

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Tuesday, 8th May, 2001

The House met at 2.30 p.m.

[*Mr. Speaker in the Chair*]

### PRAYERS

making surpluses.

### ORAL ANSWERS TO QUESTIONS

*Question No.030*

#### MEASURES TO SALVAGE KPCU

**Mr. Kihoro** asked the Minister for Agriculture:-

(a) whether he is aware that Kenya Planters Co-operative Union (KPCU) is on the verge of being put under receivership; and,

(b) who the major debtors of KPCU are and what measures he is taking to recover the huge debts, with accrued interest, in order to return KPCU back into viable business.

**The Assistant Minister for Agriculture, Livestock and Rural Development** (Mr. Khaniri): Mr. Speaker, Sir, I beg to reply.

(a) I am not aware. However, I am aware that KPCU operations have been hampered by outstanding debts but the situation is now improving.

(b) As to who the major debtors are, the list is long and I beg to table it.

(*Mr. Khaniri laid the list on the Table*)

In order to recover the outstanding debts, KPCU Limited has taken the following steps:-

(i) A debt moratorium was extended to all debtors as from August, 1998 but backdated to 1st January, 1992, in order to encourage those debtors to repay their debts. This moratorium included waiving of all interests accrued above 18 per cent per year.

(ii) A debt collection unit was set up in November, 2000, to evaluate the existing difficulties encountered by debtors with a view to addressing them.

(iii) Some of the stubborn debtors have been taken to court and recoveries have been made. Since these measures were put in place in 1998, the downward trend at KPCU Limited has been reversed and the union has started way in improving the quality of coffee.

**Mr. Kihoro:** Mr. Speaker, Sir, I have just been given the list of the debtors of KPCU. It looks like more than Kshs3 billion is owed by these high class debtors that the Assistant Minister has avoided reading. Why was this situation allowed to obtain, to the extent that the shareholders of KPCU have been suffering?

**Mr. Khaniri:** Mr. Speaker, Sir, first of all, I would like to correct the impression that the hon. Member is giving. I think the total debt is not Kshs3 billion as he says; it is Kshs1.5 billion. There are various reasons why these debts rose to that level. I would like just to outline some of the reasons.

Some debtors would have managed to service their debts but due to low coffee production, poor prices and adverse weather conditions, this is no longer achievable. With the collapse of the International Coffee Agreement (ICA) in 1999, most farmers panicked and abandoned coffee farming. To the extreme end, some went to the extent of uprooting their coffee trees.

**Mr. Wamae:** On a point of order, Mr. Speaker, Sir. Is it in order for the hon. Assistant Minister to refuse to give the names of the major debtors?

**Mr. Speaker:** Order, Mr. Wamae! You are totally out of order! The list of the major debtors has been tabled. It is a public document. Mr. Wamae, I am confident you can read!

**Mr. Michuki:** Mr. Speaker, Sir, given the happenings of the last few years, would the Assistant Minister agree that - the reasons he is giving to explain the state of affairs in this case, that prices went down - the quality of coffee which could have been improved was hampered by the non-release of the STABEX funds for the last ten years, so that the quality deteriorated and hence the prices plummeted downwards?

**Mr. Khaniri:** Mr. Speaker, Sir, I would say yes and no. I have stipulated that there are various factors that have made this situation. But when it comes to STABEX funds, we all know what the new developments are and we hope this will go a long [Mr. Khaniri]

**Mr. Gatabaki:** Mr. Speaker, Sir, may I start

by thanking the Minister for Agriculture for giving what is abnormal of this Government - a good answer. However, could the Assistant Minister agree that the problems in KPCU started when the Government begun interfering with the management of KPCU, through the then Commissioner of Co-operatives, Mr. Birgen? Could he agree that, that is the time KPCU started experiencing problems and has never recovered?

**Mr. Khaniri:** Mr. Speaker, Sir, I deny that vehemently.

**Mr. Kihoro:** Mr. Speaker, Sir, the extent of debts in KPCU is very high. If this is indicative of what the level of debts is in the co-operative movement in this country, then even the STABEX funds that have been made available by the European Union to be given to the farmers cannot be of any assistance at all.

Could the Assistant Minister pursue that long list of high class debtors, who have almost managed to put KPCU under receivership? He should pursue them and make sure that they pay the money with interest, and make sure that this year, KPCU will pay the shareholders dividends.

**Mr. Khaniri:** Mr. Speaker, Sir, as a Ministry, we will do everything possible to assist KPCU.

*Question No.117*

RETRENCHMENT OF KENYA RAILWAYS ENGINEERS

**Eng. Toro** asked the Minister for Information, Transport and Communications why Messrs M.O. Ndeda, Chief Mechanical Engineer; J.K. Kamau, Chief Civil Engineer and L.D. Achieng, Chief Traffic Manager, were retrenched by the management of the Kenya Railways Corporation.

**The Minister for Information, Transport and Communications** (Mr. Mudavadi): Mr. Speaker, Sir, this Question was raised last week and there was a problem as to the meaning of "a flatter structure". However, I beg to reply.

The officers were retrenched, among others, from the corporation as part of the on-going staff reduction programme, which has been in place since 1994. In the process of retrenching, the departments within the corporation were reduced from 20 departments and consolidated to 12. This consolidation involved merging of some of the departments so that we now have a situation where we have a Deputy Managing Director, General Manager, Finance; General Manger, Human Resources, and General Manger, Operations. It is within this restructuring and consolidation of the departments that some of the engineers so listed here by hon. Toro were retrenched.

**Eng. Toro:** Mr. Speaker, Sir, the answer I got last week before this Question was deferred is exactly the same as the one I have today. However, it appears that the

Minister is not aware of the operations of the Kenya Railways corporation. The Minister should tell this House whether the said departments were affected by the reduction of departments or not?

Mr. Speaker, Sir, could he tell this House whether we have departments today such as Mechanical Engineering headed by a Chief Mechanical Engineer; Traffic Department headed by the Chief Traffic Manager, and Civil Engineering headed by a Chief Civil Engineer? Those were the chief officers who were sacked, and yet they were heading the same departments. Are those departments still in existence today as they were before?

**Mr. Mudavadi:** Mr. Speaker, Sir, I have already said that those departments are not in existence exactly as they were at that time. But there have been some consolidation of these departments so that they now fall under the General Manager, Operations. But we still maintain somebody responsible for mechanical aspects, civil aspects, and also the traffic aspects.

**Mr. Toro:** On a point of order, Mr. Speaker, Sir. The Minister has not answered my Question. I asked him to tell this House specifically whether we have a Chief Mechanical Engineer, Chief Traffic Manager and Chief Civil Engineer today in that corporation!

**Mr. Mudavadi:** Mr. Speaker, Sir, I am prepared to table the entire organisational structure of the Kenya Railways corporation in this House, so that this specific Question could then be looked at again in relation to the organisational structure of Kenya Railways.

**Mr. Speaker:** Could you do that tomorrow afternoon, Mr. Mudavadi?

*(Loud consultations)*

Order, hon. Members! The Chair is addressing the hon. Minister. You must give reverence to the Chair! Can you do that tomorrow afternoon, Mr. Minister?

**Mr. Mudavadi:** Mr. Speaker, Sir, I will be very happy to do it on Thursday afternoon.

**Mr. Speaker:** Very well, Question deferred to Thursday afternoon.

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

**[Mr. Speaker]**

Order, Mr. Raila! Have I not deferred that Question?

**Mr. Raila:** Mr. Speaker, Sir, I know that and I do not want to challenge that ruling at all. This is a very important Question. I want the Minister, when he is coming to answer it on Thursday, to address the critical issue of engineering departments within the Kenya Railways Corporation and not just to come and table the list of the staff here.

Mr. Speaker, Sir, the big problem besetting the Kenya Railways is retrenchment of engineers, which has made all the departments - Mechanical, Traffic, Electrical and Civil - completely inoperational. Could he address those issues?

**Mr. Speaker:** Very well, next Question.

*(Question deferred)*

*Question No.142*

COMPLETION OF MALABA-KOCHALIA  
WATER PROJECT

**Mr. Speaker:** Question No.142 by Mr. Sifuna had been dealt with earlier. Therefore, it should not be there.

*(Question withdrawn)*

Next Question, by Mr. Muchiri!

*Question No.094*

RECOMMENDED RENTS FOR  
AMANI HOUSING PROJECT

**Mr. Muchiri** asked the Minister for Roads and Public Works:-

- (a) what the recommended rent per room at Amani Housing Project Mathare "A" and the criteria for tenancy is; and,
- (b) how much money the project has realised from rent and donations, and how it was realised.

**The Assistant Minister for Roads and Public Works** (Eng. Rotich): Mr. Speaker, Sir, I beg to reply.

(a) There is no uniform recommended rent per month at Mathare 4A Slum Rehabilitation Project. The rent varies from room to room, depending on its size, quality of shelter, fabric status, type of finishes and whether the room is used for commercial or residential purposes.

(b) The project has to date received Kshs473,242,436.40 from the Federal Republic of Germany, and Kshs65,545,999 from rental income paid by the tenants.

The breakdown is as follows:-	KShs(Milion)
Compensation to structure owners	62,651,767
Construction of Physical	
Infrastructure	224,279,624
Construction/Relocation of Housing	152,000,000
Maintenance of Infrastructure	
& Housing	36,222,359

**Mr. Muchiri:** Mr. Speaker, Sir, the Assistant

Minister has misled this House. There was a task force where Mr. Ngala recommended the rent payable. It was even reported in the Press and I am going to lay the document on the Table. Former Ministers of this Ministry, including Eng. Kiptoon and Mr. Kones, confirmed the rent to the members of the public at the site to be Kshs400. Even the present Minister, Mr. Morogo, also confirmed the rent as Kshs400.

Mr. Speaker, Sir, all these recommendations have been rejected by the Catholic Archdiocese of Nairobi. Is he now telling the House that this document, which has been signed by Mr. Ngala, is useless and that what the Catholic Archdiocese of Nairobi has set is what is the right rent?

**Eng Rotich:** Mr. Speaker, Sir, at the moment, the tenants are paying Kshs400, but according to the study that was done, the rent was supposed to be 20 per cent of disposable income, which is between Kshs500 and Kshs600. So, there is no difference between what he is saying and what I have said.

**Mr. Raila:** Mr. Speaker, Sir, we are dealing with a very volatile situation - Mathare 4A. The other time I saved the Archbishop of Nairobi from being lynched by the residents of Mathare 4A. The reasons were as stated by Mr. Muchiri. Three Ministers are on record as having said that the rent should be Kshs400, but the Catholic Archdiocese of Nairobi is insisting on exploiting the poor people who live in Mathare 4A by increasing the rents.

Mr. Speaker, Sir, could the Assistant Minister give an undertaking to this House that the rent in Mathare 4A is going to remain Kshs400 and not more, irrespective of what the Catholic Archdiocese of Nairobi says?

**Eng. Rotich:** Mr. Speaker, Sir, I am not able to do that. A task force was set up a month ago, which visited the area and discussed with the people. It will come up with the levels acceptable to them and to the Catholic Archdiocese of Nairobi.

**Mr. Raila:** On a point of order, Mr. Speaker, Sir. The task force was already there before. Is the Assistant Minister in order to try and perpetuate this kind of stalemate by telling the [Mr. Raila] House that a task force has been appointed now, when there was already a task force in place, which had made recommendations which the former Ministers implemented?

**Eng. Rotich:** Mr. Speaker, Sir, I think I am in order. The task force that I am talking about was set up a month ago. They will give their recommendations in the next two weeks.

**Mr. Mwenje:** Mr. Speaker, Sir, the whole issue has been a hullabaloo and some people have even ended in courts. You have heard the Assistant Minister saying clearly that the funds that were used to put up those houses were not borrowed. This was money given

by the German Government and partly by this Government through Parliament. All along, these people have been demanding that these houses should now be given under a tenant- purchase scheme to those people. The land was not bought from anybody because it was still being occupied by the same people. Why has the Ministry been adamant to put the houses under a tenant purchase scheme so that they are owned by these people, and that those who have been residing there can continue residing there while paying affordable rents to the head tenants of those houses?

**Eng. Rotich:** Mr. Speaker, Sir, it is not true that the Government contributed funds to the scheme. The Government's contribution was in the form of land and not cash. Secondly, the agreement between them, which is called the Amani Housing Trust, was that the houses would be rental. Maybe, the next Phase 4B can be a tenant-purchase scheme. But as of now, it is a rental scheme.

**Mr. Mwenje:** On a point of order, Mr. Speaker, Sir. The Assistant Minister is not in order to continue misleading the House. I have a copy of the agreement where they agreed that it would be a tenant-purchase. Why has the Government deviated from the original agreement?

**Eng. Rotich:** Mr. Speaker, Sir, I do not agree with what Mr. Mwenje has said. I have to see that document before I can comment. What I know is that the agreement was rental and not tenant purchase scheme.

**Mr. Muchiri:** Mr. Speaker, Sir, this is a Kenya Government funded project in conjunction with the Government of Germany, while the Catholic Archdiocese of Nairobi is an executing agent. The Assistant Minister also agrees that the title of the land is registered in the name of the Catholic Archdiocese of Nairobi. Since December, Mathare residents have not had water. It was disconnected by the Nairobi City Council. The refuse is not being collected by either the Amani Housing Trust or the Kenya Government. Could the Assistant Minister, right now, order the Nairobi City Council to reconnect the water and collect refuse from Mathare 4A, because this is a Government project?

**Eng. Rotich:** Mr. Speaker, Sir, I cannot order the reconnection of either water or electricity. The people refused to pay rent from December last year. Part of that rent is used to pay electricity bills, water and other services. So, at the moment, they have no water. That revenue is used for paying water bills. is being repaired during this financial year at a cost of Kshs3 million.

**Mr. Maitha:** Mr. Speaker, Sir, you have heard the Assistant Minister misleading the House. In his first reply he said he has no money, and now he comes up to say that he is going to repair the road at a cost of Kshs3 million. Where is that money coming from, now that, that road is being repaired?

**Mr. Mokku:** Mr. Speaker, Sir, I did not mislead the House. I said part of the road, C115 has an allocation of Kshs3 million during this financial year. From August this

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

**Mr. Speaker:** Order, Mr. Muchiri! We have other Questions! Last week I had to forgo four Questions because we had taken too much time on one Question. So, please, be satisfied with the time allocated to you because every hon. Member wants to participate. Next Question!

*Question No.156*

REPAIR OF TEZOROKA-KAKANJUNI ROAD

**Mr. Maitha** asked the Minister for Roads and Public Works:-

(a) whether he is aware that the road from Tezoroka-Kakanjuni, which connects Ganze and Kilifi, is impassable; and,

(b) what immediate measures he is taking to ensure that this road is repaired.

**The Assistant Minister for Roads and Public Works (Mr. Mokku):** Mr. Speaker, Sir, I beg to reply.

(a) I am aware that the road from Tezoroka to Kakunjuni, which connects Ganze and Kilifi is in a state of disrepair.

(b) The Ministry will include the repair of Tezoroka-Kakunjuni Road in its routine maintenance works plan for the 2001/2002 Financial Year under the Road Maintenance Levy Fund Programme.

**Mr. Maitha:** Mr. Speaker, Sir, the reason why I have asked this Question is because this is the only by-pass road from Mombasa to Malindi. Whenever there was a problem with the Kilifi Ferry, people used this road as a by-pass, but now it is impassable. There was an accident at Sabaki where there was a heavy traffic jam towards Lamu because there is no by-pass. I wonder what Malindi people would do if an accident occurred at Mtwapa Bridge or Kilifi Bridge and there is no by-pass, and yet Malindi is a tourist destination area.

**Mr. Mokku:** Mr. Speaker, Sir, part of the road the hon. Member is referring to; C115 from Magogoni to Sokoke, which is 10.3 kilometres long, [Mr. Mokku] year when the repair of the bridge commences, the by-pass will also be taken care of.

**Mr. Mwakiringo:** Mr. Speaker, Sir, it seems as if the Ministry did not find this road very important and, therefore, did not allocate it any money this financial year. This is a very important road, and it is important that emergency funds are sought for the repair of the same. Could the Assistant Minister confirm that half of the Kshs3 million is not going to be used by his officers for diesel purchase? That is where most of the money goes.

**Mr. Mokku:** Mr. Speaker, Sir, I would like to assure the hon. Member that we undertake repairs on a road if the DDC prioritises it. At the moment, the DDC, Kilifi, has not prioritised this road.

Mr. Speaker, Sir, secondly, it is my hope that, that money will be utilised on the road. If the hon. Member comes across any fishy dealings as alleged, he should make a report.

*Question No.157*

DELAYED SALARY PAYMENTS BY  
NYANDO COUNTY COUNCIL

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

(a) whether he is aware that some councillors and workers from Nyando County Council have not received their allowances and salaries, respectively, for the last five months; and,

(b) what urgent measures he is taking to ensure that these people get their allowances and salaries on time.

**The Assistant Minister for Local Government**

(Mr. Sirma): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that some councillors and workers from Nyando County Council have not received their allowances and salaries, respectively, for the last five months.

(b) I have directed the Provincial Local Government Officer to move in and facilitate staff rationalisation.

**Mr. Otita:** Mr. Speaker, Sir, the answer given by the Assistant Minister cannot satisfy this House at all. I had a meeting recently with Nyando County Council where the councillors and chief officers stated that they need more than Kshs7 million to make their payments up-to-date. The Assistant Minister says that he has directed payments to be made. How is the council going to raise money to effect the payments since it does not have any money in its account?

**Mr. Sirma:** Mr. Speaker, Sir, I think the hon. Member should appreciate that Nyando County Council is poor because it has a very narrow revenue base. The councillors in that county council have paid themselves up to March, 2000. Apparently, for some reasons, the workers who are involved in the day-to-day collection of revenue for the council were not paid. The council lacks the required revenue to pay its officers.

**Mr. Kamolleh:** Mr. Speaker, Sir, you have heard the Minister say that, that county council is poor. I wonder why we have to create more of the local authorities when we know very well that they are poor? That is very bad. The Assistant Minister knows the poor local authorities in this country. So, I hope that he will also do away with Kwale Urban Council, which is as poor as Nyando County Council. Those local authorities have no money to pay their workers and councillors.

**Mr. Sirma:** Mr. Speaker, Sir, hon. Kamolleh's request that we do away with Kwale Urban Council will be considered very soon. As you are aware, the Electoral Commission of Kenya (ECK) is going round the country to collect views from Kenyans, Members of Parliament included, so that it can reduce the number of councillors in each local authority. So, I hope that hon. Otita will give his positive views to the ECK in view of the fact that Nyando County Council is very poor and that it needs just three or four councillors.

**Dr. Omamo:** Mr. Speaker, Sir, in my opinion, it is not the question of poverty that is bothering the Ministry. Kenya is not a rich country, but she must be governed. So, we have to share the little resources that we have. That is why we have the Local Authorities Transfer Fund (LATF), through which the Central Government helps the relatively poorer local authorities. Why has the Ministry not taken time to study the budget of every local authority at the beginning of every financial year, to determine the extent of their deficits and correct them before the local authorities start their operations?

**Mr. Sirma:** Mr. Speaker, Sir, the narrow revenue base of Nyando County Council is not the responsibility of the Ministry of Local Government. That is due to the scarce resources the local authority has. Secondly, the LATF funds are distributed all over the country. Every local authority [**Mr. Sirma**] receives a share of that Fund. If funds are being misappropriated at that local authority, then we had better check on that.

**Mr. Speaker:** Could you ask the last question, Mr. Otita? Or do you want to give your chance to your very good neighbour?

**Mr. Otita:** Mr. Speaker, Sir, I will give him only part of it.

*(Laughter)*

**Mr. Speaker:** You will give him the whole of it!

**Mr. Sungu:** Mr. Speaker, Sir, I would like to disagree with the Assistant Minister that Nyando County Council is poor. The county council collects cess from Muhoroni and Chemilil Sugar Factories. Well, Muhoroni Sugar Factory has collapsed, but where is the money the local authority has been collecting as cess gone to? Is this a classic case of corruption that the Ministry is not able to deal with and ensure that cess money collected by the local authority is accounted for?

**Mr. Sirma:** Mr. Speaker, Sir, it is also the responsibility of the hon. Member to ensure that services are delivered to his people. If the county council is misappropriating the funds it collects, he should report the same to us so that we can send there an inspection team to ascertain the truth of that allegation.

*Question No.237*

TELEPHONE FACILITY FOR  
PUBLIC TRUSTEE'S OFFICE

**Mr. Speaker:** Hon. Members, Mr. Oloo Otula's Question is deferred.

*(Question deferred)*

**QUESTIONS BY PRIVATE NOTICE****THUGGERY IN GUSII DISTRICTS**

**Mr. Obwocha:** Mr. Speaker, Sir, before I ask my Question, I would like to inform you that the written reply to it which I have received is not signed.

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

(a) Is the Minister aware that there is a gang of thugs operating in the three Gusii districts which is terrorising Catholic Fathers at their parishes?

(b) What has the Government done to stop this thuggery and offer adequate security to the parish residents?

(c) How many arrests have been made so far?

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

(a) I am aware of two incidents in Nyamira District where thugs raided the houses of Catholic priests in Kebirigo and Kegano Parishes in November and December, 2000, respectively.

(b) Security personnel have increased day and night patrols in and around institutions housing Catholic clerics alongside their other various operations.

(c) No arrests have so far been made in connection with the two incidents. However, investigations are still in progress. where Catholic Fathers and Sisters are being terrorised.

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

Mr. Speaker, Sir, the most serious of these incidents is the one where Father Thomas Menge was shot four times by thugs who invaded his parish. This is the most serious of these nine incidents. The letter from the Bishop states:

"The police were given the names of the suspects who may have organised the attack. The suspects had written a letter to the Bishop demanding the transfer of that priest or else they would act in any way necessary."

This means that the names were known and given to the police. I put it to the Assistant Minister that the names are known. Why have these people not been arrested up to now?

**Mr. Obwocha:** Mr. Speaker, Sir, the Assistant Minister did not address this Question in its totality. I am asking about the three Gusii districts, namely, Nyamira, Central Kisii and Gucha Districts.

"Mr. Kisii"---

*(Laughter)*

**Mr. Speaker:** Mr. Obwocha, what did you say that tickled the whole House?

**Mr. Obwocha:** It was a slip of the tongue, Mr. Speaker, Sir. I have a letter here, which I would like to lay on the Table before I ask my question.

**The Minister for Vocational Training** (Mr. Ruto): On a point of order, Mr. Speaker, Sir. Is it in order for the hon. Member to refer to the Speaker as "Mr. Kisii"?

**Hon. Members:** Aah! That is trivial!

**Mr. Speaker:** Order! Order! Hon. Members, the Speaker cannot be a Kisii or any other tribe. The Chair is the Chair and will always remain the Chair. Forgive Mr. Obwocha; he is really thinking Kisii.

**Dr. Omamo:** On a point of order, Mr. Speaker, Sir. I heard very clearly the circumstances that made the hon. Member use that word in Kisii. It was a case of *lapsus linguae*; a slip of the tongue which can happen naturally. It is good that you have forgiven him.

*(Laughter)*

**Mr. Speaker:** Order, hon. Members! It was a case of *lapsus linguae*.

**Mr. Obwocha:** Thank you, Mr. Speaker, Sir, for turning the House into a lecture room. Before I ask the Assistant Minister this question, let me table the letter from the Bishop of Kisii, narrating the nine incidents in the three districts [**Mr. Obwocha**]

**Mr. Samoei:** Mr. Speaker, Sir, I clearly understand that the Question refers to the three Gusii districts. However, I did say that two incidents were reported in Nyamira. We have not had any incidents reported in the other two districts. As regards the specific incident that the hon. Member has referred to, this happened on 29th December, 2000, as I have already indicated. Father Menge was attacked, but I am not aware of the details that the hon. Member is giving to this House. Given those details, if at all there was a letter written by anybody, I am willing to pursue the matter to its logical conclusion.

**Mr. Angwenyi:** Mr. Speaker, Sir, I do not think this Assistant Minister is taking this Question seriously. We have had a spate of robberies against Catholic Missions and institutions in Kisii. Right now, there is no principal at St. Pauls Teachers College in Nyabururu because the Sisters who were there were

attacked by thugs. We reported the matter at Kisii Police Station late last year, but no action was taken. Could we give this list to the Assistant Minister so that he can go and carry out proper investigations before he replies to this Question?

**Mr. Kathangu:** On a point of order, Mr. Speaker, Sir. The Assistant Minister has just said that he has not ascertained the facts given by Mr. Obwocha from the Bishop. Could we give him the opportunity to do that, so that he can come next week and tell us about these incidents?

**Mr. Speaker:** What is your reaction, Mr. Assistant Minister?

**Mr. Samoei:** Mr. Speaker, Sir, I do not know the contents of that letter. I would not want to promise this House that I will take some action once I see that letter because I do not know its contents.

**Mr. Speaker:** Is it not worthwhile to look at it?

**Mr. Obwocha:** No! No!

**Mr. Speaker:** Order, Mr. Obwocha! You have no business telling the Assistant Minister: "No! No!" You cannot direct him on what to do. You can only pray to me to order him. Mr. Assistant Minister, I am not directing you on how to carry out your affairs, but if I were you and I got certain information which I would think requires my further attention to investigate, for whatever it is worth, I would take the opportunity to go and investigate further. If there is anything new, I would come and inform the House. If your investigation will lead to the same answer, you will come and say the same. I am just asking you whether you would like to take that lead?

**Mr. Samoei:** Mr. Speaker, Sir, since the document has already been tabled here, I will have a look at it. The specific incidents mentioned by Mr. Obwocha and Mr. Angwenyi are well within my knowledge. I have the information right here.

As far as the incidents mentioned by Mr. Angwenyi, which occurred on 21st November, 2000, are concerned, our investigations were frustrated by Father Christopher Owira who refused to allow the nuns who were

**Mr. Speaker:** Order! Mr. Samoei, do not forget that you are also a politician. There is absolutely nothing wrong in being a politician. I head a House of politics and I am proud of it. So, you should also be proud of being a politician, Mr. Samoei. It is politicians and their quality that make the country tick.

Anyway, I think I like your response, that it is a serious matter and you want to investigate. I will give you time to do so. Do you think it will be enough for you to do the investigation by Thursday afternoon or you want me to give you a longer period?

**Mr. Samoei:** Mr. Speaker, Sir, owing to the seriousness of this matter and given the seriousness with which this House wants to take this matter, I would ask to be given three weeks to carry out the investigation.

**Mr. Speaker:** I will give you three weeks. Therefore, the Question is deferred.

attacked by this criminal, one James Michira Onduko, to come and identify this person. Unless these persons are identified positively, there is not much we can do.

**Mr. Obwocha:** On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to evade the Question? He never even mentioned Father Owira and now he is mentioning him. We were talking about Father Thomas Menge of Gikano Parish.

**Mr. Samoei:** Mr. Speaker, Sir, if the hon. Member cared to listen to me, I was making reference to what Mr. Angwenyi had said.

**Mr. Nyachae:** Mr. Speaker, Sir, this problem is so serious that it is worrying the Bishop and all the Christians in Gusiiland. The Bishop's letter was circulated even to the Office of the President, but he has not received any reply. Could the Assistant Minister take that letter, read it fully, investigate the cases and come back to this House to give us a comprehensive reply? He has said that the nuns refused to give evidence. They were being harassed by the policemen and that is why they refused to go and give evidence.

In fact, as Members of Parliament, we are trying to construct grilled doors for the nuns so that they can return to work at Nyabururu Mission. The problem is extremely serious and we do not want to treat it casually. Let the Assistant Minister study the letter, ask his officers on the ground to give him full information, and come back to the House with a proper reply.

**Mr. Speaker:** What do you think, Mr. Assistant Minister?

**Mr. Samoei:** Mr. Deputy Speaker, Sir, I quite agree with Mr. Nyachae that we should not take this matter casually. This is a very serious matter. I have pledged to this House that I will take due consideration of the letter that has been laid on the Table of this House. I do not know to whom it was addressed or circulated. It looks like it was circulated to politicians because I have not seen a copy. The OCPD, Kericho, has not even seen a copy of this letter.

*(Question deferred)*

**Mr. Angwenyi:** On a point of order, Mr. Speaker, Sir. Would I be in order to ask the Assistant Minister to beef up security around all Catholic institutions in Gusiiland while he is investigating this matter?

**Mr. Speaker:** That is a fair request!

**Mr. Samoei:** Mr. Speaker, Sir, the Government will continue to provide security to all Kenyans irrespective of who they are.

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

**Mr. Speaker:** Order! I have made a ruling that I will give him sufficient time. He says three weeks is what he requires.

**Mr. Obwocha:** Parliament will be on recess.

**Mr. Speaker:** Order! Parliament does not go forever. It only goes on recess and it will not be held by one Question. So, the Assistant Minister will be given three weeks and when the House resumes, he will answer the Question. In the meantime, I hope he will take appropriate measures to ensure that all the bishops, priests and nuns are in safe condition.

COMPLETION OF KABULA-  
BULONDO-MABANYA ROAD

**(Mr. Wamunyinyi)** to ask the Minister of State, Office of the President:-

(a) Is the Minister aware that the contractor (Associated Companies) who was awarded the tender to rehabilitate Road No.D270 (Kabula-Bulondo-Namnacha-Mabanya, 30.8 kilometres) under the *El Nino* Emergency Programme is handling other projects in Bungoma District without working on this road?

(b) Is he further aware that the same contractor has abandoned Road No.E.310 (Bungoma-Ekilatel-Nzoia Road) after rehabilitating only 800 metres instead of the intended 12.6 kilometres which was awarded and for which funds were availed?

(c) What urgent steps is the Minister taking to ensure that all such projects are undertaken as planned.

**Mr. Speaker:** Mr. Wamunyinyi's Question is deferred until after we resume, if at all we will go on recess.

*(Question deferred)*

EMPLOYMENT TERMS OF  
GOVERNOR

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

Could the Minister table the contract documents and terms and conditions of employment of the Governor and Deputy Governor of the Central Bank of Kenya?

**The Minister of Finance (Mr. Okemo):** Mr. Speaker, Sir, I hereby table the documents as requested. One is a document on the appointment of the Governor of CBK. The other is on the appointment of the Deputy Governor of the CBK. These are the documents.

*(Mr. Okemo laid the documents on the Table)*

**Mr. Kaindi:** Mr. Speaker, Sir, when I asked this Question, there was a different Governor and Deputy Governor.

**Mr. Speaker:** Does that one make the terms and conditions any different?

**Mr. Kaindi:** Yes, Mr. Speaker, Sir. This is because what the Minister has given in this reply is different from what he has laid on the Table of the House. I do not have those copies here. What I have here is a letter, OP.9/73A, dated 4th April, 2001, from the Office of the President, conveying the appointment of Mr. Nahashon Ngige Nyagah, and another letter from the Office of the President conveying the appointment of Dr. Edward Sambili as the Deputy Governor of the Central Bank.

It also says: "As indicated in the above letters, the terms and conditions of the appointments will be communicated to the bank in due course".

The reason I asked this Question was very clear: Does the Central Bank of Kenya have specific terms and conditions for its Governor and its Deputy Governor? If so, what are those terms?

**Mr. Speaker:** But he has laid documents on the Table of this House.

**Mr. Kaindi:** Mr. Speaker, Sir, I have not been able to look at them because they were not given as part of the reply.

**Mr. Speaker:** I will be fair to you. To enable you to look at those documents, I will defer the Question to Thursday Afternoon.

*(Question deferred)*

REVIVAL OF CIVIL SERVANTS UNION

**Dr. Ochuodho:** Mr. Speaker, Sir, although I have not received a written reply, I beg to ask the Minister for Labour the following Question by Private Notice.

(a) What steps has the Ministry taken to ensure that the on-going trade union elections are free and fair?

(b) Is the Minister aware that some General Secretaries are colluding with Labour Officers to rig the elections?

(c) What arrangements have been put in place to re-launch the Civil Servants Union and enable it to participate in the on-going elections?

**Mr. Speaker:** Is anyone here from the Ministry of Labour? Sorry, Dr. Ochuodho. Could I defer your Question to tomorrow afternoon?

**Dr. Ochuodho:** Mr. Speaker, Sir, I will appreciate that, although I know of unions whose elections are due tomorrow. I hope, through you, we could prevail upon the Minister to make sure that those unions do not hold their elections tomorrow until this Question has been answered.



**Mr. Speaker:** Order! I do not deal with trade unions. I deal with hon. Members. Therefore, the Question is deferred to tomorrow afternoon.

**Dr. Ochuodho:** Much obliged, Mr. Speaker, Sir.

*(Question deferred)*

SETTLEMENT OF MWINGI  
COUNCIL WRANGLES

**Mr. Musila:** Mr. Speaker, Sir, I beg to ask the Minister for Local Government the following Question by Private Notice.

(a) What has been the cause of wrangles between Mwingi Town Council and Mwingi County Council, necessitating a series of court cases against each other?

(b) What urgent measures is the Minister taking to ensure that the two local authorities stop these wrangles and instead direct their resources to providing services to the people of Mwingi District?

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

(a) The cause of the wrangles between Mwingi Town Council and Mwingi County Council is a dispute over a plot which Mwingi County Council has commenced to develop as an office block. The Town Council also claims ownership. The plot is adjacent to Mwingi Town Council offices.

There are two cases: CRC.221/2001, where the County Council is the plaintiff, and 34/2001 where the Town Council is the plaintiff.

(b) The matter is *sub judice* but the Permanent Secretary, Ministry of Local Government summoned both town clerks to his office on Friday 4th May, 2001 and advised them to withdraw the court cases and settle the matter out of court.

**Mr. Musila:** Mr. Speaker, Sir, I thank the Assistant Minister for the answer he has given to the House. However, I regret that the Assistant Minister has not given this House the correct answer. The problem within Mwingi Town Council and Mwingi County Council currently is the fact that the County Council has started constructing buildings without submitting plans for approval by the Town Council. The Assistant Minister has said the dispute is over ownership. That is not correct.

Mr. Speaker, Sir, could the Assistant Minister clarify whether the dispute is over the ownership of a plot or it is because the County Council of Mwingi is building a block without the approval of the Town Council?

**Mr. Hashim:** Mr. Speaker, Sir, the dispute is as a result of the ownership of the plot. However, the Ministry will investigate and ensure that proper procedures are followed by both councils before the completion of the building.

**Mr. Musila:** Mr. Speaker, Sir, I wonder whether

you have heard what the Assistant Minister said. Are you satisfied that the Assistant Minister has answered my Question? He says he will investigate the matter. Could he ask the indulgence of the Chair for time in order for him to bring the right answer to this Question?

**Mr. Speaker:** What do you have to say, Mr. Hashim?

**Mr. Hashim:** Mr. Speaker, Sir, the Question is on the dispute. Since there are two cases, I think the Ministry has taken action on this matter. But since there are complaints that the proper procedure was not followed, the Ministry will investigate and lay on the Table documents to show whether the procedures were followed or not.

**Mr. Speaker:** How long do think you need?

**Mr. Hashim:** Mr. Speaker, Sir, up to Thursday this week.

**Mr. Speaker:** Thursday will be all right? Are you sure?

**Mr. Hashim:** Mr. Speaker, Sir, I am not sure; I need to consult my officers.

**Mr. Speaker:** Mr. Musila, how much time do you think he requires?

**Mr. Musila:** Mr. Speaker, Sir, in view of the importance of this Question and the fact that the Assistant Minister seems not to be sure of the issues involved, may I ask that he be given all the time he needs, even if it is two weeks, to come up with a solution to this serious problem.

**Mr. Speaker:** Very well! I will give him two weeks.

*(Question deferred)*

Next Question, Dr. Murungaru!

PLOTS ALLOCATION IN KANYONI VILLAGE

**(Dr. Murungaru)** to ask the Minister for Lands and Settlement:-

(a) Is the Minister aware that Kanyoni village in Gakawa Location of Kieni East Division, Nyeri District, has been planned and plots allocated by the Laikipia District Plots Allocation Committee?

(b) By what authority did the Laikipia Administration, which is in the Rift Valley Province, involve itself in land affairs in Kieni, which is in Nyeri District of Central Province?

**Mr. Speaker:** Order, Members! Order! I understand the Question by Dr. Murungaru was transferred yesterday to the Office of the President and, therefore, they are not ready for it. I will defer it. Dr. Murungaru, will Thursday be okay with you?

**Dr. Murungaru:** Yes, Mr. Speaker, Sir.

**Mr. Speaker:** The Question is deferred to Thursday.

*(Question deferred)*

Next Question, Mr. Sambu!

#### NUMBER OF CASES INVESTIGATED BY KACA

**Mr. Sambu:** Mr. Speaker, Sir, I beg to ask the Attorney-General the following Question by Private Notice.

(a) How many cases had the Kenya Anti-Corruption Authority (KACA) investigated before its dissolution?

(b) How many of these cases had reached prosecution stage and could the Attorney-General table the list of those charged and the crimes committed?

(c) How many had been concluded and how many are pending investigation?

**The Attorney-General (Mr. Wako):** Mr. Speaker, Sir, I beg to reply.

(a) KACA, prior to its dissolution, opened a total 158 files for investigation as hereunder:-

Mr. Speaker, Sir, I wish to seek your indulgence because part "c" of my Question which was "doctored" also requires the tabling of the list, **[Mr. Sambu]** so that we know those people whose cases were pending investigation.

**Mr. Speaker:** Would you want to ask your question?

**Mr. Sambu:** For a start, I do not have the list.

**Mr. Speaker:** So, what do you want me to do?

**Mr. Sambu:** To defer it, Mr. Speaker, Sir.

**Mr. Wako:** Mr. Speaker, Sir, part "b" of the Question says: "Could the Attorney-General table the list of those charged?" I have tabled the list. As to part "c", the Question is quite clear. I do not know where allegations of the Question getting "doctored" have come from. It asks: "How many have been concluded and how many are pending investigations?" I have indicated the number of those concluded and those pending investigations. There is no issue under part "c" for tabling.

**Mr. Sambu:** On a point of order, Mr. Speaker, Sir. In my handwritten Question, I demanded in part "c" that the list be also tabled. The way it is put here, it is "doctored".

**Mr. Wako:** Mr. Speaker, Sir, the way the Question is written on the Order Paper is the way it came to my office.

**Mr. Speaker:** Order! Order! The correct procedure is, what is before the House is the right thing. That is what the Attorney-General is supposed to respond to. Maybe, Mr. Sambu has a point. Maybe, he has not seen the list tabled by the Attorney-General. Have you, Mr. Attorney-General, given a copy to Mr. Sambu?

**Mr. Wako:** Mr. Speaker, Sir, I have not given him

(i) Two cases investigated, prosecuted and finalised.

(ii) 23 cases investigated, but the files were closed due to inefficient evidence.

(iii) Five cases were investigated and forwarded to the CID for further action.

(iv) 15 cases investigated, taken to court and they are still pending in court.

(v) 113 cases investigated, files were opened, investigations underway, but further action stopped due to dissolution.

(b) Seventeen cases had been or are before the court. I table the list of those charged and the crimes committed.

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

(c) The investigation in 40 cases has been concluded and 118 cases are pending investigations.

**Mr. Sambu:** Mr. Speaker, Sir, first, my Question has been "doctored" in part "c". Secondly, I do not have the list he has just tabled. In the written answer I have, he says he has attached a list, but it is not there. I just got one sheet.

a copy because the Question says: "Could the Attorney-General table the list of those charged and the crimes committed?" I have just tabled it.

*(Laughter)*

**Mr. Speaker:** Order! Order! When the Question asks you to table a certain document in the House, you are bound to do that. But you must also give the hon. Member who asked the Question that document in advance, so that he can question you. He can also solicit support from his colleagues. So, there is no conspiracy in the House, it is all open. To be fair, then, I will defer the Question. To when, Mr. Sambu?

**Mr. Sambu:** If it is possible, tomorrow afternoon, Mr. Speaker, Sir.

**Mr. Speaker:** Tomorrow afternoon is possible. The Question is deferred to tomorrow afternoon.

**Mr. Sambu:** Thank you, Mr. Speaker, Sir.

**Mr. Angwenyi:** On a point of order, Mr. Speaker, Sir. Mr. Sambu said that part "c" of his Question was "doctored". Could the Minister be given the proper Question so that he can table that list?

**Mr. Speaker:** Order! Order, Members! I think that is careless use of language. I ask hon. Members to use their language in a proper way. When you submit your Questions to the Clerk's Department of this House; first, you do so for secretarial services and editing, either to comply with grammar or to comply with the rules of the House. So, please, do not say that the Question was

"doctored". We have no doctors on the Table. We have only Clerks. If you said the Question was "clerked", then you would be right! The Question is deferred.

*(Question deferred)*

Next Order!

### POINTS OF ORDER

#### STONING OF MRS. SEII AND HER ENTOURAGE

**Mrs. Seii:** Mr. Speaker, Sir, I stand to seek a Ministerial Statement from the Minister of State, Office of the President, regarding an incident which occurred in Keiyo South on 1st May, at about three o'clock. On that material day, I was stoned together with my visitors on a main road, C53. This is a road which anybody can travel on. The people that stoned us are well known and it looked like this thuggery was well organised. I would like the Minister of State, Office of the President, to tell this House and the nation at large why these people have not been arrested despite the fact that they are very well known. Also, I would like the Minister to tell this House whether Keiyo South is a security zone or not, and why such people can breach peace with impunity without any finger being raised by the Administration Police who were standing there watching the drama as it unfolded.

Mr. Speaker, Sir, I would also like the Minister to tell this House whether in the face of such an attack, the police do not have the obligation to protect innocent people. As we were travelling, we had not even disembarked from our vehicles; one side of the road was blocked with a lorry and the other one was blocked with logs. The thugs stoned us while the police were spectating at this. I would like to know whether I am safe. This is one kilometre from my own home and we know these people very well. The picture of the organiser of this act was carried in one of the newspapers and I am prepared to submit a copy of his picture. This man is very well known in the area and he lives not very far from that place. I would, therefore, like to know whether I am safe and whether he is going to give me security in the light of what happened.

**Mr. Speaker:** Very well!

#### SAFETY OF AIRCRAFT IN KENYAN AIRSPACE

**Mr. Musila:** Mr. Speaker, Sir, I rise on a point of order to seek a Ministerial Statement from the Minister for Information, Transport and Communications in relation to an incident which occurred yesterday, 7th May, 2001, involving Flight KQ 101 from London. As it was about to land, the Captain of the flight abandoned landing at the last moment. The explanation given by the Captain - I was among the passengers along with some other hon. Members - was that while he was about to touch down, obviously after

having received clearance from air controllers, he noticed that there was an aircraft owned by M/S Martin Air Cargo on the runway. Consequently, the Captain had to abandon landing because if he, indeed, landed, he would have caused a disaster of huge magnitude. That incident brings a lot of questions as to whether aircraft in Kenyan airspace and airports are safe. I am, therefore, calling on the Minister for Information, Transport and Communications to issue a Ministerial Statement on that particular incident which occurred yesterday, and also on the general safety of aircraft using our airspace and airports.

**Mr. Speaker:** Mr. Mudavadi, do you want to respond?

**The Minister for Information, Transport and Communications** (Mr. Mudavadi): Mr. Speaker, Sir, I just wish to state that I will issue a Ministerial Statement on Thursday because I need to be given some time in order to get some facts on that particular matter. This is also because, indeed, it is a very serious issue, and it is important that we address it as urgently as possible.

#### CANCELLATION OF HARAMBEE MEETING

**Mr. Mwiraria:** Mr. Speaker, Sir, I rise to seek a Ministerial Statement from the Minister of State, Office of the President, in charge of Internal Security, regarding the stoppage of Harambee for the Thura Central Water Project. It was stopped by the police on Sunday, 6th of May, 2001, after the Harambee had been sanctioned by the chief who was, in fact, a member of the planning committee. The police went to the chief's home on Sunday morning after people had made all the arrangements; they had even prepared the ground. In fact, they had prepared food for the visitors, but the police ordered that the Harambee should not continue. The reason given, which I received from the OCS, Meru, was that there were security implications, and the OCS had received orders from "above." I reasoned that "above" in the context of Meru, could only be the DC. So, I went to see the DC and he told me: "You, being a former administrator and as a legislator, know that I have nothing to do with stoppage of meetings." He told me that, that was the work of police and we should go and seek explanation.

Mr. Speaker, Sir, I would like to ask the Minister: What security reasons led to the stoppage of the Harambee, particularly, when it was for a water project? The Government knows that it is broke and it cannot give those people water, and they are just arranging to raise funds in order to help themselves. That incident, coming so soon after the stoppage of Harambees in Bomet and Kibugua in Embu, and now Harambees in Meru, must indicate that the Government is, perhaps, thoroughly scared of something. What is it?

*(Applause)*

**The Assistant Minister, Office of the President** (Mr. Samoei): Mr. Speaker, Sir, on the point of order raised by hon. Seii, we will issue a Ministerial Statement next week or when Parliament resumes.

On the circumstances surrounding the cancellation of the Harambee to be held in hon. Mwiraria's constituency, we will give a Ministerial Statement on Thursday.

#### CASES OF INSECURITY IN BUDALANGI

**Mr. Wanjala:** Mr. Speaker, Sir, I rise to seek a Ministerial Statement from the Minister of State, Office of the President, in charge of Internal Security. Of late - since January this year -in Budalangi, there have been a number of cases of thuggery going on, which have not been there in the past. On January 16th, there were robbers who attacked Mr. Ali Aziz's home and murdered him and a brother-in-law. They also shot at another gangster(?) and injured Mr. Aziz's wife.

Mr. Speaker, Sir, on 27th of April, robbers invaded Mr. Fredrick Oundo's lodging at Marenga Beach, and shot the watchman, whose hand is now amputated. They also shot an occupant of one of the lodging rooms and the police officers were hardly 50 metres away. There were ten police officers who were keeping vigilance at the beach and they took no action, and the thugs used guns.

The latest incident took place on Thursday last week, the 3rd of May, where thugs waylaid a lorry which was coming from one of the fish companies from Nairobi West Feed Companies. It was being driven by Mr. Ezekiel Wanga. They shot at the vehicle's three tyres, and it was carrying some money, but the thugs were arrested by the people. Then, the thugs who were arrested---

**Mr. Speaker:** In the meantime, also before we leave this whole issue of security, either of private or public citizens, there was the issue raised by hon. Seii who is a Member of this House, and she specifically said she is worried about her security. The Minister says that he will come to the House next week. There is a possibility that we will not be here next week. Could you be in a position to tell us about her security tomorrow or the day after tomorrow, Mr. Samoei!

**The Assistant Minister, Office of the President** (Mr. Samoei): Mr. Speaker, Sir, as far as the security of the hon. Member is concerned, I think I can say something now. Her security is guaranteed and I will issue instructions as soon as I leave this House to the effect that her life is safe.

*(Laughter)*

*(Mrs. Seii stood up in her place)*

**Mr. Speaker:** Order! Hon. Seii does not want to

**Mr. Speaker:** Order, Mr. Wanjala! How long is that speech?

**Mr. Wanjala:** Mr. Speaker, Sir, they had two guns, and one gun---

*(Laughter)*

I am just finishing now. They had two guns, and one gun belonged to an inspector who is based in Nairobi. He is called Mr. Aswani, and he is based at Industrial Area Police Station. He is attached to the Department of Central Firearms Bureau. The thug who was arrested has revealed his name, but he is still working; he has not been arrested up to now. How does this Government release guns so that they are used to kill people in Budalangi where they are raping people in hundreds? It is serious! An inspector releasing a gun to people who go and kill people in Budalangi!

**Mr. Speaker:** Order, Mr. Wanjala! I hope you will realise the gravity of the allegations that you are making about the police inspector who is not here to say that he is innocent or otherwise. I would have been happy if you did not disclose the name here, pending investigations. The gun could well have been stolen or he could have given it as you said. But, please, and I am not addressing the hon. Member now alone; I am addressing the whole House; let us be very careful about the import of what we say on the lives of other Kenyans.

Anyhow, Mr. Minister, you have heard the very worried statement from the Member for Budalangi. Would you now like to comment on it?

**The Minister of State, Office of the President** (Maj. Madoka): Mr. Speaker, Sir, indeed, it is very serious and we will certainly investigate this and report back accordingly.

sit down to appreciate the fact that her security is being assured. Please, listen!

**The Assistant Minister, Office of the President** (Mr. Samoei): Mr. Speaker, Sir, as far as the other details she requires of a Ministerial Statement are concerned, because of the nature of the allegations made by the hon. Member, that there are some specific persons, newspaper cuttings and so many other things, I did request that this House gives me time. I will issue the statement some time next week. Unfortunately, this House will not be in session as you said, but it will not be out of session forever.

**Mr. Speaker:** Very well. Mr. Okemo, I think we are now coming to the end of all this. Please, make your Ministerial Statement since we are coming to the end of this and we will not have it endlessly. Everybody else will make their Ministerial Statements tomorrow morning.

**MINISTERIAL STATEMENT**

CLARIFICATION OF ALLEGATIONS  
AGAINST KENYA COMMERCIAL BANK

**The Minister for Finance** (Mr. Okemo): Mr. Speaker, Sir, I stand here to issue a Ministerial Statement on allegations that were made by hon. Ojode during my response to his Question by Private Notice, relating to various goings-on at the Kenya Commercial Bank (KCB). There are eight allegations and I will answer them one by one.

The first was that the Managing Director of KCB was planning to sell Savings and Loans Kenya Limited to Barclays Bank of Kenya. The second allegation was that KCB Staff Training School was being sold at a throwaway price of about Kshs900,000 per acre. The third allegation was that Mashariki, Muindi Mbingu, Harambee Avenue and Kehancha branches of KCB were also being sold. The fourth allegation was that KCB management was in the process of contracting the management of the KCB Staff Pension Fund to Barclays Bank. The fifth allegation was that the printing branch of KCB was up for sale. The sixth one was that the new computer, which links the bank and the Nairobi Stock Exchange and which had just been installed and refurbished at the cost of Kshs24 million, was up for sale.

The seventh allegation was that a computer project being undertaken by KCB at a cost of Kshs560 million was awarded to a company from India which was lowly rated but quoted highly and that this company cannot do the job. The eighth allegation was that the chief executive of KCB, that is the Managing Director of KCB, had signed a watertight contract with KCB without the knowledge [**The Minister for Finance**] of the Minister for Finance and that this contract should be terminated.

Mr. Speaker, Sir, I wish to respond to each allegation as I have said. On the first allegation about the selling of Savings and Loans Kenya Limited, KCB does not plan to sell it. As I mentioned during my reply then, the KCB subsidiary board had agreed to merge the Savings and Loans Kenya Limited and Kenya Commercial Finance Company Limited subsidiaries into KCB. I have approved the integration of Kenya Commercial Finance Company Limited into KCB, subject to approval by the shareholders at the annual general meeting to be held later this year. However, as I similarly mentioned, an application for a merger of Savings and Loans Kenya Limited has been forwarded to me and I have not approved that application, and I am unlikely to approve it. Therefore, Savings and Loans Kenya Limited is not being sold.

On the second allegation, the KCB Training Centre is not being sold. A comprehensive review of KCB training content and delivery has commenced. No firm decision has been made. A study is being carried out at the moment and will be presented to the board of KCB sometime in July or August for a decision. On the third allegation, the Mashariki,

Muindi Mbingu, Harambee Avenue and Kehancha branches of KCB are not being sold as alleged. These branches are being closed down following a restructuring and evaluation of the KCB branch network and the approval to close these branches has already been given by me. On the fourth allegation, the KCB management is not in the process of contracting the management of the KCB Staff Pension Fund Management to Barclays Bank of Kenya. The KCB Staff Pension Fund management is to be outsourced and this is a requirement under the Retirement Benefits Act and, therefore, suitable fund managers are being considered for recommendation to the KCB board for consideration. Barclays Bank is not under consideration.

On the fifth allegation, the Printing Department is not for sale. However, following a strategic review, the board has agreed that printing should not be regarded as KCB core business and that the service can be provided more cost-effectively through outsourcing this activity. It is important to note that at the moment, 85 per cent of the printing requirements of the bank are being outsourced, while only 15 per cent is internal. A project is being incepted by the KCB management to carry out this change. On the sixth allegation, similarly on the KCB Printing Department, the board has approved for strategic review an in-house share registry and they look at this as a non-core business of the bank. This takes into account the information technology investment and a one time licence fee of Kshs445,000. The project has been incepted by the KCB management to carry out this change. On the seventh allegation, KCB has not made a decision regarding the choice of software for computer systems. However, the Government has investigated and established that the procedures for procurement and evaluation have not been proper and, therefore, the Government is making its position known through its member on the board of KCB that the whole process should start afresh.

Regarding the allegation of the KCB Chief Executive's contract, in line with the KCB Memorandum and Articles of Association, the contract of employment of a chief executive has to be approved by the board, and that was what was done. However, looking at the contract, it is not a good one but there is no way of correcting it because it has been signed and it is valid in law.

Thank you very much, Mr. Speaker, Sir.

**Mr. Speaker:** Mr. Ojode, very briefly, because we are behind schedule!

**Mr. Ojode:** Mr. Speaker, Sir, first, this report is unacceptable to me. This is because when the Minister went to investigate the dealings at KCB, he wrote to the person who is the accused to write a report on himself. I would want to table the letter which he wrote to Mr. Gareth George to answer charges on himself. Here is the

letter and I hereby table it.

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

Mr. Speaker, Sir, as concerns the contract agreement, the Minister categorically denied here in this House that he had ever seen the contract. I have the contract document here and I would also want to table it for the Minister---

**Mr. Speaker:** Order! Order! The Minister has said that he has seen the contract and he thinks that it is a bad one and he does not agree with it. So, there is no point of you putting it to the House again.

**Mr. Ojode:** Mr. Speaker, Sir, I was just talking about the reply he has given us. He has come up after having seen the contract. Within the contract, I had also asked him--

**Mr. Speaker:** Order! This is not debating time by the way!

**Mr. Ojode:** Mr. Speaker, Sir, I will just be brief.

**Mr. Speaker:** Order! Order! We will not turn a Ministerial Statement into Question Time or make it a pretext for debate. You are supposed to use this opportunity to seek clarification on what the Minister has said. Now, as it were, you are not seeking anything, actually, but you are making a counter-statement.

**[Mr. Speaker]**

So, please, seek clarification from the Minister.

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

**Mr. Speaker:** Mr. Angwenyi, you are out of order! Proceed, Mr. Ojode!

**Mr. Ojode:** Mr. Speaker, Sir, I am just finishing because you have directed that I should be brief. First of all, the Chair will agree with me that it is not in order for Mr. Gareth George to reply to the accusations which are levelled against him. I would also like to table the reply by Mr. Gareth George.

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

The last one is that as concerns the contract, the papers also asked the Minister the amount of money Mr. Gareth George was earning. I would just like to say that when Mr. Gareth George was recruited to the post, he was paid Kshs18 million for "greetings" only.

**Mr. Speaker:** He was paid that amount of money for greetings only?

*(Laughter)*

**Mr. Ojode:** Yes, Mr. Speaker, Sir. It is here in the contract.

*(Laughter)*

**Mr. Speaker:** Order! Order, hon. Members! For clarity of the record, Mr. Ojode, you are saying something very strange or unheard of, that you pay somebody Kshs18 million for greetings---

**Mr. Ojode:** Mr. Speaker, Sir, it is here.

**Mr. Speaker:** Who is greeting who?

*(Laughter)*

**Mr. Ojode:** Mr. Speaker, Sir, let me explain. I would like to clarify:

"Salary: Subject as hereinafter, provided that the bank shall pay to the Managing Director remunerations as follows:-

(i) upon commencement of his employment under the agreement, the bank shall pay to the Managing Director the sum of Sterling Pounds 150,000 which is equivalent to Kshs18 million; greetings to Mr. Gareth George."

I would like to table the agreement.

*(Mr. Ojode laid the contract on the Table)*

Part (ii) says:

"The sum of Sterling Pound 150,000 per annum without any deduction or taxes to an account outside the Republic of Kenya.

(ii)(b) The Kenya Shillings equivalent to the sum of Sterling Pound 150,000 here will also be paid in the Republic subject to Income Tax or other taxes and imposed to the payment in subject. In the event that his contract is terminated, Mr. Gareth George will be paid Sterling Pounds 600,000, which is equivalent to Kshs72 million."

**Hon. Members:** Shame!

**An hon. Member:** Is he an engineer?

*(Laughter)*

**Mr. Ojode:** Mr. Speaker, Sir, the contract is here and I would like to table it.

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

I would like to tell the Minister that Mr. Gareth George is disposing of the assets of the KCB so that he can be fired and get Kshs72 million. Within the contract, it is also said that the KCB management can also fire him because even if we go to the audited report here, you

will find that last year alone, Mr. Gareth George was paid Kshs106 million for only seven months. He was paid Kshs106,626,000 for having worked for seven months only as opposed to what was paid to Mr. Nyakiamo, the then Chief Executive, who was paid Kshs21,796,000 per annum. I would like to say that Kshs21,796,000 was paid to Mr. Nyakiamo for the 12 months he had worked, but this man was paid Kshs106,626,000 for the seven months he had worked.

**Mr. Speaker:** Mr. Ojode, is all this real?

**Mr. Ojode:** Mr. Speaker, Sir, I have not got your question.

**Mr. Speaker:** Mr. Ojode, now that you are bringing all these things, are they all real?

**Mr. Ojode:** Mr. Speaker, Sir, I will table this document for the benefit of hon. Members. This is an audited report for the year 2000. I hereby table it.

*(Mr. Ojode laid the report on the Table)*

I have already tabled the contract agreement. So, let [**Mr. Ojode**] the Minister explain to the House because this is direct theft. A black man is paid Kshs21 million per annum, and when a white man takes over he is paid Kshs106 million! Could he justify this?

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

**The Minister for Finance** (Mr. Okemo): Mr. Speaker, Sir, I think it is important for hon. Members to have paid attention to what I said at the concluding remark that I made. I would like to say that the KCB is not a Government bank, and the Government has 35 per cent shareholding.

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

**The Minister for Finance** (Mr. Okemo): Mr. Speaker, Sir, the Articles and Memorandum of the bank specify clearly how the Chief Executive is to be employed and who is to approve his terms and conditions of service. I would like to inform this House that the blame does not lie with the Government, and the explanation does not come from the Government. I would like to point out that the blame goes to the Board of Directors. Therefore---

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

**Mr. Speaker:** Order! Order! I think I can understand the sentiments of hon. Members. Maybe, every hon. Member should study the documents here, let the issue sink and then find out how to approach it. I can understand your uproar, but what can I do? We cannot go on telling the Minister "shame", and he says that he is not the employer, but the Board of Directors. Maybe, you should find out where the fault lies and see what you can do next.

Maybe, I will hear Ms. Karua last.

**Ms. Karua:** On a point of order, Mr. Speaker, Sir. We appreciate what the Minister has said, that the Government is a 35 per cent shareholder. But as a majority shareholder, could he tell us what on its part, the

Government is doing to rectify this sorry state of affairs?

**The Minister for Finance** (Mr. Okemo): Mr. Speaker, Sir, I do not know what the word "major" means in this context because the Government is not a major shareholder of the KCB. I think we must start from here; the Government is a 35 per cent shareholder and that is not a major shareholder. It is a significant shareholder.

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

**Mr. Speaker:** Order! Order! If I understood the hon. Member for Gichugu right, what she is inquiring is: Since the Government has 35 per cent shareholding, which, therefore means, 35 per cent of the votes, how did you utilise your votes as the Government?

**The Minister for Finance** (Mr. Okemo): Mr. Speaker, Sir, I think I had better start from the way it goes. I would like to say that 65 per cent of the votes approved all those terms and conditions that you see in that contract that Mr. Ojode has tabled in the House, and 35 per cent votes, which was represented by the Government, was against it.

**Hon. Members:** On points of order, Mr. Speaker, Sir.

**Mr. Speaker:** Mr. Nyachae!

*(Loud consultations)*

**Mr. Speaker:** Order! Order, Members! Unless you become orderly, I will go to the next Order.

Mr. Nyachae, the Floor is yours.

**Mr. Nyachae:** Mr. Speaker, Sir, I am standing here to support what you have indicated. This matter is of terrible concern to Kenyans. The amount of money we are talking about and which is going to an individual, is colossal. We do not know how many other individuals are "eating" national resources in this manner. This money does not belong to the Government; it belongs to Kenyans and we must bring this matter to a stop. Therefore, we need to understand the contents of these documents.

Mr. Speaker, Sir, I also want to add that the Government, with its 35 per cent in the Kenya Commercial Bank--- I also want to confirm this issue because I know about the shareholding in the KCB since I have an interest there. I know that the shareholders were not consulted over the salaries.

*(Applause)*

Therefore, it is during the Board of Directors' meeting, where the Government sat, that the shareholders were requested to approve the appointment. We need to go into the details of the agreement. Whether it is legal or not, we must bring this kind of exploitation to an end,

and that is the responsibility of this House.

**Mr. Speaker:** Very well, hon. Members. Let it sink there. Please, study those documents.

**An hon. Member:** Give us one more chance.

**Mr. Speaker:** Okay. I will take the last chance from Mr. Wamalwa. That is it.

**Mr. Wamalwa:** Mr. Speaker, Sir, while I appreciate the statement made by the Minister for Finance, for whom I have a lot of respect, that the Government has only 35 per cent of the shares in the KCB, it is a well known fact that any Government owes a fiducial duty to its citizens. Whether the Government has shares or not, it owes its citizens a duty of care. The Government is also the custodian [Mr. Wamalwa]

of something known as the public interest, which underlines and underpins all Government policies. I think no responsible Government would agree to a situation where something like this goes on and it just says that: "I am minority shareholder and I was out-voted". I would like the Minister to think again, in terms of the public interest, and because of the duty this Government owes Kenyans. What steps can the Government take to stop this kind of practice at the Kenya Commercial Bank?

**Mr. Speaker:** Let us have one comment from Mr. Keriri as the Official Opposition representative.

**Mr. Keriri:** Mr. Speaker, Sir, the Minister has said something which is very unfortunate. He has said that the Government had no chance of influencing this decision because it has only 35 per cent shareholding at the KCB.

First, I want to make one general point, that the Government has privatised the KCB and other institutions. In doing so, private shareholders, who include many very small people, have got into those institutions. Those people have no way of knowing the details, rigmaroles and directorships followed in the banking industry. They ought to have someone to protect them, and that person is supposed to be the Government.

The second point is that under the Company Law, a minority shareholder is protected against a decision which may harm him. The shareholder who is under the law holds 12.5 per cent of the shares, but the Government has 35 per cent. In fact, if the Minister understands the Company Act better, he can educate me further. The Government, through its director in the KCB, could have rejected this increase on that salary and so on, since it is protected by the law. The Minister is not telling us whether anybody attempted to do that.

**Mr. Speaker:** Very well. Can we have your last comment?

**Mr. Keriri:** Mr. Speaker, Sir, thirdly, the Directors of the Kenya Commercial Bank cannot be appointed until their appointments are approved by the Minister for Finance and the Central Bank of Kenya. We had such a case here the other day when one hon. Member asked a Question about a Mr. Kihara Waithaka and someone else whose appointments as directors of the KCB had been rejected,

because as the Minister said: "Their characters did not qualify them for appointment". That decision was made by the Central Bank of Kenya and the Ministry of Finance.

**Mr. Speaker:** Order! Order! We have done non-business for almost one hour. We were supposed to have gone to the Business of the House at 3.30 p.m. I think we seem to be enjoying doing non-business. Now, the Chair's business is to ensure that the House is doing business. Therefore, I will now give the Minister an opportunity to respond and immediately, this House will be ordered to be in business.

**An hon. Member:** On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** Order! No further non-business! Mr. Minister, the Floor is yours.

**The Minister for Finance (Mr. Okemo):** Mr. Speaker, Sir, I think I will respond as follows:-

Given the gravity of the matter and the concern of this august House, the Government is going to look into the entire contract and seek ways and means of rectifying the situation legally.

*(Applause)*

**Mr. Speaker:** Very well. Next Order now!

#### COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

*[Mr. Speaker left the Chair]*

#### IN THE COMMITTEE

*[Mr. Temporary Deputy Chairman (Mr. Musila) took the Chair]*

#### THE CONSTITUTION OF KENYA REVIEW (AMENDMENT) BILL

*(Loud consultations)*

**The Temporary Deputy Chairman (Mr. Musila):** Order, hon. Members! We are now in the Committee of the Whole House. Consult quietly so that we can start the Business of the House. Please, sit down.

*(Clauses 2, 3, 4, 5, 6 and 7 agreed to)*

**The Temporary Deputy Chairman (Mr. Musila):** Hon. Members, there is a notice which has been given by Mr. Muite on page 122 of the Order Paper.

Mr. Muite, you can move your amendment



now.

*Clause 8*

**Mr. Muite:** Mr. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 8 be amended in paragraphs (a) and (c) by deleting the words "twenty-

**[Mr. Muite]**

seven" and substituting therefor the word "thirty".

Mr. Temporary Deputy Chairman, Sir, the reason for proposing this amendment is because when Mr. Raila was making his contribution, he went out of his way to explain that the Commissioners, when appointed, are supposed to be non-partisan and should serve no particular appointing authorities, but should serve the public interest. The fact of the matter is that even as Mr. Odinga, the Chairman of the Parliamentary Select Committee on Constitutional Review, was talking about the non-partisanship of the Commissioners, you will recollect that his Committee was in the same vein, in fact, reneging on the previous arrangement that the Ufungamano Initiative was to have 12 Commissioners, and was saying that the Ufungamano Initiative would be permitted to have only ten Commissioners. So, you will see that the Parliamentary Select Committee on Constitutional Review is itself insisting on having a dominating majority in the Commission.

This is a Commission that will be making very important political decisions. The ideal situation would have been to scrap the existing 15 Commissioners, set a fresh criteria and invite fresh nominations. In its absence, we should have equality. We should have 15 Commissioners coming from the Ufungamano Initiative and 15 Commissioners being nominated by Parliamentary Select Committee on Constitutional Review, so that there is no side that will have a dominating majority in the Commission. After all, Ufungamano Initiative represents 52 of the original stakeholders who went to Safari Park Hotel when the Parliamentary Select Committee on Constitutional Review is representing only two stakeholders. So, I urge that we increase the number of the Commissioners to 30 and have 15 Commissioners from the Parliamentary Select Committee on Constitutional Review and 15 Commissioners from the Ufungamano Initiative.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Mr. Musila): I would like to caution that hon. Members should be brief because in actual fact, we have not opened debate. You should just bring out the points as briefly as possible.

**Mr. Obwocha:** Mr. Temporary Deputy Chairman, Sir, nobody is opening up debate although some of us never contributed to the debate during the Second Reading stage

of the Bill. I believe that we have reached a stage where we can tolerate each other. We would like this process, if it is taking off, to take off with some kind of trust. What Kenyans are looking forward to is that, if this process is carried out, it is carried out fairly. This should be a process of give and take. So, in hon. Muite proposing that we should have the existing 15 Commissioners from the Parliamentary Select Committee on Constitutional Review and 15 Commissioners from the Ufungamano Initiative, he is asking Parliament to be tolerant enough, and give Kenyans a process that can be trusted and one which they can look forward to. The process should make Kenyans believe that those who will serve in the Commission will give us a Constitution. It is in this light that I am supporting Mr. Muite's amendment.

**The Assistant Minister for Foreign Affairs and International Co-operation** (Mr. Affey): Mr. Temporary Deputy Chairman, Sir, first of all, it is important for the House to know that the 15 Commissioners appointed initially do not represent any particular political affiliation. These were Kenyans appointed as a result of their qualifications.

As an hon. Member of the Parliamentary Select Committee on Constitutional Review, I know that when we opened up discussion to negotiate with our colleagues from the Ufungamano Initiative, we accepted out of good gesture, goodwill and sincere wish for reconciliation, as Mr. Obwocha has just stated, to give them ten more slots and give the Parliamentary Select Committee on Constitutional Review two more slots, essentially creating room for 12 more Commissioners.

If this proposal is accepted, we will renege on our negotiations with the Ufungamano Initiative. Therefore, we reject the proposal.

**Mr. Orengo:** Mr. Temporary Deputy Chairman, Sir, we should try and create some goodwill. Just imagine that in the National Assembly of the United Nations, Kenya has got the same one vote as a super power like the United States of America because we want to build one world together. In this sense, if you are going to insist that the Commissioners that were appointed through the Parliamentary Select Committee on Constitutional Review must be the majority, we will not be creating a spirit of goodwill.

Mr. Temporary Deputy Chairman, Sir, I think, so far, we have made progress and we should not let the question of numbers take us back. There should be a sign of goodwill, and so the 15 Commissioners who were appointed by the Parliamentary Select Committee on Constitutional Review should be joined by 15 Commissioners from the Ufungamano Initiative. Any difficulty in the Constitution review process should not be resolved purely through numbers, but purely by creating a spirit of goodwill amongst all Kenyans.

For that reason, I support this amendment by

Mr. Muite.

*(Question, that the words to be left out be left out, put and negated)*

*(Clause 8 agreed to)*

**The Temporary Deputy Chairman** (Mr. Musila): Hon. Sinyo has given notice of her intention to move an amendment to Clause 9.

**Ms. Karua:** On a point of order, Mr. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman** (Mr. Musila): Order, hon. Karua. Hon. Sinyo is not around and the Chair is not aware of her having given anybody mandate to move the amendment on her behalf.

*(Clauses 9 and 10 agreed to)*

*Clause 11*

**Mr. Muite:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 11 be deleted.

Mr. Temporary Deputy Chairman, Sir, in order to enhance the independence, autonomy and impartiality of the Commission which we are establishing here; the idea is that once the Commission is established, then quite clearly, the Parliamentary Select Committee should not continue to have any role; the Commission should be left absolutely alone to carry on with its work. The issue of the role, if any, to be played by the Parliamentary Select Committee has been the bone of contention for quite some time. Even the Chairman of the Commission told the public that the Committee was merely there symbolically. Otherwise, it would not be having any functions.

But when you see the language that is used in this clause, it is very wide and, therefore, the Parliamentary Select Committee will have the basis of overseeing the work of the Commission which, in my view, is not desirable. This amendment is proposed to do away with the Parliamentary Select Committee. I am suggesting that Clause 11 that preserves the Parliamentary Select Committee be deleted altogether, so that the Commission can be left alone to do its work.

With those few remarks, I beg to move.

*(Question of the amendment proposed)*

**Mr. Raila:** Mr. Temporary Deputy Chairman, Sir, when I was seconding this Bill, I stated the responsibilities of the Parliamentary Select Committee. I do not intend to repeat them. But the question that the House should ask is: Does Parliament as an institution have a role in constitution-making? The answer is yes! You can either do the review through the Executive, Judiciary or Parliament. We chose Parliament. The

Commission itself will require support of the House in the course of its work. The House needs to have a mechanism through which the Commission can access the House. The House also, at some stage, may require to get a progress report from the Commission. It is through the Committee that the House would be able to approach the Commission.

Mr. Temporary Deputy Chairman, Sir, I believe that the House has a very important role, as the institution mandated by the people of this country, to legislate and take part in the review process.

With those few remarks, I oppose the amendment.

**Dr. Ochuodho:** Mr. Temporary Deputy Chairman, Sir, I stand to support the proposed amendment, the reason being that many of us would agree that we want to de-link the process as much as possible from elections. Equally, we want to de-link the process from Parliament. In a situation where the President, under Sections 58 and 59 of the Constitution, still reserves the right to dissolve Parliament, one would be left wondering what would happen to the Parliamentary Select Committee if the President uses that prerogative and dissolves Parliament mid-stream. That means that we might give some responsibilities to the Select Committee which, by its nature, would stand dissolved.

In that regard, I support the proposed amendment.

**Mr. Orengo:** Mr. Temporary Deputy Chairman, Sir---

**Hon. Members:** You are wasting time!

**The Temporary Deputy Chairman** (Mr. Musila): Order, hon. Members! No time is being wasted! This is an important matter and the Chair has the discretion to give as many Members as possible time to contribute.

**Mr. Orengo:** Thank you, Mr. Temporary Deputy Chairman, Sir, for giving a chance, for the voice of the minority to be heard. Under our system of governance, there are three arms of the Government. If we establish a commission, it can actually be a Presidential Commission under Chapter 102 of the Laws of Kenya. We can have a Judicial Commission. What this Parliament has created is an independent Commission that will eventually bring its business before this House in the normal way, by way of a constitutional Bill, when the final product has been agreed upon.

Now, in my view, to have Parliament supervise the work of the Commission would demonstrate that it will not be an independent Commission. It will be a Commission subject to parliamentary supervision. So, I would urge that, in as much as even finally, the President will have his **[Mr. Orengo]** say when the constitutional Bill will have been enacted

by this House, Parliament will also have its say. But while the work of the Commission is going on, it is important that we allow the Commission to do its work independently without interference from the Executive, Parliament and Judiciary.

For example, the Attorney-General is accountable to this House but, under the Constitution, he is required to do his work under the direction of nobody, including Parliament. What about a big Commission which is supposed to look into the Constitution? It is important that it does its work without any direction from anybody.

With those few remarks, I support.

*(Question, that the words to be left out be left out, put and negatived)*

*(Clause 11 agreed to)*

#### Clause 12

**Mr. Kajwang:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 12 be amended in paragraph (b) by deleting the proposed subsection (3) and substituting, therefor, the following new subsection:

(3)(i) Where a vacancy occurs in the office of the Secretary, the Commission shall, within 14 days of the occurrence, submit to the Parliamentary Select Committee three names of persons qualified under this Act to fill the vacancy.

(ii) The Select Committee shall, within seven days of receipt of the names from the Commission, submit to the National Assembly names of two persons from whom the President shall appoint the Secretary.

Mr. Temporary Deputy Chairman, Sir, the reason for this amendment is that where a vacancy occurs in the office of the Secretary, there is a proposed amendment that the Commission would appoint a Secretary. We are saying that a Commission which has been appointed by this House, and then finally notified by the President, cannot itself appoint a Secretary to that Commission.

So, a Secretary should be appointed through the same channel the original Secretary, who will have left that office vacant, was appointed. That should be through the Parliamentary Select Committee and the President of the Republic of Kenya. So, that is the purpose of this amendment.

*(Question of the amendment proposed)*

**Mr. Angwenyi:** Mr. Temporary Deputy

Chairman, I rise to support this amendment now that it has been agreed that a Select Committee of this House should be in place to supervise the operations of the Constitution of Kenya Review Commission. That will be the only job for the Committee to do. Otherwise, Members of the Committee will not have any other job to do.

*(Laughter)*

So, in case a vacancy of this nature arises, the Committee will look into the matter and also give this House feedback on what will be happening in the Commission.

**Mr. Wamae:** Mr. Temporary Deputy Chairman, Sir, while I agree to the inclusion of the proposed Sub-Section 3(i) in the proposed amendment to Paragraph (b) of Clause 12, I have a problem with the inclusion of the proposed Sub-Section 3(ii) in the proposed new Section 3. When the Select Committee submits to the House the names of the two persons from whom the President is supposed to appoint the Secretary, should this House not select one of those names and forward it to the President for appointment as Secretary?

**Mr. Muite:** Mr. Temporary Deputy Chairman, Sir, I have no strong feelings about the proposed amendment to this clause. The proposed amendment seeks to empower the Select Committee to forward names to the National Assembly. How will the Commission continue with its work if the Secretary dies and the President dissolves Parliament? In that case, there will be no National Assembly to forward the two names to the President. If that happens, even the work of the Commission will grind to a halt. Is that not a lacuna that we should address?

**Ms. Karua:** Mr. Temporary Deputy Chairman, Sir, I rise in support of this amendment. Should Parliament be dissolved as pointed out by Mr. Muite, those are the issues we should address in the other necessary and consequential amendments that ought to be brought to this House to enable the work of the Commission go on smoothly. I think that is what is envisaged by other amendments which will come up after we finish with this one.

I beg to support.

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

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

*(Clause 12 as amended agreed to)*

*(Clause 13 agreed to)*

**The Temporary Deputy Chairman** (Mr. Musila): Hon. Members notices have been received from Messrs. Muite and Kajwang of their intention to move amendments to Clause 14. We will, first, deal with Mr. Muite's proposed amendment.

*Clause 14*

**Mr. Muite:** Mr. Temporary Deputy Chairman, Sir, I beg to move:

THAT, Clause 14 be amended as follows:-

(a) in paragraph (b) by inserting between the words "the President" and the words "the name" in the proposed Subsection 5, the expression "from a list supplied by the person or body of persons who supplied the Commissioner in respect of whom the vacancy has occurred";

(b) by deleting paragraph (c)

(c) by re-numbering paragraph

(d) as (c) and the proposed Subsection

(7) as (6).

You need to look at the way this clause is worded. Clause 14(b)(5) reads as follows:-

"Where any vacancy occurs on the Commission, the Commission shall, within seven days of the occurrence, submit to the President the name or names of persons qualified under this Act to fill the vacancy."

So, the responsibility of filling up that vacancy is vested in the Commission. The proposed amendment intends to require the body that made the initial appointment to the Commission to be responsible for filling up any such vacancy that may occur. So, the same body that appointed the initial holder of any office that may fall vacant should be empowered to forward another name to the House for nomination.

I beg to move.

**The Temporary Deputy Chairman** (Mr. Musila): Mr. Muite, have you addressed parts (a), (b) and (c) of your proposed amendment? We are dealing with all those parts at once.

**Mr. Muite:** Mr. Temporary Deputy Chairman, Sir, as you can see, the other parts of the amendment are purely consequential. The substantive amendment is that proposed to paragraph (b).

*(Question of the amendment proposed)*

**Dr. Ochuodho:** Mr. Temporary Deputy

Chairman, Sir, I rise to support the proposed amendment on the basis of the fact that the reality in the past has been that you cannot go by a gentleman's agreement when it comes to dealing with the Government. If we assume that if an office of a person nominated by the Ufungamano group falls vacant will be replaced by a person who will be nominated by the Ufungamano group without putting it in law, that will never happen. What we are likely to see is a scenario whereby a person who is nominated by the Ufungamano group resigns or is induced to resign and then the Parliamentary Committee nominates a replacement. It is in that regard that I would like to urge my colleagues not to go by the so-called "gentleman's agreement" and put this requirement in the law.

Mr. Temporary Deputy Chairman, Sir, if the other side is genuine, there is no reason as to why they should oppose this amendment. If a Commissioner who was nominated by the Parliamentary Select Committee (PSC) leaves office he should be replaced by the PSC and vice versa.

**The Temporary Deputy Chairman** (Mr. Musila): Very well, Dr. Ochuodho. We have heard you.

**The Minister of State, Office of the President** (Mr. Sunkuli): Mr. Temporary Deputy Chairman, Sir, an Act of Parliament must be consistent with itself. As you realise, nominating bodies are not mentioned anywhere in this Act. So, it will be very difficult to implement that particular provision legally, because no bodies nominating anybody are mentioned in the Act. At any rate, it is important that if bodies are mentioned, they should be bodies that will actually exist in perpetuity and not bodies that were constructed for just one particular purpose.

Mr. Temporary Deputy Chairman, Sir, I oppose the amendment.

**Mr. Murathe:** Mr. Temporary Deputy Chairman, Sir, as we speak here, several other groups are claiming that they should be represented by some of the 12 extra Commissioners who are going to be appointed. Unless we are very clear as to where the 12 extra Commissioners will come from, we will be creating further confusion.

I beg to support.

*(Question, that the words to be left out be left out, put and negatived)*

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

**The Temporary Deputy Chairman** (Mr. Musila): Hon. Members, I am informed that 20 hon. Members are needed for a Division to take place, but only 18 hon. Members have stood up. Therefore, we cannot have a Division.

Let us now proceed to another notice of

amendment to this clause given by Mr. Kajwang.

**Dr. Ochuodho:** On a point of order, Mr. Temporary Deputy Chairman, Sir. Which Standing Order requires the hon. Members to be 20 instead of 15?

**The Temporary Deputy Chairman** (Mr. Musila): I would like to draw the attention of Dr. Ochuodho to Standing Order No.53(b) which states:

"If, on a question other than a question of procedure 20 or more---"

Are you satisfied? Let us move on.

Hon. Members, I had earlier drawn your attention to a notice of an amendment by Mr. Kajwang on page 124.

**Mr. Kajwang:** Mr. Temporary Deputy Chairman, Sir, I beg to move:

THAT, Clause 14 be amended in paragraph "b" by deleting the proposed sub-section (5) and substituting therefor, the following new subsections as set out in that amendment in the Order Paper.

Let me refer the House to the original position in Section 15 of the principal Act, if the Members may have it. It deals with the occurrence of a vacancy in the Commission. It is almost the same thing as the position with the Secretary. I am suggesting that in the case where a vacancy arises in the Commission, the Commission should not appoint the committee, but it should be substituted---

**The Temporary Deputy Chairman** (Mr. Musila): Order, Mr. Kajwang! Could you move the amendment? The purpose of calling upon you is to move the amendment which you have not done.

**Mr. Kajwang:** Mr. Temporary Deputy Chairman, Sir, I beg to move:

THAT, Clause 14 be amended in paragraph "b" by deleting the proposed subsection (5) and substituting in place therefor, the following new subsections (5)(i) and (ii):

(5)(i) Where any vacancy occurs in the Commission, the Commission shall within 14 days of the occurrence, submit to the Parliamentary Select Committee a list of three names of persons qualified under this Act to fill the vacancy.

(ii) The Select Committee shall, within seven days of the receipt of the names, submit to the National Assembly names of two persons from whom the President shall appoint a Commissioner.

We are trying to give the give the Parliamentary Select Committee and the National Assembly the power to nominate a replacement in case of a vacancy. That is the purpose of this amendment.

I beg to move.

*(Question of the amendment proposed)*

**Mr. Maitha:** Mr. Temporary Deputy Chairman, Sir, while I support the amendment, this is a "gentlemen's agreement" where men met and agreed. This will give power to our Select Committee to do the right job as agreed. We, hon. Members, trust each other and we need to sit down and agree on issues which come into this House.

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

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

*(Clause 14 as amended agreed to)*

Clause 15

**Mr. Kajwang:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 15 be amended by deleting the proposed paragraph "a" and substituting in place therefor, the following new paragraph "a":-

(a) to conduct and facilitate civic education in order to stimulate public discussion and awareness of constitutional issues.

The purpose of this amendment is that in the negotiations, it was suggested that the Commission should merely facilitate and promote civic education. We have realised that the job of civic education is so important for this exercise that it should be one of the duties of the Commission.

I propose this amendment in order to give the Commission the power to conduct and facilitate [Mr. Kajwang] civic education.

I beg to move.

*(Question of the amendment proposed)*

**Mr. Kombo:** Mr. Temporary Deputy Chairman, Sir, I do support the amendment on the basis that civic education is extremely important. If it can be co-ordinated through the Commission, then we shall have a standard way of educating the public to ensure that it is understandable.

**Mr. Murungi:** Thank you, Mr. Temporary Deputy Chairman, Sir. I also rise to support this amendment.

We met at County Hall to consider this amendment and we all agreed to support it when it comes before this House. I would urge all the Members to support it.

**Mr. Muite:** Mr. Temporary Deputy Chairman,

Sir, while I support the proposed amendment, I would like to call on the Attorney-General to stand up and assure this House so that it is in the permanent record of the HANSARD, that the wording here will mean that the Commission will tap and allow the civil society, religious sector, political parties and other persons to carry out civic education, and that the intention here is not to say that only the Commission will conduct civic education.

I foresee an area of difficulties here. I foresee a situation where the Government of the day will say that the civil society must not be permitted to carry out civic education and it will say that this is not civic education, but politics. There is room for disagreement down the road. I would like the Attorney-General to assure the House that the interpretation will not be such that the civil society and other bodies, including political parties, will be prevented down the road from carrying out civic education.

**The Temporary Deputy Chairman** (Mr. Musila): Attorney-General, would you like to make any comment?

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, the words are very clear; conduct and facilitate. There is no need for further clarification.

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

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

*(Clause 15 as amended agreed to)*

*(Clauses 16, 17 and 18 agreed to)*

Clause 19

**Mr. Kajwang:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 19 be amended by deleting the proposed paragraph "d".

Mr. Temporary Deputy Chairman, Sir, the proposed paragraph "d" provides for a situation where the Secretary, in reporting to the Commission, will do so through the Chairperson. We found that a bit cumbersome. I think we are of the view, because we have discussed and agreed that the Secretary---

**The Temporary Deputy Chairman** (Mr. Musila): Order! Do you have a copy of the Bill?

**Mr. Kajwang:** Yes, Mr. Temporary Deputy Chairman, Sir. It is on page 426, paragraph "d".

**The Temporary Deputy Chairman** (Mr. Musila): Continue!

**Mr. Kajwang:** Mr. Temporary Deputy Chairman, what we want to correct is a situation where the Secretary, in reporting to the Commission, would have to report

through the Chairperson. We are saying that he should report directly to the Commission. That is what the original Bill provided. So, by deleting paragraph "d", we are retaining the original position. That is what I intend to move.

Therefore, I move that this amendment be allowed.

**The Temporary Deputy Chairman** (Mr. Musila): Very well.

*(Question of the amendment proposed)*

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

*(Clause 19 as amended agreed to)*

*(Clauses 20 and 21 agreed to)*

**The Temporary Deputy Chairman** (Mr. Musila): Hon. Members, there are two notices of amendment to clause 22. These are from Messrs. Muite and Kajwang'. We will deal with Mr. Muite's proposed amendment first.

Clause 22

**Mr. Muite:** Mr. Temporary Deputy Chairman, Sir, this is perhaps the second most important amendment. Through you, I would like to appeal to hon. Members in this House to support my amendment. I beg to move:-

**[Mr. Muite]**

THAT, Clause 22 be amended in paragraph "a", subsection (4) by deleting all the words after the word "extension".

Mr. Temporary Deputy Chairman, Sir, this is the minimum reform package clause, if I may call it so. This is the clause that is giving power to the Commission in 12 months' time down the road, to recommend a minimum reform package, if they find they cannot complete their work in time for the next election; that is, before October next year. It is my submission that if there will be any minimum reforms, that package should be negotiated, discussed, debated and agreed upon by all stakeholders, and not the Commission. I would really like to plead even with hon. Members from the Democratic Party, to see the danger in this clause. If we need to go to division, let us do so. I am saying it is not the duty of the Commission to come up with a reform package targeting the next election. It is for us, all the stakeholders, to do so. Even if we will have to extend the life of Parliament, let us debate it now. Even if we are going to delete Section 9 in order for President Moi to contest another term, let

that issue be debated now, and not 12 months down the road.  
I beg to move.

*(Question of the amendment proposed)*

**Ms. Karua:** Mr. Temporary Deputy Chairman, I beg to oppose this amendment, preferring the amendment that is coming later. The danger for minimum reforms is far-fetched. The legislative power of this assembly has not been taken away and cannot be taken away, either by the Commission or anybody else. I do agree that the section as it needs to be amended, but I prefer the amendment that is about to be brought by Mr. Kajwang. This is because the Commission will not be given power to bulldoze this House. The Commission may recommend, but this House has to debate and even throw out what the Commission has recommended. Nothing can pass by way of amendment of minimum reforms or even constitutional reforms without an absolute majority in this House. We, therefore, should not fear outside bodies when it comes to the legislative agenda.

*(Applause)*

**Mr. Gatabaki:** Mr. Temporary Deputy Chairman, Sir, having witnessed what happened to the IPPG package about minimum reforms, we cannot and dare not accept any other minimum amendments. I call for comprehensive amendments. So, I support the sentiments expressed by Ms. Karua.

**Dr. Ochuodho:** Mr. Temporary Deputy Chairman, I know that supporting Mr. Muite's amendment may be very unpopular. However, I think it is important to go on record that we did caution Kenyans, at some stage, that a loophole is being provided for President Moi to seek another term. We fear a situation whereby the Ghai Commission will go across the country like other Commissions before it, and tell Kenyans that they have been across the country and Kenyans want President Moi to continue ruling. The Chairman's personal opinion may not matter. He will have to go along with the views of the other Members of the Commission. It is in that regard that I wish to support the amendment proposed by Mr. Muite.

**Mr. Angwenyi:** Mr. Temporary Deputy Chairman, Sir, if I am given an option to choose between surrendering my responsibility in this House to the Commission and allowing, by two-thirds majority, President Moi to extend his stay in power, I will choose the latter. I do not want to surrender my responsibility in this House to the Commission. If we have to make any amendments, they should be discussed in this House. If there are constitutional amendments, they will have to be discussed and passed by a two-thirds majority of the House. If two-thirds of the House pass that amendment, then I think it will be for the good of all Kenyans.

**Mr. Raila:** Mr. Temporary Deputy Chairman, Sir, the issue of minimum amendments has been discussed for a

long time. But I want this House to disabuse itself of the notion narrowly held by some hon. Members that they have the interest of the people of Kenya at heart more than other hon. Members. All of us, collectively, have a responsibility to the people of this country because we were elected to represent them. This idea or fear that President Moi wants to extend his term through the back door is all hogwash. If minimum amendments are brought to this House and hon. Members do not like those minimum amendments, then there is no way they will be passed in this House. Therefore, no single hon. Member should think that he represents the so-called stakeholders more than other Members. This is because there are no greater stakeholders than the people who are represented by hon. Members. Therefore, I beg to oppose.

**The Temporary Deputy Chairman (Mr. Musila):** Very well. I will proceed to put the Question.

*(Question, that the words to be left out be left out, put and negatived)*

*(Clause 22 agreed to)*

**The Temporary Deputy Chairman (Mr. Musila):** There is a notice on the same clause by Mr. Kajwang on page 125.

**Mr. Kajwang:** Thank you, Mr. Temporary Deputy Chairman, Sir. I beg to move:-

THAT, Clause 22 be amended in paragraph "a" by deleting the proposed subsection (4) and substituting therefor the following new subsection (4):

(4) Notwithstanding any extension of time under subsection (3), the Commission may, where circumstances demand, recommend such minimum amendments to the Constitution or any other law as may be necessary towards fulfilment of any of the objects of the review process which shall be considered by the National Assembly in accordance with the Standing Orders.

Mr. Temporary Deputy Chairman, Sir, subsection (4) which we want to delete did not categorically say that the amendments or any other law may only be necessary towards the fulfilment of any of the objects of the review process. There may be some bottlenecks which may be caused by constitutional provisions or by any other Act of Parliament. The Commission, on recognising those bottlenecks, may bring proposals to this House, which this House will debate and pass or reject. So, there is no fear whatsoever which is being brought by my learned friends.

With those few remarks, I beg to move.

*(Question of the amendment proposed)*

**Mr. Murungi:** Thank you, Mr. Temporary Deputy Chairman, Sir. I rise to support this amendment. The key phrase here is "The Commission may recommend to Parliament"; so, the final decision on whether we are going to amend the Constitution or not will be made by this Parliament. The requisite two-thirds majority of all Members of Parliament will also apply before any amendments can be made. Those who are afraid that the amendments might be used to extend, either the life of Parliament or the constitutional tenure of the Presidency, have little to worry about because that particular question will have to come before this House. We have to be convinced by two-thirds majority to extend the life of Parliament or to extend President Moi's tenure.

From the mood I see on both sides of the House, only a crazy Member of Parliament would go for that kind of option.

*(Laughter)*

**The Temporary Deputy Chairman** (Mr. Musila): Order! Order! Mr. Murungi, you must withdraw that remark of a crazy Member of Parliament! The word "crazy" is unparliamentary in as far as it relates to Members.

**Hon. Member:** Why should he withdraw? There is nobody who is complaining.

**Mr. Murungi:** Mr. Temporary Deputy Chairman, Sir, I have not said any Member of Parliament is crazy. I am saying it is only a crazy Member who would do such a thing. Wait until that time

**The Temporary Deputy Chairman** (Mr. Musila): Order! Order, Mr. Murungi! I think we all know what you mean, but I did rule and it is obvious, that you said that it is only "a crazy Member of Parliament" who would do such a thing. Therefore, you will withdraw, Mr. Murungi!

**An hon. Member:** There is nobody injured!

**The Temporary Deputy Chairman** (Mr. Musila): Order! Mr. Murungi, could you withdraw that word, or if you do not, let me know?

**Mr. Murungi:** Mr. Temporary Deputy Chairman, Sir, I have no problem withdrawing the word, but I would like you to read for me the Standing Order which says the word "crazy" is unparliamentary and then I will withdraw it.

**The Temporary Deputy Chairman** (Mr. Musila): Order! Order! Mr. Murungi, the Chair has already ruled that you withdraw that word. If you wish, you can withdraw. If you do not, you let me know and then I will decide what action to take. It is a matter of withdrawing but if you are not withdrawing, I take the decision.

**Mr. Murungi:** Mr. Temporary Deputy Chairman, Sir, I feel it is unfair for the Chair to ask me to withdraw. There is no offence here. What I have said is that it is only a crazy Member of Parliament who would vote for the

extension of the life of Parliament beyond the five years or to vote for the extension of President Moi's tenure beyond that. I do not see what is so offensive in that one for me to be asked to withdraw.

**Dr. Murungaru:** On a point of order, Mr. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman** (Mr. Musila): There is no point of order because I have already---

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

Order, hon. Members! The Chair has been very clear on this one. Mr. Murungi, I have been very generous to you and I have asked you to withdraw that remark. If you are not withdrawing---

**Mr. Murungi:** On a point of order, Mr. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman** (Mr. Musila): There is no other point of order. I just take the decision and we proceed. Are you withdrawing or not withdrawing, Mr. Murungi?

**Mr. Murungi:** Mr. Temporary Deputy Chairman, Sir, I would like to substitute the word "crazy" with the word "mad."

*(Laughter)*

**The Temporary Deputy Chairman** (Mr. Musila): Order, Mr. Murungi! The word you have substituted is even worse. Therefore, Mr. Murungi, for the final time, I ask you to withdraw the words "crazy" and "mad".

**Mr. Murungi:** In that event, Mr. Temporary Deputy Chairman, Sir, I am advised to substitute those words with the phrase "mentally unsound!"

*(Laughter)*

**The Temporary Deputy Chairman** (Mr. Musila): Mr. Murungi, I really regret to do this, but since I have given you all the opportunity, I will, therefore, declare you disorderly and order you to leave the House for the balance of the day. Could you leave, Mr. Murungi?

*(Mr. Murungi withdrew from the Chamber  
escorted by Ms. Karua, Messrs. Wamae,  
Maitha and Eng. Toro)*

Very well! I think, hon. Members, the Chair, and even Mr. Speaker has repeatedly impressed upon hon. Members to behave, all the time, in an orderly manner. I think we can now make progress.



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

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

*(Clause 22 as amended agreed to)*

**Mr. Angwenyi:** On a point of order, Mr. Temporary Deputy Chairman, Sir. Would I be in order if I asked the Clerk's office to list the words that are objectionable in this Parliament from now on, so that we do not have to utter them?

*(Applause)*

**The Temporary Deputy Chairman** (Mr. Musila): Order, Mr. Angwenyi! That is why the Chair is there; to guide hon. Members on the usage of different words. I think the Chair has done that. It has guided the House, and unless you want to challenge the Chair, that decision has been taken and is final.

**Mr. Obwocha:** Mr. Temporary Deputy Chairman, Sir, I may have read the wrong Order Paper. There is a notice of amendment by Ms Karua - 22 (1). Has it been overtaken by events, or what is happening?

**The Temporary Deputy Chairman** (Mr. Musila): Order! That is a new clause. It will come later. Very well. Let us move on.

*Clause 23*

**Mr. Muite:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 23 be amended as follows:

(a) in paragraph (b)(iii) by deleting the expression "not exceed twenty-five per cent" and substituting therefor the expression "not less than thirty-five per cent" in the proviso to the proposed new paragraph (e);

(b) in paragraph (c) by deleting the proposed subsection (3) and substituting therefor the following new subsections-

3(i) the National Constitutional Conference shall elect its own chairperson or co-chairpersons;

(ii) The National Constitutional Conference shall regulate its own procedure and may establish such subcommittees as it deems necessary; and,

(iii) The Commission shall serve as the constitution-making subcommittee of the

Conference.

Mr. Temporary Deputy Chairman, Sir, part "b" of the amendment, which is more important, is contradictory; to ask the Chairman of the Commission who will be reporting and presenting his Report to the National Constitutional Conference to also chair the National Constitutional Conference because that is the body to which he will be presenting his Report to. Members attending the National Constitutional Conference may well wish to criticise, accept or amend what he will be presenting. **[Mr. Muite]**

So, it is like asking the Chairman of the Commission to be a judge in his own court, when we also ask him to chair the National Constitutional Conference.

Part "a" of the amendment seeks to increase the participation of the civil society to 35 per cent.

*(Question of the amendment proposed)*

**The Minister of State, Office of the President** (Mr. ole Sunkuli): Mr. Temporary Deputy Chairman, Sir, I agree that, that clause needs to be amended, but in the terms that the hon. Member proposes, that is certainly objectionable. Anything that tends to increase the representation of NGOs in any democratic forum is not right.

Mr. Temporary Deputy Speaker, Sir, I know that my hon. colleague, for instance, belongs to seven of the NGOs that call themselves stakeholders; the Kenya Human Rights Commission, the 4CCs, the NCEC--- I think that is really---

**Mr. Muite:** On a point of order, Mr. Temporary Deputy Chairman, Sir. It is not right for Mr. ole Sunkuli, who is my learned friend, to mislead this House. The truth of the matter is that although I do have some friends in those organisations; professional colleagues, I am not a member of Kenya Human Rights Commission, the NCEC, the 4CC's or any of those bodies which he has mentioned. But I am a member of the Anglican Church.

*(Laughter)*

**The Minister of State, Office of the President** (Mr. ole Sunkuli): Mr. Temporary Deputy Chairman, Sir, but at any rate---

**The Temporary Deputy Chairman** (Mr. Musila): Order, Mr. ole Sunkuli! I think Mr. Muite's point has been taken.

**The Minister of State, Office of the President** (Mr. ole Sunkuli): Mr. Temporary Deputy Chairman, Sir, I also hope mine has been taken too; that the so-called 52 stakeholders are just seven strong individuals who have re-duplicated themselves into multifarious NGOs.

**The Temporary Deputy Chairman** (Mr.

Musila): Order, Mr. ole Sunkuli! Have you got the substance of the amendments by Mr. Muite?

**The Minister of State, Office of the President**

(Mr. ole Sunkuli): Mr. Temporary Deputy Speaker, Sir, I am talking about the 25 per cent. In fact, it is already too generous.

I beg to oppose the proposed amendment.

**Mr. Obwocha:** Mr. Temporary Deputy Chairman, Sir, I think bringing in the issue of NGOs is trivialising that matter. What that amendment is asking is basically that the Chairman of the Commission, who is presenting his findings to the Conference, should not chair that Conference because he was the Chairman of the other Commission. So, that conference should entirely elect its own Chairman. That is all that the amendment is asking. I would request that the two proposals be put separately, so that if one is not admissible---

Mr. Temporary Deputy Speaker, Sir, I believe the other one is a genuine matter because we are trying to streamline the organs of the constitutional review process.

**The Temporary Deputy Chairman** (Mr.

Musila): Order, hon. Members! I will now put the Question.

*(Mr. Muite stood up in his place  
as the Question was being put)*

Order, Mr. Muite! I have already taken a vote. I have already got the vote for the "Ayes."

**Mr. Muite:** Mr. Temporary Deputy Chairman, Sir, separately, Mr. Obwocha---

**The Temporary Deputy Chairman** (Mr.

Musila): Order, Mr. Muite! Let me finish that process of taking the vote. I will now put the Question again.

*(Question, that the words to be left out  
be left out, put and negatived)*

*(Clause 23 agreed to)*

**The Temporary Deputy Chairman** (Mr.

Musila): I have another notice of amendment by Mr. Kajwang on page 125 of your Order Paper.

**Mr. Kajwang:** Mr. Temporary Deputy Chairman, Sir, I beg to move:

"THAT, Clause 23 be amended by deleting the proposed subsection (6) and substituting therefor the following new subsection (6):-

That, the Commission shall record the decision taken by the National Constitutional Conference on the Report and the Draft Bill pursuant to its powers under subsection 1(c), and shall, in the absence of a consensus, submit the question or questions to the people for determination through a referendum."

We are proposing that because originally subsection (6) which we wanted to be deleted provided that the entire draft Bill would be sent to **[Mr. Kajwang]**

the people for a referendum. But after discussions, it has become apparent that you can only send to the people, a question or questions on which there is a disagreement. I am proposing that we substitute the proposed amendment with this amendment, so that it is only a question or questions on which there is no consensus at the National Constitutional Conference that will be taken to the people for determination through a referendum.

*(Question of the amendment proposed)*

**Mr. Kombo:** Mr. Temporary Deputy Chairman, Sir, I think this is a very central issue in the whole process. I know that, originally, this was a question of bringing the referendum before or after Parliament has debated the whole process, or not. I think the way this amendment is put is to ensure that once the Conference has taken certain decision and if they do not agree, the entire Kenyan population is given a chance to have its say before the matter comes to Parliament for deliberation and legislation.

So, I fully support the amendment.

**Mr. Munyao:** Mr. Temporary Deputy Chairman, Sir, I fully support the amendment as put by hon. Kajwang, and I am particularly more happy that the word "referendum" is for the first time going to be inscribed in our Constitution. We need not overemphasise on this matter.

I therefore support.

**The Temporary Deputy Chairman** (Mr. Musila): I would like to give a chance to anyone with an opposing view.

**Mr. Muite:** Mr. Temporary Deputy Chairman, Sir, I do have an opposing view which is based purely on legal considerations. As far as I know, if the Kenyan people rewrite a new Constitution, there are only two options in which that new Constitution can have legal validity. One, it is for the new Constitution to be enacted by a constituent assembly; or, two, for the new Constitution to be ratified by the Kenyan people through a referendum. This proposed amendment brings the matter to be referred to the referendum into question, instead of submitting the entire Constitution to the Kenyan people for ratification through a referendum. This introduces confusion because unless the House converts itself, by amending the current Constitution, into a constituent assembly for the purposes of giving birth to the new Constitution, I do not know how this new Constitution is constitutionally and legally going to come into being in the absence of a referendum.

**Mr. Imanyara:** Mr. Temporary Deputy

Chairman, Sir, while supporting this amendment, I note that this is the first time we are introducing the word "referendum" in our law, and I do hope that the Attorney-General is taking note that there is a complete absence of definition of the word "referendum" in our laws. Therefore, it is important that this House, before or during the process of review, does enact a law that spells out what a referendum is, how it is to be conducted, and on what issues.

I beg to support.

**The Vice-President** (Prof. Saitoti): Mr. Temporary Deputy Chairman, Sir, I also wanted to say that I do support the proviso which is there, but clearly, in the absence of a clear-cut definition of the word "referendum", it is actually important that upon this Bill being enacted into law, we need another Bill which will define clearly the word "referendum" and how it is going to be working. Otherwise, I do support the spirit of resolving, where there is a stalemate, the matter through a referendum.

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

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

*(Clause 23 as amended agreed to)*

*(Clauses 24, 25, 26, 27, 28 and 29 agreed to)*

**Mr. Michuki:** On a point of order, Mr. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman** (Mr. Musila): I will give you a chance, but I just wanted to mention to the House that we notice that Clause 30 is missing and we have drawn the attention of the hon. Attorney-General to that so that he can do the renumbering because it is missing on this Order Paper.

**Mr. Michuki:** Mr. Temporary Deputy Chairman, Sir, that is the issue that I wanted to be clarified.

**The Temporary Deputy Chairman** (Mr. Musila): Thank you. So, let us proceed now. We have a notice of a proposed amendment by Mr. Muite. It is on page 123 on the Order Paper.

*Clause 31*

**Mr. Muite:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 31 be amended by numbering the existing paragraph (a) and adding the following new paragraphs:-

(b) The Government of the Republic of Kenya undertakes to

[**Mr. Muite**]

facilitate, through all its organs, the expression of the will of the people as it emerges through the review

process.

(c) The powers vested by the Constitution in the executive and legislative branches of the Government, in so far as they affect the review process, shall be exercised in furtherance of a comprehensive review and in accordance with the advice of the Commission and the National Constitutional Conference.

Mr. Temporary Deputy Chairman, Sir, if you look at page 437 of the Bill we are debating, Schedule III, you will see the words:

"The Government undertakes not to deny or interfere with anyone's right to hold or attend public meetings or assemblies, the right to personal liberty and the freedoms of expression and conscience during the review process save in accordance with the law."

The intention of this amendment is to uplift this sentiment in values which, at the moment, are in a schedule and make it part of the inactive section in the law. This is necessary because even if we sit here debating this Bill, the Vice-Chairman of the Democratic Party has been disrupted in a previously legalised meeting. Hon. Ndwiga's meeting was disrupted. These acts of interfering, diverting and obstructing people's freedom of assembly and expression are going on. So, it is not enough to have these matters in a schedule. It is important to have them as sections in the new Act which we are going to enact, so that, at least, we can see whether the Government can be prevailed upon to respect these freedoms during the review process.

I beg to move.

*(Question of the amendment proposed)*

**Mr. Michuki:** Mr. Temporary Deputy Chairman, Sir, I do think that, in retrospect, it is possible that the Attorney-General omitted Clause 30 because this schedule ought to represent this section in this Act. The matters discussed here are so fundamental that they cannot be an appendix to an Act. This is because they must constitute a major provision just, if for nothing else, to ensure that the goodwill that is required during the period of review of the Constitution is not only in fact, but in law accepted by this House and the country.

Mr. Temporary Deputy Chairman, Sir, I would, therefore, propose that the schedule which is here should constitute Section 30 of this Act.

**The Temporary Deputy Chairman** (Mr. Musila): No! No!

**Mr. Maundu:** Thank you, Mr. Temporary Deputy Chairman, Sir. I admire the manner in which my

learned friend has expressed his opinion with regard to this clause for amendment. But these matters can only rest at that point, and they are incapable of being translated into any legal formality. There are strong political statements, but they cannot form part of the process in which we are undertaking. Therefore, we object to it. It should not be part of the process, but should be part of the encouragement that we will give as we go along the process.

*(Question, that the words to be added be added, put and negated)*

*(Clause 31 agreed to)*

#### Clause 32

**Mr. Muite:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 32 be amended in subclause (4) by deleting the word "twelve" and substituting therefor the word "fifteen" and by deleting all the words after the words "forwarded to the" and substituting therefor the words "President by the Ufungamano Initiative".

*(The Attorney-General smiled)*

I can see the Attorney-General leading in the merriment. Whether the Parliamentary Select Committee will give the Ufungamano Initiative the opportunity to nominate 12 or ten Commissioners, this clause seeks to say that the ten or 12 Commissioners will be nominated directly by Ufungamano. This clause now seeks to give Ufungamano the legal authority instead of leaving the matter purely to inferences. This is because you will see that under the present Clause 8, the additional 12 names are to be forwarded to Parliament by the Chairman of the Commission, but nowhere in this Bill does it say where the 12 additional names will come from. So, this amendment seeks to make it clear that the additional Commissioners, whether they will be 12 or ten, will come from Ufungamano Initiative. I would like to say that through this amendment, we are trying to close the loophole of arguments tomorrow. As the Chair has heard already, there are other groups that

**[Mr. Muite]**

are also seeking to have a say in the nomination of the additional Commissioners. With this amendment, the matter will be put beyond argument that the additional ten or 12 Commissioners will be appointed by Ufungamano Initiative without the requirement of vetting by anybody.

Mr. Temporary Deputy Chairman, Sir, I beg to move.

*(Question of the amendment proposed)*

**Mrs. Mugo:** Thank you, Mr. Temporary Deputy Chairman, Sir. I rise to support this amendment. The first thing I would like to say is that from the beginning, the stakeholders have been given an opportunity to nominate their representatives. It is common knowledge that Ufungamano had a majority of those stakeholders, and because there have been negotiations between the Parliamentary Select Committee and Ufungamano Initiative--- The gentlemen and ladies' agreement was that the Parliamentary Select Committee would come forward to meet the Ufungamano Group so that the Ufungamano Initiative would also have an equal number to represent them. It appears like we are now going through the back door.

I support that we accept the nominations. I am among those members---

**The Temporary Deputy Chairman (Mr. Musila):** Mrs. Mugo, all I am saying is that this is not debate time. You have made your point.

**Mrs. Mugo:** Mr. Temporary Deputy Chairman, Sir, I support the amendment.

*(Mr. Ruto consulted with Mr. Raila and Mr. Imanyara on the Opposition side)*

**Mr. N. Nyagah:** On a point of order, Mr. Temporary Deputy Chairman, Sir. Would the Chair help us in getting rid of Mr. Ruto from the Opposition side and, therefore, stop him from creating confusion?

**The Temporary Deputy Chairman (Mr. Musila):** All I can say, hon. Members, is that we are in the Committee and everybody should be seated.

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

Mr. Wamunyinyi, could you, please, take your seat? Any consultation must be done quietly without interrupting the proceedings of the Committee.

**Mrs. Ngilu:** Mr. Temporary Deputy Chairman, Sir, I wish to support this amendment in that during the negotiations, we agreed that we were not going to have the Ufungamano Initiative included in the Memorandum of Understanding, but by the gentlemen and ladies' agreement, we agreed that we were going to have 12 Commissioners and this was not going to be there. Now, I do believe that this is where we will have the test and see whether it can stand.

*(Question, that the word to be left out be left out, put and negated)*

*(Clause 32 agreed to)*

**The Temporary Deputy Chairman** (Mr. Musila): Hon. Members, I had informed you that I had another notice for a proposed amendment on the same clause by Mr. Ojode---

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

**The Temporary Deputy Chairman** (Mr. Musila): Hon. Members, he has withdrawn his amendment.

*(Applause)*

So, there is no question of rising on a point of order!

*(Clause 33 agreed to)*

**The Temporary Deputy Chairman** (Mr. Musila): Hon. Members, there is a proposed new clause on page 125 by Ms. Karua.

*New Clause*

**Ms. Karua:** Mr. Temporary Deputy Chairman, Sir, I seek to move that Section 22 of the Principal Act be amended by adding a new Subsection (3) as follows:

"THAT, the Minister in charge of Finance, in consultation with the Select Committee, shall determine the remuneration and allowances of the Commissioners and shall scrutinize and approve the budget of the Commission".

If you look at the Act, there is nowhere the remuneration and allowances of the Commissioners are set. This gives room for consultations between the Minister in charge of Finance, representing the Executive, and Parliament, represented by the Select Committee. We should do away with the confusion over what their remuneration should be.

I beg to move.

*(Applause)*

*(Question of the new clause proposed)*

*(New clause read the First Time)*

**The Temporary Deputy Chairman** (Mr. Musila): Hon. Members, in accordance with the Standing Orders, the amendment being moved involves the addition of a new clause which shall be deemed to have been read the First Time and the question shall be that the new clause be read a Second Time proposed.

*(Question, that the new clause be read a Second Time, proposed)*

**Hon. Members:** No, that is not the procedure!

Not at this stage!

**The Temporary Deputy Chairman** (Mr. Musila): Order, hon. Members! We have to follow the procedure!

**Mr. Angwenyi:** On a point of order, Mr. Temporary Deputy Chairman, Sir. I thought the Second Reading would be moved again by Ms. Karua before we begin discussing the amendment. What procedure is this?

**The Temporary Deputy Chairman** (Mr. Musila): No, it has already been moved. Please, have a look at page 41 of the Standing Orders. It states very clearly the procedure which we are following.

**The Minister of State, Office of the President** (Mr. Sunkuli): Mr. Temporary Deputy Chairman, Sir, I support this amendment. This, in fact, gives the Commission a good way to determine what kind of payments the Commissioners will receive. This has been a very tricky issue, even in the present Commission. I think the fact that the Executive, together with Parliament, will determine the remunerations is quite acceptable.

**The Assistant Minister for Education, Science and Technology** (Mr. Karauri): On a point of order, Mr. Temporary Deputy Chairman, Sir. The proposal by Ms. Karua is correct and we have accepted it, but it omits the word "Parliamentary", and reads just "Select Committee". Although we are going to pass it, the Attorney-General should be able to correct that omission and put the word "Parliamentary".

**The Temporary Deputy Chairman** (Mr. Musila): That is noted. Could we hear from Prof. Ongeru?

**The Minister for Public Health** (Prof. Ongeru): Mr. Temporary Deputy Chairman, in fact, I was rising on the same point and I want to support that we insert the word "Parliamentary" so that it reads: "Parliamentary Select Committee".

**The Temporary Deputy Chairman** (Mr. Musila): Very good. Could we hear from Mr. Michuki?

**Mr. Michuki:** Mr. Temporary Deputy Chairman, Sir, I am wondering whether you can guide us on this matter, not necessarily in relation to the Bill that we are now discussing. The Bill is already before this House and has been distributed to hon. Members. As a result of these constitutional amendments, the offices of the Commissioners will become constitutional offices. In that case, their remunerations will be determined as per the existing Section 104 of the Constitution of Kenya. Therefore, it seems to me that the inclusion of this provision will be inconsistent with the Constitution on how the salaries of constitutional offices are determined, unless, of course, it is intended that the Constitution is not going to be amended as proposed in the Bill which has already published by the Attorney-

General.

Therefore, I propose that we look at this matter so that we do not introduce inconsistencies in a law that would then become part of the Constitution, thereby contradicting an existing constitutional provision.

**Mr. Obwocha:** Mr. Temporary Deputy Chairman, Sir, in giving the Commissioners their due remunerations, it is important that we do two things here. If, indeed, we are going to incorporate these amendments in the Act, then to make sure that Commissioners are entirely independent, the Attorney-General must then bring an amendment to the Act to state clearly how their remunerations will be determined. Otherwise, this can be used to arm-twist the Commissioners.

Secondly, I was also bringing the point which has been made by Mr. Michuki because there is already an existing law on how they can be remunerated. So, I am proposing that while we agree with this new clause of Ms. Karua, the Attorney-General does bring specifically a provision that sets their remunerations so that they are not arm-twisted when they are doing this exercise. on your feet. Be it as it may, I am going to allow it, but really---

**Mr. Michuki:** Mr. Temporary Deputy Chairman, Sir, I have sworn in this House to defend the Constitution, and this is what I am trying to do! You should not stop me from doing that! I am saying---

**The Temporary Deputy Chairman (Mr. Musila):** Order, Mr. Michuki! Order! Mr. Michuki, you should not say that by all means. This is because I did make a remark from the beginning that we should take our time on this. Therefore, the question of denying you an opportunity to defend the Constitution does not arise. I think that is a very unfair comment that you have made in reference to the Chair.

Proceed!

**Mr. Michuki:** Mr. Temporary Deputy Chairman, Sir, all I am trying to say is this: If it is intended that automatically these positions become constitutional, they fall under Section 104 of the Constitution, in which case, their salaries will be determined under the Constitutional Offices Remuneration Act, which we amended here the other day. That would be automatic without introducing any further provisions. That is, of course, as I said, unless it is intended that they are not going to be constitutional offices-- But I understand, this is the intention. Therefore, we should not pass a law in this House which contradicts the Constitution as it now stands, although the Bill has not been passed.

**Ms. Karua:** Mr. Temporary Deputy Chairman, Sir, I think it is important that the House and the public should not be misled. Even when the Constitution of Kenya (Amendment) Bill is passed to make this Bill a schedule of the Constitution, the Commissioners cannot, by any stretch of imagination, be called constitutional office holders.

Since the point is debatable, we should carry on

**The Temporary Deputy Chairman (Mr. Musila):** Mr. Attorney-General, do you have any comment on these sentiments being expressed, particularly with regard to the existing Constitution?

**The Attorney-General (Mr. Wako):** Mr. Temporary Deputy Speaker, Sir, the position is that, the Constitution of Kenya Review Amendment Bill is yet to be passed by this House. At this point in time, we are focusing on the Bill. Therefore, I fully and totally support the proposal by Ms. Karua. As and when the Constitutional of Kenya (Amendment) Bill is passed, then the other issues can be looked into.

**The Temporary Deputy Chairman (Mr. Musila):** I will now put the question---

**Mr. Michuki:** On a point of order, Mr. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman (Mr. Musila):** Order, Mr. Michuki! Please, sit down. I have given you an opportunity and then when I am just in the process of putting the question, you are [**The Temporary Deputy Chairman**] with the debate at hand because we are passing an Act of Parliament, and the proposed amendment is not, by any imagination, in contravention of the Constitution.

**Mr. Obwocha:** Mr. Temporary Deputy Chairman, Sir, let us not mislead anybody. If I can refer to Section of 104 of the Constitution here, the bottomline is that the Attorney-General, who has now refused to commit himself, should bring a Bill here. Section 104(1) reads as follows:-

"There shall be paid to the holders of the offices to which this section applies, such salary and allowances as may be prescribed by or under an Act of Parliament."

*(Loud consultations)*

**The Temporary Deputy Chairman (Mr. Musila):** Order! Order, hon. Members!

**Mr. Obwocha:** Hold your horses! So, with regard to that section and what we are passing now, the Attorney-General must bring an Act of Parliament to state what they are going to earn. That is all.

**The Vice-President (Prof. Saitoti):** On a point of order, Mr. Temporary Deputy Chairman, Sir. One hon. Member has asked whether a new Bill should be brought here. We are talking about a Bill which in any case, will be an Act of Parliament. But much more important, the Constitution is also very clear. In the event that we have a constitutional amendment and an Act of Parliament that may be contradicting the Constitution, then the Constitution carries the day. So, there is no problem here.

*(Question, that the new Clause be read a*

*Second Time, put and agreed to)*

*(The new clause was Read a Second Time)*

*(Question, that the new clause be added to the Bill, put and agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of the Constitution of Kenya Review (Amendment) Bill and its approval thereof with amendments.

*(Question proposed)*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, I beg to move that [The House doth agree with the Committee in the said Report.

**The Vice-President** (Prof. Saitoti) seconded.

*(Question proposed)*

**Mr. Obwocha:** Mr. Temporary Deputy Speaker, Sir, I want to make just two comments. First, in this Bill, we have agreed that there will be a Parliamentary Select Committee on Constitutional Review. We know the squabbles we went through during the formation of this Committee. I believe that this House should now stand above those squabbles and form a new Parliamentary Select Committee acceptable to the whole House, so that all interests are represented on it because this review will take a bit of time before it comes to an end.

Secondly, the other side has failed to act gentlemanly because it was agreed that the Ufungamano Initiative should nominate 12 Commissioners. Now, during voting, it has turned around and rejected the amendment to effect that agreement. I want to believe that when the names of the 12 Commissioners come from Ufungamano Initiative, they will be acceptable to the new Parliamentary Select Committee on Constitutional Review to be formed, so that we do not go to another round of squabbles.

**Mr. Muite:** Mr. Temporary Deputy Speaker, Sir, in the setting up of the envisaged Parliamentary Select Committee on Constitutional Review, I would like to propose that we get away from this practice where KANU chooses the representatives from the Opposition parties to some of these Committees. The proper practice throughout the Commonwealth countries is for the respective political parties to be asked to nominate their representatives on the committees. The decision is that of the political parties and it should not be made for them by the other side.

*(Question put and agreed to)*

*(Question put and agreed to)*

*(The House resumed)*

*[The Temporary Deputy Speaker (Mr. Imanyara) in the Chair]*

## **REPORT, CONSIDERATION OF REPORT AND THIRD READING**

### **THE CONSTITUTION OF KENYA REVIEW (AMENDMENT) BILL**

**Mr. Musila:** Mr. Temporary Deputy Speaker, Sir, I beg to report that a Committee of the whole House has considered The Constitution of Kenya Review (Amendment) Bill and approved the same with amendments.

**Attorney-General]**

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

Mr. Temporary Deputy Speaker, Sir, with your permission, I wish to make a few remarks at this juncture. We all agree that it has been a long road to this date and time in Parliament. The National Assembly has now given its thumb of approval to this Constitution of Kenya Review (Amendment) Bill, 2001. As was stated during the Second Reading, this is the fourth set of major amendments that have been enacted by this House, and are really the last amendments that we will make to this particular Bill. It has been a long road, but it was well worth it. As the Democratic Party shadow Attorney-General said, with each major amendment, there has been a constant improvement in the provisions for a review process. So, today, I believe we have had the best.

Just to add a few things, first I would like to say that, since we have now reached this stage, there ought to be a unity of purpose amongst all Kenyans. The wrangling, suspicions, confrontations and the games that have been played in connection with this review process should come to an end today. All Kenyans, young, old, men and women and the disabled must unite. With this unity of purpose, we must now focus our attention on the constitutional review process. I know that there are many problems that this nation is going through, particularly in the economic and social fields, but let me hope that, at least, one issue on which Kenyans can be united is to ensure that we have a proper constitutional review process, so that we have, at the end of the day, a Constitution that we can say is ours.

Secondly, I would like to underline the fact that

Commissioners are not there to espouse the political parties or the various organisations that they may belong to. They are not there to further the interests of any section of the community. The Commissioners are there to do a technical job. The technical job is to listen to what the people of Kenya have to say, and reflect their wishes in the new constitutional order that we are going to have. Therefore, I want to appeal to the Commissioners to particularly bear in mind what this House has now just passed; that all Commissioners, once appointed, shall cease active participation in political parties or any other organisation, whether registered or otherwise, or propagate partisan views with respect to the review process. I wish to bring to everybody's attention or organisations, the Code of Ethics which is set out in the Third Schedule. If I may say so, the Third Schedule is part of the Act. It is enforceable as part of the Act.

The third issue that I would like to mention is: We have, as it has been noted for the first time, been referring to the word "referendum" in our legislation. I can promise this House that I shall immediately embark on trying to put together what would be the law on referendum. I hope that this House will be able to debate that law on referendum in due course.

**Mr. Gatabaki:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I would like to seek your guidance! I thought the proper procedure was for the Attorney-General to move the Bill for the Third Reading, and then you put the question!

**An hon. Member:** That has been done!

**The Attorney-General (Mr. Wako):** That is what I am doing! All in all, the real stakeholders in the constitutional review process are the 30 million Kenyans and not the 52, 5 or 4 groups here and there. The stakeholders in the constitutional review process are the 30 million Kenyans. Now, this is their time to exercise the golden opportunity to re-shape their future by ensuring that we have a Constitution that we all respect and obey.

With those few remarks, I beg to move that The Constitution of Kenya Review (Amendment) Bill be now read the Third Time.

**The Minister for Information, Transport and Communications (Mr. Mudavadi)** seconded.

*(Question proposed)*

**Mr. Ndwiga:** Mr. Temporary Deputy Speaker, Sir, today, the House has risen above pettiness and passed this very crucial Bill. Listening to the Attorney-General, I think Kenyans need to be given more assurance that, as the Commission goes about its work to collect and collate views from the citizens of this country, the Government will behave like a civilised Government.

Mr. Temporary Deputy Speaker, Sir, recently, you heard of cases where the police and the Provincial Administration, especially in Eastern Province, have gone

completely wild! Members of Parliament cannot conduct Harambees or meet their constituents there. I do not think the spirit that the Attorney-General is trying to create here is not manifested on the ground.

Mr. Temporary Deputy Speaker, Sir, in Eastern Province, it happened in one week. You know what happened in Meru and Kibugua Market in Manyatta Constituency. We have discussed about who should manage the civic education, but on 3rd May, that is last week, a group of disabled persons, while attending a workshop at Isaac Walton Inn, were set upon by policemen. We later learnt that their crime was that they did not pay a courtesy call to the Officer Commanding Station (OCS). What is happening?

We know that in Eastern Province, the Provincial Commissioner---

**The Temporary Deputy Speaker (Mr. Imanyara):** Please, stick to the Bill!

**Mr. Ndwiga:** Mr. Temporary Deputy Speaker, Sir, I am merely saying that, as we go about the process of constitution-making, there are certain things that are expected on the ground. We expect the Government to be civilised. You will not believe that disabled persons were thrown out of a hotel. We saw one disabled person without legs rolling like a football after being thrown out by a policeman! The policemen are supposed to guard and protect private property. They invaded Isaac Walton Inn in Embu and closed it down! In the spirit of constitution-making, I think we need to tell the Government to act with some decency. This time round, we would like to ask Kenyans to give the Commission which will be set all the support that there is. The destiny of this country will depend a lot on what happens in that process. In the constitutional review process, we want to heal wounds. We want Kenyans to determine their destiny.

With those few remarks, I beg to support.

**Mr. Raila:** Mr. Temporary Deputy Speaker, Sir, I would like to thank all Members of this House for showing a sense of patriotism in debating this Bill. We started when the temperatures were very high. One would say that it has been a very long constitutional journey to arrive where we are. I remember the last time we parted company in this House, when Members were walking out. I saw Mr. Mwenje carrying a placard up there, saying that Raila was a traitor! I was tempted to say: "Father, forgive him for he knows not what he is doing!" I am happy that we are ending this debate in a very convivial note, with Mr. Mwenje himself also present here!

As regards the Select Committee, I would like all the Members to now have a mental reconstruction, to realise that we are now back together, and that those parties which were on the Select Committee already nominated their representatives. There is no point in asking KANU to nominate its representatives because it



has already done so. NDP representatives are already in the Committee. Only parties which were not present and which had boycotted the Committee should now take up their positions in the Select Committee. Let us, for once, agree that we are now united. Let us forget where we have come from. The unified Commission that we are going to appoint will be one. It will not be a coalition of a Commission of Ufungamano and the Parliamentary Select Committee. It will be a national Constitutional Review Commission which, as the Attorney-General rightly said, should be non-partisan.

With those few remarks, I beg to support.

**Mrs. Mugo:** Thank you, Mr. Temporary Deputy Speaker, Sir. I also wish to add my support to this Bill. We know the acrimonious time that we went through in this process. It is our hope and prayer that this will serve to bring Kenyans closer. It will be a healing process in making the Constitution. It will be something that we all will embrace. That can only happen if everybody resists trying to monopolise, or uses the powers that may be, by using more representation, to take control of the process. We want to leave the process to the Commissioners, who must be completely **[Mrs. Mugo]** independent. So, I urge the Government to resist using its powers to say that the Constitution shall belong to certain people. The Constitution shall belong to all the 30 million Kenyans. That includes women! We hope to see the women's representatives in the whole set-up, be it in the Select Committee or the Commission. We would like to see the spirit of affirmative action applied in this process. At least 30 per cent in both sectors should be women representatives. Everybody should remember that women constitute more than 50 per cent of this country's population. So, if democracy is to be seen to work, they must be fully represented. We hope that the Constitution-making process will not tear Kenyans further apart, but rather will bring them closer to each other. That will largely depend on whether the Government and the Head of State will continue trying to control the process.

With those remarks, I support.

**Mr. Munyao:** Mr. Temporary Deputy Speaker, Sir, I would like to join my colleagues in saying that we came from very far to this end. The achievement we have realised is a compliment to this House and the entire country. Although the entire population of this country is not here, it has been supporting this spirit.

Constitution-making processes the world over have never been comfortable. In fact, the way you start is not the way you end. At one time, I looked behind and saw hon. Sunkuli and wondered whether, by the end of the debate on the constitutional review process, we will be together. I am happy that we are still together, and we are going to continue being together.

I would now like to call upon the Commissioners to be non-partisan in their operations. They should limit the visits by some groups of their membership to State House.

They should be cohesive. The practice of forming small groups and visiting State House, thus frustrating their Chairman, is not going to work. I would also like to call upon the Government to show commitment to what we are doing. The Government has been known for not being committed to the constitutional review process. So, for heaven's sake, I would like to plead with the Government to show commitment this time round.

With those few words, I beg to support.

**Mr. Keriri:** Mr. Temporary Deputy Speaker, Sir, I agreed with the Attorney-General when he said: "We have moved a long way. Today is a great day and date for Kenyans." We arrived to this end through a very rough road with potholes, broken promises and bridges. Ultimately, we have shown a unity of purpose. Were Kenyans not very poor, everybody would buy a bottle of champagne tonight to celebrate what we are about to achieve. I would like to call upon the Attorney-General to ensure that the Business Committee allows the Constitution (Amendment) Bill, which is meant to facilitate the entrenchment of this process into the Constitution, to come to the House for the Second Reading as quickly as possible.

Mr. Temporary Deputy Speaker, Sir, I support.

**The Minister of State, Office of the President** (Mr. Nassir): Bw. Naibu Spika wa Muda, mambo yangu ni machache tu, nayo ni kumshukuru Mungu, mwenyekiti, na maofisa wote, Mawaziri pamoja na Prof. Ghai. Kitu kilichobakia si Katiba, bali ni kusafisha roho zetu. Inafaa tuwache kuchukiana na tupendane ili Katiba hii ifanye kazi sawa sawa. Kwa hivyo, wale waliokuwa na fikira zingine zozote wanafaa wazisahau. Kenya hii ni ile ambayo watu wanataka, yaani nchi ya umoja na kupendana.

Asante.

**Mr. Kibicho:** Mr. Temporary Deputy Speaker, Sir, there is something he has omitted. We know that the Attorney-General will use his powers, and I believe---

**The Assistant Minister for Education, Science and Technology** (Mr. Karauri): On a point of order, Mr. Temporary Deputy Speaker, Sir. Considering that this is the Third Reading and we have debated on the Second Reading of this Bill extensively, would I be in order to call upon the Mover to reply?

**The Temporary Deputy Speaker** (Mr. Imanyara): Proceed, Mr. Kibicho.

**Mr. Kibicho:** We know that the Attorney-General will use his powers and Cap.1. I would like to appeal to him that when he does so, he should not re-organise this Act in a manner which will bring confusion. If he does so, there will be mistrust and the process may also be derailed because we do not know why he left out Section 30. I would appeal to the Attorney-General that when he exercises his powers, he should recall Sections 30 and 31 and proceed in that

manner without re-organising this Act and bringing confusion.

I would also appeal to the Attorney-General to bring this Bill on the referendum so that this process is not derailed.

**The Minister of State, Office of the President**

(Mr. Sunkuli): Mr. Temporary Deputy Speaker, Sir, this process has shown that no matter how much Kenyans disagree, they will eventually come to one point. We have all seen a thorough process with some people being referred to as hardliners and others forming their own small camps. This nation has tolerated all this and its survival is ensured. I have not heard the Members of the Opposition really thank the Government for being so considerate that even an *ad hoc* organisation like Ufungamano can be

**[The Minister of State, Office of the President]**

invited to take part in something as serious as constitution making. That indicates to my colleagues on the other side that this country has a considerate Government.

*(Question put and agreed to)*

*(The Bill was accordingly read  
the Third Time and passed)*

**ADJOURNMENT**

**The Temporary Deputy Speaker** (Mr. Imanyara): Hon. Members, it is now time for the interruption of Business. The House is, therefore, adjourned until tomorrow, Wednesday, 9th May, 2001, at 9.00 a.m.

The House rose at 6.30 p.m.