

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 3rd May, 2007

The House met at 2.30 p.m.

*[Mr. Deputy Speaker in the Chair]*

### PRAYERS

### NOTICES OF MOTIONS

#### CENSURE OF THE VICE-PRESIDENT FOR INTERFERENCE WITH COURT PROCESS

**Mr. Midiwo:** Mr. Deputy Speaker, Sir, I beg to give notice of the following  
Motion:-

THAT, in view of the Court Case No.2342/05 pending in Busia Law Courts and the letter by His Excellency the Vice-President and the Minister for Home Affairs to the Resident Magistrate, Busia, requesting for details of the case considering that the matter is not in the domain or jurisdiction of the Vice-President and is, therefore, interference of the due process of the law; noting the strong sentiments and objections by the trial court in Busia through his letter reference No.BSA.CR.2391/05/2 to the Vice-President copied to the Chief Justice; noting further the continued harassment by the police of a Dr. Paul Otuoma and some other six people who have been put in custody in Busia on alleged murder of a Mr. Mohammed Mubale in 2005; this House calls upon the Vice-President to immediately cease interfering with the court process and censures his conduct for abuse of office and urges the Attorney-General to ensure a fair trial is accorded in this case and to provide for the safety of the complainants.

#### A BILL TO AMEND THE REGISTERED LAND ACT

**Mr. Mukiri:** Mr. Deputy Speaker, Sir, I beg to give notice of the following  
Motion:-

THAT, aware that many Kenyans have been fraudulently deprived of their land by fraudsters through registration under the Registered Land Act, Chapter 300 of the Laws of Kenya, further aware Section 143 of the said Act Denies the High Court jurisdiction to interfere with first registration titles even where fraud has been proved; this House do grant leave to introduce a Bill to amend Section 143 of the Registered Land Act to empower courts to cancel and revoke fraudulently obtained titles.

#### A BILL TO AMEND THE WATER ACT

**Mr. Mirugi:** Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion:-

THAT, being aware of the critical role of the Government is bound to play in the sound management of the provision of clean water for domestic use to the public at a cost effective rate; concerned that some private water service providers have taken advantage of certain inherent weaknesses in the Water Act, 2002 resulting in their focusing more on making profits than on improving water quality and supply, this House grants leave to introduce a Bill for an Act of Parliament to amend the Water Act in order to provide for public sector participation in the sustainable management of provision of water services and for matters incidental thereto and connected therewith.

### QUESTIONS BY PRIVATE NOTICE

#### INVASION OF BAHARI CONSTITUENCY BY RAIDERS FROM KALOLENI

**Mr. Khamisi:** Mr. Deputy Speaker, Sir, I beg to ask the Minister of State for Administration and National Security the following Question by Private Notice.

What action is the Government taking to stop raiders from Kaloleni Constituency from invading villages along the Bahari/Kaloleni boundary including Kitumbo in Mtwapa Location, Bahari Constituency, where they have destroyed property and taken over farms belonging to villagers?

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

I am not aware of any raiders invading villages along the Bahari/Kaloleni boundary, including Kitumbo in Mtwapa Constituency; neither am I aware of any property destroyed and individuals' farms taken over. I am, however, aware of two incidents which were reported to the Mtwapa Police Station. On 20th January, 2007, Nancy Chalango reported that unknown people were clearing bushes in her farm. The OCS and the area Provincial Administration officers went to the farm. However, when approaching the farm, those unknown people sighted the security personnel and ran away.

Secondly, on 14th March, 2007, Mr. Paul Baya reported that some people bordering his farm at Kidutani area had burnt down his shelters. Police officers visited the farm and on investigation, it was revealed that a neighbour had lit a fire while preparing his farm. The fire later overwhelmed him and it extended to Mr. Baya's farm. The fire incident was not intentional and Mr. Baya did not pursue his complaint. Since that time, the area has been under frequent surveillance by police and also public barazas have been organized to resolve the matters.

The problem is because---

**Mr. Deputy Speaker:** Order, Mr. Assistant Minister! You have responded to the Question. If there are any supplementary questions, you will address them.

**Mr. Khamisi:** Mr. Deputy Speaker, Sir, I am surprised by that answer because I am talking about areas that are very close to where I live. I have actually been intervening on this particular issue. I have a document here that was sent to the DO, Kikambala, as recently as 11th April, but the Assistant Minister is talking about January. Houses have been burnt and crops have been destroyed. Is the Assistant Minister telling us now that these *wananchi* here are wrong and he is right?

**Mr. Munya:** Mr. Deputy Speaker, Sir, I have not said that *wananchi* are wrong. I have said we cannot talk of invaders because the problem is a boundary dispute because of the creation of new districts. We have some farms on one side extending to the other side. So, we have to resolve those disputes and that is why we are holding the *barazas* there. The issue of people invading the farms is not the reality. The Provincial Administration officers are trying to resolve the boundary issues so that they can be sure where the proper boundaries are. Once that is done the border disputes will end.

**Mr. Mwanicha:** Mr. Deputy Speaker, Sir, the issue of raiders in this country is a very serious one. You will find raiders from one community attacking another community in broad daylight and then end up taking thousands of animals and driving them across the country. The Government has the Kenya Air Force, the Kenya Army and the Kenya Police. Why is this Government, which has been elected by the people and has all the necessary forces, unable to eradicate this menace?

**Mr. Munya:** Mr. Deputy Speaker, Sir, I have already explained that, in this particular case, there are really no raiders because these were neighbours disagreeing over ownership of land. The particular instance I, have explained was a fire extending accidentally to a neighbours' farm and the matter was resolved. The hon. Member has not raised this issue. On the issue of raiders in pastoralist areas, we have been doing a lot to make sure that we deal with that old culture where people think that they can raid other people and take their property at will. We are also asking hon. Members to assist us in helping their people transcend from that traditional lifestyle to modern lifestyles. The police are always ready to handle situations like those when they arise.

**Maj. Madoka:** Mr. Deputy Speaker, Sir, I believe Kenya has one of the most efficient and competent intelligence service. What amazes us is how things can be done for so long and the information does not get to the police or the administration to take action before these incidents happen. Could the Assistant Minister tell us whether the services of our intelligence services are declining?

**Mr. Munya:** Mr. Deputy Speaker, Sir, our intelligence services are not declining. That is why we have been able to handle most serious issues like anticipation of terrorism and other crimes. Sometimes even in the most efficient system some things can slip through without notice. That has happened sometimes. We have one of the best intelligence institutions in Africa.

**Mr. Khamisi:** Mr. Deputy Speaker, Sir, I will table this document which was signed by villagers in that border area. This document cites the names of the victims as well as the raiders. The Assistant Minister is talking about a border dispute. Yes, there is a border dispute. On 27th March, an elected politician from a neighbouring constituency came to my area, held a very big meeting there and is claiming that particular area as his own. Is the Assistant Minister aware of that? If you do not know him, I will name him!

**Hon. Members:** Name him!

**Mr. Deputy Speaker:** Order! Mr. Assistant Minister, could you respond to that?

*(Mr. Khamisi laid the document on the Table)*

**Mr. Munya:** Mr. Deputy Speaker, Sir, I am not aware of any politician going to announce about certain areas being in his constituency. I have said that there is a dispute because of the creation of new districts. Until we resolve that, there will be a bit of disagreement. It is important that we do not politicise small disputes like this one. However, I am prepared to take the list from the hon. Member for Bahari and investigate it. If anything is found, we will deal with it.

*(Mr. M.Y. Haji stood up in his place)*

**Mr. Deputy Speaker:** What is it, Mr. M.Y. Haji? We have already dealt with that Question!

**Mr. M.Y. Haji:** On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to say "small problems"? Boundary disputes normally lead to fighting! The matter should be arrested before it gets out of hand.

**Mr. Deputy Speaker:** Mr. Assistant Minister, you may need to take advantage of the advice of the former Provincial Commissioner (PC).

**Mr. Munya:** Mr. Deputy Speaker, Sir, I want to take the advice of the former PC and call this a big problem that we will deal with.

*(Laughter)*

DROWNING OF MR. ASHALI  
IN KAYOLE QUARRY

**Mr. Arungah:** Mr. Deputy Speaker, Sir, I beg to ask the Minister of State for Administration and National Security the following Question by Private Notice.

(a) Under what circumstances did Mr. Allan Inganga Ashiali drown in a disused quarry in Kayole on Sunday, 22nd April, 2007?

(b) What measures are being taken to recover the body?

(c) What further measures are being taken to prevent such unnecessary deaths?

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

(a) I am aware that on 22nd April, 2007, at about 1300 hours Allan Inganga Ashiali in the company of other boys went to a disused quarry within Kayole, which was filled with rain water, to swim. He, unfortunately, drowned. His parents sought the help of one David Ochieng to try and retrieve Allan's body. Unfortunately, David also drowned.

(b) The Government airlifted Kenya Navy divers from Mombasa on Thursday, 26th April, 2007, and they were able to retrieve the bodies of Allan Inganga and David Ochieng by 27th April, 2007. The bodies were taken to the City Mortuary for postmortem examination.

(c) The owner of the quarry has, time and again, fenced it. However, vandals have always removed the fence. A fence has been put up again and, in addition, the Provincial Administration is also sensitising members of the public not to trespass on the land or go and swim in that quarry.

**Mr. Arungah:** Mr. Deputy Speaker, Sir, for the information of this House, one Allan Inganga drowned on Sunday, 22nd April, 2007, and within hours the police was informed. The parents and onlookers waited in vain for a whole day. No action was taken by the police. By the Assistant Minister's admission, the parents, indeed, sought assistance from a young man to try and help the young Allan who had drowned. Unfortunately, the young man, David Ochieng, also drowned. The Assistant Minister said that they airlifted the Kenya Navy divers from Mombasa on 26th April, 2007. That was four days later, after the young man had drowned on Sunday, 22nd April, 2007. Mombasa is one hour away by air. Why did it take four hours to get the Navy personnel to Nairobi?

**Hon. Members:** Four days!

**Mr. Deputy Speaker:** Four hours or four days?

**Mr. Arungah:** Four days, Mr. Deputy Speaker, Sir.

**Mr. Munya:** Mr. Deputy Speaker, Sir, I would like to admit that there was undue delay in getting the divers from Mombasa to come and help in retrieving the bodies. We are going to investigate. In fact, we are investigating to find out why this happened because they should have been there in the shortest time possible. So, once we investigate, we will take the necessary action.

**Mr. Omondi:** Mr. Deputy Speaker, Sir, disused quarries are, indeed, a menace to the people who live around there. Those quarries kill the people who live around them, who are drunkards and mistake their residences. They become easy places for people who want to commit suicide. During rainy seasons, there are rivers that flood across the homes and houses. The Assistant Minister has not addressed part "c" of the Question, which wanted him to state how they are going to stop that menace, once and for all.

**Mr. Munya:** Mr. Deputy Speaker, Sir, I would want to tell my friend that sometimes, if people insist on committing suicide, the Government may not be able to guard them. If you cannot jump into a quarry, you will jump into the nearest river or get the nearest tree to hang yourself.

However, I have already explained that in this particular instance, the quarry is fenced but vandals always go and remove the fence and steal it. Even now, it has been fenced again and we are not sure whether vandals will not come again. We are sensitising the public to avoid such quarries. That quarry is a private property, so there is nothing we can do about it. We cannot tell the owner to--- It is his property! We need quarries because we need materials for building. So, the most important thing is for the hon. Member to educate his citizens not to get drunk near quarries.

*(Laughter)*

**Mr. Muriithi:** Mr. Deputy Speaker, Sir, the Assistant Minister is taking this matter rather lightly and we are losing the lives of our young ones who cannot be educated. One was a kid and he did not know whether the quarry was dangerous or not. If these quarries are abandoned, is there any law which can be applied to ask the owners to seal them and the matter is solved?

*(Applause)*

**Mr. Deputy Speaker:** To add on to Mr. Muriithi's suggestion, they should also plant trees.

**Mr. Munya:** Mr. Deputy Speaker, Sir, we will advise the National Environment Management Authority (NEMA) to go around advising property owners who have quarries to do that very important thing of filling them and planting trees. However, this particular one is used occasionally by the Department of Defence (DoD) which owns it. It is in the middle of that area and it is fenced.

**Mr. Deputy Speaker:** Last question, Mr. Arungah!

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

Order, hon. Members! We are controlled by time! We are only on the second Question and we have almost spent half of Question Time!

**Mr. Arungah:** Mr. Deputy Speaker, Sir, from the response given by the Assistant Minister, in a nutshell, it means that disaster management in the country is in a very sorry state. I would like the Assistant Minister to tell this House what specific steps he is taking to improve the response time to disaster. This is not the first time this is happening. To tell us that it will take four days to airlift personnel from Mombasa is, to say the least, very absurd. What steps is he taking so that he can improve on his response time?

**Mr. Deputy Speaker:** Mr. Arungah, you ask a question and put a question mark, then you continue! Let the Assistant Minister now respond to your very good question!

**Mr. Munya:** Mr. Deputy Speaker, Sir, I have taken the sentiments that the hon. Member for Khwisero has raised very seriously. We will take his views when we re-formulate our policy on disaster preparedness.

GOVERNMENT'S COMPLIANCE  
WITH PROCUREMENT/ANTI-CORRUPTION ACTS

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

(a) Could the Minister confirm that the Government signed a contract with a private firm on 17th January, 2007 for consulting services for valuation of security-related goods, works and services to examine tenders given by the Government between 2002 and 2004?

(b) Could the Minister further confirm that the contract complies with the provisions of the Public Procurement and Disposal and the Anti-Corruption and Economic Crimes Acts?

**The Minister for Finance (Mr. Kimunya):** Mr. Deputy Speaker, Sir, I beg to reply.

(a) Yes, I can confirm that the Government signed a contract with a private firm on 17th January, 2007, towards valuation of security-related goods, works and services that were supplied to the Government under the security loan contract. I will also add here that the time is not just from 2002 to 2004 but all the way from 1997 to 2004.

(b) I further confirm that the contract was signed in accordance with the prevailing Public Procurement and Disposal Regulations and the Anti-Corruption and Economic Crimes Acts.

**Mr. Ojode:** Mr. Deputy Speaker, Sir, the Minister for Finance is misleading this House. This contract was signed on 17th January, 2007, as he has said, but it was done through single-sourcing. I have the contract document here with me, and I will table it. The contract document, on page 16, states that a total amount of US\$1,372,050 will be paid to PriceWaterhouseCoopers!

**Hon. Members:** Shame! Shame!

**Mr. Ojode:** Mr. Deputy Speaker, Sir, in the event that Treasury does not honour the invoice, a penalty of 3 per cent of the contractual amount will be charged per day. If that is not another scandal, the Minister should stand up and tell us why he contracted this private firm.

*(Applause)*

This is a mini scandal of the Anglo Leasing one. There is no way where the Ministry of Finance---

**Mr. Deputy Speaker:** Mr. Ojode, I am inviting you to ask the Minister your question!

**Mr. Ojode:** Mr. Deputy Speaker, Sir, why was it necessary for the Ministry of Finance, which is a culprit of the Anglo Leasing scandal, to contract another private company to give them a clean bill of health through single-sourcing?

**Mr. Kimunya:** Mr. Deputy Speaker, Sir, it is important that we put matters in their proper perspective so that we can remove rumours from this House. I take great exception to the aspersions cast by the hon. Member, that this contract was single-sourced. Speaking from a point of ignorance will not bring the political mileage that some hon. Members are seeking.

The Controller and Auditor-General advised that further evaluation was necessary and that Report was laid on the Table of this House. The Public Accounts Committee (PAC) advised that we should take further action and validate those claims. We took that seriously and we searched, internationally, for firms to propose to come and do this evaluation. When we requested for proposals, we got them from the following firms: Sociatal General De Sovereign (SGS) of

Switzerland; Cotecna Inspection of Switzerland; Bureau Veritas of Switzerland; Dispute Analytic of USA; PriceWaterhouseCoopers of Kenya; Ernst and Young of Kenya, and Keat Peat Marwick Group (KPMG) of Kenya. We invited all these seven firms to submit their proposals to be considered as part of the team that was going to peruse these contracts. The proposals were to be submitted by these firms by Tuesday, 30th October, 2006, at 12.00 noon.

Mr. Deputy Speaker, Sir, we also set up a technical team that was going to evaluate all these proposals. This was an inter-Ministerial team comprising of the Ministry of Finance, the Directorate of Procurement and the Kenya Anti-Corruption Commission (KACC). By the deadline of the submission of proposals, two firms; that is, PriceWaterhouseCoopers and Ernst and Young had submitted their proposals. We went through a whole technical evaluation of the two proposals at the technical level even before the financial level. Out of that analysis, PriceWaterhouseCoopers was awarded the contract. I must say that their bid was not only strongly technically responsive, but was financially lower than the competitor.

Mr. Deputy Speaker, Sir, when some hon. Members stand up in this House and make wild allegations that this was single-sourcing, it is important that those hon. Members be held responsible for the allegations that they make in this House.

*(Loud consultations)*

**Mr. Deputy Speaker:** Order, hon. Members! Let the Minister finish first!

**Mr. Kimunya:** Mr. Deputy Speaker, Sir, I have just explained the process we went through for purposes of short-listing the firm that was awarded this contract.

**Mr. Odoyo:** On a point of order, Mr. Deputy Speaker, Sir. I happen to have been a Member of the PAC and I am fully aware that this particular Act requires that with regard to tenders of such magnitude, you must have a minimum of three applicants. Where you have less than three applicants, then you are supposed to advertise the tender again. Why is it that the Minister could not use his full powers and have this particular tender re-advertised unless he had a particular ulterior motive?

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

**Mr. Deputy Speaker:** Order, Mr. Minister! Mr. Odoyo stood on a point of order. He has, however, asked a good question! That is not a point of order!

**Hon. Members:** He is misleading the House!

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

**Mr. Deputy Speaker:** Order, Mr. Odoyo! You must respect the rules of the House. You wanted to ask a question, but you stood on a point of order.

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

Mr. Maore, is yours a point of order, or a question?

**Mr. Maore:** Mr. Deputy Speaker, Sir, with regard to the issue raised by the Controller and Auditor-General when he touched on the 18 contracts in the Report that was submitted to the PAC, he said that there was need for further investigations. In which paragraph, did that Report mention that the office that is constituted in this country to raise audit queries was unable to do its work and

that they needed the Treasury to go and look for another body and yet the KACC is also in town?

**Mr. Kimunya:** Mr. Deputy Speaker, Sir, I thought I explained that the team that has been responsible for following up on all these recommendations and contracting the external resources that are required to evaluate these matters comprises of the Ministry of Finance, Ministry of Justice and Constitutional Affairs and the KACC. They are constituted as an inter-Ministerial task force. The responsibility of executing decisions rests with the Government. The Government has set up this inter-Ministerial team to be able to bring all the resources that are required together to get to the depth of some of the mess that we were put in by some of the people sitting on the other side of the House!

**Mr. Muite:** Mr. Deputy Speaker, Sir, when the Minister was answering a question a little while ago, he listed the companies that the Treasury invited and not the companies that wrote in response to the advertisement. Could the Minister, please, clarify that and also answer the question asked by Mr. Odoyo?

**Mr. Deputy Speaker:** Mr. Muite, are you asking the Minister to answer a question which I ruled out of order?

*(Laughter)*

**Mr. Muite:** Mr. Deputy Speaker, Sir, I am asking that through you!

**Mr. Deputy Speaker:** Mr. Muite, your question will be answered, but not Mr. Odoyo's.

**Mr. Muite:** Mr. Deputy Speaker, Sir, can I also ask the question---

**Mr. Kimunya:** Thank you, Mr. Deputy Speaker, Sir, for that protection.

Mr. Muite has asked a question regarding the seven companies that I named. They are actually the companies that we invited to submit their proposals. Just for the information of hon. Members, the procurement regulations give two options. Where the skills that are required are limited, you could list down all the companies that have those skills and request them, in total, to express an interest in performing the task. Where a skill is generally available, we are allowed to open that out for everyone to apply for the tender. Now, the skills that we were looking for are limited in supply to a specific number of contractors who can provide that skill. We went through the profiles of several firms and even looked at the seven top firms on a global basis. I said, earlier on, that we had proposals from SGS, Bureau Veritas, Cotecna, Dispute Analytic of USA, PriceWaterhouseCoopers, Ernst and Young and KPMG. These are the firms that are internationally reputed in terms of providing this kind of forensic intervention that we required. We asked all these firms to bid for this work. However, only two of them expressed interest that they would be happy to do this kind of work.

Mr. Deputy Speaker, Sir, it is important for hon. Members to appreciate that we are talking of very technical issues here.

**Mr. Raila:** On a point of order, Mr. Deputy Speaker, Sir. This is not rocket science! We know that there are so many companies with the capacity to do this kind of work.

Is the Minister in order to mislead the House?

*(Applause)*

**Mr. Deputy Speaker:** What is your point of order?

**Mr. Raila:** Mr. Deputy Speaker, Sir, given time, I can produce evidence on this. There are so many companies with the capacity to do the forensic auditing the Minister is talking about. Why is he deliberately misleading the House when he knows that he did single sourcing merely because there was something they wanted to benefit from?



*(Applause)*

**Mr. Deputy Speaker:** Hon. Members, when you want to ask a question, just do so!

**Mr. Kimunya:** Mr. Deputy Speaker, Sir, I have explained the various options that are available in procurement. That is in accordance with the law. I do not think that is in dispute.

**Hon. Members:** Which law? Which law?

**Mr. Kimunya:** Mr. Deputy Speaker, Sir, the laws are here. They have been passed by this House. I mentioned the law that is applicable and which we applied---

**An hon. Member:** Passed by who?

**Mr. Kimunya:** Mr. Deputy Speaker, Sir, it was passed by this House. If you are challenging the law, then that is a different issue. We have followed the law to the letter. It gives us two options; one being to request for a specialist on a limited tender. We did that and requested for seven specialists. We followed the law to the letter. We evaluated and came up with those people.

Mr. Deputy Speaker, Sir, when I hear hon. Members, who sat in the Cabinet meeting that approved these Anglo Leasing contracts, come here and say we want to benefit from them, I really wonder who is hiding the truth.

**Mr. Billow:** Mr. Deputy Speaker, Sir, I have a lot of respect for this firm because I worked for it. The same person who signed this contract; Mr. Alfian Njeru, was my employer. However, yesterday, I raised the same issue about procurement. The Minister seems to be giving conflicting information. On the one hand, he is saying that there was an international tender on an international magazine. On the other hand, he did an invitation in accordance with the Act. He needs to clarify this. There cannot be both an open and closed bidding where you invite people. But more importantly, my question is: The terms of contract which were tabled in this House yesterday refer to forensic services in which they are also required to indicate if there is any criminal activity. How does an audit firm which hires people from the United Kingdom (UK) have the capacity to identify how criminal activity could have been committed when the Kenya Anti-Corruption Commission (KACC) has been unable to do so?

*(Applause)*

**Mr. Kimunya:** Mr. Deputy Speaker, Sir, let me confirm that the KACC has not been unable to prove the criminal charges. It is pursuing the issues. The auditors are working closely with the KACC in demystifying all those contracts from a forensic perspective.

Mr. Deputy Speaker, Sir, for the information of the hon. Member; who I am surprised, being an accountant, ought to have known this, these firms we are talking about are not just typical auditors. Forensic accounting is a bigger discipline than the typical audit he is used to.

*(Laughter)*

Mr. Deputy Speaker, Sir, I am an accountant. I have experience in forensic auditing. I know that forensic audit is different from the typical auditing we are talking about. I have no doubt that these firms are going to deliver on the services that we have contracted them.

**Mr. Kajwang:** Mr. Deputy Speaker, Sir, when the Government wants to hide some of these money laundering activities, they call them "forensic" so that some of us do not know what they are talking about. We took a Permanent Secretary at the Treasury to court. We must have had something to hold him in court. Now, the same Treasury, which is the culprit, we are complaining about and which took our money abroad without a valid contract, is hiring people to investigate for

them what happened. How can you investigate yourself and pay some people millions of shillings unless the Treasury just wants to launder money? Unless they want to get money for campaigns, they cannot do this!

Mr. Deputy Speaker, Sir, what is really happening here? The Treasury knows how they paid the money, whom they paid and who returned it. However, all of a sudden, they are now calling the thing "forensic". What is forensic about it?

*(Laughter)*

**Mr. Kimunya:** Mr. Deputy Speaker, Sir, I would have chosen to ignore the question if it were not for the allegation that the Treasury is fundraising for the campaigns. The Treasury is not campaigning!

Mr. Deputy Speaker, Sir, for the information of hon. Members---

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

**Mr. Deputy Speaker:** Order, Dr. Ali! The Minister has not even finished his sentence!

**Dr. Ali:** Mr. Deputy Speaker, Sir, I am surprised! The Minister has no right to ignore questions in the House!

**Mr. Kimunya:** Mr. Deputy Speaker, Sir, the---

**Mr. Deputy Speaker:** Mr. Minister, will you sit down?

Let us hear Dr. Ali!

**Dr. Ali:** On a point of order, Mr. Deputy Speaker, Sir. Is the Minister in order to say that he would have ignored the question asked by Mr. Kajwang? Does he have the capacity to refuse to answer a question asked by an hon. Member? Who gave him that authority?

**Mr. Deputy Speaker:** Hon. Members, I have pleaded with Mr. Kajwang to ask a question. He very ably described why it is forensic, *et cetera*. I listened to him and did not hear a question. In fact, I asked him to ask a question.

Mr. Kajwang, could you now ask a question?

**Mr. Kajwang:** The KACC has been created to deal with investigations, especially where there are allegations of corruption. In the Act, there is a provision that they can hire any necessary skills from wherever to do that job. Why did the Treasury enter into a contract with somebody else? Why did they not leave the KACC to acquire any skills from wherever to do this work?

**Mr. Deputy Speaker:** Now that is a question!

Mr. Minister, please, proceed!

**Mr. Kimunya:** Mr. Deputy Speaker, Sir, that is now a question.

Mr. Deputy Speaker, Sir, I think there is a misconception being created here that the Treasury ceased to exist when Anglo Leasing was discovered. The Treasury, as an institution, still continues to exist. It has a legal mandate to continue carrying out all the duties given to it by the law. These include investigating and taking care of finances of this country.

It is important for hon. Members to recall that it was the Treasury that asked the Controller and Auditor-General, in August, 2004, to investigate the 18 contracts. It was the Treasury that brought the Report to the Public Accounts Committee. It is the Treasury that has taken further investigations to determine whether the Kenya taxpayers' money should be paid or not on these contracts. That is in addition to the work that is being done by the KACC. We are collaborating in terms of using the output of this. They will take care of the criminal issue and we will take care of the custodial issues of safeguarding taxpayers' money.

Mr. Deputy Speaker, Sir, I do not know where the excitement is coming from. One day, I am being told, I need to pay by the same people. On another side, I am hiring a consultant. Are they

fearing that the auditors are going to uncover who played what role from that direction?

**Mr. Deputy Speaker:** Order now! Just look at the time. Last question, Mr. Ojode!

**Mr. Ojode:** Mr. Deputy Speaker, Sir, yesterday, we were told by the same Minister that there are some contracts which had been cancelled so far, yet, on page 28, he has signed a contract with PriceWaterhouseCoopers to investigate 18 contracts. Why would it be necessary for him to take PriceWaterhouseCoopers to investigate even the cancelled contract?

Secondly, when you go to page 31, the contract says, that PriceWaterhouseCoopers will also be empowered to examine personal bank accounts using the powers of the Kenya Anti-Corruption Commission (KACC). I have gone through the Constitution of this country and it is very clear that the powers of KACC cannot be transferred to a private investigator. I know that it is only the court that can give you powers to examine a private account.

Could the Minister tell us whether this contract has already expired? Up to what level did they extend the contract? When is PriceWaterhouseCoopers going to give the report of the evaluation? How much money, apart from US\$1.3 million which is supposed to be paid, is going to be additionally paid?

**Mr. Deputy Speaker:** For the public interest, I have been very patient.

**Mr. Kimunya:** Mr. Deputy Speaker, Sir, I will try to answer the series of questions. I want to confirm that KACC has powers given to it by this House to contract any other person to carry out investigations on its behalf. That is in the law. The extension that we have given to the contract is to facilitate the completion of the work. In terms of the cost necessary to complete the work which is a time-based contract, it should not exceed Kshs126 million. We believe that, that a good investment knowing that we are looking at the circumstances that led to exposure of Kshs54 billion of public money. Apart from the contracts that we have cancelled, we need to know the circumstances in which they had been contracted. What lessons are we learning from that, to safeguard the same from happening again in future?

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

**Mr. Deputy Speaker:** Order, Mr. Ojode! I was so patient to allow you to ask so many questions, and yet I should only have allowed you one question. Now the Minister is attempting to respond and you are interrupting! Let him continue misleading the House, then when he finishes, we will know what to do with him.

**Mr. Kimunya:** Mr. Deputy Speaker, Sir, I am trying to be generous to the hon. Member by giving him the whole truth. If the hon. Member was here yesterday when I was responding to this issue on a different Question on the same matter, I stated very clearly that the reason why we are looking at the 18 contracts, instead of only the nine that are still active is - because six have been cancelled and three were completed - we are looking at all the 18 contracts for different reasons. For the ones that were completed; how they were contracted and if Kenyans got value for their money. For the ones that are still ongoing; how they were contracted, what is the status of the implementation and if Kenyans are getting value for their money. For those that were cancelled; how they were contracted, would Kenyans have got value for their money and if there was any fraud intended.

All these issues have to be addressed so that we can close the chapter on the Anglo Leasing saga. It is something that is painful. It started in 1997 when the seed was planted and it is something that we want to make sure that it does not haunt the future generations, as it has haunted this current generation.

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

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

**Mr. Deputy Speaker:** Order, Mr. Ojode! This is Question Time! We have already spend 20 minutes on one Question. I have given this Question enough time. Hon. Members, you have

other avenues to follow up this matter. There are many avenues if you wish. Familiarise yourself with the Standing Orders and come up with your proposals.

### ORAL ANSWERS TO QUESTIONS

#### *Question No.037*

#### NUMBER OF RETURNED/ GROUNDED GOVERNMENT VEHICLES

**Mr. Owino** asked the Minister for Finance:-

- (a) how many Government vehicles have been returned or grounded as a result of his directive in the Budget Speech for 2006/2007 Financial Year; and,
- (b) how much the Government has saved as a result of the directive.

**The Minister for Finance** (Mr. Kimunya): Mr. Deputy Speaker, Sir, I beg to reply.

(a) As at 30th March, 2007, a total of 1,004 vehicles had been returned by the various Ministries and Government Departments.

(b) The Government has saved an estimated Kshs1.3 billion as a result of part "a" above.

**Mr. Owino:** Mr. Deputy Speaker, Sir, if you go in the yards where these vehicles are parked, they are rotting. Most of them cannot even be sold! How did the Minister raise Kshs1.3 billion when, maybe, he has not even sold one of them?

**Mr. Kimunya:** Mr. Deputy Speaker, Sir, the Kshs1.3 billion has not been raised from the sale of vehicles. We have advertised for sale 112 vehicles through competitive bidding and the bids are being evaluated. When that is complete, we shall know how much we are realising from the sales. The Kshs1.3 billion that we have saved, is from efficiency gains in terms of getting those vehicles off the road so that they are not incurring the fuel and maintenance costs that they were previously incurring.

**Rev. Nyagudi:** Mr. Deputy Speaker, Sir, how many vehicles was the Minister expecting to be returned and what is he going to do to those Ministries that have not surrendered their vehicles?

**Mr. Kimunya:** Mr. Deputy Speaker, Sir, the 1,004 is a calculated figure based on the assessment that was carried out in the individual Ministries. I am not aware of the Ministries that have refused to return vehicles. So, I cannot contemplate action on an issue that has not arisen.

**Prof. Ojiambo:** Mr. Deputy Speaker, Sir, many Ministries and Government Departments today do not even have vehicles, for example, the Police Department. We are ever asking for the Police Department to be allocated more vehicles. How could the Minister collect vehicles and ground them when we are asking for vehicles to be given to hospitals and to the police department?

**Mr. Kimunya:** Mr. Deputy Speaker, Sir, we are not just getting vehicles and grounding them. We are assessing the needs of each Ministry and Department and ensuring that those who have surplus vehicles do return and those who have shortages are given more through re-allocation. In fact, we are still spending more money on buying more vehicles, especially, for our security forces and the Police Department. So, we are not just getting vehicles and keeping them idle.

The 112 vehicles that we are disposing of are the vehicles that are of excess engine capacity and thus do not conform with the Government Financial Management Act of 2004. But we are basically re-allocating them. We do believe that at the end of the exercise, we shall be able to ground some vehicles and dispose of them.

**Capt. Nakitare:** Mr. Deputy Speaker, Sir, could the Minister tell us the time frame within which he will get rid of those vehicles he impounded from the junkyard to save the money that the taxpayer wasted to buy those vehicles?

**Mr. Kimunya:** Mr. Deputy Speaker, Sir, I am not sure that I got the question. There was the "time frame" and "waste." Which is which?

**Capt. Nakitare:** Mr. Deputy Speaker, Sir, I asked the Minister to tell us how long the vehicles will stay in the junkyards before they are sold, or translated into money, to benefit this nation.

**Mr. Kimunya:** Mr. Deputy Speaker, Sir, the 112 vehicles are being sold. They have been offered and people have tendered their prices. I am not sure of any other vehicles that will remain in the junkyards.

**Mr. Kimeto:** Mr. Deputy Speaker, Sir, the vehicles that are grounded should [Mr. Kimeto] have been given to hospitals. Could the Minister consider giving those vehicles to hospitals?

**Mr. Deputy Speaker:** Order, Mr. Kimeto! There was a similar question by Prof. Ojiambo and it was answered.

**Mr. Salat:** Mr. Deputy Speaker, Sir, we passed a Bill in this House requiring that cars that Ministers use should not have a capacity of more than 2,000cc. I stand corrected, but there is a car which is used by this Minister, and it is now parked outside here, which has a capacity of over 4,600cc. It is a Range Rover. Why has the Minister not surrendered that vehicle?

**Mr. Kimunya:** Mr. Deputy Speaker, Sir, I do not wish to give a tutorial to the hon. Member on the law that he himself passed. But the law basically puts the limit for petrol saloon cars at 2,600cc and for diesel cars at 3,000cc. I believe the Range Rover he is talking of and which is not used by me has a capacity of 3,000cc, hence its capacity is within the law. So, I am not sure about the car he is talking of, which has a capacity of 4,600cc.

**Mr. Owino:** Mr. Deputy Speaker, Sir, could the Minister confirm or deny that the Head of the Public Service and Secretary to the Cabinet wrote to him, asking him to give two vehicles to a Mau Mau group and two others to *Mungiki*?

**Mr. Kimunya:** Mr. Deputy Speaker, Sir, I think that is a rather serious allegation made on the Floor of the House, especially about an untruth. I would like the Member to table that letter.

**Mr. Deputy Speaker:** Order, Mr. Minister! I think you have been asked to confirm or deny. That means the hon. Member may not have the facts; he is asking you to confirm or deny his statement. So, I cannot ask him to substantiate it.

**Mr. Kimunya:** Mr. Deputy Speaker, Sir, I can deny categorically that I have seen such a letter. I challenge him to table that information here, because his is a very serious allegation against the person of the Head of Public Service and Secretary to the Cabinet, who is not here to defend himself!

**Mr. Deputy Speaker:** That is the end of that matter!

### COMMUNICATION FROM THE CHAIR

#### DEFERMENT OF QUESTIONS DUE TO SHORTAGE OF TIME

**Mr. Deputy Speaker:** Hon. Members, there are six Questions on the Order Paper which we cannot deal with because, obviously, we have weighty matters to deal with. I, therefore, order that Questions Nos. 074, 223, 245, 031, 144 and 196 appearing on the Order Paper be deferred to Tuesday next week. I really apologise to the hon. Members who were to ask these Questions and to the Ministers who were to answer them. Owing to shortage of time, we cannot go further with Questions.

*Question No.074*

TERMINATION OF SERVICES OF  
KNH PROCUREMENT OFFICERS

*(Question deferred)*

*Question No.223*

WITHHOLDING OF PATIENTS'  
IDS BY MOI REFERRAL HOSPITAL

*(Question deferred)*

*Question No.245*

EXPOSURE OF HORTICULTURAL  
WORKERS TO TOXIC PESTICIDES

*(Question deferred)*

*Question No.031*

CAUSE OF FREQUENT COUNTRYWIDE  
POWER BLACK-OUTS

*(Question deferred)*

*Question No.144*

SUPPLY OF ELECTRICITY TO LAISAMIS SCHOOLS

*(Question deferred)*

*Question No.196*

NON-REGULATION OF MULTI-LEVEL  
MARKETING COMPANIES

*(Question deferred)*

**Mr. Deputy Speaker:** Before we go to the next Order, there are Ministerial Statements to be issued. I call upon the Minister of State for Administration and National Security, to give his Ministerial Statement.

**MINISTERIAL STATEMENTS**

ARREST OF IMAM AND MAJENGO RESIDENTS

**The Assistant Minister, Office of the President** (Mr. Munya): Mr. Deputy Speaker, Sir, on the 26th of April, 2007, hon. Najib Balala, MP, Mvita, rose on a point of order to seek a Ministerial Statement from the Minister of State for Administration and National Security on the recent arrest of an Imam and ten others within Majengo Location in Mvita Constituency.

Following information on the presence of high profile terrorist suspects---

*(Loud consultations)*

**Mr. Deputy Speaker:** Order, hon. Members! If you wish to withdraw, please, do so quietly. We are having a very important Ministerial Statement being issued by the Assistant Minister at the request of the Member for Mvita.

Proceed, Mr. Munya!

**The Assistant Minister, Office of the President** (Mr. Munya): Mr. Deputy Speaker, Sir, following information that high profile terrorist suspects were being housed by one Ibrahim Oubeidila, who was also alleged to be the Imam of Musa Mosque, a search was conducted at the premises by police in accordance with Section 20 of the Police Act, Cap.84, Laws of Kenya, which gives the police power to conduct searches without a warrant. Following the search, 11 people were arrested, out of which ten were found to be Kenyans with proper identification documents and were released immediately. The 11th person, who was alleged to be an Imam, was later on discovered to be a citizen of Comoros Islands. He was found to be in illegal possession of a Kenyan identity card, which was suspected to have been obtained fraudulently, through false declaration. He is still held in custody pending investigations on his immigration status and his connection with terrorism.

Mr. Deputy Speaker, Sir, use of reasonable force by the police is allowed under Section 21 (1) and (2) of the Criminal Procedure Code, Cap.75 Laws of Kenya, and only minimum force was used to gain entrance to the premises of Ibrahim Oubeidila. During the incident, no property was stolen or destroyed.

Mr. Deputy Speaker, Sir, I would like to assure hon. Members that Kenya is a secular State. Furthermore, the Constitution guarantees religious freedom. This particular individual was not arrested because of his religious persuasion.

**Mr. Balala:** Mr. Deputy Speaker, Sir, the Assistant Minister has just mentioned that this was a high profile terrorist arrest. It has been shown that they were targeting the Imam. Why did they arrest the whole village? Secondly, why did the arresters refuse to identify themselves as police officers? They burnt down the premises of these villagers, and stole money and gold from them. Is this what the law says in Section 21 of the Criminal Procedure Code? This is purely religious profiling!

**Mr. Raila:** Mr. Deputy Speaker, Sir, the Assistant Minister says that the use of reasonable force is allowed by law. But we know that only if there is resistance is the use of reasonable force allowed. The Assistant Minister has not explained if there was any justification for the use of what he considered to be reasonable force.

Mr. Deputy Speaker, Sir, secondly, Mr. Deputy Speaker, Sir, under which section of the law is this fellow being held beyond what is legally allowed? To our knowledge, we do not know whether there is a provision that gives the police power to hold somebody as a terrorist suspect beyond the period that is allowed by the law. Why is this fellow being held for that long?

**Mr. Deputy Speaker:** Lastly, Mr. Bahari!

**Mr. Bahari:** Thank you, Mr. Deputy Speaker, Sir. It appears as if Muslims are worse than fish, because fish are protected by law. When you want to fish, you have to use certain types of

nets. The action which has been taken is indiscriminate; rounding up the whole village. What evidence is there that there are high level terrorists other than, perhaps, what the Assistant Minister is saying; that this gentleman who is the Imam is not a Kenyan. All this, including the identity card, are still suspicions. Could he tell us what the results of the investigations are since this is a small matter and the files and all the details are there?

**Mr. Deputy Speaker:** Now, Mr. Assistant Minister, could you address yourself to those clarifications, please?

**The Assistant Minister, Office of the President (Mr. Munya):** Mr. Deputy Speaker, Sir, I have already indicated that investigations have been done and it has been confirmed that this particular individual is not a Kenyan. He had a Kenyan Identity Card which had been acquired fraudulently through false declaration. We have established where he comes from, even his village, his relatives; we have established everything!

**An hon. Member:** Is he a terrorist?

**The Assistant Minister, Office of the President (Mr. Munya):** Mr. Deputy Speaker, Sir, we are trying to establish whether he has any links with terrorists. The police are doing that investigation and he is helping the police with the investigations.

Mr. Deputy Speaker, Sir, the other people who were arrested---

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

**The Assistant Minister, Office of the President (Mr. Munya):** Mr. Deputy Speaker, Sir, I am explaining the issues that were raised!

**Mr. Deputy Speaker:** Mr. Balala, I will give you another chance, but not until the Assistant Minister finishes saying what he wants to say. You know, he may also say something that you do not like, but listen to it, note down and let the Assistant Minister finish!

**The Assistant Minister, Office of the President (Mr. Munya):** Mr. Deputy Speaker, Sir, I was explaining the issue raised by hon. Bahari; that this is mere suspicion. I have explained that it has already been established beyond any doubt that this person is not a Kenyan. We are trying to establish whether he has any links with terrorists. If he has and we have evidence, the law will take its course.

Mr. Deputy Speaker, Sir, this particular individual was not arrested because he belonged to any particular religion! He was arrested on the strength of information given to the police, and they have, indeed, proved to be correct because this gentleman is masquerading as a Kenyan when he is not a Kenyan!

Mr. Deputy Speaker, Sir, I would like to plead with hon. Members not to misuse religion for political purposes. The security of the Kenyan people is very important. Very many Kenyans were killed by terrorists and it is the core mandate of this Government to make sure that there are no terrorists terrorising Kenyans in this country.

**Mr. Deputy Speaker:** Mr. Assistant Minister, can you confine yourself to the issues which were raised by hon. Members? Hon. Members are waiting!

**The Assistant Minister, Office of the President (Mr. Munya):** Mr. Deputy Speaker, Sir, I was just making the last remark that, this person is in proper custody of police and the law--- The other villagers who were arrested were arrested because they were in his company and we wanted to identify or find out whether they were part of the terrorists that we had been told were there. When we found out that those were innocent Kenyans who had no problem, they were released. So, we are dealing with only this particular individual. The issue of religious profiling does not arise. This Government respects religion and Kenyans are free to belong to any religion. But any individual involving himself in crime will be dealt with according to the law.

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

**Mr. Deputy Speaker:** Sit down, Mr. Raila. You know, I would have been very



comfortable, Mr. Assistant Minister, if you started with the clarifications which were sought by Mr. Balala, Raila and Mr. Bahari. Now, I do not know whose clarification you have responded to and whose you have not. I think that was the point that Mr. Raila was trying to raise.

**The Assistant Minister, Office of the President** (Mr. Munya): Mr. Deputy Speaker, Sir, I have explained to Mr. Bahari that this is not mere suspicion. Muslims are treated with a lot of respect by this Government. They are never discriminated and there is no incident, whatsoever, where they have been discriminated. Even a non-Muslim, when he is involved in a crime, the Government arrests him, and that is why this particular individual was arrested!

**Mr. Deputy Speaker:** Go ahead to Mr. Raila's clarification.

**The Assistant Minister, Office of the President** (Mr. Munya): Mr. Deputy Speaker, Sir, this particular individual is under police custody and they are allowed to keep him for 14 days. The 14 days are not yet over but if we finish the investigation, he will be charged in court or the Government can use the investigations to do whatever it wants to do. But we are doing investigations to establish other aspects of crime. We have already established that he is not a Kenyan and that he is here illegally. We are trying to establish other aspects which could enable us make a decision on what crime to charge him with or whether to deport him to his country of origin.

**Mr. Raila:** On a point of order, Mr. Deputy Speaker, Sir. Fourteen days are for capital offences only. The police have no right to keep somebody in custody for 14 days merely on suspicion of being a terrorist or not being a Kenyan! If he is not a Kenyan, deport him or charge him for being in Kenya illegally!

**The Assistant Minister, Office of the President** (Mr. Munya): Mr. Deputy Speaker, Sir, I have already said that we are investigating him for involvement with terrorism, which is a capital offence. But before you arrest and investigate, you cannot, in advance, determine whether an offence is capital or not! The offences that are being investigated right now are capital offences, and that is why he is in police custody.

**Mr. Deputy Speaker:** Finally, Mr. Balala!

**Mr. Balala:** Mr. Deputy Speaker, Sir, the Assistant Minister is misleading this House by contradicting himself. First, he spoke here about a "high profile terrorism arrest"; then he concentrates on a fraud of an identity card. Suddenly, he says that they are still investigating him for the crime of terrorism. Some investigations must have been done prior to an arrest and then the suspect is arrested and immediately arraigned in court! But here, somebody is arrested without investigations and then assumed to be a terrorist, then he is taken to court. There is a lot of contradiction!

Mr. Deputy Speaker, Sir, the Assistant Minister's Statement here is purely on profiling, and there are some masters who they want to please for political campaigns and mileage!

**The Assistant Minister, Office of the President** (Mr. Munya): Mr. Deputy Speaker, Sir, false accusations will not become true accusations even if they are repeated 20 or 30 times. There is no religious profiling here. The police acted on information which they thought would be true and, indeed, they found it to be true because this man turned out not to be a Kenyan, but an illegal alien. That has been established and we are now investigating other links to terrorist activities. There is no religious link in this matter. Therefore, let us leave religion out of this issue.

**Mr. Deputy Speaker:** Thank you, Mr. Assistant Minister!

The next Ministerial Statement by the Minister of State for Administration and National Security, is in connection with districts. Who asked for that Statement? Yes, it was Mr. Ojaamong. All right, proceed!

## BOUNDARIES OF NEW DISTRICTS

**The Assistant Minister, Office of the President** (Mr. Kingi): Mr. Deputy Speaker, Sir, on 26th April, 2007, hon. Ojaamong rose on a point of order seeking a Ministerial Statement from the Minister of State for Administration and National Security, regarding:-

- (i) The exact number and names of the districts which have so far been created.
- (ii) When the official boundaries of these new districts will be made public.
- (iii) Whether the concerned Ministry will consult with the public and leaders in the respective districts.
- (iv) If the beacons, as detailed in the Districts and Provinces Act of 1992 will be adhered to; and,
- (v) What measures the Office of the President has taken to address the issue of district headquarters which fall in other districts.

Mr. Deputy Speaker, Sir, the role of the Kenya Government is to deliver efficient services closer to the people. That necessitates a continuous assessment of the people's requirements and adopting appropriate measures to satisfy them.

Mr. Deputy Speaker, Sir, owing to requests by various leaders, the Government came up with a criteria to determine new districts. Subsequently, His Excellency the President issued two Gazette Notices - No.9143 of 16th November, 2005, and No.134 of 9th January, 2007, to inform the public of the intention of the Government to create 38 new districts and, at the same time, to legalise 24 others that had been created by the previous regime. Following the publication of the intention to create the new districts, the Government instructed the provincial commissioners to facilitate the convening and holding of leaders' meetings in the affected areas to deliberate and resolve three key issues namely:-

- (i) The name of the proposed new districts.
- (ii) The boundaries of the said districts.
- (iii) The name and location of the district headquarters.

Mr. Deputy Speaker, Sir, leaders from the affected districts have convened meetings to resolve the above three key issues and any other related matters. The boundaries of the new districts will be made public as soon as their delineations are completed. The description of the district boundaries will be presented to Parliament in the Bill to be preferred for the amendment of the Districts and Provinces Act of 1992. The description of the boundaries for the new districts will definitely mean an amendment of the earlier description of those districts, from which the new districts will be carved.

Mr. Deputy Speaker, Sir, in conclusion, I wish to inform the House that, at Independence, we had 41 legal districts in the country, including Nairobi area which was also a district. The 1992 Districts and Provinces Act recognised 47 districts, with Nairobi District included. Subsequently, 24 other districts were created between 1992 and 2002 through Executive pronouncements. The Government has proposed the creation of 38 districts. It will also legalise the districts that were created earlier on. That shall bring the total number of districts in this country to 108. However, there are more requests that have so far been received. The exact number of the new districts to be formed will be contained in the Bill to be presented before Parliament.

Thank you.

**Mr. Deputy Speaker:** Thank you, Mr. Kingi. Hon. Members, clarifications will sought in the following order: Messrs. Ojaamong, Angwenyi, Capt. Nakitare and Mr. Omondi. Please, just seek clarifications!

**Mr. Ojaamong:** Mr. Deputy Speaker, Sir, I must thank the Assistant Minister for saying that he will bring a Bill to be discussed in Parliament. But he has stated that provincial

commissioners held meetings with the leaders from the affected districts to discuss the issue of boundaries. When were the meetings called? In Teso, Bungoma and Mt. Elgon districts, for example, leaders have never been invited to any meeting to determine the boundaries. When shall we, as leaders, be called to those meetings to discuss with our neighbours about the issue of boundaries, amicably?

**Mr. Deputy Speaker:** Mr. Kingi, let us hear from Mr. Angwenyi and then you can respond to the two questions.

**Mr. Angwenyi:** Mr. Deputy Speaker, Sir, that is a laudable action. People need those districts. I hope the Ministry has included one district for the Chair! But, be that as it may, as we approve the Bill, could the Ministry include in the Bill a provision to increase the provinces? We want to bring the Government, at the provincial level, closer to the people. In Nyanza Province, for example, our people travel from Kenyenyia to Kisumu, which is further from Kenyenyia to Nakuru. We would like to have a provincial headquarters in Kisii Town. Could the Assistant Minister increase the number of provinces in this country as demanded by the people of Kenya? I have presented the demands of the people of Gusiland.

**Mr. Deputy Speaker:** Mr. Kingi, could you deal with those two questions first?

**The Assistant Minister, Office of the President** (Mr. Kingi): Mr. Deputy Speaker, Sir, we instructed provincial commissioners to convene meetings in the affected districts. But if there is any hon. Member who, for any reason or the other, was not invited, or is sure that such meetings did not take place in his or her area, he or she should inform us so that we can put corrective measures in place.

As for the provinces, that is a constitutional affair which we cannot amend through a Bill.

**Mr. Deputy Speaker:** Very well! I will now allow Capt. Nakitare, Mr. Omondi and Mr. Balala to seek clarifications in that order, and then finalise the issue.

**Capt. Nakitare:** Mr. Deputy Speaker, Sir, it was a noble idea to increase the number of districts to bring services closer to the people. But why are there disputes in establishing the district headquarters?

Secondly, I am one hon. Member whose district is still hosting a DC from another district. That is because the people of Kwanza and Cherengany constituencies cannot agree as to where the district headquarters will be located. To avoid tension among the citizens, what expedient method will the Assistant Minister use to quell the tension between the arguing parties, where the district headquarters or boundaries are being contested even now?

**Mr. Omondi:** Mr. Deputy Speaker, Sir, the Assistant Minister has said very rightly that the creation of new districts or divisions must be as a result of the request by the people. That is the reason why a committee went round the country to seek the interests of the people. In Nairobi, it has emerged that some divisions will be created. That negates what the people wanted. What does he have to say about that?

**Mr. Balala:** Mr. Deputy Speaker, Sir, I request the Assistant Minister to clarify a certain issue. They have organized and demarcated the districts. But there is the issue of overlapping of constituencies between districts. What will take place when there is an overlapping of constituencies between districts? The law does not allow overlapping of constituencies between districts?

**The Assistant Minister, Office of the President** (Mr. Kingi): Mr. Deputy Speaker, Sir, the first issue was on the establishment of the district headquarters. I said in my Ministerial Statement that, that is one of the issues that was supposed to be resolved at the leaders meetings. There is still an opportunity for the leaders to come together and resolve that matter because it is not the intention of the Government to impose a district headquarters on any one of our districts.

Mr. Deputy Speaker, Sir, as far as Nairobi is concerned, the idea is to split Nairobi into four

districts. The issue of divisions that is being raised by the hon. Member could be a new one. I am not aware of that. But after we have created the districts, the District Development Committees (DDCs) may wish to propose the creation of more divisions and locations in their areas.

Mr. Deputy Speaker, Sir, where constituency boundaries overlap, we raised that issue when we sent out a letter to the provincial commissioners and even when we gave a notice in the media. We instructed leaders to use that opportunity to correct situations where constituency boundaries overlap. We have had situations where some parts of certain constituencies belong to one district and others belong to another district. We have Ijara District as an example, and we have used this opportunity to correct that situation. We want to ask leaders to use this opportunity to try and resolve this problem, so that it does not interfere with our administration.

Thank you, Mr. Deputy Speaker, Sir.

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

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

**Mr. Deputy Speaker:** Oh! Mr. Mwanicha, you had seen me earlier. I am sorry for forgetting about your case.

### POINT OF ORDER

#### NATURE OF MARKETING CONTRACT BETWEEN KTDA AND LIPTON

**Mr. Mwanicha:** Thank you very much, Mr. Deputy Speaker, Sir, for your understanding.

Mr. Deputy Speaker, Sir, I rise to seek a Ministerial Statement from the Minister for Agriculture regarding a contract that--

**Mr. Deputy Speaker:** The Minister for Agriculture is not here. Therefore, the Deputy Leader of Government Business will take a brief for him on what Mr. Mwanicha wants to say.

**Mr. Mwanicha:** Thank you, Mr. Deputy Speaker, Sir. I rise to seek a Ministerial Statement from the Minister for Agriculture regarding a contract entered into between the Kenya Tea Development Agency and Lipton Tea of London. Lipton is a chief buyer of Kenyan tea at Mombasa. It is common knowledge that whenever Lipton does not buy our tea, the prices of the commodity go down. Lipton was given a contract to market Kenyan tea. I would like the Minister to tell us the nature of the contract, the anticipated benefit of the contract, whether the farmers were involved and are aware of that contract, and whether in future the Minister will be in a position to value-add our tea before he can sell it to Lipton. All that Lipton does is to buy our tea, value-add it in Mombasa and then export it, which we can do.

Thank you very much.

**The Minister for Justice and Constitutional Affairs (Ms. Karua):** Mr. Deputy Speaker, Sir, the Minister for Agriculture could be given until Thursday next week to issue the Ministerial Statement.

**Mr. Deputy Speaker:** Thank you very much, Ms. Karua.  
Next Order!

### BILLS

#### *Second Reading*

#### THE LABOUR RELATIONS BILL

**Mr. Deputy Speaker:** Hon. Members, at the request of the Government, the Chair orders

that we skip this Bill. Therefore, this Bill will not be read the Second Time now. In its place, we shall have the next Order.

*(Bill deferred)*

*Second Reading*

THE CONSTITUTION OF KENYA REVIEW BILL

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Mr. Deputy Speaker, Sir, I beg to move that the Constitution of Kenya Review Bill be now read the Second Time.

Mr. Deputy Speaker, Sir, this Bill is part of a package of Bills negotiated and agreed upon by the Multi-Sectoral Review Forum on the Constitutional Review, established following the resolution of the Inter-Parties Consultative Forum on Constitutional Review, held at Safari Park Hotel, Nairobi, on 15th September, 2006. You will recall that in 2005, we had a referendum on the proposed new Constitution, with the result that Kenyans rejected the proposed new Constitution.

In January, 2006, the President appointed the Committee of Eminent Persons, which made a Report indicating that Kenyans still wanted a comprehensive review of the Constitution. Following this, I did, with Members of Parliament, hold informal discussions in my office, after which those discussions were formalised and resulted in the Inter-Parties Consultative Forum, held at Safari Park Hotel in September, 2006. This forum was constituted for the purpose of exploring ways to revive the constitutional review process, consequent upon the expiry earlier on of the Constitutional Review Act, Cap.3A, Laws of Kenya, after the defeat of the proposed new Constitution at the referendum.

*[Mr. Deputy Speaker left the Chair]*

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

Mr. Temporary Deputy Speaker, Sir, the principal object of this Bill, which was negotiated by the Multi-Sectoral Forum, is to provide a road map for the completion of the review. I want to say at the outset that the Multi-Sectoral Forum comprised of all shades of opinion in this Parliament. Note that I am not talking of parties but of "all shades of opinion", because people have since moved from the parties that brought them to Parliament and are subscribing to other new fora. We, therefore, decided to do a reality check and invite people on the basis of shades of opinion represented in Parliament.

Additionally, we invited political parties that are not represented in Parliament. We also invited the Centre for Multi-Party Democracy to further represent political parties out of Parliament. We then negotiated with the civil society representation and came up with the Multi-Sectoral Forum, which was fairly representative, and which consisted of all sectors that ought to be represented in the review process.

Mr. Temporary Deputy Speaker, Sir, in this forum, the question that we were in the first instance exploring was whether it was possible to have a comprehensive review of the Constitution before the general election. We answered that question in the affirmative, and this Bill was supposed to have been passed last year, in which case the calendar would have run from November, 2006 to September, 2007. That calendar is no longer feasible and, most probably, during the Committee Stage, necessary amendments to the time-table will have to be moved.

I want to say that, as we are all aware, Members of Parliament are meeting under the Chair of the Leader of Government Business to discuss the issue of minimum reforms. The Bill I am presenting today deals not with minimum reforms but with the comprehensive review of the Constitution. It must be underscored that the ultimate goal for Kenyans is a total overhaul of the Constitution. That is what this Bill represents. The moving of this Bill, therefore, is not in contradiction with what is happening in the parliamentary forum, which is dealing strictly with the issue of minimum reforms.

I have indicated that the Multi-Sectoral Forum had representatives from all sectors. The youth and the faith-based organisations were represented. We had the Episcopal Conference representing the Catholic Church, the National Council of Churches of Kenya representing Protestants, the Seventh Day Adventist Church, the Evangelical Alliance, Muslims, Hindus and Sikhs. Women were represented by two broad women umbrella organisations, namely, the Women Political Caucus and the Women Political Alliance.

We also had the Civil Society Movement, the business constituency constituting the Kenya Private Sector Alliance (KEPSA), the Federation of Kenya Employers, and trade unions represented by Central Organization of Trade Unions (COTU) and the Kenya National Union of Teachers (KNUT). We also had the professionals represented by the Law Society of Kenya (LSK) and the Association of Professional Societies in East Africa. We also had the disability movement represented.

The shades of political opinion represented were the Kenya African National Union (KANU), Liberal Democratic Party (LDP), National Rainbow Coalition (NARC), NARC(K), Democratic Party of Kenya (DP), New KANU, Alliance Party of Kenya, FORD(P), FORD(K), FORD(A), Shirikisho Party, SAFINA, National Party of Kenya, Mazingira Greens Party of Kenya, Sisi kwa Sisi; indeed, all parties represented in Parliament and those outside Parliament. In a nutshell, the multi-sectoral review forum was, and is still, a most comprehensive review forum. It did deliberate for quite a while and the Bill before the House today, is a result of those negotiations by that very broadly-represented forum.

Mr. Temporary Deputy Speaker, Sir, this Bill proposes the organs of review. One of the organs of review, as suggested here, is the Council of Reference. The Council of Reference which is proposed will be a body corporate. It is the organ which will negotiate the contentious issues and prepare a harmonised draft constitution. The Council will be the principal organ of review, just like the former Constitution of Kenya Review Commission (CKRC). It will be independent and autonomous in its operations.

Other organs of review are the Constitutional Conference, which will debate and adopt the harmonised Draft Constitution, the National Assembly which will adopt it before the Referendum and the Electoral Commission of Kenya (ECK) which will organise and conduct the Referendum. The Bill also envisages that the President will promulgate the new Constitution.

The membership of the Council of Reference shall be drawn from stakeholders whom I have outlined; political parties, civil and professional societies, religious and youth organisations, women and minority groups.

Mr. Temporary Deputy Speaker, Sir, I will now move to the provisions of the Bill. This is a Bill which is intended to facilitate the completion of the review of the Constitution by the people of Kenya for connected purposes. We recognise that we are not starting from scratch. Kenyans have been on this business of the review process for over one decade. We, therefore, recognise that we have a wealth of documents which make a reference point in the review process. One of them is the Bomas Draft, which is described here as meaning, the document which was produced by the National Constitutional Conference on 15th March, 2004, under the expired Act. We also have the proposed new Constitution which was commonly referred to as the Wako Draft, which means, the

proposed new Constitution which was submitted to Kenyans during the Referendum on 21st November, 2005. It means that the principal documents which we shall be referring to when completing the review will be the Bomas Draft, the document commonly referred to as the Wako Draft, that is, the proposed new Constitution subjected to the Referendum in 2005 and any other documents that are relevant, like the views collected from Kenyans and collated by the CKRC, which are all in our archives.

The objects of the review process are clearly spelt out in Section 3. One of them is to guarantee peace, national unity and integrity of the Republic of Kenya, in order to safeguard the well-being of the people of Kenya. This clearly indicates that the review of the Constitution is for the benefit and welfare of all Kenyans, and also to guarantee their peace and national unity. It is, therefore, wrong for any one sector; whether the political class or any other sector to take constitutional review, as a tool for politicisation and other political gains. The Constitution is for posterity and we should all embark on the review process with only one objective; bringing a new order in our country.

The other objective is establishing a free and democratic system of Government that guarantees good governance, constitutionalism, rule of law, human rights, gender equity and equality, and affirmative action.

It is also intended that the new Constitution will help Kenyans to demarcate divisions of responsibility among the various state organs, including the Executive, Legislature and Judiciary, so as to create checks and balances between them. It is also intended to ensure accountability of each organ and also of the Government and its officers, to the people of Kenya. I would like to underscore here that we have to ensure, in the new order, that the Legislature, to which we belong, becomes accountable to the people of Kenya, more than it is today.

The Constitution is also intended to enhance people's participation in the governance of the country, through democratic free and fair elections. It should provide also for devolution and exercise of power. It is also intended to enable us to respect our ethnic and regional diversity and communal rights.

Mr. Temporary Deputy Speaker, Sir, the new order also should guarantee the provision of basic needs to all Kenyans, through the establishment of an equitable framework for economic growth and equitable access to national resources. This is very necessary, so that we can live in a society where every time we talk about leadership, we do not refer to our ethnicity. It will also ensure that we live in a society where everybody is able to access the national resources and services equitably. Then, tribalism will die a natural death. Even leaders who like promoting tribalism, while denying that they are tribalists, will find that there is no fertile ground for promoting tribalism. I have already indicated that the organs of review are the Council of Reference, Conference, National Assembly and Referendum.

The guiding principles are very well-spelt-out in Clause 5 of the Bill, one of them being to ensure that the national interests prevail over regional or sectoral interests. This is in remembrance of the fact that one of the objectives of the review is peace, unity and integrity of the Republic of Kenya.

Therefore, Mr. Temporary Deputy Speaker, Sir, the guiding principle following that objective is to ensure that the national interests override all other interests. In performing the duties of reviewing the Constitution, all those engaged in the review process shall be accountable to the people of Kenya and ensure that it accommodates the diversity of the people; including their socio-economic status, race, ethnicity, gender, religious and age, among others.

It is also the duty of those engaged in the review process to provide the people of Kenya with an opportunity to actively, freely and meaningfully participate in generating and debating proposals to the review process. This will ensure that the review of the Constitution is by Kenyans,

for Kenyans. We also must be guided by the principle of stewardship and responsible management. We must be open and guided by respect for principles of human rights, equality, affirmative action, gender equity and democracy. We must also ensure that the outcome of the review process faithfully reflects the wishes of the people of Kenya.

Mr. Temporary Deputy Speaker, Sir, it is hoped that we shall learn from the processes we have undergone and that by now, we all acknowledge that neither the Government nor the Opposition, indeed, nor any other sector can, on its own, deliver to the people of Kenya a new Constitution. However, reasoning together and for the welfare and interest of Kenyans; placing Kenya above self, we can deliver a new Constitution.

What is the composition of the Council of Reference? Its establishment is provided for in Part II, Section 6. Like I said before, the Council shall be a body corporate with perpetual succession. It shall be capable of suing and being sued and doing all other things that corporate bodies do. It shall consist of 104 persons; 91 of whom shall be nominated by the organs set out in the Second Schedule; majority of whom I read, when giving the composition of the multi-sectoral forum. Thirteen of these shall be nominated by the Parliamentary political parties in proportion to their numbers in the National Assembly as agreed by the parties and appointed by the President. All the organisations specified in the Second Schedule; that is the organisations as agreed in the multi-sectoral forum, shall each nominate the number of persons specified in that Schedule.

Mr. Temporary Deputy Speaker, Sir, the Attorney-General or his representative and the Director shall be *ex-officio* members of the Council without the right to vote. The reference to the Director here means the Director appointed under proposed Clause 10 of this Bill, who will be the director heading the Secretariat for the Council of Reference; in other words, the CEO of the Council of Reference.

In nominating the persons for appointment as members of the Council of Reference, all the organisations enumerated in the Second Schedule are obligated by Clause 6, subclause 7 that they must have regard to Kenya's ethnic, geographical, cultural, political, social and economic diversity and the principle of gender equity, equality and affirmative action. This is to further buttress the principle of inclusiveness and especially, that of ensuring that the marginalised groups get a voice.

The procedure of nominating members to the Council is given in Clause 7 and also the qualifications are given in Clause 8. It provides that, for a person to be appointed as a member of the Council, they must have knowledge and experience in public affairs. No person shall be qualified to be appointed unless they are citizens of Kenya and are able to speak, unless incapacitated by blindness or other physical cause, to read Swahili and English languages well enough to take an active part in the proceedings of the Council. Such persons must be of sound mind, good character and integrity. They must also not be undercharged bankrupt.

Mr. Temporary Deputy Speaker, Sir, Clause 9 indicates that there will be two co-chair persons of the Council of Reference and two deputy co-chair persons who will be elected from among the members. Each of those positions shall be held by people of opposite gender. This is again, the principle of inclusiveness, including inclusiveness in terms of gender. The Council shall also elect two joint secretaries of opposite gender from among its members. These will be the ones responsible for the management of the meetings and preparations of the reports.

Just like the Constitution of Kenya Review Commission (CKRC), the Council shall have a Secretariat headed by a Director who will be the CEO and the duties of the director are spelt out in Clause 10. It will also have staff as spelt out in Clause 11. Any person appointed to the Council shall subscribe to an oath as shown in the Third Schedule, or an affirmation, prior to taking up the duties.

The Bill also proposes a code of conduct for those engaged in the review process. This is basically to ensure that the deliberations are conducted in an atmosphere of civility which is



necessary to enable the review process to go on smoothly. This will also help to avoid the pandemonium that Bomas was. We must learn from the journey that we have undertaken; that, we cannot be able to listen and to reason together and to listen to one another if civility is not maintained.

Mr. Temporary Deputy Speaker, Sir, the tenure of office of members of the Council is provided for in Clause 17, including that a Council member may resign by notice in writing and what should happen thereafter if there is a vacancy.

The functions and powers of the Council are spelt out in part III. This is basically; one, to be the principal organ of the review process. They will provide policy direction to guide the process, oversee operations of the steering committee, identify contentious issues in the proposed new Constitution which was rejected at the Referendum and also in the Bomas Draft, and also any other draft that the Council may consider appropriate. They are mandated to negotiate the resolution of the identified contentious issues, and on the basis of the two previous drafts, that is, the 2005 Draft Constitution and the Bomas Draft Constitution and any other materials, prepare a harmonised draft constitution for presentation to the Constitutional Conference. They are also mandated to establish an audit, monitoring and evaluation mechanisms to ensure compliance with the principles and objects of the review process and that the draft constitution produced by the conference is entirely consistent and is of the highest legislative drafting standards. It is the duty of the Council of Reference to ensure that this happens. It is their duty also to conduct and facilitate civic education in order to stimulate public discussion and awareness on constitutional issues. They are also supposed to carry out studies, research and evaluation concerning the Constitution and any other constitution and all constitutional systems. In other words, they may have comparative studies in order to inform themselves as they embark on this very important task.

Mr. Temporary Deputy Speaker, Sir, with regard to the powers conferred upon the Council, if they deem it necessary, they may summon any public officer or other persons to appear before them or to produce any document or any information which they may consider relevant in their work. This is a condition that was there even in the previous Constitution of Kenya Review Act.

Mr. Temporary Deputy Speaker, Sir, Clause 17 establishes a steering committee which shall be composed of 43 members appointed by the Council from amongst its members. The Council has 104 members. The steering committee will have about half the membership of the Council. This shall be the principal organ of the Council in the execution of its functions. In other words, it is like an executive committee. The Council is also empowered to establish such other committees as it may consider necessary in the carrying out of its mandate.

The procedure the Council will adopt is spelt out in Clause 18 and like in any other committee, it shall regulate its own procedures and that of its committee. The Council is empowered to hold such number of meetings at such places and times and in such manner as they consider it necessary. In other words, it is totally autonomous in executing its duties. The quorum of the Council and that of its committee is prescribed at two-thirds of its members.

It is also emphasised in Clause 18(4) that all questions before the Council or its committee shall be determined by consensus.

*(Loud consultations)*

**Mr. Sungu:** On a point of order, Mr. Temporary Deputy Speaker, Sir. There are loud consultations going on that we can hardly hear the Minister. You need to intervene, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Mr. Wambora): You are very right, Mr. Sungu. There are so many consulting groups in the Chamber. Please, consult quietly.

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Mr. Temporary

Deputy Speaker, Sir, all questions before the Council or its committee shall be determined by consensus, but in the absence of consensus, decisions of the Council shall be determined by a two-thirds majority of its members present and voting. Therefore, this Bill is emphasising on consensus as a method to guide the review process, but in the event of failure to gather consensus, then a two-thirds majority will reach a decision.

Mr. Temporary Deputy Speaker, Sir, Clause 19 provides for verbatim recording of all the proceedings of the Council so that people may cross-check this very important process. The Council will consult with the Kenya Broadcasting Corporation (KBC) and other licensed broadcasting stations in order to secure suitable allocation of airtime and space for purposes of disseminating information about its activities through the electronic and print media and for provision of sign language inset or subtitles, in all television programmes aired---

### QUORUM

**Mr. Arungah:** On a point of order, Mr. Temporary Deputy Speaker, Sir. The matter of constitution review is very important in the lives of Kenyans. It is a very important topic, but as you can see, we are discussing it and yet there is no quorum in the House.

**The Temporary Deputy Speaker** (Mr. Wambora): It is true that there is no quorum in the House. Ring the Division Bell!

*(The Division Bell was rung)*

**The Temporary Deputy Speaker** (Mr. Wambora): We have quorum now. You may proceed, Ms. Karua.

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Speaker, Sir, Clause 20 provides that the Council shall, in furtherance of the completion of the review process, facilitate and promote civic education in order to stimulate public discussion and awareness on the Constitution. It will also make sure that civic education materials are made available in a form accessible to the various categories of persons with disabilities. This is a good provision because it will ensure that, throughout the review process, the civic education that is conducted is what is approved by the Council and not what the various groupings may put across.

*(Loud consultations)*

**Mr. Sungu:** On a point of order, Mr. Temporary Deputy Speaker, Sir. There are hon. Members standing and consulting with their backs facing the Chair when the Minister is moving this Bill. That is out of order!

**The Temporary Deputy Speaker** (Mr. Wambora): Order, hon. Members! I hope we shall not have any more disorder in the House.

Proceed, Ms. Karua!

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Speaker, Sir, Part IV of the Bill provides for the Report of the Council and the action thereof. Once the Council of Reference completes its work, and it is provided here that it will complete its work within a period of 12 months from the commencement of the Act, it shall, within two months of the commencement, on the basis of the proposed new Constitution of 2005, the Bomas Draft and such other drafts as the Council may consider, prepare a draft constitution for presentation to the Conference. After compiling the report and preparing the draft, the Council is obligated to publish such drafts for a

period of 30 days to enable Kenyans to acquaint themselves with the proposed new constitution. This is an effort to make sure that the Draft, just like the Wako Draft, is availed to the public so that they can go through it and prepare themselves for the referendum. The Council is thereafter obliged to call for a Constitutional Conference to present its report and the draft constitution for adoption with or without amendments.

Mr. Temporary Deputy Speaker, Sir, it is the responsibility of the Council to make the rules that will govern the elections of the members of the Constitutional Conference.

Mr. Temporary Deputy Speaker, Sir, it is also envisaged that all questions before the Conference shall be determined by consensus. We are here, again, recognising that constitution making is about consensus building. But, in the absence of consensus on all questions other than a question relating to the contents of the draft, matters shall be determined by a simple majority of the members of the Conference present and voting. But if the question relates to the contents, then this shall be determined by two-thirds of the members present and voting.

Mr. Temporary Deputy Speaker, Sir, like I said before, the National Assembly is also an organ of review. After the Conference has passed the Draft Constitution, the National Assembly will be required to look at it, debate and pass the Draft Constitution. It can approve the Draft without amendments and submit it to the Attorney-General or propose amendments to the Draft and submit the Draft and proposed amendments back to the Conference for reconsideration. The procedure is set out but the National Assembly can only amend it by referring back to the Constitutional Conference. This, again, is to ensure that it is the people of Kenya who make all the significant input to the Constitution before it is submitted to referendum.

Mr. Temporary Deputy Speaker, Sir, Part V deals with the issue of the referendum. Under Clause 25(i), the Electoral Commission of Kenya (ECK) is obligated within seven days of the publication of the Draft Constitution by the Attorney-General, to frame the question to be determined by the referendum and the Attorney-General shall lay the question before the National Assembly for its approval. Once the question is approved by the National Assembly, it will then be published by the ECK within seven days.

It is also provided in Clause 25(3) that the question in the referendum will be answered with a "Yes" or "No" vote. The procedure of voting in the referendum is by secret ballot. It is up to the ECK to assign symbols. Remembering that the "banana" and "orange" symbols given in the last referendum have become symbols of political parties, I am sure the ECK will look for other symbols for the next referendum. It is also provided very clearly that in the referendum only one question will be answered.

Mr. Temporary Deputy Speaker, Sir, there is also a specific provision arising from the debate that came during the last referendum. Clause 27 says that public funds shall not be used to finance partisan campaign activities of any referendum type. Note the word "partisan". It means legitimate dissemination of information for purposes of the referendum is not outlawed from public funding but partisan campaign is.

Mr. Temporary Deputy Speaker, Sir, I would want to also say that Clause 33 indicates that the code of conduct that is applicable during national elections under the National Assembly and Presidential Elections Act shall apply to the conduct of the referendum and shall bind all the persons participating in the referendum. The ECK, as was in the previous referendum, is obligated to publish the results in the Kenya Gazette within two days of the referendum being held. If there is no petition challenging the results of the referendum within the time limit of making such a petition, then upon the expiry of that limit the results will be final.

## QUORUM

**Mr. Balala:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I note that we do not have a quorum, yet we are discussing a very important Bill.

**The Temporary Deputy Speaker** (Mr. Wambora): Yes, We do not have a quorum! Ring the Division Bell!

*(The Division Bell was rung)*

### **ADJOURNMENT**

**The Temporary Deputy Speaker** (Mr. Wambora): Hon. Members, due to lack of quorum, this House is adjourned until Tuesday, 8th May, 2007, at 2.30 p.m.

The House rose at 4.50 p.m.