or reveal details to the Press. We receive daily briefs from our Embassy in Saudi Arabia. The briefs are accurate and verified. That is the role of an embassy. Verification is what is received from it. We do not act on information received from another embassy, company or Press. We receive daily reports in the morning, evening and a third report at midday, depending on the line of discussion. All the reports we have received are accurate and we have full confidence in the work which is being done by our Embassy in Saudi Arabia. As I speak here now, our ambassador is still in Kuwait.

The situation in Iraq is very fluid, sensitive, complex and needs an approach which will not in any way antagonise the captors. Even a word could culminate in a decision making process which might not be favourable to us. So, we decided not even to address the Press. We did that because we want our nationals to come back home alive.

On Sunday, 1st, August, this year, I held a Press conference where I announced that our

nationals, together with the four others, had been released and were in safe custody in Baghdad. That statement remains true as at that moment in time. I have just even had a meeting, together with the Assistant Minister and senior officers of our Ministry, with the Kuwait Charge de Affairs. According to him, the information was correct at the time it was released. We must remember here that the negotiation is between the company and the captors. We only intervene or participate just to give ideas and suggestions. The fulfilment of the requirements rests on the company and other stakeholders and not the Government of Kenya, or anybody here in Kenya. What happened here is that an agreement had been signed, confirmed and it was time to take action to ensure that we receive our nationals. The Ambassador was even ready, but the situation is extremely fluid and sensitive and decisions change by the minute, such that even now, if we get a report that the three Kenyans have been released, I will not be surprised if there was a change in decision because the captors are driving very hard bargain.

Furthermore, our Ministry has been in close touch with the families. I did talk to some of the family members, including the wives of the hostages, in Mombasa.

Mr. Speaker, Sir, I talked to them on telephone and I also sent the Assistant Minister, Mr. Wetangula, to Mombasa to visit the families on behalf of the Government and specifically the Ministry. I also sent Ambassador Mahat, who was our former ambassador to Saudi Arabia, but is now based at the Ministry Headquarters, to visit the families in Mombasa on behalf of the Ministry and the Government in general. That was done. So, we have been in very close touch with the families and we do interact with them. The Permanent Secretary calls them everyday. As I have said earlier on, I did speak to some of the members of the families. So, it is not true that we have distanced ourselves from the families. However, the events of 1st August, this year, are such that even some of the family members received SMS messages from their relatives in Kuwait, confirming that those people had been released. Some of the media houses here in Kenya had information as early as 4.00 p.m. that, that had been done. So, when I made an announcement, given the events of the day, what we had received and confirmed, it was absolutely right and true. The present situation is that the captors are driving very hard bargain. They changed their mind. We had no role to play other than pray and hope for the best because the fulfilment of those conditions does not lie in the hands of Kenya.

We would, therefore, urge all Kenyans to exercise caution---

**Hon. Members:** Pray!

**Mr. Speaker:** Order, hon. Members! Mr. Minister, have you finished?

**The Minister for Foreign Affairs** (Mr. Mwakwere): I have not finished, Mr. Speaker, Sir. I would like to make an appeal to Kenyans that we exercise caution and not make statements that would unnecessarily extend agony and despondency to the families. Whatever I announced had already been known by the families. The situation is fluid, complex and filled with uncertainty, but we are on the right direction and we are optimistic that we shall get positive results in the next few days, if not hours.

Thank you.

**Mr. Y. Haji:** Mr. Speaker, Sir, I wish to ask the Minister which of his statements is correct. On one hand, he says the people who took our people hostage have given the condition that Kenya must withdraw her troops, observers and companies that are working in Iraq. On the other hand, he says that the people who are negotiating with the captors are from the transport company. Which of his statements is correct?

**The Minister for Foreign Affairs** (Mr. Mwakwere): Mr. Speaker, Sir, both statements are correct up to certain limits. One, the company is operating in Iraq and it has agreed to withdraw operations in Iraq. Secondly, Egypt and India also have their drivers captured. So, the statement was general to all. Whether they have troops or observers, it is up to them to confirm and take action accordingly.

**Mr. M'Mukindia:** Mr. Speaker, Sir, if I remember, in the Minister's statement on Sunday,

there was a categorical statement to the fact that the hostages, that is, the three Kenyans, were now safely in the custody of the Egyptian Embassy. Could he explain where he had got that information from, given the fact that he says that any information emanating from Riyadh is tested, validated and found to be correct?

**Mr. Speaker:** Can I get one more?

**Mr. Maore:** Mr. Speaker, Sir, if you remember, immediately after the capture of the captives, the Government did volunteer to negotiate. The first issue that came from Washington DC, who are the main antagonists in the region, did caution that it was a stupid move for Kenya Government to have volunteered to negotiate with terrorists who have no physical address. Now that the Government has got itself into negotiating with terrorists, could the Minister tell this country what they will do in case the terrorists do not agree to the negotiations?

**The Minister for Foreign Affairs (Mr. Mwakwere):** Mr. Speaker, Sir, that is a hypothetical question. First, we do not take orders or directives from another Government. Secondly, indeed, I can confirm that we are not discussing with the captors. The terminology you have used is one that we have never used, and I leave it to you. As far as we are concerned, they are just captives---

**Mr. Speaker:** Order, Mr. Mwakwere! You do not leave it to him. Mr. Maore, I think, taking into account that our people are already there captured, you must use a better language. That threatens the lives of Kenyans!

**Mr. Maore:** Mr. Speaker, Sir, as I said, after the Government accepted the issue of negotiations, the terrorists changed the language and said they wanted American---

**Mr. Speaker:** Order! Mr. Maore, there are our sons there. The Minister has already said any statements can actually imperil the lives of our people. I implore you to withdraw the word "terrorists."

**Mr. Maore:** Sorry, Mr. Speaker, Sir. I inadvertently used the word terrorists, and I understand it is not appropriate. I say, captors. I am very sorry about it.

**Mr. Speaker:** Very well. Minister, have you got anything more to say? I want to finish this matter.

**The Minister for Foreign Affairs (Mr. Mwakwere):** Mr. Speaker, Sir, I have got nothing to add.

**Mr. Speaker:** Order! There was one issue raised by Mr. M'Mukindia and I think you need to clarify it to the House and country. The issue is that, you stated categorically that our people were already in the safety of the Egyptian Embassy. Where did you get that information from? That is his question.

**The Minister for Foreign Affairs (Mr. Mwakwere):** Mr. Speaker, Sir, as I said earlier, the Ministry receives reports twice daily and, in some case, a mid-day report. These reports are received from our Embassy in Saudi Arabia based in Riyadh. That is the source of our information because we received those pieces of information after complete verification.

Mr. Speaker, Sir, that is why I said the information as received and released at that moment in time was correct, but the situation is extremely fluid.

**Mr. Speaker:** Very well. I am sorry, we have to end that issue.

*(Several hon. Members stood up  
in their places)*

Order, all of you! I realise I must give an opportunity to the Opposition spokesperson because that is the right thing to do.

Proceed, Maj. Madoka!

**Maj. Madoka:** Thank you, Mr. Speaker, Sir. I think the issue raised by Mr. M'Mukindia is important because what we want to know is the truth. Where did the Minister get his information

from if, indeed, the captives were in the hands of the Egyptian Ambassador? In addition, you say it was verified. Were they recaptured, or what happened? This is what we want to know.

**The Minister for Foreign Affairs** (Mr. Mwakwere): Mr. Speaker, Sir, when we say that an individual is in the hands of an Embassy, it does not mean that the individual is in a chancery or a building. The hon. Member is fully aware of that because---

*(Loud consultations)*

**Mr. Speaker:** Order, Mr. Minister! We have to finish this somehow. But, you know, you are addressing Kenyans and not diplomats. You told Kenyans who are not schooled in diplomatic language that those people were safe in the hands of the Egyptian Embassy. Where did you get that information from?

**The Minister for Foreign Affairs** (Mr. Mwakwere): Mr. Speaker, Sir, with your permission, and based on security grounds, I beg not to answer or give details.

*(Several hon. Members stood up  
in their places)*

**Mr. Speaker:** Order, hon. Members! As you can see, I have been sitting very patiently, but again, deeply torn between our right to know and the safety of the Kenyan people. I am really torn about it. I think everybody should be equally concerned. I think our paramount concern must be the safety of the Kenyan people who are already in the hands of those captors.

I have tried as much as possible to make the Minister realise the importance of addressing the nation and this House correctly. I think hon. Members have various views on this issue. Maybe, we are well advised to leave it at that.

Next Minister!

**Maj. Madoka:** On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** Why are you following this issue? Yes! What is it?

**Maj. Madoka:** Mr. Speaker, Sir, the hon. Minister has an obligation! The honourable thing he can do is to apologise and say that he was misled. But he should not keep on saying that he had information which was verified.

*(Applause)*

**Mr. Speaker:** Order, Members! Mr. Minister, I think you need to respond to that!

**Hon. Members:** Yes! Yes!

**The Minister for Foreign Affairs** (Mr. Mwakwere): Mr. Speaker, Sir, I stand by every word that I have said! It is right, accurate and can stand the test of time.

**Hon. Members:** Ah! Ah!

**Mr. Speaker:** Order, Mr. Minister! I think we have to be a little bit more serious than that, Mr. Minister. You cannot be right! You cannot be right in any language!

*(Applause)*

You stated that the Kenyans are free! But they are not! So, in what language are you correct? What is your reaction?

**The Minister for Foreign Affairs** (Mr. Mwakwere): Mr. Speaker, Sir, we are referring to

the events of Sunday, between mid-day and 8.00 p.m. During that frame of time, the statement was correct and it was verified. All, including some media houses in Kenya, had information before me. The families were informed and my information was verified and remains accurate given that frame of time.

**An hon. Member:** Censure Motion!

**Mr. Speaker:** Order, hon. Members! We will not debate it now! It is for you to judge! That is the end of the story.

Next Ministerial Statement!

ALLEGED KIDNAPPING OF FELIX KENGERE  
AND EMMA KENGERE

**The Assistant Minister, Office of the President** (Mr. Mungatana): Mr. Speaker, Sir, on 29th July, 2004, hon. Omingo Magara rose on a point of order to demand for a Ministerial Statement---

*(Loud consultations)*

**Mr. Speaker:** Order, hon. Members! Could we hear the Ministerial Statement?

**The Assistant Minister, Office of the President** (Mr. Mungatana): Mr. Speaker, Sir, Mr. Omingo demanded a Ministerial Statement on the alleged kidnapping of Felix Osiemo Kengere and Emma Rebere Kengere in Kisii Town.

*(Loud consultations)*

**Mr. Speaker:** Order, hon. Members! Order, hon. Orwa Ojode! Hon. Members, we are still on the issue of kidnapping; this time at a local level.

Mr. Assistant Minister, please, proceed!

*(Laughter)*

**The Assistant Minister, Office of the President** (Mr. Mungatana): Mr. Speaker, Sir, on 26th July, 2004, it was reported by Father Lucas Ongesa of Kisii Catholic Diocese that he had received a telephone call from somebody who was calling himself George, and who was claiming that he had kidnapped his nephew, Felix Osiemo Kengere, and niece, by the name Emma Rebere Kengere.

Mr. Speaker, Sir, the reason for the kidnapping was that the father of the two children made George to be expelled from school in 1991. The alleged kidnapper wanted the father to the children, Peter Kengere Manwa, who is currently in the United States of America (USA), to apologise. Emma Kengere---

*(Loud consultations)*

**Mr. Speaker:** Order, Members! There are some Kenyan children from Kisii kidnapped and a ransom is being sought! The Assistant Minister is telling you what is going on, but you are not interested!

Mr. Assistant Minister, please, proceed!

**The Assistant Minister, Office of the President** (Mr. Mungatana): Mr. Speaker, Sir, Emma Rebere Kengere, aged 20, is currently taking a driving course with Automobile Association (AA) Driving School in Kisii Town. She was staying with Father Lucas Ongesa at the mission, but two weeks prior to the alleged kidnapping, she had moved to town, where she was staying with her cousin, Mokiera, who was working in their father's bookshop in Kisii Town. Felix Kengere is 19 years old, and is a Form III student at Nyansiongo Secondary School. At the time of the alleged kidnapping, he had been expelled from school and was just roaming within Kisii Town.

Mr. Speaker, Sir, investigations were carried out and calls coming from the alleged kidnapper were being monitored. The alleged kidnapper, in one of the calls, demanded to be given the telephone number of Peter Kengere in the USA. When he contacted him, he demanded Kshs700,000, so that the kidnapped children could be released. The father of the children negotiated with the abductors and they agreed to settle the issue on payment of Kshs200,000.

Mr. Speaker, Sir, in the course of communication, Kencell Headquarters, together with the police, were monitoring the mobile phone communication, which was being used by the kidnappers. They then released a computer printout for the number, which was 0735-208348. It became clear that all the calls were being made in Kisii Town and not at Kakamega as the alleged kidnapper alleged. As the investigations continued, it became apparent that the caller could be one of the children who had allegedly been kidnapped.

Mr. Speaker, Sir, on 29th July, 2004, a trap was laid by the police at Uhuru Plaza in Kisii Town, and one of the two children alleged to have been kidnapped, Emma Rebere Kengere, was arrested and Kshs100,000, which was part of the Kshs200,000 which was to be paid to the kidnappers, recovered from her.

Mr. Speaker, Sir, Emma Kengere was arrested and upon interrogation, admitted that there was no kidnapping, but they had planned with her brother, Felix Osiemo, to pose as kidnappers in order to get some money from their father, who had not sent them money for a long time. She also admitted that it was Felix Osiemo, his brother, who was making the telephone calls from Kisii Town, mostly at Uhuru Plaza.

Mr. Speaker, Sir, further inquiries have revealed that the two children had been without parental care since their mother passed away, and father went to live in the USA. They feel neglected by their father, who is their only remaining parent. The investigating officer has talked to the father who is in the USA, and he has also admitted that the children have not been given parental care as required. Emma Kengere has been bonded to keep peace and be of good behaviour.

Efforts are being made to arrest his brother, Felix Osiemo, who is going to be treated in the same way.

Thank you, Mr. Speaker, Sir.

**Mr. Speaker:** Mr. Omingo is not in. Proceed, Mr. Metito!

#### **POINTS OF ORDER**

IMMINENT CLOSURE OF

LOITOKITOK HOSPITAL

**Mr. ole Metito:** On a point of order, Mr. Speaker, Sir. I rise to seek a Ministerial Statement from the Minister for Health over the imminent closure of Loitokitok District Hospital tomorrow just because there is no water in the hospital.

On the 6th June, 2004, two months ago the Assistant Minister for Health, together with hon. Dzoro and myself, toured that hospital. The problem, then, was two weeks old. This is a district hospital with a bed capacity of 180 patients. The most affected departments of the hospital are the



laundry, the theatre, and catering. By tomorrow, the hospital will be closed down. Because of this problem, the residents of Loitokitok have been seeking medical care from the neighbouring country, Tanzania. I want the Minister to tell us, in her statement what action the Ministry intends to take because the people of Loitokitok have suffered for so long already. It is now two months and the situation is such that the Public Health Department has issued a notice that the hospital should be closed tomorrow.

**Mr. Speaker:** Order, Members! It is almost 4.30 p.m. and we have not started business of the House yet. Is the Minister for Health present?

**The Minister for Health** (Mrs. Ngilu): I am, Mr. Speaker, Sir.

**Mr. Speaker:** When are you ready to respond to that?

**The Minister for Health** (Mrs. Ngilu): I will respond on that matter on Thursday, this week.

**Mr. Speaker:** Very well. There was also another Ministerial Statement sought by hon. Dr. Galgallo. When will you respond to that one?

**The Minister for Health** (Mrs. Ngilu): I will issue it tomorrow.

**Mr. Speaker:** Very well. Hon. Members, we must now embark on the business of the House.

**Dr. Khalwale:** On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** I am sorry, you will have to raise your matter tomorrow in the morning. It is now 4.30 p.m and we have not started with the business of the House.

**Dr. Khalwale:** Mr. Speaker, Sir, children are right now in hospital because of this matter.

**Mr. Speaker:** Okay, I give you a minute. Proceed!

GRABBING OF KAKAMEGA SCHOOL LAND  
BY PRIVATE DEVELOPER

**Dr. Khalwale:** Mr. Speaker, Sir, I rise to demand a Ministerial Statement from the Office of the President in connection to an incident that took place last week on 26th July, 2004, in Kakamega Primary School. Over 2000 children attacked workers on a construction site, the reason being that a private developer had hived off a section of their school for private development.

Mr. Speaker, Sir, answers to the following questions are being sought: How did a private developer assume possession of the school land; who is the *bona fide* owner of the land in question, and what action is the Minister going to take against the construction workers who injured school children, some of whom are still admitted in hospital with fractures?

**Mr. Speaker:** Next Order!

**BILL**

*Second Reading*

THE CONSTITUTION OF KENYA  
REVIEW (AMENDMENT) BILL

**The Minister for Justice and Constitutional Affairs** (Mr. Murungi): Mr. Speaker, Sir, I beg to move that the Constitution of Kenya Review (Amendment) Bill be read a Second Time. We all know the pain and suffering that we have gone through in the Constitutional review process. For me, personally, the constitutional review process has been like a millstone hanging around my

neck. I have been accused of all manner of things, including delaying, derailing and scuttling this process. However, today, I want to announce to all Kenyans that I am for acceleration of this process. We know Kenyans have been tired of waiting for a new Constitution and it behoves the leadership of this House to facilitate the process so that Kenyans can have a new Constitution.

This day will go down in our history as one of the greatest days. This is because apart from other things, we are going to reinvent our politics. We would like this day to be remembered as the day when we, as leaders from various political parties and hon. Members, rescued the constitutional review process. It is a day when we would like to see the politics of confrontation, quarrels and acrimony that we have witnessed in the past giving way to politics of co-operation, compromise and consensus. I am happy to inform this House that the Bill before this House is a product of consensus by hon. Members of this august House. I would like to especially thank the leaders of the Consensus Building Group of Parliament, led by their former chairman, hon. John Koech; the current chairman, hon. Angwenyi, hon. Bifwoli, hon. Dr. Machage and all other hon. Members of Parliament who are members of the Steering Committee of the Consensus Building Group and who sat down with the Constitution of Kenya Review Commission (CKRC) to develop this Bill.

I also want to thank hon. Members of the Parliamentary Select Committee on the Constitution Review especially, the Chairman, hon. W.R. Samoei. The Committee has led us in very rigorous discussions on this Bill. I am happy to report that after several meetings with regard to this Bill---

*(Loud consultations)*

**Mr. Speaker:** Order, Members! We have a very, very important piece of legislation which you will be called upon, at the end of the day, to vote on. How do you vote on a Bill you have not heard anything about? Please, listen to the Minister.

**The Minister for Justice and Constitutional Affairs** (Mr. Murungi): Mr. Speaker, Sir, I was thanking the Chairman of the Parliamentary Select Committee on the Constitution Review, hon. Samoei, for leading us into discussions on this Bill both within the Committee and the sub-committee that was appointed to scrutinise the Bill clause by clause. I must say that after a very lively discussion, we have agreed on some important amendments to be made on this Bill during the Committee Stage. I thank hon. W.R. Samoei for agreeing to second this Bill.

Mr. Speaker, Sir, I would not wish to go into the details of the amendments that the Committee agreed upon. I think the Chairman of the Parliamentary Select Committee on Constitution Review will expound more on the amendments that we have brought forth.

Mr. Speaker, Sir, the main object of this Bill is to comply with the decision of a Constitutional Court in the Njoya case, which made it mandatory for us to have the new Constitution being approved by the people of Kenya through a referendum. The Constitutional Court made a referendum a mandatory process in the constitutional review process. We are also trying to find a way of releasing the constitutional review process from the legal traps that it has found itself in as a result of some cases which are now pending in court.

We intend, through this Bill, to create a legal framework through which the Bomas Report and Draft will eventually find its way into this House for further discussions and development of a national consensus on contentious issues. We hope that when we resolve and do agree on these contentious issues, the process will move faster to conclusion so that we can have a new Constitution as soon as possible.

Mr. Speaker, Sir, the Bill also makes very elaborate provisions with regard to the mechanism of a referendum, which is to be conducted by the Electoral Commission of Kenya (ECK) in conjunction with the Constitution of Kenya Review Commission (CKRC), and also provide for the manner in which that referendum will be carried out. If the people are not happy with the results of that referendum, the results can be challenged in court. The Bill also seeks to

ensure that the process so far; all that was done by the Commission prior to the Bomas Conference and the Bomas process itself, is validated through an amendment to this Act, so that there is no doubt whatsoever that what was done at Bomas, and the work of the CKRC before that were, indeed, valid in law. We are trying to do that because the Constitutional Court did throw some doubts as to whether some aspects of the Bomas process and the work of the Commission were valid.

Mr. Speaker, Sir, so, very broadly, those are the principal objectives of this Act. Now, I would like to take the Members through the various clauses just to give them a general overview of what the amendments entail. On page 565, we start with a note which explains that this Bill supersedes the Bill with the same title published in the *Kenya Gazette Supplement No.10*, as Bill No.2 of 9th March, 2004. You will also note from the Memorandum of Objects and Reasons that I am now formally withdrawing the two Bills which we published on 9th March, 2004. These are the Constitution of Kenya (Amendment) Bill, 2004; and the Constitution of Kenya Review (Amendment) Bill, 2004. Those Bills became irrelevant in light of the Constitutional Court's decision in the Njoya case.

Mr. Speaker, Sir, the long title of this amendment Bill explains the general objective of the Bill, and it reads:

"It is an Act of Parliament to amend the Constitution of Kenya Review Act to provide for the participation of the people of Kenya in the making of a new Constitution through the National Assembly, and a referendum, and to provide for certain other matters".

Mr. Speaker, Sir, the procedure we are proposing for making the new Constitution is contained in part IV of the Amendment Bill, which is on page 566. Article 26 in Clause 5 captures the essence of the Constitutional Court decision by restating the sovereign right and power of the people of Kenya in making a new Constitution. It provides that:

"Recognizing that the people of Kenya, collectively, have the sovereign right and power to replace the Constitution with a new Constitution."

Sections 27, 28 and 28(a) are enacted to facilitate the exercise of that right and power.

Mr. Speaker, Sir, in the Njoya case, the Constitutional Court decided that under Section 47 of the current Constitution, this Parliament has the power to amend any provision in the current Constitution. But in the interpretation of the Constitutional Court, Section 47 did not give this Parliament powers to replace the current Constitution with a new Constitution. Neither did it give it power to create a new Constitution. The court decided that this fundamental power reposes in the people, and that it is the sovereign right of the people of Kenya to replace the current Constitution with a new one. They said that one of the ways of exercising that right is to adopt a new Constitution through a referendum. So, this Bill aims to facilitate the people of Kenya to exercise that right by providing mechanisms through which they can adopt a new Constitution through a referendum.

The Bill provides that the Bomas Draft, that is the Draft Bill and the Report which were adopted at Bomas on 15th March, 2004, and a Report from the CKRC be brought to Parliament; and that when that Draft is brought to Parliament, the House should consider that Report and the Draft Bill. Indeed, Article 27(4) provides that:

"In considering the Final Report and the Draft Bill, the National Assembly shall undertake consultations to initiate, facilitate and promote a national consensus".

So, it is proposed that the contentious issues will be agreed on by this Parliament.

Those contentious issues are what we will discuss. We will not open the entire Bomas document. There is no contest about 80 per cent of the contents of the document. The contentious

issues form about five chapters of the Bomas Draft Bill. This is what we want to sit down to discuss and agree on, so that we can have a complete Bill which will be taken to the Attorney-General who will do the final constitutional document, which will not come back to Parliament. After the Attorney-General prepares the final constitutional document, it will be taken directly to a referendum.

Mr. Speaker, Sir, Clause 28 provides the mechanism by which the people of Kenya will ratify this document through a referendum. The referendum will be organised by the Electoral Commission of Kenya (ECK). My draft provides that the ECK, in consultation with the CKRC, will conduct a referendum. But as the Chairman of the Parliamentary Select Committee (PSC) will point out, we separated the roles of these two commissions so that the referendum will be conducted by the ECK, and the CKRC will facilitate and co-ordinate civic education on the referendum.

With regard to the majorities that will be required for the approval or adoption of this document through a referendum, my draft says that 65 per cent support will be required. I think we have discussed this point and the position should be that it will be proposed that this 65 per cent should go down to 51 per cent, that is a simple majority, plus 25 per cent of the votes in each of the five of the eight provinces of the Republic. We are using a system similar to the one we used in determining the presidential vote. If the document is passed by a simple majority, then it will be announced by the President to be law.

The same Clause 28 provides for proclamation of the new Constitution by the President and legal challenges to the results of the referendum. To avoid unnecessary petty complaints being taken to court, we suggested a deposit of Kshs1 million, but the PSC raised it to Kshs5 million. The deposit will be required from any person who will want to file a petition against the results of the referendum. The petition against the referendum will be heard by a panel of five judges. The court that will be hearing the petition can decide to annul the referendum, order a fresh referendum or declare the results to be incorrect.

In Clause 33 we are talking about the life of the CKRC. It is proposed that the CKRC be dissolved immediately after the new Constitution becomes law. We had proposed in the draft Bill that it be dissolved after 90 days. There were proposed amendments to the effect that it should be dissolved after 30 days.

Generally, that is what these amendments contain. I am appealing to hon. Members from both sides of the House to support this Bill, with the amendments that will be proposed to it by the Chairman of the PSC, because we have discussed them and found them to be good. I want to emphasise that constitution-making is not an easy exercise. It is a very complex, social, political and legal exercise. It requires humility from all of us. It requires co-operation. We should not miss this historic opportunity to lay a firm foundation for reinventing this country. We should not miss the opportunity to conclude this process as soon as possible; if possible early next year, so that we can move on to consolidate our democracy and liberate our people from centuries of oppression.

With those few remarks, I beg to move and I call upon Mr. Ruto to second.

**Mr. Samoei:** Mr. Speaker, Sir, I rise to second this Bill. Right from the outset, I want to say that the PSC on the review of the Constitution was constituted by this House on 30th June this year, pursuant to Section 10 of the Constitution of Kenya Review (Amendment) Act, Cap.3A which provides:-

"The National Assembly shall, in accordance with the Standing Orders, establish a Select Committee consisting of not less than five and not more than 27 members to assist in the performance of its functions under the Act."

I want to thank this House for giving Members of that Committee the opportunity, on behalf of this House, to provide the necessary leadership to the review process. Further, I want to thank the

Members of that Committee for electing me as its chair unanimously. I want to agree with the Minister that the mandate of our committee encompasses various issues. The Bill, together with the amendments that my Committee will be proposing, will seek to achieve four things. One, we will seek to achieve a by-pass that will enable this process to move forward in the light of the many court cases that have been brought by persons who have issues to take with the review process. I can report that this Bill has successfully managed to provide a by-pass for Parliament and the country to move forward with the review process.

Secondly, it has provided an opportunity for us, as a country, to look at the issues that bring differences amongst us, which are the so-called contentious issues. We now have a chance to, within the provisions of law, look at the issues that are causing the divisions that we have in our country. I believe that, having looked at those issues, we shall agree as a country to sort them out and move on with the process.

Thirdly, we also have a chance through this Bill to recommend means of incorporating in the new Constitution what was agreed upon by the people of Kenya. This is what was collected and collated by the CKRC. This was debated, amended and adopted in Bomas. This is what this House will look at. Subsequently, we will have a chance to take it for ratification by the people in a referendum. Many Kenyans are waiting to put their stamp of approval on a new Constitution. This Bill, with amendments, seeks to achieve that. By passing this Bill, I feel that we will actually provide the people of Kenya with a means to put a stamp of approval on a new Constitution.

Mr. Speaker, Sir, very importantly, this Bill seeks to secure the hard-earned success of the people of Kenya in the long journey that we engaged in reviewing our Constitution. It is not lost on us that this process begun ten years or so ago. What the Bill seeks to secure is to make sure that what was debated during the Bomas talks; the collection of the views from the public, are all legal and will be part of what will eventually go into the final document. That is a new Constitution. There are express provisions in this Act that in spite of the ruling by the Constitutional Court that made certain actions suspect and raised issues on the validity of the Bomas draft, we have sought to provide in this Bill that what went on during the Bomas talks was legal and right. In fact, Section 28(J) does make that express provision. It says:-

"To ensure that there is no doubt as to their validity, the following are declared to have been authorised by and to have been done in accordance with this Act. That is, the work of the Commission in compiling its report and drafting the draft Bill, and the work of the National Constitutional Conference (NCC) in discussing, debating, amending and adopting the Commission's draft Bill."

Mr. Speaker, Sir, this will go a long way, I hope, in assuring the people of Kenya that we intend to provide leadership to this process and to bring it to its logical conclusion. I would like to ask this House that the people of Kenya are looking up to Parliament as the supreme organ, elected by the people of Kenya, to provide that leadership. I would like to believe that Parliament will rise to the occasion and provide that leadership.

Mr. Speaker, Sir, we have expressly provided for the avoidance of doubt and to allay the fears of many, that Parliament wants to write a Constitution for its citizens. We have said that is not the case. What we are doing in this House, we have expressly provided under amendment on Section 27(1), and I believe I will circulate these amendments to hon. Members, so that as they debate, they have the benefit of the agreements that we managed to secure in the Select Committee, that this House shall discuss and give recommendations only to the extent of the contentious issues. The 80 per cent of the draft Bill, which is not in contention, will not be subject to discussions, recommendations or amendments in this House. We did that specifically because we wanted to assure the people of Kenya that Parliament does not harbour intentions of trying to re-write or to

write a Constitution for them.

We have agreed that the contentious issues will be isolated and identified by a committee of this House that is representative of all shades of opinions, that is the Parliamentary Select Committee. Once these issues are isolated, we will hammer them out and Parliament will take a decision.

Mr. Speaker, Sir, the Bill has also made it very clear that the President will have limited jurisdiction in terms of when he proclaims the new Constitution into law. Originally, this Act provided an open-ended time for the President to do so, but the amendments have proposed that the President will only have 14 days. I think this goes a long way in reducing the anxiety that will be visited upon the people of Kenya in the event that, that proclamation delays.

Mr. Speaker, Sir, there were issues that were raised in my Committee on whether it was logical to have a Referendum at 65 per cent as was initially proposed by the Bill. The Committee eventually settled that with all the agreements that have gone into the discussions on a new Constitution, it was inappropriate to provide that to be able to obtain a "yes vote". This was reduced to 51 per cent because we believe that the document we will present to the people of Kenya in the form of a referendum will be a consensus document, and we will have agreed on the areas of contention.

Mr. Speaker, Sir, originally also, there was a provision that in the event of a challenge in a court of law on the results of the referendum, there was an open-ended tie for that appeal. The Select Committee did narrow it down because we appreciate that a lot of money, time and manpower was engaged in this process. To limit the anxiety that would emerge if a challenge on the results of a referendum are challenged in court, we limited that time to only 45 days; that all the legal issues that will arise must be determined in one and a-half months.

Mr. Speaker, Sir, finally, we agreed that the Electoral Commission of Kenya (ECK) will conduct the referendum and that the ground rules that would govern that referendum will be agreed in form of regulations, which will be approved by this House, so that the document that goes to the referendum, all of us will be agreed in the country in the manner in which all the issues that concern a referendum will have been agreed upon by the House. We have written those ground rules, that both the Commission and the Select Committee will sit with the ECK to make sure that the input which is part of Parliament is secured, and, therefore, the input of the people we represent is put into that process.

The issues we will be tackling are very sensitive; they are very elative, and sometimes, very partisan. Therefore, I would like to call upon the House, that as we debate these issues, at the very utmost in our thoughts, let us consider the people of Kenya who have been looking for and aspired for a new Constitution for the last 10 years. I will be moving these amendments at the Committee Stage, and these are amendments that have been agreed upon by the Select Committee.

As the Minister said, we are requesting both sides of the House to support the amendments and provide the country with a legal road-map that will take us to a new Constitution.

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

**Mr. Speaker:** I have not even proposed the issue. So, it is up to you. I will proceed to do that very quickly. I would like the Minister and the Chairman of the Review Committee to address the issue of how, ultimately, the draft documents as approved even through a referendum, will be constitutionally

accepted. I hope you are not keeping that matter in abeyance. You must have it alive in your mind on how a new Constitution replaces another one. I will, therefore, propose the Question. I hope my anxiety has been understood!

*(Question proposed)*

**The Vice-President and Minister for Home Affairs** (Mr. Awori): Mr. Speaker, Sir, I rise to support this Bill with its amendments. Both the Mover and the Seconder were very clear on our responsibility in this House. We want a new [Constitution. The country and everybody is crying about a new Constitution. It is our responsibility to give Kenyans a new Constitution.

Mr. Speaker, Sir, for several months, we drove ourselves into a corner because of mistrust, tinged with hatred, ethnicity and everything negative within human beings. We have polarised this country and personalised the Constitution. Every step that we took, we saw the Constitution in the eyes of individuals. That happened right up to the time when there was a stalemate.

It is wonderful to see that both sides of the House can now sit down and agree on how to prepare a road-map for our country. It is important to build consensus among ourselves. When we talk of building consensus, let us be serious that we are talking about a consensus. That is, the middle-of-the-road position. That is if you are on the right and the other person is on the left, the person on the right should not view consensus as everybody must go to his corner. The same must apply to the person on the left. Consensus is a question of giving and taking.

We have suspended a lot of work for this country. Our people want development. They would like to see a health scheme that is going to take care of the rich and poor. When we go to see our constituents, we find that they are wallowing in poverty.

*[Mr. Speaker left the Chair]*

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

Mr. Temporary Deputy Speaker, Sir, we need to create employment for our people. Many of our Form IV leavers, tertiary and university graduates have no jobs at all, because we, as policy-makers, should now be concentrating on how to create jobs. We have been boxing ourselves into a corner. The Constitution is something that is going to be written on a piece of paper. It will be incumbent upon all of us to ensure that we utilise that Constitution for the benefit of this country. There are many countries that have governance problems and yet, they have excellent constitutions.

Mr. Temporary Deputy Speaker, Sir, a good constitution depends entirely on those who are going to implement it. If we will have a Constitution based on what we have seen before, it will not help us at all. It is time to start building reconciliation. We have to try and see each other's point of view. Let us take Kenya back to where it was, before we started looking at each other suspiciously.

Mr. Temporary Deputy Speaker, Sir, I am happy to see that the Parliamentary Select Committee (PSC) is working closely with the Minister concerned with the Constitution. None of us has got the monopoly for wisdom, patriotism or loyalty to this country. We need to look at the future generation. We must start to ask: What are we doing to our country? We want to ensure that the ugly head of corruption is killed and removed from the midst of our society. We will not be able to do that if we are still concerned about who is going to hold what position in the next Government or future governments. We want a Constitution that can unite our people. We want to unite our people, so that they can develop.

We have a lot of opportunities for jump-starting the economy. We can start by revamping not only the agricultural sector, but the manufacturing sector. To do that, there must be investments in this country. For investments to come into this country, a lot of things need to be considered. We have to look at the security of this country. The security situation has not improved tremendously

because of the poverty that people are wallowing in. Investments will not come into this country if we continue to have total differences, hatred and divisions. I am not going to touch that section because there are experts who will deal with that.

My main purpose of supporting the Mover and the Seconder is simply to appeal to both sides of the House that time has reached when we must now work together, knowing that if we fail, no one is going to win. We will not have a situation where such-and-such a faction in this House will be a winner and another faction will be a loser! This is not the time for partisan politics. This is the time to work together. Therefore, I just want to appeal to everyone to lower temperature and look at issues. Since a door has now been opened, let us take that door so that we can give *wananchi*, as quickly as possible, a new Constitution.

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

**Mr. Kajwang:** Thank you very much, Mr. Temporary Deputy Speaker, Sir. I want to oppose this Bill for very good reasons. One, this Bill is based on a wrong foundation. The Act which we are seeking to amend; the Constitution of Kenya Review Act Cap. 3(A) has its objects set out very clearly. The objects of that Act is a comprehensive review of our Constitution. It sets out that the routes to that review must be through the people themselves. It sets out how the people will be consulted, their views collated and how a draft Bill will be arrived at so that the philosophy behind the Bill, which we now want to amend, is that it is people-driven; that it is people-owned. That it is the people who have spoken and said: "This is the Constitution for the Republic of Kenya and we give it to ourselves!" That is the philosophy behind the Act which we now seek to amend. We have gone that route; we set the Commission and it went that route, to a large extent to taxpayers, painstakingly going to every constituency and listening to villagers in every corner of this country. Of course, then it was collated into a draft Bill and we congregated at the Bomas of Kenya for several months. All that time, the foundation was clear; the people of Kenya had spoken on the type of Constitution that they wanted.

At Bomas of Kenya, there was also a provision in the Act, which we now seek to amend; on how to deal with the views of the people of Kenya. We were going to debate them and vote on them. Of course, we debated them for a long time and we sought consensus on every issue. However, we also provided in that Act that, where there is a disagreement, then any matter that goes into the draft Constitution, must carry two-thirds majority of those voting at the Bomas of Kenya and that was complied with.

If we go to the history of this review, it is almost a revolution. This is because we will remember that the Head of State then said, in 1992/93, that if Kenyans wanted to review their Constitution, what we needed were some experts. He said that he was ready, at the Government's expense, to bring experts from any part of the world. I remember, if my memory does not fail me, the Canadian Ambassador saying that they were ready to help Kenya at their own costs with experts on constitution-making. That Kenyans would then propose what it is that they wanted to put in the new Constitution. At that time the argument was this, before this House and Ufungamano; Ufungamano was saying: "We want a people-driven constitutional review. We want a Wanjiku, Atieno and Fatuma Constitution." That is what the people at Ufungamano were saying. For a while, we opposed them. This House opposed them and said: "We are the representatives of the people. Our job is to make law and it includes amending the Constitution." Therefore, the debate went on for a while until Parliament accepted and we drafted Cap. 3(A) and we said that we would merge Ufungamano and Parliament, go to the people, seek their views and go to Bomas and debate them and adopt them. Later, it would come to Parliament for one reason only; to amend the Constitution as provided for under Section 47 of the current Constitution.

The foundation then was the people of Kenya. What is the foundation of this Bill? Its



foundation now wants to reverse that philosophy. It wants to build on its new foundation which is this; that Parliament will write a Constitution and give it to the people to ratify it in a referendum. What is the reference if the draft Constitution was written through that elaborate process but we brought to this House and we applied Section 27 of this Bill? The Section says:-

"That, this House will debate this and then amend."

Essentially, what Parliament is trying to do is to write the Constitution for the people of Kenya. That is what the former President and Parliament were saying and that is what the people of Kenya refused. The Kenyan people said: "Although it is expensive to go that route, we are ready to pay for it because we need a new Constitution on a foundation that the people have been consulted." This Bill now seeks to do the following: To tell the people of Kenya that they were wrong, they wasted their money and that the people who have the mandate and the legitimate right to change the Constitution is this Parliament and not the people. Now we are saying that we are the representatives of the people and that we are the ones who should look at this Constitution. That is what the former President, Parliament and Government were saying. Remember that we went to the people and told them that, that Government did not want them to have the Constitution of their choice and they voted against it. We won on that promise! That their Constitution will be the Constitution of the Republic of Kenya. Now we are saying that it is the Constitution of this Parliament which will be the Constitution of the Republic of Kenya.

Mr. Temporary Deputy Speaker, Sir, on the philosophy alone, it cannot happen! In fact, how do we amend an Act of Parliament which is based on a people-driven constitutional review by actually negating it? If we were to amend it to look like what we now have, we are negating Cap. 3(A) because we are saying that it is no longer the people; it is us their representatives. Therefore, even in our Standing Orders, if I did not even raise that issue, you do not bring an amendment to a Motion which is likely to negate the original Motion. The original Motion here is Cap. 3(A) which says that it is the people of Kenya who will write their Constitution through that process that we set out. However, this Bill of 2004 now says that it is Parliament which will take possession of that draft Bill and do whatever it likes with it. That is what we are saying! Of course we can say "contentious issues" but we do not know what they are.

Of course, I do not know whether everything is not contentious from Article 1 to the last one; it could as well be! I do not know whether the preamble is not contentious; it could as well be. Therefore, what we are saying is that this Parliament is taking possession of the draft Bill and re-writing it afresh and giving it to the people of Kenya; that the people of Kenya will now vote on it either a "yes" or "no". Therefore, how can we really be proud that we are a Parliament that is following its rules and say that we are amending the Review Act? Why do we not say that: "We are, in fact, repealing Cap. 3(A) and replacing it with a new Act?" I cannot even go to contents of this Bill. When you talk of a referendum, you would be talking of a referendum on what? It is a referendum on a Constitution as drawn by Parliament. If you say that Parliament is not drawing it, but it is merely amending it, what guarantee is there that Parliament will not amend everything? Amendments can also include amending everything and coming up with something new.

Mr. Temporary Deputy Speaker, Sir, are we not ashamed, as a Parliament, that for the last ten years, we have been fighting for a cause with a foundation? When we thought we are just there, we start a new process altogether and call it an amendment to the Act. We cannot live with this. I am embarrassed. I cannot go to my constituents and tell them that we are now going to take to them a Constitution which is Parliament-driven and not people-driven. Therefore, this Bill must be fought and it must fail. If it does not, this House will pay for it. The people will ask us: "Why did you waste our money? Why did you bother to ask us questions? Why did you congregate us at the Bomas of Kenya? Why did you talk of Wanjiku when you, actually, meant hon. Members of Parliament?"

Mr. Temporary Deputy Speaker, Sir, I do not know whether I have any words with which to express myself, but you can see that the foundation on which this Bill is built, is clearly in contradiction to the foundation on which the Act it seeks to amend is built. We are seeking to repeal the Zero Draft, and not to amend it. How can we proudly face our people when we go on recess? What will we tell our people? We will tell them that they did a useless job. We will also tell them that we have taken into consideration what they said, but we are going to do it the way we like it, anyway. Is that what we are going to tell the people when we go on recess?

With those few remarks, I oppose.

**Mr. M'Mukindia:** Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to make my little contribution to this debate.

First, I would like to congratulate the Select Committee for accepting the principle that was enumerated in Cap.3(A). The title of Cap.3(A), which we seek to amend, says:-

"Constitution of Kenya Review Act to facilitate the comprehensive review of the Constitution by the people of Kenya."

Section 17 of the Act, which this Bill seeks to amend, also restates the fact that we are moving towards creating a national consensus in order for us to review the Constitution.

Mr. Temporary Deputy Speaker, Sir, when Mr. Samoei was elected the Chairman of this Select Committee about two or three weeks ago, a few of my friends on the Government side told me that this was a disaster going to happen. I was, in fact, asked that question by the Press somewhere in Meru.

*(Loud consultations)*

**The Temporary Deputy Speaker** (Mr. Khamasi): Order! Order, hon. Members! Could we hear Mr. M'Mukindia?

**Mr. M'Mukindia:** Thank you, Mr. Temporary Deputy Speaker. I told my colleagues that I knew Mr. Samoei to be a very intelligent man and hoped that he would rise above partisan politics. Once you are elected the Chairman of the Parliamentary Select Committee, you are now a national leader. You are no longer a chairman of a particular party.

**Mr. Y. Haji:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. Member to pick on the Chairman of the Select Committee alone when he is, indeed, only one amongst many of the Members of that Committee? Even Mr. M'Mukindia himself is a Member of the Committee.

**The Temporary Deputy Speaker** (Mr. Khamasi): Order! Order, Mr. Y. Haji! Mr. M'Mukindia is only expressing his opinion about the election of the Chairman of the Select Committee. So, let us allow him.

**Mr. Y. Haji:** Mr. Temporary Deputy Speaker, Sir, the hon. Member is saying that we should be above partisan politics.

**The Temporary Deputy Speaker** (Mr. Khamasi): Order, hon. Y. Haji!

Proceed, Mr. M'Mukindia!

**Mr. M'Mukindia:** Temporary Deputy Speaker, Sir, I want to recognise my friend, Mr. Y. Haji. I also recognise you, Sir.

*(Laughter)*

I do not want to say that only one person, actually, played a major role in this matter. I think the whole Committee did a wonderful job and I am grateful for that. I was coming to that.

Mr. Temporary Deputy Speaker, Sir, as the Vice-President and Minister for Home Affairs has just told us, we have degenerated into tribalists and to looking at things in a very narrow way. In fact, hon. Members of this House are endangering the stability of this country, by the way we act and what we say. It is a shame that we indulge in some of these things. For that reason, I strongly support the Bill as brought to this House.

The Act we are trying to amend also says that we must promote the democratic process - and a secure process - in order for us to review the Constitution and bring a new Constitution to this country. So, we have to have a democratic and secure way of doing it. The Act emphasises that we must engender trust and build national consensus. The Act we are trying to amend already had those tenets in it. Therefore, the issue of consensus is not new. It is already in Cap.3(A), which this august House passed in the year 2000. Now, we cannot pretend to be against the issue of consensus when it is already in the Act that was passed by this House three years ago. So, that is a principle that has already been recognised.

I am happy that in proposing amendments to Cap.3(A), the Minister for Justice and Constitutional Affairs made very few changes. He has not gone into changing the principal areas, which would have made us refuse to accept these amendments. For instance, if he had sought to amend the provision on how to collate information and how to look at the relationship between the three arms of the Government, we would have found it very difficult to agree to those changes. The changes that the Minister and the Select Committee have proposed seek not to weaken the Constitution of Kenya Review Act, but rather strengthen it. The proposed amendments are not meant to weaken the issue of the constitution-making process being people-driven. It is an improvement on the original Act itself.

If we consider the so-called principle of one man, one vote as opposed to a caucus decision; which one would be more people-driven? Is it that based on the principle of one man, one vote, or that of a caucus? I am the first one to grant that the Commission has done a wonderful job in going round the country to collect and collate the information, and convening the National Constitutional Conference at the Bomas of Kenya. The National Constitutional Conference delegates did a wonderful job. Unfortunately, despite the efforts that were made by the Bomas delegates and the Commission itself, it was a decision of a caucus.

Mr. Temporary Deputy Speaker, Sir, we are still grappling with a problem of a caucus. You know that there are contentions regarding as to how some of the delegates were elected. I do not want to go into that, but those are some of the issues that may have made the Minister and the Committee think that, perhaps, we should go a step further and ask the people of Kenya, through a referendum, whether the Zero Draft that was produced at the Bomas of Kenya is acceptable to them or not.

Mr. Temporary Deputy Speaker, Sir, Kenyans are already used to the issue of one man, one vote. I am absolutely sure that they would not want their hon. Members or councillors to be picked by a group of people, no matter how well-meaning that group of people is. For example, my constituents would not accept to have a group of people meeting in Bomas, no matter how well-meaning they are, to pick an hon. Member for them. My councillors would not accept the same thing. Why then would anyone think that they should make a Constitution for the people of this country? Let the people themselves decide, as Mr. Matiba said many years ago. This an opportunity to give Kenyans a chance to directly influence the kind of Constitution they want to have.

Mr. Temporary Deputy Speaker, Sir, I do not know why Mr. Kajwang is opposed to this. I believe this is an improvement on the original Draft. Between the three arms of the Government, Parliament is supreme. I think there is a misunderstanding about the roles of the three arms of the Government. At the end of the day, Parliament will drive this process. Parliament is where the buck

stops irrespective of how many times we go round the country and how many caucuses we hold.

At the end of the day, Parliament has to create a legal road map in order to achieve what the people want. Without a legal and clear-cut road map, you cannot have the Constitution that Kenyans want. For that reason, we should not apologise to anybody about the supremacy of Parliament. It will be extremely dangerous for Parliament to start apologising about its supremacy. If we do not agree that the buck stops here, where else will it stop? Who will make the final decision? Who is the final arbiter and in what legal way? Who will provide that road map? I want to beg hon. Members not to be afraid to say that Parliament is supreme because in the structure of the Government, that is what we have.

The onus is on us to ensure that we give Kenyans the road map that will lead to a people-driven Constitution. A people-driven Constitution, which is decided by a one man one vote through a referendum, is superior to one that is agreed on in a caucus called the Bomas of Kenya, irrespective of the goodwill and the hardwork that those people have done. We, therefore, should not be afraid of our constituents. I sense fear that maybe the referendum will go one way or the other. If we are afraid of the people who elected us, then I think we are dishonest. We are not true democrats and we do not believe in the long-term stability of this country. We must be courageous enough, as hon. Members, to accept that we are not here because we are any clever than any other Kenyan. We are not more intelligent than anybody else. We have to accept that anybody can be an hon. Member as long he is 18 years, he is a Kenyan and he is of sound mind. There is no other qualification that you require to be an hon. Member. Why are we afraid of our people telling us what they think about the proposals that have come from Bomas of Kenya through a one man, one vote? Why are we scared? Unless we want to take them for a ride.

The only way we can properly lead Kenyans is to be humble enough and accept that they are the bosses, and we are the servants. Let us, therefore, be their servants. Let us give them the opportunity to either approve what we have done or disapprove it. Let us give them the best way possible, which is through a very simple vote. Let them say that Mr. M'Mukindia was wrong at the Bomas of Kenya to support this Draft Constitution. They have a right to say that. If we do that, we shall be in no danger, whatsoever, of creating a monster through a Constitution. Even if that is created, we can acquit ourselves and say: "But we brought this document to you. We carried out civic education for three months and you approved it.

Mr. Temporary Deputy Speaker, Sir, at least, we tried". Today, we can be shot down, if we just pass that Zero Draft in this House. People in my constituency do not understand it. They will look up to me to explain it to them. Enough civic education has not been provided. So, how will we do it? Let us be humble enough and submit ourselves to the will of the people.

I am sure Mr. Kajwang will agree with me that, that is a more people-driven process than through a caucus, no matter how well-meaning that caucus is.

**Mr. Kajwang:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I wonder what it is, that I agree with Mr. M'Mukindia about. Just as he called the National Constitutional Conference a caucus, so do I call this Parliament another caucus!

**The Temporary Deputy Speaker** (Mr. Khamasi): That is not a point of order, Mr. Kajwang!

**Mr. Kajwang:** Mr. Temporary Deputy Speaker, Sir, stop him from calling my name!

**Mr. M'Mukindia:** Mr. Temporary Deputy Speaker, Sir, I believe that nobody is perfect. Many times we have been told that even democracy itself is not perfect. I tend to agree with that, but it is the best that we have. The day that we will discover something better than Parliament, so be it and we should move to that. The way the structure of the Government is designed is such that Parliament is the supreme body in this country, as it is in many other countries in the world.

Therefore, Parliament has a responsibility to create that road map in order to find a way where we can submit our decisions and recommendations to the people directly.

Mr. Temporary Deputy Speaker, Sir, I support this Bill. The proposed Clause 27(4) says:-

"In considering the final report and the Draft Bill, the National Assembly shall undertake consultations to initiate, facilitate and promote a national consensus".

This is very important. Without a consensus, then we cannot go anywhere. As I had an occasion to mention a few days ago, truly Kenya is a geographical accident created by foreigners from Europe. They put us together; people from different communities, cultures, languages, different ways of life and even different ambitions. How then are we going to create a covenant between ourselves in order to retain this geographical entity called Kenya in a stable and prosperous way? There is no other way other than building consensus. This is the issue of give-and-take. I cannot be expected to be like somebody from whatever corner of the world. But within Kenya, we need to agree on how we will live with each other and relate to one another. We should know how to control our ambitions and emotions. This is the covenant we are trying to build and there is no reason why I should not give up one step and you give in one step and we come together, to retain this wonderful although accidental geographical nation called "Kenya". For that reason, let us not think that Kenya belongs to either one man, woman or community. Let all of us come together, respect one another as Kenyans and we move forward.

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

**Mr. Angwenyi:** Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this chance to contribute to this very important Bill which I support right from the outset. I would like to thank hon. Members of Parliament; the Backbenchers who came up with the idea that we should talk to each other, so that we can move forward. I also want to thank the Parliamentary Select Committee on the constitutional review process for having considered the views of those Backbenchers who are the bedrock of this Parliament. This Bill has been drafted with one main objective; of laying a legal framework to unlock the stalemate that has existed in the constitutional review process for almost the last five months. The Bill does not address the so-called contentious issues. The Bill does not give an opinion on the Constitution, but it only addresses the legal impediment in carrying out the constitutional review process.

Mr. Temporary Deputy Speaker, Sir, I had a chance to look at some of the amendments which have been proposed by the Select Committee of Parliament chaired by Mr. Samoei. The way that Committee has handled this Bill is above board and is in response to the wish of the people of Kenya. This is because the wish of the people of Kenya, by and large, is to have a Constitution which is all-inclusive and appeals to all Kenyans; a Constitution which bends backwards to protect the interests of the minority, in particular. Therefore, this Bill wants to provide a legal framework so that the constitutional draft which was done at the Bomas of Kenya and captures the views of Wanjiku, Moraa, Nekesa, Akinyi and Halima can be collated and written into a Constitution which is acceptable to all Kenyans. This is a mechanism which we can go into. It has to be refined so that by the time we take it to our people, it will be acceptable throughout the country.

Mr. Temporary Deputy Speaker, Sir, the Bill has set the threshold on a referendum. The process of a referendum has been set in this Bill. The institutions and stakeholders who will participate in completing this process have been identified and given their rightful place. So, this Bill, with the amendments which are being proposed by the Select Committee, and some of which hon. Members of Parliament will propose, will address those thresholds. For example, initially, it was thought that we need a threshold of 65 per cent for the referendum to succeed, but we realised that for the President of Kenya, we will propose in the amended Constitution 51 per cent majority, so that he or she can be declared the winner. The maiden, and also current Constitution say that the

President should win in five of the eight provinces. So, we are marrying the two processes; the process of electing a President by all Kenyans and the process of a referendum by all Kenyans.

This House has been elected at a critical time in the history of this country. This is similar to the time of 1963/64 when we attained our Independence. So, we must carry that responsibility which we have been elected to do in this Parliament. That is to provide the people of Kenya with a legislation they would be proud of and can stand the test of time for centuries.

I have seen other nations try to prod us to produce a constitution which may not be applicable or acceptable to most Kenyans. Some of those nations do not have a constitution to date, although they have existed for thousands of years. Some of the nations like the European nations have been unable to produce a constitution for the last 25 years. They have not known how to produce a constitution for the last 25 years. So, if we were provided with this legal framework and produced a Constitution, we will teach those people how to successfully write their constitution.

Mr. Temporary Deputy Speaker, Sir, I know some of our colleagues in this Parliament have got misgivings as to what should be done, but I want to re-assure them that this Parliament will stand up to the occasion and consider all the views and interests of all Kenyans. I have particularly said that the interest and views of the minority---

It is possible in this Parliament for the majority communities to push through some legislations but I can assure this House that the intention of this Bill is not for the majority communities to force on Kenyans their views only. Actually, the main intention of this Bill is to provide a mechanism for the views of the minority communities in this country to be considered. I believe that my colleagues who have been opposed to this Bill will see what is in it. They can go through, propose amendments and we will support those we believe will promote the interests of this country. I do not want to contribute for too long, but suffice it to say that this is a Bill that we should all support. Let us have that document here with 80 per cent being perfect and correct the remaining 20 per cent so that we have a document which will be acceptable to all Kenyans. But we have provided for a referendum and said that the President does not have any power to change its findings. We have also provided a provision for Kenyan citizens to appeal for a referendum. This will give a leeway just in case there are any mistakes. I believe that this Bill has tried to be as accommodative as possible and we should support it quite quickly, so that when we go for recess, we can continue with the process of completing our new Constitution.

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

**Mr. Wario:** Ahsante, Bw. Naibu Spika wa Muda kwa kunipatia fursa hii, ili nchangie Mswada ulio mbele yetu. Sitaki kuzungumzia juu ya maridhiano au uwiano, ili kukubali umuhimu wa Katiba mpya kwa nchi hii. Ni kwa nini ninasema hivi? Hii ni kwa sababu suluhisho ya matizo ya kijamii, kiuchumi na kisiasa yanayowakumba wananchi wetu itapatikana katika Katiba mpya. Suluhisho la ufisadi hapa nchini ni Katiba mpya. Wakati mwewe anapomunyakua kifaranga wa kuku hutafuta mahali angalau atulie huko akimla. Kinyume na mwewe huyu, sisi Wakenya hatutulii hata kidogo. Mali ya wananchi inanyakuliwa na watu wachache. Suluhisho la tatizo hili linaweza kupatikana katika Katiba mpya.

Bw. Naibu Spika wa Muda, ukosefu wa nafasi za kazi unaowakabili vijana wetu na umaskini uliotanda kote nchini, suluhisho ni Katiba mpya. Ili wawekezaji wawe na imani na nchi yetu na kuweza kuboresha uchumi wetu, suluhisho ni Katiba mpya. Nasimama hapa kusema mjadala huu ni mbaya kwa wananchi wetu na vizazi vijavyo. Ningependa ninukuliwe katika rekodi zetu kuwa Bunge hili lisitumiwe kuwadhulumu Wakenya maskini wasiokuwa na fursa ya kusimama hapa na kujitetea. Hii ni kwa sababu Wakenya wamechoka na shere wanayochezewa na Serikali hii. Chama cha NARC kiliwaahidi Wakenya Katiba mpya baada ya siku 100 ya utawala wao. Ningependa wajue ya kwamba zaidi ya Kshs4 bilioni zilimetumika katika kazi hii ya kurekebisha

Katiba. Tulikuwa na imani kuwa baada ya siku 100, Kenya ingepata Katiba mpya. Hatimaye, Serikali hii ilikuja hapa Bungeni na kuomba iongezewe muda wa miezi sita. Nilisimama hapa na nikainga mkono Serikali hii. Nilikuwa na matumaini kuwa baada ya miezi sita, basi Serikali hii itawapa Wakenya Katiba mpya. Lakini kwa vile mashua yao inazama, wanatafuta watu wa kuzama nao. Mimi sitaki kuzama nao. Wakenya wanataka Katiba mpya. Lazima Serikali iwape Wakenya Katiba mpya!

Bw. Naibu Spika wa Muda, Mswada huu ni thibitisho tosha kwamba Serikali inataka daraja. Wao ndio walifanya mgomo na kujiondoa katika Kongamano la Bomas of Kenya na sasa wao ndio wanataka uwiano. Wajibu wa kuwapa Wakenya Katiba mpya si sisi bali ni Serikali. Kwa hivyo, siwezi kulaumiwa kuwa nimekataa kuunga mkono Serikali katika Mswada huu.

Bw. Naibu Spika wa Muda, Mswada huu mbele yetu unataka kurekebisha Kifungu cha 3(a). Kifungu cha 3(a) kina maudhui yake maalum. Kwa hiyo, Mswada huu umeenda kinyume na maudhui ya Kifungu hiki. Kwa nini ninasema haya? Ni kwa sababu tulifikiri Katiba itakuwa milki ya watu wa Kenya. Tulifikiri itajumuisha maoni ya Wanjiku. Ningependa waheshimiwa Wabunge kuangalia kwa makini Kifungu cha 28(4). Ikiwa sitaridhika na kura ya maoni itakayopigwa, basi kwenda Kortini nitahitajika niwe na Kshs1 million. Lakini katika Mswada huu ni lazima uwe na Kshs5 milioni ikiwa utakuwa na malalamiko yoyote. Hii ni kumunyima Mkenya haki yake.

Bw. Naibu Spika wa Muda, ikiwa tutamruhusu maskini kupiga kura ya maoni, kwa nini tusimpe fursa ya kwenda kortini kukosoa mambo ambayo yatamdhulumu? Tunaambiwa tupige kura lakini tusiende kortini kwa sababu Mswada huu tunaoujadili hapa leo ni wa matajiri na wala si wa watu maskini. Mswada huu ni dhuluma dhidi ya Wakenya.

Bw. Naibu Spika wa Muda, ukiangalia Kifungu cha 28(p) utaona ya kwamba ikiwa mtu hataridhika na kura ya maoni hawezi kwenda Mahakama ya Rufaa. Anaweza tu kwenda Mahakama Kuu ya Kenya na itakavyoamuliwa na Jaji, ndiyo itakuwa mwisho wake. Lakini kama una uwezo wa kwenda Mahakama ya Rufaa utapata haki. Bunge hili ndilo tegemeo la Wakenya. Ikiwa Bunge hili litapitisha Mswada ambao hautakosolewa na Mahakama ya Rufaa hiyo ni dhuluma tupu. Tunawadhulumu Wakenya kupitia Mswada huu. Kwa hivyo, jambo la maana la sisi kufanya ni kuupinga.

Bw. Naibu Spika wa Muda, nchini kuna jamii ambazo hazijimudu kiuchumi. Kwa mfano, tunaweza kuwa na kabila moja ambalo haliwezi kuchanga Kshs1 milioni moja ili waende kortini. Hii haimaanishi kuwa hawana haki. La! Wana haki bali ni utawala wa dhuluma ambao uliwafanya wawe maskini. Leo ukiwaambia ni lazima wawe na Kshs5 milioni ili waende kortini kupigania haki yao, basi hii itakuwa ni dhulumu dhidi yao na maskini wengine hapa nchini.

Sikatai kwamba Kenya inataka maridhiano na uwiano. Hata hivyo, hatuwezi kuwaafikia maridhiano iwapo tutawanyima Wakenya haki zao. Maridhiano ni muhimu kama tutatambua haki ya Wakenya wote. Hata hivyo, Mswada huu mbele yetu unaleta haki kwa mkono wa kulia na kuichukua kwa mkono wa kushoto. Huu ni Mswada mbaya na lazima tuupige teke.

Nimezungumza kuhusu madhumuni ya Kifungu cha 3(a); tulielezwa kuwa wanyonge vijijini watakuwa na fursa ya kutoa maoni. Leo tunaenda kinyume ya Kifungu cha 3(a). Hii ni kwa sababu tunamunyima haki Wanjiku ya kwenda Mahakama ya Rufaa kulalamika ikiwa maoni yake haitazingatiwa katika Katiba mpya. Iwapo tunampa Wanjiku fursa ya kupiga kura ya maoni, kwa nini tusimpe fursa ya kwenda kortini?

Kifungu cha 3(a) kimetoa mwongozo kwamba tufuate njia fulani na tukikosana mahali fulani, tutapata suluhisho mahali fulani. Baada ya mazungumzo kule Bomas of Kenya sijawahi kusikia Wakenya wakisozana juu ya Katiba. Waliojiondoa katika kongamano hilo walitoka na waliobaki walikaa na wakapiga kura. Tulikubaliana kwa kila jambo. Kwa hivyo, maridhiano ni ya nini leo?

Natumai kila mmoja anakumbuka kiasi cha pesa za umma zilitumika kwa kazi ya Bomas of Kenya. Je, Serikali inataka kutueleze hizi Kshs4 bilion hazikuwa na maana yoyote? Kuna maana gani kuwa na Tume ya Marekebisho ya Katiba? Kwa nini tusiandike Katiba na kuileta hapa Bungeni ili tupige muhuri na kuipitisha mara moja? Kwa nini tuunde Tume ya Marekebisho ya Katiba na itumie zaidi ya Kshs4 billion? Leo Bunge inapitia mlango wa nyuma na kutaka kukosoa Katiba iliyoundwa na tume hiyo. Kama Mswada huu ungekuwa na mwelekeo mzuri, basi Kifungu cha 28 hakina maana kwa sababu kinamnyima Mkenya haki yake.

Sitaki kuzungumza hapa mchana kutwa. Hata hivyo, nasimama kuupinga Mswada huu.

**The Assistant Minister for Energy** (Mr. Kiunjuri): Mr. Temporary Deputy Speaker, Sir, I stand to support this Bill. The reasons are very clear. We were here in this same House and enacted Cap.3(A). We navigated all through into the deep seas, but the waters are so turbulent that unless we now rescue this ship with this Bill before this House, then it will be so difficult to reach the dock.

This Bill is already providing us with a solution and the way forward.

Mr. Temporary Deputy Speaker, Sir, these points are too dark. With infinity of vanity, we are only running after the wind. Unless we sit down, as provided for in the Bill, we will never reach a conclusion. We will never deliver a new Constitution to this country. This Bill will enable us to jump the hurdle and come out of the difficulties that we are experiencing now. There is no way Kenya will ever receive a new Constitution unless we tackle the constitutional matters already facing us. We know the ruling on 25th. The provisions of the Constitution have to be adhered to. The law is very clear. We had been overtaken by events. There is no way the Bomas Draft will ever land in this House. For us to stimulate this process, we have to look for a way forward to jump-start it. This Bill is offering us a solution.

Mr. Temporary Deputy Speaker, Sir, those who have not read this Bill need to know that it will enable us to stop relying on the Attorney-General to discuss the Draft Constitution. The Attorney-General will get authority from this House to go ahead and give us the final draft. Even in the first Act, it was clear that a referendum was to be conducted. This Bill is agreeing with all those factors.

Mr. Temporary Deputy Speaker, Sir, the people of Kenya have collective responsibility because they are sovereign. They have a sovereign right to enact a new Constitution through this Parliament and a referendum. That is already provided for. If you look at the original Review Act Cap.3, the object and purpose of the review of the Constitution was well stipulated from Sections (a), (b), (c) up to (k). I would like to jog the memories of hon. Members again and refer them to the same old Act. Cap.3(C) clearly demarcates divisions of responsibilities among the various State organs. That was one of the provisions. That was one of the object and purpose of bringing in Cap.3(A). That has already been adhered to. That is because Cap.3(A) was supposed to guarantee peace, national unity and integrity of our people. This Bill that is before us today, is capable of doing exactly that. We should not forget that it is adhering to Section (K) of Cap.3, which states clearly that the Act was supposed to enable Kenyans to solve national issues on the basis of consensus-building. This Bill is based on the foundation of consensus-building. If it is enacted today, we shall be able to sit down and discuss those contentious issues. We are all in agreement that there are contentious issues. All of us are in agreement that, having spent over Kshs4 billion, and the Draft Constitution is taken for referendum through Parliament or the Attorney-General, those contentious issues will emerge again. If that happens, and we will not have researched clearly and gauged the feelings of our people, we shall pass whatever Bill is in this House, then go to a referendum, spend another Kshs5 billion of Kenyan taxpayers' money and then shoot it down! I challenge anybody to give us a solution on how we shall conduct a referendum without dividing Kenyans. All we are doing is chest-thumping claiming: "We have the majority and we shall push it



through the referendum!" But we are not agreeing that, that referendum will also be subject to this House. That is because we are the opinion-shapers. We have been elected by our people because they respect us. Therefore, this should be a win-win situation. We should not have a situation where we are going to test our popularity. We must, first of all, agree on those contentious issues in this House. If we do that, by the time we go for the referendum, it will just be an exercise to give us a new Constitution.

Mr. Temporary Deputy Speaker, Sir, Section 17 of the Bill, that is Cap.3(A), is very clear. It sets out the functions, powers and privileges of the Commission and the Commissioners. If you look at the amendments proposed by this new Bill, they are proposing a way forward to enact a new Constitution. The mandate of the Commissioners is very clear. First, they were supposed to conduct and facilitate civic education and stimulate debate, so that Kenyans could tell us what they want in the new Constitution. That way, Wanjiku could give her own views. That was done accurately and in a very intelligent way. They were supposed to collect and collate the views, draft a Bill and alter the Constitution of this country. They did exactly that! But that alteration or the Draft Constitution cannot land in this House. So, we have a duty to make sure that it is brought before this House. That is what this Bill is proposing. The Commissioners were supposed to carry out or cause to be carried out such studies, research, evaluation and all that was pertaining to that Act. They did all those things. But the biggest question of the day or the parting shot is: After all that work by the Commissioners, did it bear any fruits? It is true it cannot bear fruits! We have a problem because men will never understand the language of firewood produced by hardwood. They only want to rely on ropes! That is why we are now in a quagmire. That is the reason why we cannot move a step forward.

This Bill is proposing so many things, some of which we shall not agree with! We shall move some amendments and Members of Parliament are allowed to do exactly that. We shall be questioning some of the sections in this Bill. For example, when we talk about 65 per cent of Kenyans agreeing on the referendum, then democracy will be bent in one way or the other. We shall be arguing vehemently that we, at least, amend such sections. On the issue of voting, we know that Kenyans have been subjected to the pain of not exercising their rights. We have Kenyans who are over 25 years and do not have identity cards. We shall be addressing that issue. We would like to know whether Kenyans who have attained the age of 18 and do not have identity cards will vote. We would like to know whether those with identity cards but have no electoral cards will also vote.

If you look at Section 28(A), the results of the referendum are supposed to be gazetted. We shall be coming out clearly to say that announcement will be made in advance, so that nobody will change the results. That has happened before! We shall look at that. We shall even decide on the cost of moving to court to challenge the decision. We shall decide whether the Kshs1 million is enough. That is because people with sinister motives might be hired in one way or the other and raise the Kshs1 million without any pain just to derail this process. There are people who will oppose the results because they want to discredit others! There are others who would like to use the stalemate in 2007 elections and say that the NARC Government was unable to give Kenyans a new Constitution. There are hyenas in sheep skins who will use the constitutional review process as a campaign tool. All they are thinking of is the 2007 elections. They are not thinking of giving Kenyans a new Constitution. They know that this Constitution cannot work. They know that this Bill can jump-start the process. But they will come here and argue intelligently - and they are very intelligent - but their intention will only be one! They will argue not for the good of this county; not for the common *mwananchi* in this country; not for the poor of this country; not for the economic recovery of this country, but for their political ambitions.

They will make sure that the new Constitution does not see the light of day because they

fear that if that happens, their ambitions will be permanently derailed. The only way they can do that is by ensuring that this new Constitution does not see the light of day. That is why we have to rise up and if we are really democratic as we claim to be, then, we should realise that lack of unity amongst us only portrays our weakness. The people who will benefit out of our weakness are the International Monetary Fund (IMF), the World Bank and other donors. This is because we shall always be out there in their streets with bowls seeking donations and aid while we can easily solve the problems facing us by just listening to each other, working together as brothers and focusing on the issues that affect our people. We need to concentrate on issues that can revive our economy so that we have a booming economy to avoid relying on donors heavily. Because of our own selfish motives, we are too desperate to go anywhere.

Mr. Temporary Deputy Speaker, Sir, if you listen keenly to the debates in this House, you will be so discouraged. I was in the Opposition for a very long time and during that time we used to debate reasonably. We never opposed things for the simple reason of opposing.

Today, the debates in this House are of a low standard. The Opposition side concentrates on personalities and personal issues such that each day you have to rule hon. Members out of order. This is because hon. Members do not bring facts to this House. They do not do research, let alone going through simple Bills to be able to argue with facts. All that hon. Members concentrate on is challenging each other. We have not come up with anything from this House that could challenge the media and the nation at large for the last 18 months. What we are only doing is to challenge each other everyday. If we continue that way, we will not forge ahead.

The only way we can move forward is by conceding that we have a nation which we must be proud of. We shall surprise many when the time for negotiation comes. Some of us will make very radical decisions. For example, some of us will support institutions because the reason for bringing in a new Constitution is to strengthen such institutions. We shall support the strengthening of vital institutions. We shall join Committees to tackle contentious issues. In fact, you will be surprised that we will support the vesting of executive powers in the post of Prime Minister in a way that the Prime Minister is given capacity to control other Ministers. We shall be very radical on many other matters that will arise. Let it be known that we shall be doing it for the good of the nation and for the future of our children. We want to ensure that this country gets a Constitution that will be in harmony with the interests of the people. I know many hon. Members would also like to contribute and the purpose of our contributions is to make sure that the only person who should be provided with a comfortable zone is the common *mwananchi*. He should be able to enjoy the fruits of his labour and the Constitution of this country for many years to come.

With those few remarks, I beg to support.

**Dr. Oburu:** Mr. Temporary Deputy Speaker, Sir, I stand to oppose this Bill. I do so with a heavy heart and disappointment because those with whom we have discussed the Constitution---

**The Minister for Tourism and Wildlife** (Mr. E.K. Maitha): Mr. Temporary Deputy Speaker, Sir, this debate has been going on for some time now and because we have agreed on what is to be done, I beg to move that the Mover be called upon to reply.

*(Applause)*

**The Temporary Deputy Speaker** (Mr. Khamasi): Order! Order, Members! Order, Mr. Wanjala! Well, I have been implored to provide some time for people to debate this Bill.

*(Applause)*

I will, therefore, call upon Dr. Oburu to contribute to the debate!

**The Assistant Minister for Energy** (Mr. Kiunjuri): On a point of order, Mr. Temporary Deputy Speaker, Sir. Given the curiosity that the Members have, I agree with you that we require more Members to contribute. Will I be in order to ask for an extension of time so that we can decide on this matter exhaustively?

**Hon. Members:** Why? No!

**The Temporary Deputy Speaker** (Mr. Khamasi): Order! You are out of order, Mr. Kiunjuri! We do not do that. According to the Standing Orders, you cannot do that because this is not an Allotted Day. So, you cannot ask for an extension of time.

Proceed, Dr. Oburu!

**Dr. Oburu:** Thank you, Mr. Temporary Deputy Speaker, Sir. The Constitution is a very important document for this country. This is an issue which has been debated in this country from 1992, it has been an issue which has brought acrimony and people have even fought over it and some people have even lost their lives. Therefore, when we are discussing the Constitution, we must be very serious, indeed. We should not cast aspersions on people or impute improper motives on other Members, because we are saying what we believe in. We are saying what we think is right for this country, and there is nobody who is representing the people of this country more than the other. All of us represent the people of Kenya, and when we speak, we speak with honesty, and it should be taken as such.

Mr. Temporary Deputy Speaker, Sir, as you might be aware, and I am sure that you are aware, the history of the Constitution of this country is long. First, it was suggested in the last Parliament that the Constitution can be made by this Parliament through the normal process of getting a Bill from the Attorney-General. At that time, it was argued that this Parliament is elected and mandated by the people of this country to make laws, the Constitution being one of those laws. The argument went on until the former Head of State suggested that if Kenyans themselves are not able to draft a Bill, then this process should be left to the experts to do the same. Parliament debated this issue and there was a split. Finally, the Bill which came to this Parliament was as a result of a consensus.

**Mr. Wanjala:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Kenyans need a Constitution by yesterday. This thing has been with us for the last three years, and this House mandated a Committee which has brought up amendments, and we have discussed them exhaustively. Will I be in order to call upon the Mover to reply? There is a lot of repetition!

*(Applause)*

**The Temporary Deputy Speaker** (Mr. Khamasi): Order! Order, Mr. Wanjala!

**Dr. Oburu:** He is challenging your ruling, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Mr. Khamasi): Order, Mr. Wanjala! That is tantamount to challenging the Chair. I have just made a ruling not even two minutes ago, and you cannot go back on the same application.

Proceed, Dr. Oburu!

**Dr. Oburu:** Mr. Temporary Deputy Speaker, Sir, I do not know why some hon. Members are so impatient. We are just debating, and irrespective of whoever wins at the end of the day, we just want to make our points. Let them win, but we must make a point. We will not be deterred or intimidated.

When the document which established the law on the constitutional review process was brought to this House, it was recognised as a consensus document. Parliament debated and passed

that document. By passing that document into law, Parliament ceded its power to control the constitutional review process to other organs. Parliament ceded its---

**Mr. Angwenyi:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member in order to mislead this House that once we enact a law, we lose our power to amend or repeal that law?

**Dr. Oburu:** Mr. Temporary Deputy Speaker, Sir, I think Mr. Angwenyi has not understood what I said. I did not say that we lost our authority to amend any law. I am saying that we ceded our authority to interfere with the constitutional review process. The process has gone on and is now more than 90 per cent complete. We are coming up with a second thought, and trying to regain the power which we ceded to the people. By bringing this authority back to Parliament, we are abusing the same process which we, as Parliament, established. When we said we would not bring this matter back to Parliament it was for a very good reason. The reason was that Parliament was going to be part and parcel of the process at Bomas. Hon. Members formed one-third of the delegates at Bomas, who were over 600. Many of us here decided not to attend the Bomas process. By not attending the Bomas process, many of us decided to abuse the same process they had established, and also to defy the people.

If we had exerted our authority, as Parliament, on the Bomas process, perhaps this second thought would not have come, because we would have influenced the outcome of the Bomas process in a manner which would have been satisfactory to this House. We did not actually participate effectively in the Bomas process. Some of us made allegations that they were being abused at Bomas---

**Mr. Karaba:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Would I be in order to move that the Mover be now called upon to reply?

**The Temporary Deputy Speaker** (Mr. Khamasi): Order, Mr. Karaba!  
Proceed, Dr. Oburu!

**Dr. Oburu:** Mr. Temporary Deputy Speaker, Sir, as I said, I will not be deterred!

We decided not to participate in the Bomas process and, therefore, did not influence the outcome. It was very sad that at the very minute when the Bomas process was just about to be concluded, some hon. Members from the Government side decided to walk out of that process. I am sure a government never walks out of any process.

*(Loud consultations)*

**The Temporary Deputy Speaker** (Mr. Khamasi): Order, hon. Members! I cannot even hear what Dr. Oburu is saying.

**Dr. Oburu:** Mr. Temporary Deputy Speaker, Sir, it was very sad that at the last moment when the Bomas process was just about to be concluded some hon. Members from the Government side decided to walk out of it. The Government was not a participant in the process at Bomas. The MPs were participating at Bomas in their individual capacity. I would, therefore, like to say that the document we are discussing here today was written in Mombasa by a group of people who were calling themselves, "consensus group". The word "consensus" is being misused deliberately by certain people.

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

**Dr. Oburu:** Mr. Angwenyi, be patient!

**The Temporary Deputy Speaker** (Mr. Khamasi): Order, Dr. Oburu! What is it, Mr. Angwenyi?

**Mr. Angwenyi:** Mr. Temporary Deputy Speaker, Sir, is the hon. Member in order to refer to

hon. Members as "these people who call themselves consensus"?

**Dr. Oburu:** Mr. Temporary Deputy Speaker, Sir, the word "consensus" is being misused because there are some hon. Members here who believe that consensus is to agree with them. But if you express a different view, you are not participating in consensus. I think this is wrong impression because the word "consensus" means coming half way and the other party also coming half way and both agree.

Mr. Temporary Deputy Speaker, Sir, this document, which is coming here is what was the original position of Mr. Murungi, at the Bomas of Kenya. It is what has been brought here as a consensus document because it appears some hon. Members have been compromised!

**The Minister for Gender, Sports, Culture and Social Services** (Mr. Ochilo-Ayacko): On a point of order, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Mr. Khamasi): What is it, Mr. Ochilo-Ayacko?

**The Minister for Gender, Sports, Culture and Social Services** (Mr. Ochilo-Ayacko): Mr. Temporary Deputy Speaker, Sir, in view of the fact that hon. Members are interested in continuing with this debate, would I be in order to ask the Chair to make a ruling under Standing Order No.1, although today is not an Allotted Day, to extend time to accommodate the interests of hon. Members?

**The Temporary Deputy Speaker** (Mr. Khamasi): Mr. Ochilo-Ayacko, which Standing Order?

**The Minister for Gender, Sports, Culture and Social Services** (Mr. Ochilo-Ayacko): Mr. Temporary Deputy Speaker, Sir, Standing Order No.1. It says where matters are not provided for, it would be in the discretion of the Chair to give guidance.

**Dr. Oburu:** Mr. Temporary Deputy Speaker, Sir, I think you made a ruling on this. As far as some hon. Members are concerned, consensus means moving towards their position. Once you disagree with them, then you are not in consensus.

Mr. Temporary Deputy Speaker, Sir, the Bill which is being presented here is the same position which Mr. Murungi took when we were at the Bomas of Kenya. That is, there should be a short-cut; the document should not go direct to the Attorney-General for drafting into a Bill to be presented here. It was suggested that the document should be brought to Parliament first to be mutilated---

**The Minister for Tourism and Wildlife** (Mr. E.K. Maitha): On a point of order, Mr. Temporary Deputy Speaker, Sir. There has been a request under our Standing Orders where the Chair is supposed to make a ruling---

**The Temporary Deputy Speaker** (Mr. Khamasi): Order, Mr. E.K. Maitha! Leave the Chair to look at what you are making an application for. We have specific times for business in this House. Traditionally, we have extended the House when it is an Allotted Day. This is not one of them and, therefore, I will not use my discretion to extend the House.

So, Dr. Oburu, if you could finalise your contribution!

**Dr. Oburu:** Mr. Temporary Deputy Speaker, Sir, what I am saying is that this particular Bill got here, it is the same position which was taken by Mr. Murungi, that is to have a short-cut from the Bomas process to come direct to Parliament as a Sessional Paper so that they can come here and discuss it, mutilate it, revise it, amend it and do whatever else is required and then take it to the Attorney-General for final drafting.

**The Minister for Lands and Housing** (Mr. Kimunya): On a point of order, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Mr. Khamasi): Order, Dr. Oburu! Let us listen to Mr. Kimunya's point of order.

**The Minister for Lands and Housing** (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, you have heard the hon. Member say that this hon. House will mutilate a document. Is he in order to cast those aspersions on hon. Members of this House, that their role here is to mutilate a document that is presented to this House?

**Dr. Oburu:** Mr. Temporary Deputy Speaker, Sir, if that is the English he understands--- My understanding of revising a document is that, in fact, you can destroy it completely. That is mutilation, if you like. You can just throw it out! So, it is my understanding that is mutilation and we have a right to do that.

Mr. Temporary Deputy Speaker, Sir, this process here is actually meant to defeat the process which was started. It is meant to give Parliament power to revise the Constitution. It is, therefore, going on a different principle on which the Constitution review process was started. The people of Kenya have spent Kshs4 billion in this process. If this document was to finally come to Parliament, for Parliament to revise it and do what it likes with it, that is a waste of money.

Mr. Temporary Deputy Speaker, Sir, in fact, what we want to do now, we should have done from the very beginning. We would have just made a draft of the Bill here, send it to the Attorney-General, who will bring it back to us and then we pass it in the normal manner. If we will accept this, and I want this to go on record; I know there are people who are impatient because they want to vote; some of them were even last week referred to as "voting machines". I do not want to call them so. However, I know that is what they want to do. They are willing---

**The Assistant Minister for Justice and Constitutional Affairs** (Mr. Githae): On a point of order, Mr. Temporary Deputy Speaker, Sir. The Chair has just heard what the hon. Member has said that hon. Members of this House are nothing, but "voting machines". Is he in order to refer to hon. Members of this House as "voting machines"?

*(Mr. Githae spoke from the  
Dispatch Box on the Opposition Side)*

**The Temporary Deputy Speaker** (Mr. Khamasi): Order, Mr. Githae! Mr. Githae, you are a Member of the Government Front Bench. I think it is not right for you to speak from the Dispatch Box on the Opposition side.

So, if you have anything, go round and then you will be in order.

### ADJOURNMENT

**The Temporary Deputy Speaker** (Mr. Khamasi): Dr. Oburu, when debate resumes, you will still have seven minutes to finalise your contribution.

Hon. Members, it is now time for the interruption of business. The House is, therefore, adjourned until tomorrow, Wednesday, 4th August, 2004, at 9.00 a.m.

The House rose at 6.30 p.m.