

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 19th July, 2000

The House met at 2.30 p.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

NOTICE OF MOTION

IMPLEMENTATION OF THE JUSTICE KWACH REPORT

Dr. Ochuodho: Mr. Deputy Speaker, Sir, on behalf of Mr. Waithaka, I beg to give notice of the following Motion:-

THAT, in view of the crucial role the Judiciary plays in the democratization process and particularly in the administration of justice, considering the need to enhance its efficiency and independence; this House urges the Government to urgently implement the recommendations of the Justice Kwach Committee.

ORAL ANSWERS TO QUESTIONS

Question No.468

WHEREABOUTS OF MR. KAIYAKA

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

(a) if he could inform the House the whereabouts of Mr. Michael Mwaura Kaiyaka, a resident of Kamwangi in Gatundu North, who was last seen on 11th May, 1996, at Karen, Nairobi; and,

(b) why the killers of the late Kaiyaka have not been arrested and charged with murder.

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

(a) I am not aware of the alleged disappearance or murder of Mr. Michael Mwaura Kaiyaka.

(b) Arising from the reply in part "a", part "b" does not arise.

Mr. Muiruri: Mr. Deputy Speaker, Sir, I am disturbed by the answer from the Assistant Minister. The family of this man has been living in nightmares. The disappearance or murder of this person was reported to Langata Police Station and seven people were arrested and, thereafter, somebody interfered with this matter. It beats reason for the Assistant Minister to say he is not aware of this man's disappearance, let alone the murder, because the people who were involved in his murder are known. How can the Assistant Minister claim not to know about this man's murder when the police records are there? I do not know whether he has checked the records because his answer is not acceptable to me.

Mr. Samoei: Mr. Deputy Speaker, Sir, at the request of the hon. Member, I checked at the Karen Police Station, with the OCPDs of Kiambu, Murang'a and Thika, and I do not have a record of the disappearance or murder of Mr. Mwaura. If the next of kin of Mr. Mwaura, or the hon. Member, can let me have that information, I promise to take action and report back to this House.

Mr. Muiruri: Mr. Deputy Speaker, Sir, the Question has not been answered at all. The investigating officer who handled this matter was Superintendent Mathenge of Langata Police Station, and all the details are there. When this man disappeared, he was an employee of the then Chairman of KANU in Nairobi District, Mr. Clement Gachanja. This is pure cover-up of a murder case. Could the Assistant Minister undertake to go and investigate further and answer the Question properly?

Mr. Samoei: Mr. Deputy Speaker, Sir, I undertake to take up this matter and seek a justifiable conclusion to it, but not on the premise the hon. Member has set, that it is a cover-up. Unfortunately, he is introducing issues that will

mar the efforts that I intend to make to bring the culprits to book. I would like to ask the hon. Member to refrain from making allegations about cover-up and issues that he cannot justify.

Mr. Muchiri: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to tell this House that he is not aware of the murder of Mr. Kaiyaka when, every morning, all police divisions and the police Commissioner report serious crimes in this country to the Office of the President and to the President himself?

Mr. Samoei: Mr. Deputy Speaker, Sir, the statement made by hon. Muchiri is not true.

Mr. Anyona: Mr. Deputy Speaker, Sir, the Assistant Minister said that he checked around various police stations in the country to find out the disappearance of Mr. Kaiyaka. But the Question implies that this matter was reported to Karen Police Station. Now, if Karen Police Station has said that there is no record, then it is either a cover-up or there was no such thing. Where is he going to find out when he has stated that there is no record?

Mr. Samoei: Mr. Deputy Speaker, Sir, in the interest of the general public and, indeed, the interest of the family concerned, I have undertaken that I will institute investigations into this particular matter with respect to whether those documents have been tampered with or any other allegation has been made. Otherwise, records at Karen Police Station do not reflect the disappearance or report of the disappearance of Mr. Kaiyaka.

Mr. Gitonga: Mr. Deputy Speaker, Sir, the Assistant Minister has been given the name of the officer who was investigating this matter as Mr. Mathenge. Could he then undertake to consult Langata Police Station and find out how far this investigation has gone and report back to the House? How soon can this be done?

Mr. Samoei: Mr. Deputy Speaker, Sir, that is correct, and I undertake to do that.

Mr. Muiruri: Mr. Deputy Speaker, Sir, I have indicated to the Assistant Minister that the matter was reported to Karen Police Station, which must be under Langata, because Langata is the divisional headquarters. I cannot understand why the Assistant Minister went on a wild goose chase to Kiambu and Thika when I had given him a lead as to where he should start his investigation. Now he comes back to tell this House that he has no information whatsoever. Further on, he says that he is going to investigate and let the House know. The Assistant Minister is simply beating about the bush, and yet, we are talking about a murder. Could the Assistant Minister undertake to do fresh investigations and report back to this House without covering the then powerful KANU Chairman in Nairobi District, who was the employer of this unfortunate person?

Mr. Samoei: Mr. Deputy Speaker, Sir, the hon. Member knows very well that Mr. Mwaura Kaiyaka is a resident of Kamwangi Division in Gatundu North. I was not on a wild goose chase in Thika or the other police stations I mentioned. It is because they are relevant. However, I have undertaken that I will do thorough investigations into this issue and report back to this House in a month's time. That is the best I can do for now.

Mr. Mwenje: On a point of order, Mr. Deputy Speaker, Sir. We all know that in a month's time, this House will go on recess.

Mr. Deputy Speaker: Order! How do you know?

Mr. Mwenje: Mr. Deputy Speaker, Sir, we all know. It is an open secret and you know that as much as I do.

Mr. Deputy Speaker: Mr. Mwenje, before this House passes a Motion for it to go on recess, there is no recess.

Mr. Mwenje: Mr. Deputy Speaker, Sir, the Motion will be passed.

Mr. Deputy Speaker: Order! Raise your point of order.

Mr. Mwenje: On a point of Order, Mr. Deputy Speaker, Sir. Could the Assistant Minister give a reply in a week's time because it is presumed the House will be on recess in a month's time?

Mr. Samoei: Mr. Deputy Speaker, Sir, unfortunately, I cannot comply with what hon. Mwenje has requested because of the extent and seriousness of the issue I am going to address myself to. If the House goes on recess, we will still take action and I will still report back to this House when it resumes.

Mr. Deputy Speaker: Next Question!

Question No.282

STATUS OF ONGICHA/MATIEKO
PRIMARY SCHOOLS

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

(a) if he is aware that Ruga Market, Ongicha and Matieko Primary Schools are in Rachuonyo District and not Kisii District;

(b) if he is further aware that the people living in these areas are administratively answerable to Kisii

District Commissioner; and,

(c) what action he has taken to correct this anomaly.

The Assistant Minister, Office of the President (Mr. Samoei): Mr. Deputy Speaker, Sir, I have consulted with the hon. Member on this Question, and because I want to give a very comprehensive answer, I have requested him that we defer the Question for a week in order to give him the right information.

Mr. Angwenyi: On a point of order, Mr. Deputy Speaker, Sir. Those places mentioned here are in my constituency. I hope the Assistant Minister will consult with me, otherwise, it will cause war there!

Mr. Deputy Speaker: What is there to cause war?

Mr. Angwenyi: Mr. Deputy Speaker, Sir, I will be a warlord then!

Mr. Otula: Mr. Deputy Speaker, Sir, I have no objection.

(Question deferred)

Question No.251

DESTRUCTION OF INFRASTRUCTURE IN KISII

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

(a) if he is aware that *El Nino* rains destroyed road, water and sanitary infrastructure in Kisii District;

(b) if he is further aware that no project is programmed under the *El Nino* Programme in the district; and,

(c) if he could consider funding the following projects under the *El Nino* Programme:-

- (i) Gesoni Water Project
- (ii) Nyatieko Water Project
- (iii) Gatere Water Project, and,
- (iv) Isecha Health Centre.

The Minister of State, Office of the President (Mr. Nassir): Mr. Deputy Speaker, Sir, I beg to reply.

(a) The Minister is aware that *El Nino* rains devastated roads, water and sanitary infrastructure in the entire country, and Kisii District was not spared. However, the extent of the devastation depended on the intensity of rain, which differed from district to district.

(b) It is true that Kisii District is not covered in the on-going *El Nino* package. However, on 4th July this year, the Government of Kenya signed an agreement with the French Government, in which it gave our country Kshs1.1 billion to support infrastructure and rehabilitation in the country. Kisii District is one of the districts to benefit from this funding.

(c) The projects to be supported by the French funding have already been identified through the Kisii District Development Committee. None of the projects listed by the hon. Member was submitted for consideration and, therefore, they cannot be supported. Due to many requests, not all projects could have been funded. The loan agreement of Kshs1.1 billion, which was signed between the French Government and the Government of Kenya will cover the rehabilitation of roads and water supply in the following districts in Central Province:- Murang'a, Maragwa, Nyeri and Nyandarua. In Rift Valley, the following districts will be covered:- Nakuru, Koibatek, Kericho and Bureti.

Mr. Mwenje: On a point of order, Mr. Deputy Speaker, Sir. The Minister is totally irrelevant. He is not answering the Question before the House. Could he be relevant and answer it?

The Minister of State, Office of the President (Mr. Nassir): Mr. Deputy, Speaker, as you know very well, some of us here have got very big mouths and can talk very loudly, but can do nothing.

Mr. Angwenyi: Mr. Deputy Speaker, Sir, I am happy that the Minister has recognized the need for *El Nino* funded projects in the entire Gusiiland. We have discussed and I am going to give him the projects that need to be funded.

Thank you.

Question No.194

DISMISSAL OF MR. MUTISO

Mr. Munyao asked the Minister for Home Affairs, Heritage and Sports why ex-Superintendent of Prisons, Mr. John S.K. Mutiso, was summarily dismissed from service on 29th September, 1994, after 25 years of exemplary service.

The Minister for Home Affairs, Heritage and Sports (Mr. Ngala): Mr. Speaker, Sir, I beg to reply.

Mr. John S.K. Mutiso, ex-Superintendent of Prisons, was enlisted into the Kenya Prisons Service on 22nd May, 1968, prior to the offence of gross misconduct. He had already committed a prisons disciplinary offence on 3rd January, 1971. The offence was being under the influence of alcohol and drugs, whether on duty or off duty. He was disciplined under Section 124(1)(d) of Prisons Rules (Revised in 1977) as follows:- He was fined Kshs100; he was severely reprimanded and warned of dismissal. Mr. Mutiso continued working with the Kenya Prisons Department until 29th September, 1993, when he was dismissed from the service on account of gross misconduct by the Public Service Commission of Kenya. The officer did not have an exemplary service as alleged in the Question. In accordance with the Public Service Commission, Prisons Service, (Cap.185)(29)(i), disciplinary proceedings were instituted, whose findings were forwarded to the Public Service Commission of Kenya for further action. After perusal of the same by the Commission, the ex-officer was found guilty of the offence of gross misconduct. On 29th September, 1993, the Public Service Commission of Kenya dismissed him from the service. On 30th November, 1993, he appealed against the decision of the Commission on a count of dismissal. On 12th October, 1994, the Public Service Commission disallowed the appeal against dismissal from the service and hence upheld the earlier decision.

Mr. Munyao: Mr. Deputy Speaker, Sir, you can see the disadvantage I have; supplementary questions are usually based on what the Minister has read out. Anyway, I thank the Minister for reading the paper that he was given before he came to this House this afternoon. Has the Minister investigated why this senior Superintendent of Prisons was sacked? The allegations were that he was given some names of people he was supposed to have recruited into the service but he declined because these people were not qualified!

Mr. Ngala: Mr. Deputy Speaker, Sir, I do not agree with the hon. Member. I have a different reason as to why he was dismissed. On 17th July, 1989, he was appointed to be in charge of recruiting teams for prison warders and wardresses, covering Rift Valley Province. On 23rd July, 1989, the team was to recruit in Turkana District, and officers are normally accommodated at Lodwar Town. The officer, instead of putting up at the town decided to go on a tour, up to Kalokol on the shores of Lake Turkana, which is a distance of 72 kilometres away, without permission. On his tour, he carried with him the entire recruiting team, which also included unauthorised passengers who were civilians, for a joyride to Kalokol. Their trip was not a lucky one as on their way back, the vehicle, GK 481M, had an accident where it overturned and both uniformed staff and members of the public who were civilians were seriously injured, and the vehicle extensively damaged. Its repairs were to the tune of Kshs29,050. The civilians who were unauthorised passengers soon after filed a suit against the Government for damages as a result of the injuries they sustained after the accident.

As a result of what transpired, this office took appropriate action on a count of gross misconduct, and hence interdicted him from duty with effect from 6th January, 1990.

Mr. Wamae: Mr. Deputy Speaker, Sir, the Minister has said the ex-officer was a drunkard and using drugs. But in his reply with regard to the accident, he did not say this man was drunk and had taken drugs. That is a contradictory answer!

Mr. Ngala: Mr. Deputy Speaker, Sir, I am not contradicting myself. The first mistake he made was in 1971.

Mr. Muite: Mr. Deputy Speaker, Sir, it is a very serious matter to charge one with drug-taking or being a drunkard. Is the Minister in a position to lay on the Table of the House medical reports to show that, that person was a drug addict and an alcoholic?

Mr. Ngala: Mr. Deputy Speaker, Sir, I said he was under the influence of alcohol and drugs. He was disciplined by being fined Kshs100, reprimanded, and warned of dismissal.

Mr. O.K. Mwangi: Mr. Deputy Speaker, Sir, the Minister talked about this person being under the influence of alcohol and drugs in 1971. He was involved in an accident in 1989. No action had been taken until October, 1993. Is this not a ridiculous matter, where somebody sat down and framed the question of drugs and alcohol? Why did the Government have to wait for over 10 years before taking disciplinary action on this person?

Mr. Ngala: Mr. Deputy Speaker, Sir, I said he was interdicted in 1993. When one is interdicted, it takes a bit of time for the process to take effect. During that intervening period, those matters were being looked into but as an interdicted officer, he was earning half his salary.

Mr. Muchiri: It is very unusual for a gazetted officer, of which this one was to be dismissed. Normally, such officers are dismissed on public interest. Why was he not dismissed under the public interest code, bearing in mind that, that officer had served this country for 25 years diligently and had only two disciplinary cases?

Mr. Ngala: Mr. Deputy Speaker, Sir, he was summarily dismissed. I believe that was the proper sentence for him to be given. Maybe, it was not necessary for him to be retired in public interest because of what he had done.

Therefore, I think it is a matter of the degree of the offence that he committed and that is why he deserved to be summarily dismissed.

Mr. Munyao: Mr. Deputy Speaker, Sir, again, you will agree with me that the Minister is reading a statement which he was given in the office by the same officers who conspired to sack Mr. Mutiso because he had refused to employ the people he was given. Could the Minister consider compensating this officer who had served this country for a quarter of his life?

Mr. Ngala: Mr. Deputy Speaker, Sir, there is nothing wrong if I read what has been written by the officers. That is the correct procedure. The Ministry of Home Affairs, Heritage and Sports was not directly involved. I did quote the Public Service Commission, which is the body that employs Government officers. So, the issue of refusing to recruit particular persons does not arise. The process had been carefully gone into and it is unfortunate that this gentleman has had to suffer this way. I do not think there is anything I can do at this particular time.

Question No.518

NON-SUBMISSION OF PROJECT MARKS
BY TECHNICAL INSTITUTE

Mr. Mwakiringo, on behalf of **Mr. Katuku,** asked the Minister for Science and Technology:-

(a) whether he could explain why Machakos Technical Institute failed to submit Trade and Entrepreneurship Project marks to the Kenya National Examinations Council (KNEC) for a candidate by the name Ms Mbatha Mbithe, Index No.301701, as a result of which she was not graded in July, 1999 results; and,

(b) whether he could, as a matter of urgency, order the institute to submit the marks to enable the student to be graded.

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

(a) The student by the name of Ms. Mbatha Mbithe was not graded in July, 1999, because she submitted her project to the institute later than 30th June, 1999, which was the deadline set by the KNEC.

(b) The institute later submitted her marks to the KNEC for processing, and the results are ready for collection either by the candidate or the institute. But I have already asked my officers to give me the result slip, which I can hand over to my colleague later.

(Applause)

Mr. Mwakiringo: Mr. Deputy Speaker, Sir, it is common sense that it is the Institute which is actually supposed to submit the results to the KNEC for grading, but in this case, why did it take too long for the institute to follow up with the student so that the results could be submitted for upgrading?

Dr. Wamukoya: Mr. Deputy Speaker, Sir, I have already given him what he wanted, but he is still baying for my blood. However, what he has said is wrong because normally, what happens is that when students sit for their theory papers, they are submitted to the KNEC for marking. It is only the practical papers, whose deadline was 30th June, that is supposed to be marked by the institute for out of 80 marks, and an external examiner comes in from the KNEC to mark out of 20, and that is submitted to the KNEC, and then, they are put together and the results come out like we have now here. You can congratulate her because she got a Credit.

Question No.469

DISSOLUTION OF DISPENSARY
MANAGEMENT COMMITTEE

Eng. Toro asked the Minister for Medical Services:-

(a) whether he is aware that the Management Committee of Naaro Dispensary in Kandara Constituency was dissolved in May, 1999, and that the dispensary has been operating without the said committee since then; and,

(b) why the committee was dissolved.

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

(a) Yes, I am aware that the Naaro Dispensary Management Committee was dissolved, and thus, the Maragwa Medical Officer of Health (MOH) is currently managing the facility on an interim basis.

(b) The management committee was dissolved as a result of leadership dispute following elections that were held on 29th April, 1999.

Eng. Toro: Mr. Deputy Speaker, Sir, I expected the Assistant Minister to give a more detailed answer to this Question because after more than one year, there has been no committee in that health centre, and nobody knows how the money is managed by the Maragwa MOH or his representative. Could he tell this House why there was a dispute because it does not necessarily mean that wherever there is a dispute in leadership, then, a committee has to be dissolved? Was money misappropriated by this committee, or the previous committee, and when will the MOH conduct elections for a new management committee?

Mr. Mukangu: Mr. Deputy Speaker, Sir, after anomalies were noted following public outcry, we instituted and sent an audit team to audit the dispensary affairs and what came out is that there was mismanagement of the dispensary, and hence, the reason to dissolve the standing committee. Secondly, the elections are scheduled to be held in mid-August.

Mr. Parpai: Mr. Deputy Speaker, Sir, could he explain why, two weeks ago, the Ministry issued a circular abolishing all hospitals and dispensary committees, thus leaving them at the mercy of the district committees, knowing very well that some hospitals and dispensaries depend on those committees in their day-to-day running?

Mr. Mukangu: Mr. Deputy Speaker, Sir, all the committees that were found wanting are the only ones which we notified that they should be suspended so that proper committees could be elected.

Mr. Mwenje: Mr. Deputy Speaker, Sir, I know that hospital, having been the first guest of honour to conduct a Harambee for it, which is a self-help project of the people of the area. The area people were managing their hospital and the Assistant Minister is still not telling us precisely what was the dispute because that is what they should have gone to solve, and if they are now ready to have the people reinstated and hold elections, could he specifically tell us which date has been arranged for elections of the leaders for this hospital?

Mr. Mukangu: Mr. Deputy Speaker, Sir, the Harambee hon. Mwenje is referring to was held in 1989 and a substantial amount of money was raised; to the tune of Kshs120,000. So, those are some of the reasons why we dissolved the committee, because they could not account for Kshs32,000 out of Kshs120,000 raised.

Mr. Parpai: Mr. Deputy Speaker, Sir, regarding my question, he says that it is only those committees that were found wanting that have been suspended. Could he tell us how he identified those committees, and why did the circular not indicate that they are being dissolved because of the way they are running the hospitals?

Mr. Mukangu: Mr. Deputy Speaker, Sir, we have got a system whereby we get results from all health centres and even district hospitals. We get reports on monthly basis, and when we get a negative report, we have got every reason to take action.

Mr. Angwenyi: Mr. Deputy Speaker, Sir, the Assistant Minister said that they dissolved that committee because they could not account for some Kshs32,000. What steps has the Ministry taken against those people who may have misappropriated those funds?

Mr. Mukangu: Mr. Deputy Speaker, Sir, investigations are still under way.

Eng. Toro: Mr. Deputy Speaker, Sir, for over one year, the Ministry has been undertaking an audit in these dispensaries, and now the Assistant Minister says that the investigations are incomplete. Even for a committee which has not performed, there is somebody who is behind the misappropriation of funds. Could he now tell us, because the audit is more or less complete, and I hope that he has got the report; who misappropriated this money and when will we have new elections for a new committee?

Mr. Mukangu: Mr. Deputy Speaker, Sir, if the hon. Member wants me to mention the name, we are talking of the former chairman, Mr. Joseph Muraga, and the elections are scheduled to take place in mid-August.

Question No.449

MISAPPROPRIATION OF LGTF MONEY

Mr. Otita asked the Minister for Local Government:-

(a) whether he is aware that money from the Local Government Transfer Fund (LGTF) which was given to Nyando County Council has been misappropriated by the chief officers;

(b) whether he is further aware that the Nyando County Council has not paid some councillors and employees their dues for the last five months due to lack of funds; and,

(c) what action he is taking against the said officers.

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

(a) The Ministry is investigating cases of alleged misuse of LGTF and other council revenue of Nyando County Council by the chief officers.

(b) Yes, I am aware.

(c) Given the reply in parts "a" and "b," the Ministry will take severe disciplinary measures which may include dismissal from the service and prosecution in the court of law against any officer found to have misappropriated council revenue. Already, one chief officer has been interdicted, pending the outcome of the investigations.

Mr. Otita: Mr. Deputy Speaker, Sir, the answer given is unconvincing. This Ministry is messing up every place in the municipalities, county councils and even town councils. Chief officers misappropriate funds, and you will find that it takes years, even when they talk of investigations, and there are no proper investigations being done. This case started in February, and they are still saying, up to this time, that they are still investigating.

Mr. Deputy Speaker, Sir, could the Assistant Minister tell this House when they intend to finish the investigations and take the severe action that he is intending to take?

Mr. Sirma: The investigation is going on and it is almost complete. Once the report is with us, we should be able to take the necessary action immediately.

Mr. Kajwang: Could the Assistant Minister tell us who runs local authorities? The chief officers seem to run them and utilise their resources as if these authorities belong to them personally, and yet, they are supposed to act in accordance with the decisions of the full council. Is it not so easy to determine, by just looking at the records whether there was a full council meeting before such an action was taken, so that you take disciplinary action immediately instead of cheating us that you will take a year to investigate?

Mr. Sirma: Action and the running of the council is done by the councillors within the respective council. There should be a meeting of the full council for the Ministry to take real action. A full council meeting was held on 9th June, this year, and it was chaired by the chairman of the county council and so we are taking the appropriate action. This is to confirm the action taken.

Mr. Munyasia: On a point of order, Mr. Deputy Speaker, Sir. When hon. Kajwang asked his supplementary question he said that hon. Sirma was cheating us here. Hon. Sirma has not objected to that particular charge. Is he in order to continue without, first of all, objecting to that particular slur?

Mr. Sirma: I never heard that remark. If he happened to have said it, of course that is very unparliamentary language. I do not think an hon. Member of this House lies.

Mr. Deputy Speaker: I missed it.

Mr. Achola: Since the Assistant Minister has already conceded that there was misuse of funds at the Nyando Town Council, could he make emergency arrangements for the councillors to be paid from whatever source?

Mr. Sirma: Mr. Deputy Speaker, Sir, I thought Mr. Kajwang could have withdrawn the word he used. All the same, the hon. Achola has asked whether we could get funds to pay the councillors, chief officers and workers in the Nyando County Council. The arrears have been paid up to June, and once we release the Local Authority Transfer Fund (LATF), which was provided for in the Budget, they will pay the arrears which they inherited from the Kisumu County Council.

Dr. Ochuodho: My understanding was that the LATF was created for the purposes of enhancing delivery of services in the local authorities, but this does not seem to be happening. Can the Assistant Minister tell us if the Government has any guidelines as to the use of this fund? In Homa Bay, for example, Kshs7 million went there and only Kshs250,000 was allocated for road works, which has also been "eaten" instead of doing the road work. Are there any guidelines for the use of the LATF funds?

Mr. Sirma: Mr. Deputy Speaker, Sir, I wish to refer the hon. Member to the LATF Act, which we passed in this Parliament. Debt reduction is part of that Act.

Question No.405

TABLING OF CITY COUNCIL
PROBE COMMITTEE REPORT

Mr. Mwenje asked the Minister for Local Government if he could table the report of the Probe Committee that was appointed to investigate financial and administrative affairs of the Nairobi City Council.

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

The report of the Probe Committee which the Minister appointed to investigate the financial and administrative affairs of the City Council of Nairobi is still being analyzed by the Ministry, with a view of working out implementation modalities of the recommendations. Some aspects of the report have, in fact, been implemented in accordance with the provisions of the Act under which the Probe Committee was appointed. As soon as the remaining aspects of the report are finalised, it will be made public.

Mr. Mwenje: Mr. Deputy Speaker, Sir, we are also interested parties in this report. We would want to know what is contained in it. First and foremost, we are not asking the Assistant Minister to start implementing what is in the report even before we know what is there. Can he table the report here in this House because public funds have been used in writing it and we want to see what is contained in it?

Mr. Kiangoi: Mr. Deputy Speaker, Sir, I wish to refer the hon. Member to the provisions of Sections 231 and 248 of the Local Government Act. Section 231, Sub-section 3, provides that after receipt of the report upon conclusion of the extraordinary inspection, the Minister will inform the local authority concerned with a view of advising or guiding them to be more efficient. Section 248 provides that the Minister may take such action as he deems fit.

There is no provision under the Local Government Act for the report to be made available to Members of Parliament.

Mr. Keriri: On a point of order, Mr. Deputy Speaker, Sir. Can the Assistant Minister tell us whether there is any provision in that Act which prohibits the Minister making that report public since public money was spent on it?

Mr. Kiangoi: Mr. Deputy Speaker, Sir, we act positively in the sense that we go in accordance with the provisions that are there. The report will be made public, but the first institution to be informed of it is the local authority concerned, so that they can rectify their mess.

Mr. Kariuki: Mr. Deputy Speaker, Sir, could the Assistant Minister explain the purpose and the results of the Mbaru's Oversight Committee that was supposed to implement some of the recommendations made by the Probe Committee?

Mr. Kiangoi: Mr. Deputy Speaker, Sir, in fact, that is one way of showing that the Minister took action. That is one aspect of the Report that was implemented. But, to be specific, the purpose was to look into the financial management of the City Council. It was supposed to look at what makes it inefficient in running its financial affairs.

Mr. Murathe: Mr. Deputy Speaker, Sir, the Assistant Minister is misleading this House! Could he confirm or deny that the Oversight Board has never commenced its work? He has been asked a specific question by hon. Kariuki. He has agreed that the Oversight Board has started to implement the Probe Committee's Report. We know they have never commenced their work. Could the Assistant Minister confirm or deny whether the Oversight Board has ever commenced its work?

Mr. Kiangoi: Mr. Deputy Speaker, Sir, I confirm that the Oversight Board has started its work.

Mr. Mwenje: Mr. Deputy Speaker, Sir, we know why they are refusing to table the Report! Could he confirm or deny that they are trying to cover-up some officers and councillors who have stolen, and who have been mentioned in the Report? The Ministry is trying to cover-up because the officers and councillors stole together!

Mr. Kiangoi: Mr. Deputy Speaker, Sir, I, again, wish to deny that the Minister is trying to cover-up anything! I have referred hon. Members to the provisions of the Act under which the Probe Committee was set up. We followed the Act to the letter.

QUESTION BY PRIVATE NOTICE

MEASURES TO STOP ALLOCATION OF PLOT NO. KAK/HOU/HG/32

Dr. Kulundu: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Lands and Settlement the following Question by Private Notice.

(a) What urgent measures is the Ministry taking to stop the allocation of plot No.KAK/HOU/HG/32 in Kakamega Municipality, which is currently occupied by the Deputy Provincial Commissioner, Western Province?

(b) What other steps is the Ministry taking to ensure that the current State Lodge is not allocated to private individuals?

The Assistant Minister for Lands and Settlement (Mr. Sudi): Mr. Deputy Speaker, Sir, I beg to reply.

(a) The Government house No.KAK/HOU/HG/32 in Kakamega Municipality is intact, and has not been allocated to anybody. The house is still occupied by the Deputy Provincial Commissioner, Western Province.

(b) The Government has no plans to allocate the State Lodge, Kakamega, to private individuals.

Dr. Kulundu: Mr. Deputy Speaker, Sir, this Government never ceases to amaze me! I have got a letter in

my possession here, from the Provincial Public Works Officer, to the Permanent Secretary in the Ministry of Roads and Public Works. The reference is: "Curving off of Deputy Provincial Commissioner's Residence, Kakamega, by Mr. Joshua Angatia, Private Developer." It reads:-

"This is to inform you that the curving off of this compound has left the house without any space and, therefore, it is inconvenient and embarrassing to the occupant. Since the fence is crossing just in front of the sitting room and the septic tank for the house is also now in Mr. Angatia's plot, this office feels that the acquisition of this particular plot is illegal and insecure to the occupant."

That is a letter from the Provincial Works Officer in Kakamega, to the Permanent Secretary in the Ministry of Roads and Public Works. Now, in view of this information, could the Assistant Minister tell the House whether, indeed, this should be accepted as an answer, when, in fact, officers on the ground, including the Provincial Commissioner himself, have confirmed that part of the Deputy Provincial Commissioner's house; that is the sitting room and the septic tank, are now in somebody else's plot?

Mr. Sudi: Mr. Deputy Speaker, Sir, I am not aware of that. The house in question is intact, and has not been allocated to private individuals. However, part of the compound was re-planned in 1995, and was allocated to one of the local leaders, a Mr. Joshua Angatia. The allottee has already paid and collected his title deed - in June this year.

Mr. Shitanda: Mr. Deputy Speaker, Sir, arising from the Assistant Minister's reply, and given that part of the State Lodge is under threat of being allocated to private individuals--- Allocation of Government land was stopped over one year ago by a directive from His Excellency the President. Is the Assistant Minister aware that part of the State Lodge has been allocated to a Mr. Angatia on the basis of a letter written by President Moi in April this year? Even if President Moi was to be so generous, which he has never been, would he go to an extent of even allocating State Lodges?

Mr. Sudi: Mr. Deputy Speaker, Sir, I am not aware that part of State Lodge, Kakamega, has been allocated to private individuals. However, the State Lodge, Kakamega, is secured by a letter of reservation. It is also fenced with a perimeter wall which makes any sub-division impossible, unless the wall is demolished. However, the State Houses in Nakuru, Nairobi and Kisumu have already acquired title deeds. We are in the process of processing title deeds for the other State Lodges.

Mr. Khamasi: Mr. Deputy Speaker, Sir, it is apparent that the Assistant Minister does not know what is going on. There is a letter that we have in our possession here, from the Department of Physical Planning. I would like to read it to the Assistant Minister to make him understand. It reads:-

"Whereas there is past development plan for the extended part of the State Lodge, the old site has no part development plan because the plot is surveyed."

Could the Assistant Minister explain to this House whether this has been hived off from the State Lodge? This letter was from none other than the Provincial Physical Planning Officer! It is dated 8th May, 2000.

Mr. Sudi: Mr. Deputy Speaker, Sir, usually, when we are preparing a title deed for a plot, it has to be surveyed and planned. So, maybe, what he is talking about is part of the preparation of the title deed for the State Lodge. I am not aware of any allocation, unless he gives me a document to that effect.

Mr. Khamasi: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Assistant Minister to avoid answering a legitimate question which I put to him? I asked him: "Do you agree that part of the State Lodge has already been surveyed and given out to one by the name of Joshua Angatia to develop?"

Mr. Sudi: Mr. Deputy Speaker, Sir, I am not aware!

Mr. Munyasia: Mr. Deputy Speaker, Sir, arising from the Assistant Minister's answer, how much did Mr. Joshua Angatia pay for the land and the house which he was given?

Mr. Sudi: Mr. Deputy Speaker, Sir, what I know is that Mr. Joshua Angatia paid for his plot. He was allocated the plot in August, 1995. I do not know how much he paid for it.

Mr. Orenge: Mr. Deputy Speaker, Sir, in view of the fact that the house on Kabarnet Road, which was the official residence of the Vice-President, is now in the private hands of the Member of Parliament for Baringo Central, can the Assistant Minister really deny the fact that it is the noble practice of this Government to give out public land even if it is a State Lodge? Can he further deny the fact that it is part of its record to give out everything that belongs to the public, just as President Moi now is occupying the official residence of the Vice-President, and this time, Mr. Angatia is going to occupy the official residence of the President in Kakamega, which should be occupied by somebody else in the year 2002?

(Laughter)

Mr. Sudi: Mr. Deputy Speaker, Sir, I deny the allegations made by hon. Orenge. What I know and I would

ask the Members of this House not to get excited about is that there have been allocations of houses due to public demand.

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

Mr. Sudi: Let me finish. You are rising on a point of order and yet I have not finished answering the question. What I know is that due to high demand, compounds have been allocated to private developers and that is a fact which we are not denying. We are in the process of rectifying that situation.

Dr. Kituyi: Mr. Deputy Speaker, Sir, it may be understandable that this Government feels that when the compound is very large, they give it away. I have a letter from the Provincial Commissioner of Western Province to the Provincial Physical Planner. Before I table this letter, I just wish to read three sentences from it. They state:-

"The land being alienated for Mr. Angatia is so big that there was no need to demarcate the plot just outside the door of the Deputy Provincial Commissioner's office. The septic tank for the house of the Deputy PC is now in Mr. Angatia's plot."

Mr. Deputy Speaker, Sir the other sentence from the PC is the following:-

"Instructions may have been given, but they should be carried out maturely and responsibly to avoid embarrassing the Government we are serving."

If this Government and this Assistant Minister are interested in reducing the embarrassment of this Government even while carrying out political instructions, can he undertake to remove the wall from outside the living room of the Deputy PC and return the septic tank of the Deputy PC's residence to his property, instead of being part of the property of ex-hon. Angatia?

(Dr. Kituyi laid the document on the Table)

Mr. Sudi: Mr. Deputy Speaker, Sir, maybe, there are new findings. I beg that we investigate this matter further and bring to this House the correct version.

Dr. Ochuodho: Mr. Deputy Speaker, Sir, is the Assistant Minister in order to mislead the House that ex-hon. Angatia was given land on the basis of public demand while one would assume that, that may not be the case? Secondly, could he tell this House if that is not the case, on what basis they gave hon. Angatia this piece of land?

Mr. Sudi: Mr. Deputy Speaker, Sir, hon. Angatia was a respected Member of this House, and just like any other Kenyan, he has a right to be allocated land anywhere.

Dr. Kulundu: Mr. Deputy Speaker, Sir, I am glad the Assistant Minister has asked the Chair that this Question be deferred for him to come with more accurate information. However, could he also further double-check to ensure that the Presidential ban that was implemented nearly nine months ago or so is still in force with regard to allocation of public plots? Secondly, could he also come back with the correct answer?

Mr. Sudi: Mr. Deputy Speaker, Sir, the Presidential ban on new allocations of plots is very much in force, and there have been no allocations as per now except those which were done before the ban. Those were not affected by the ban. As concerns the fresh allocations which were affected by the ban, we are in the process of processing the documentations for all those who had been already allocated plots. The answer to the second part of this Question is that we are going to find out further details based on what Members have raised and we will bring them to the House next week.

Mr. Deputy Speaker: Thank you. Next Order!

POINTS OF ORDER

ANSWERS TO ISSUES RAISED DURING ZERO-HOUR

Mr. Munyao: Mr. Deputy Speaker, Sir, for the third time, on Thursday, during the zero-hour, you gave me time to raise two issues. One was replied to by the Minister for Energy, and the other one was to be replied to by the Minister of State, Office of the President. Up to this moment, he has not done it. Can I seek your indulgence to know when he will do that because this Minister was here? Since this KANU Government has got a Vice-President who is a Leader of Government Business, and a Chief Whip, why is the Minister running away from his responsibility, and the Vice-President is still very busy campaigning in the corner?

(Laughter)

PAYMENT OF DUES TO

PEARL DRY CLEANERS EMPLOYEES

Mr. Obwocha: Mr. Deputy Speaker, Sir, I rise to seek a Ministerial Statement from the Minister for Labour concerning approximately 400 former employees of Pearl Dry Cleaners who have not been paid their dues amounting to Kshs15 million from the company, and Kshs4.5 million from their SACCO society. Now, we understand that an award has been given that they will be paid Kshs50,000 per month until this is cleared. That will take about 100 years to clear that debt. So, could we have a Ministerial Statement from the Minister for Labour?

Mr. Deputy Speaker: Mr. Angwenyi!

Mr. Obwocha: On a point of order, Mr. Deputy Speaker, Sir. Could the Minister tell us when he is going to issue that Ministerial Statement since he is here?

The Minister for Labour (Mr. Ngutu): Mr. Deputy Speaker, Sir, I will get the necessary details and I will be able to give some information next week.

PERSONAL STATEMENT

COST OF RENOVATION OF PARLIAMENT BUILDINGS
AND CONTINENTAL HOUSE

Mr. Angwenyi: Mr. Deputy Speaker, Sir, I rise to make a Personal Statement according to Standing Order No.69. Yesterday, I was expelled from this House before the debate on an important Motion was over, and before an inimical amendment to an important report of this House had been made---

Mr. Deputy Speaker: Order! Hon. Angwenyi, if you stood under Standing Order No.69, you are making a personal statement and not opening a debate which is concluded.

Mr. Angwenyi: Mr. Deputy Speaker, Sir, I was expelled yesterday on the account that I could not substantiate the amounts that I said had been spent on dusting off this building and on the purchase and repair of Continental House. I have got documents with me here today showing that an amount of Kshs162,565,000 was spent in dusting off this building two years ago. On Continental House, I have got documents which show that we bought that building for Kshs400 million in 1997/1998. We have since spent Kshs100 million in 1998/1999 and, Kshs200 million in 1999/2000. We estimate to spend Kshs209 million in 2000/2001; Kshs40 million in 2001/2002, and Kshs30 million in 2002/2003, making a total of Kshs979 million. I beg to table the documents.

(Mr. Angwenyi laid the documents on the Table)

(Applause)

Mr. Deputy Speaker: Order! Order, hon. Members! It does not help the hon. Members to embellish the stories after the fact has been established. What, in fact, did hon. Angwenyi say that I took issue with him? There are two things. The first thing is that we spent Kshs150 million to clean up this House and secondly, that we had spent Kshs800 million to renovate Continental House. He did not talk about what was going to be spent on the renovation or what was spent before I came into this Chair in 1997. Those were the issues. Hon. Angwenyi, you have already finished your story and now I have been referring to the HANSARD. Read what is in the HANSARD.

Mr. Angwenyi: Mr. Deputy Speaker, Sir, the HANSARD states:

"So, all I am saying is that this House spent over Kshs150 million just to dust off these seats and the walls. We did not raise any complaints when this amount was spent. We are now spending over Kshs800 million to renovate Continental House."

(Hon. Angwenyi laid the document on the Table)

Mr. Deputy Speaker: Order! Hon. Angwenyi, there are hon. Members of this House, who are Members of the Committee that looked after Continental House. They will, themselves, I am sure, want to state that they have spent no such figure. I asked you---

(Mr. Muihia stood up in his place)

Mr. Muihia, I need no assistance. Hon. Angwenyi, I asked you whether we spent over Kshs800 million.

Mr. Angwenyi: Mr. Deputy Speaker, Sir, it has to be Kshs979 million.

Mr. Deputy Speaker: Order! I asked you whether we have spent over Kshs800 million on the renovation of that building.

Hon. Angwenyi: I used the words, "was going to spend".

(Applause)

Mr. Deputy Speaker: Order! I will give hon. Angwenyi the benefit of doubt.

Mr. Muihia: On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member in order to mislead the House that Continental House's renovation and refurbishment will cost Kshs389 million? The Committee has as of today spent only Kshs131 million which was paid to the contractor. The Continental House has different components for construction.

Mr. Deputy Speaker: Order, hon. Angwenyi and hon. Muihia. I have already said that I will give hon. Angwenyi the benefit of doubt. That is the end of the story. If anybody wants to debate Continental House, he will have to bring a Motion on it.

POINTS OF ORDER

DISCUSSION OF MATTERS BEFORE THE HOUSE OUTSIDE THE HOUSE

Mr. Kibaki: On a point of order, Mr. Deputy Speaker, Sir. There is a report in the Press that I discussed matters before the House when I was on a tour to Kisii. What matter did I discuss which is before the House?

Mr. Anyona: Mr. Deputy Speaker, Sir, I made a statement in the House yesterday which is part of the record of this House. The onus is not on me to bring to the attention of the hon. Member what matter this is, but all that is required for him is to read the HANSARD and respond. If the Chair want to assist him, it can do that.

Mr. Deputy Speaker: Order! hon. Members, if you will recall, when this matter was raised, I said that it would only be fair for us to raise the matter again when the hon. Members concerned were in the House. I felt, really out of courtesy to the Leader of the Official Opposition that he should recap what went on in the House yesterday and it is hon. Anyona who raised it. I do not think it is asking for too much for you, hon. Anyona, to say a few words on it.

Mr. Anyona: Mr. Deputy Speaker, Sir, I raised the whole question of taking debate out of the House in the criminal context with respect to the ruling that you made last week and previous rulings. **[Mr. Anyona]** I gave an example and said that senior hon. Members of the House, including the Leader of the Official Opposition, are reported to have extended the debate outside the House. In this particular case when hon. Mwai Kibaki was touring the Gusii Districts he did extend the debate outside this House. That is the issue that I raised.

I also raised another issue, and I would like to repeat it, that the community demands an apology from hon. Kibaki for violating our burial rights when we were burying a very senior citizen, a father of a senior Member of the Cabinet.

Mr. Kibaki: Mr. Deputy Speaker, Sir, which matter did I discuss outside the House? The issue refers to a debate in the House being taken outside. So, which debate before the House did I take outside of the House?

An. Hon. Member: The burial rights!

Mr. Anyona: Mr. Deputy Speaker, Sir, I made it quite clear that it was in reference to the Constitution of Kenya Review Commission (Amendment) Bill which is pending before the House for Second Reading.

Mr. Kibaki: Mr. Deputy Speaker, Sir, I did not discuss the Bill which is on the Order Paper anywhere during my tour. I referred to hon. Members of Parliament who had signed a declaration declaring that they would oppose any constitutional amendment when it is brought to this House. There is no constitutional amendment and that is why I talked about anybody amending a constitution needing a two-thirds majority. I said that those of us opposed to such an amendment are 92. I have not taken any debate, which is before the House, outside. There is no debate in the House on a constitutional amendment. In fact, an amendment to a Bill has nothing to do with a two-thirds majority. Hon. Members must know what they are talking about.

(Applause)

Mr. Deputy Speaker: Order! That is the end of that story.

CABINET MEMBERS FACING CRIMINAL OFFENSES

Dr. Kituyi: On a point of order, Mr. Deputy Speaker, Sir. I stand up to seek guidance from the Leader of Government Business about a tradition of this House which we are on the brink of breaching. From 1960s up to last year, when an hon. Member of the Government was charged before a court of law on a matter of a criminal nature, where such hon. Members of the Government have not had the dignity and honour to withdraw from their official positions, the Government has actually removed them from those positions pending the results of the matters before the court. The latest example was the hon. Member of Parliament for Lamu West who was charged with a matter related to the evasion of customs duty. He was immediately removed from the Government. This was hon. Twaha. Before that, we had the matter of the late hon. Dr. Onyonka whose personal bodyguard shot a person dead. He was removed from the Cabinet for five years. The hon. Member of Parliament for Keiyo South, hon. Biwott, when he was adversely mentioned in the murder of Dr. Robert Ouko was removed from the Cabinet. It was not a matter of his opinion, whether he wanted to remain in the Cabinet or not, but it was a matter of how one can fly the flag of Kenya when he is facing a criminal offense.

One thing is that this is just a criminal offense and another is about the abuse of office in a fraud matter. The charge facing Hon. arap Ng'eny is questioning his integrity to hold a public office.

If such an hon. Member does not have the honour and dignity, as an individual, to resign, or to resign, or to request to be set aside from his duties as Minister; it should be incumbent upon the Government, for the dignity of the National Assembly and of Cabinet, to relieve him of his duties until a court of law clears him. I would like the Leader of Government Business now, or after consultation with his boss, to tell this House what message they are sending to Kenyans when they do not relieve hon. Ng'eny of his job as a Minister.

(Applause)

The Vice-President (Prof. Saitoti): Mr. Deputy Speaker, Sir---

(Loud consultations)

Mr. Deputy Speaker: Order! Order!

The Vice-President (Prof. Saitoti): Quite clearly, I do not think that a number of hon. Members would wish me to talk at all. But let me say the following: The manner in which a Minister of the Government is appointed and ceases to be a Minister, is well laid down in the Constitution. I do not wish to add on to that.

Let me also say another thing, Mr. Deputy Speaker, Sir. What Dr. Kituyi is introducing now is to discuss the conduct of an hon. Member of this Parliament---

Hon. Members: No! No!

The Vice-President: Mr. Deputy Speaker, Sir, I also do believe that we as Members of this House, have been complicating matters in court by discussing matters already in court. If you discuss that matter here, you create the basis of a case being prejudiced. I think that should cease and avoid being personal. There is too much incrimination in this House and we should look at matters fairly and clearly.

(Several Members stood up in their places)

COMMUNICATION FROM THE CHAIR

DISORDERLY CONDUCT IN THE CHAMBER

Mr. Deputy Speaker: Order! Order! That is enough. Hon. Members, last evening, there occurred in this House what I can describe only as grossly disorderly conduct, for want of better words. Certain Members believing, that they are the only ones who have the right to speak, stood up while the Deputy Speaker was on his feet and shouted "points of order," among other things. Our Standing Orders are very clear and they state among other things that, when the Speaker is on his feet, hon. Members must remain seated. But more importantly, when the Speaker is on his feet, there is nobody in the Chair to attend to your points of order. So, really, they were not addressing the Chair, they were

merely being disorderly.

Hon. Members, these rules belong to all of us in this House and it is our collective duty to use them to guide the conduct of business in the House. Hon. Members, fortunately for me, I am too long in the tooth to get angry with Members with such disorderly conduct; I merely pity them. I do not know whether pitying is a sufficient punishment for Members who behave like that. Your rules do not give the Chair sufficient authority, power, or punishment to mete out when there has been this kind of disorderly conduct. It gives power to you, the Members of the House. Those Members who stood here, including those who sat next to the Dispatch Box while the House was still in business, know themselves. But I would like to mention a few; hon. James Orengo, Eng. Toro, and hon. Manyara, whom I have not heard speak in this House for a long time, yesterday had the courage to shout words at the Chair. Others are hon. Kiunjuri and hon. Magara.

Hon. Members: Shame! Shame!

Mr. Deputy Speaker: Order! Hon. Members, this is a very serious matter. I want those Members to search their own conscience and if they feel---

An hon. Member: And Obwocha!

Mr. Obwocha: No, I was sitting there!

Mr. Deputy Speaker: Order! Order! If they feel that since what they did damaged the honour and dignity of this House, it is for them to stand up and apologise to the House, and not to the Chair because the matter at issue then, as I understood it, was not with the Chair.

(Applause)

Hon. Members, I want to say this once again; that, these rules belong to all of us. It is incumbent upon us to enforce them. Last night, we happened to have school children in the Galleries; they are our children. Some of them are going to sit for the Kenya Certificate of Primary Examinations (KCPE) in another three months time and they will be taking a paper called Government, History and Civics (GHC) in which some questions relate to the functioning of Parliament. I want you to ask yourselves this question: What is the impression those children went away with of our Parliament?

An Member: They are there even now!

Mr. Deputy Speaker: Order! Order! We really must remove this impression that all indiscipline in this country begins in this House. We cannot and must not point fingers at touts, matatu drivers and hawkers.

Hon. Members: Shame! Shame!

(Loud consultations)

Mr. Deputy Speaker: Order! Order, hon. Members! Just go out there and see how you have defied your own rules; how you park your vehicles, and your drivers and bodyguards, who think they are above the law. Hon. Members, it is upon you to conduct yourselves and your affairs with dignity. The Chair merely sits here to help guide the proceedings of the House. As I said, I have no punishment to mete out to those hon. Members; I leave it to their own individual conscience. If they feel they did sufficient harm to the dignity of this House, it is for them on their own volition, to apologise to the House.

Thank you.

Next Order!

MINISTERIAL STATEMENT

PAYMENTS TO POWER GENERATING COMPANIES

The Assistant Minister for Energy (Mr. Chanzu): Mr. Deputy Speaker, Sir---

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

Mr. Deputy Speaker: Order! Let him finish.

The Assistant Minister for Energy (Mr. Chanzu): Mr. Deputy Speaker, Sir I stand here to respond to a Question which was raised last week by hon. Kathangu. After answering the Question, there was information which I was supposed to bring to the House. Yesterday, I had not looked at the HANSARD. After looking at the HANSARD, it is true that you required me to furnish the cost of each unit of power supplied by the two IPPS companies to the Kenya Power and Lighting Company Ltd.

Mr. Deputy Speaker, Sir, arising from that, tabulated here below is the cost of power supplied by the two

IPPS, namely; IberAfrica Power (EA) Ltd and Westmont Power Ltd to the Kenya Power and Lightning Company Ltd (KPLC). First, for IberAfrica Power (EA) Ltd, the contracted capacity was 45.25 megawatts with a total generation cost of Kshs4.5 per kilowatt hour. Secondly, Westmont Power Ltd had a contracted capacity of 46.26 megawatts and total generation cost of Kshs2.64 per kilowatt hour.

Thank you.

Mr. Deputy Speaker: Order! Order!

Dr. Ochuodho: On a point of order, Mr. Deputy Speaker, Sir. I guess the Assistant Minister was answering a Question which, I raised on the Floor of this House with regard to why different Independent Power Generators were being paid different rates for electricity consumed by Kenya Power and Lighting Company (KPLC). I am glad that he is confirming what I alleged; that different rates are being used by different--

Mr. Deputy Speaker: What is your point of order!

Dr. Ochuodho: Mr. Deputy Speaker, Sir, my point of order is that, he has not answered my Question: Why are there differences in payments to the power producers?

Mr. Deputy Speaker: Order! Order! There was an order for him to produce that information and I think he has discharged that responsibility.

Yes, hon. Kathangu!

POINT OF ORDER

APOLOGY FOR DISORDERLY CONDUCT

Mr. Kathangu: Bw. Naibu Spika, jana ilikuwa siku kubwa sana katika nchi hii. Mimi ni mmoja wa wale ambao walisimama kwa muda wote, ambapo wewe ulikuwa umesimama na kutueleza tuketi chini kwa sababu ulikuwa umesimama. Mimi nilikataa mambo hayo kwa sababu nilifikiri kuhusu jambo hili na natumaini kwamba ni kweli--- Ikiwa nilichaguliwa kuingia katika Bunge hili kuitetea nchi na kuona kwamba hakuna wizi unaoweza kudhoofisha uchumi wetu; nilifikiri kwamba ni haki kusimama hapa na kuiambia nchi kuwa Bunge hili limekubalia watu waendeleo kuiba.

Kwa hivyo, sitakubali kuungana na wewe na wale wengine waliokuwa wananiambia niketi.

(Applause)

Mr. Deputy Speaker: Order! Order!

Mr. Kathangu: Sijamaliza, Bw. Naibu Spika! I have not finished about yesterday's activities!

Mr. Deputy Speaker: Order! Order! Order, hon. Kathangu! Hon. Kathangu, you recall very clearly that, I said that, whatever it is that you want to do or say, let us do it procedurally. All that I have been asking of you is that, we must do it procedurally. But when the Speaker is on his feet, issuing a statement or proposing a question, no power on earth will make him return to the Chair, so that a point of order can be raised. No! So, really, if you had sat and listened to me finish what I was doing, I had, in fact, decided to extend time. So, really, there is no arguments.

Mr. Kathangu: Mr. Deputy Speaker, Sir, maybe I should use the English Language so that we can agree. You had asked me among others things, to stand up here and apologize. On explaining what happened yesterday, that forced me to stand while you were standing--- What I am saying is that---

The Minister of Foreign Affairs and International Co-operation (Dr. Godana): On a point of order, Mr. Deputy Speaker, Sir.

Hon. Members: He is on a point of order! What is wrong with you?

Mr. Kathangu: Mr. Deputy Speaker, Sir, if you understand me, what I am saying is this: I stood because I thought there were forces in this House that were pushing me towards accepting evil and oppression! I thought I should never, ever allow myself to accept evil! That is what I was thinking yesterday. As you were talking, I thought that, maybe, what you were saying was that, I should stand up before this House to apologize because I do not appreciate that evil was deeply rooted in this country that my resistance would mean nothing! Therefore, I do apologize.

BILL

First Reading

THE FINANCE BILL

*(Order for First Reading read -
Read for the First Time
-Ordered to be read the Second Time tomorrow)*

The Minister for Finance (Mr. Okemo): Mr. Deputy Speaker, Sir, I beg to move that the Finance Bill be referred to the Departmental Committee on Finance, Planning and Trade.

The Minister Foreign Affairs and International Co-operation (Dr. Godana) seconded.

*(The Bill was referred to the Departmental
Committee on Finance, Planning and Trade)*

MOTION

ADOPTION OF ANTI-CORRUPTION
SELECT COMMITTEE REPORT

THAT, this House adopts the Report of the Anti-Corruption Select Committee laid the Table of the House on Tuesday 9th May, 2000 and further recommends that the Attorney-General introduces a Bill entitled the Anti-Corruption and Economic Crimes Bill, 2000, contained in the Report, provided that:-

- (i) All matters in the minutes in Volume II of the Report (Minutes 125 to 510, 560, 562, 564, 565, 568, 569, 592, 614 and 619) (Pages 560-841) relating to the appendices in Volume I of the Report, as well as all matters connected thereto, be excluded;
- (ii) All matters in the Report relating to appendices I, II, II/A, II/B, II/C, III, IV, IV/A IVB (Pages 80-398) in Volume I as well as all matters connected thereto be excluded; and
- (iii) All matters relating to corruption be investigated and established beyond any reasonable doubt by *prima facie* evidence in accordance with the provisions of Constitution and the law as well as the rules of natural justice

(Mr. Kombo on 5.7.2000)

(Resumption of Debate interrupted on 18.07.2000)

Mr. Wamalwa: Mr. Deputy Speaker, Sir, I do thank you for giving the opportunity to make a contribution on the Parliamentary Select Committee on Anti-Corruption Motion as amended.

I would like to start by commending the Committee for the tremendous work they did.

I believe that, this Committee devoted itself to the task before it, as spelt out in its terms of reference and tackled a problem of monumental proportions and that is the problem of corruption in our society today.

Mr. Deputy Speaker, Sir, if you look around this country today, you will see that nearly all the problems that we have can be blamed at the shrine of corruption.

As a farmer, I can tell this House with all honesty, that all farmers' institutions, starting with the Kenya Farmers Association (KFA), Agricultural Development Corporation (ADC), Agricultural Finance Corporation (AFC), Kenya Co-operative Creameries (KCC), Kenya Meat Commission (KMC), National Cereals and Produce Board (NCPB); all these institutions have either collapsed or are tottering because of corruption.

Mr. Deputy Speaker, Sir, the state of our roads in this country today and the state of our education; even the way the Coffee Board of Kenya is run--- If you think I ever run the Coffee Board of Kenya, you better go and check your facts. In fact, all this is blamed on corruption.

I think the terms of reference for this Committee were so specific: To identify causes of corruption and to recommend effective and immediate measures to be taken against such people involved in corruption and to identify the people involved in corruption.

Mr. Deputy Speaker, Sir, the Report that the Committee brought to this House showed that the Committee had endeavoured to fulfil their terms of reference in detail. I wish I had had a chance to speak on this Motion before it

was amended.

The Motion as amended leaves me a little perplexed. This is because the Motion as amended now, in fact, the Report, therefore, before the House does not live up to the terms of reference that the Committee was given.

(Applause)

It is a completely different Report, the Report that has been grossly truncated, a Report without bowels. In fact, I will go further to say "a Report without balls."

Mr. Deputy Speaker, Sir, the amendments that were passed yesterday were so drastic that, in fact, now we are not dealing with the Motion that the Select Committee on Anti-Corruption brought to this House. We are dealing with a report that has been born on the Floor of this House as result of corruption. It makes me now wonder---

Mr. Orengo: On a point of information, Mr. Deputy Speaker, Sir. I know hon. Mr. Wamalwa is known for making very articulate speeches and so it is very difficult to interfere with him. But hon. Prof. Anyang'-Nyong'o was reminding me when he said that, this Report has no "balls", but in fact it has got Godana's "balls".

(Laughter)

The Minister for Foreign Affairs and International Corporation (Dr. Godana): Mr. Deputy Speaker, Sir, I did not quite hear that. I would like the hon. Member to repeat it.

An hon. Member: That is with a light touch!

The Minister for Foreign Affairs and International Co-operation (Dr. Godana) Mr. Deputy Speaker, Sir, on a serious note; not with a light touch!

The Minister for Foreign Affairs and International Co-operation (Dr. Godana): Mr. Deputy Speaker, Sir, I do not think it is proper for the Chair to treat this matter with a light touch.

Mr. Orengo: Mr. Deputy Speaker, Sir, I am surprised that a man who has been a Deputy Speaker can actually stand up when I am on my feet.

Mr. Deputy Speaker: Order! Mr. Orengo, if you want to discuss any part of any hon. Member's anatomy; that goes for himself as well, you have to move a substantive Motion. Would you like to withdraw that remark.

The Minister for Foreign Affairs and International Co-operation (Dr. Godana): Mr. Deputy Speaker, Sir, I do not think hon. Orengo should be allowed to get away with it.

Mr. Deputy Speaker: Order! Dr. Godana, I do not think you want to admonish a Member when, in fact, the Chair has already asked him to do precisely what you want done.

Mr. Orengo: Mr. Deputy Speaker, Sir, I withdraw.

The Minister for Foreign Affairs and International Co-operation (Dr. Godana): On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Order, hon. Dr. Godana. You cannot charge at the microphone every time you feel like it. Proceed, Mr. Wamalwa.

Mr. Anyona: On a point of order, Mr. Deputy Speaker, Sir. There is a rule about parliamentary and unparliamentary language. Is the word balls whatever it means, is it Parliamentary language? By the way, it is obscene. Are you telling me that the Chair is going to allow unparliamentary language to be used in this House because precisely that is what hon. Wamalwa said?

Mr. Deputy Speaker: Order! Mr. Orengo has withdrawn those words and they do not exist any more. Proceed, Mr. Wamalwa.

Mr. Wamalwa: Mr. Deputy Speaker, Sir, I think we will forgive the Minister because he is still a frustrated "Speaker".

Mr. Deputy Speaker, Sir, even according to the Standing Order No.41 and I would invite those who have doubt to look at it, it is not proper to allow a Motion to be amended until the substance of the Motion is lost. In this case, as I said, that devastating amendment of yesterday has, in fact, negated the very substance of the Motion that the Committee on Anti-Corruption brought before this House.

(Applause)

Mr. Deputy Speaker, Sir, I am, therefore, unable to contribute to a Motion that was not originally brought to this House and a Motion that has not been formally brought before this House, because this tremendous amendment has now put before this House, a completely different Motion and report. I hope the only way this House can stop

cheating itself that we are actually now discussing the Anti-Corruption Select Committee's Report is to ask them to come up with another report. This is because the current report is not the report they brought to this House. I do not think that this Parliament can hoodwink the whole world that Kenyans have, in fact, discussed and anti-corruption Report and things are going to be put in order and there is no corruption; I think this is dancing around the Totem Pole. This is because nothing really has been done and the insult of those who are behind this amendment was, in fact, to condone corruption and, indeed, money changed hands here on the Floor of the House to "buy" hon. Members---

The Assistant Minister for Tourism, Trade and Industry (Mr. Sankori): On a point of order, Mr. Deputy Speaker, Sir. Could the hon. Member substantiate the allegation that money changed hands on the Floor of this House?

Mr. Wamalwa: Mr. Deputy Speaker, Sir, money was laid on the Table of this House. There are people who have eyes, but they do not see or choose not to see.

The Assistant Minister for Tourism, Trade and Industry (Mr. Sankori): On a point of order, Mr. Deputy Speaker, Sir. Who does not have money here. It was hon. Kiunjuri who placed his money on the Table of this House and not from anywhere else.

Mr. Wamalwa: Mr. Deputy Speaker, Sir, I know the Chair did not even allow the previous interrupter to take the Floor, but anyway, I made way.

Mr. Deputy Speaker, Sir, what I am saying, therefore, is that this House as of now, is not ceased of the Select Committee on Anti-Corruption's Report for debate. I would like to move that with the leave of the House, a new report be brought on corruption to be discussed in this House.

(Applause)

WITHDRAWAL OF MOTION BEFORE HOUSE

Mr. Kombo: Mr. Deputy Speaker, Sir, I also stand up on Standing Order No.50 read with Standing Order Nos.1 and 45(J). On those Standing Orders, I seek leave of the House that the Motion which I brought to this House and the Motion as amended now be withdrawn due to the following reasons: First, the original Motion has been raped and mutilated, so much that it is unrecognisable. Not only are visits, evidence received and discussions held by the Committee, but even the very fact that we met; this is the effect of removing the minutes. Minutes are historical. But denying these historical facts, the Report is left without any leg to stand on. Removing the minutes from a report is like finding something indecent as the naked truth.

The second reason why I want to withdraw the Motion is that, to continue debating the Motion will not be in line with the feelings of the public, which has already passed judgment that this House is aiding and abetting corruption. The public expected Parliament to give moral leadership but instead, what the Government---

Mr. Deputy Speaker: What are you on?

Mr. Kombo: On a point of order and laying the basis for withdrawing the Motion. So, instead of the Government providing the moral leadership, it seemed to be pre-occupied with maintaining a system which is poisoned by collective bad taste and polluted by individual avarice. It is driven by craftiness and deception.

Thirdly by removing the names, is in self hypocritical. The Committee, in fact, it has been vindicated as already pointed out by hon. Dr. Kituyi, the fact that hon. arap Ng'eny and Mr. Asanyo have cases pending in court and hon. Ongeru has recorded a statement and without interference, he will appear in court. All these are vindications. Prof. Saitoti was taken to court by none other than hon. Raila and he was only saved by the Attorney-General through the back door.

Mr. Deputy Speaker, Sir, I also question whether, in fact, there was a proper vote on the Floor. Since acts and incidences of corruption have been alleged to have taken place on this very Floor of the House.

Mr. Deputy Speaker, Sir, on that basis, I beg to withdraw the Motion.

(Applause)

An hon. Member: Who will second this important Motion?

Mr. Deputy Speaker: Mr. Deputy Speaker, Sir, there is no need to second this Motion. Hon. Members, for your benefit, I will read you the Standing Order No.50 which hon. Kombo has used in support of his Motion. It says:- "After the question has been proposed on a Motion, the Motion shall be deemed to be in the possession of the House and cannot be withdrawn without the leave of the House."

Which is to say, the House must give leave for that Motion to be withdrawn. Now, what is the leave of the House?

Hon. Members: We already know that!

Mr. Deputy Speaker: Order! I want to be fair to everybody. Leave of the House means there being no objection by any hon. Member, either with the sympathy of Mr. Speaker or with the support of at least two other hon. Members.

Hon. Members: We know it!

Mr. Deputy Speaker: Order! This, of course, is such an important issue, but I am inclined to give one or two hon. Members the Floor to say something if you so wish, or I will put the Question.

Hon. Members: Put the Question!

The Minister for Foreign Affairs and International Co-operation (Dr. Godana): On a point of order, Mr. Deputy Speaker, Sir. I stand to object to the proposal by the Chairman of the Committee whose Report we are discussing to withdraw the Motion. I want to appeal to hon. Members and the Chair not to facilitate or grant leave to the request for withdrawal. This is because the request for withdrawal of the Motion has come at a time when the House has already deliberated on it for days and arrived at a crucial decision. The House has already indicated its intention on the matter. It would be prejudicial to that decision. The request to withdraw the Motion is an abuse of the process of the House because it is designed to defeat a decision which the House made here yesterday. Therefore, I would like to appeal to the Chair not to accept it.

Ms. Karua: I support the move by hon. Kombo, the Chairman of the Anti-Corruption Select Committee, to withdraw the Motion. If those who passed the amendment have the courage of their conviction; if they believe that the Report of the Committee was not in accordance with their terms of reference as it was suggested yesterday; or if they believe that the Report was irregularly compiled, then they should not oppose this withdrawal.

(Applause)

Let this House get another Committee and send them to do the work. The amendment which negates the Motion that was before the House completely destroys it and seeks to obliterate a great part of the work of the Committee. Let us not be hypocritical. The Report was either good or not in its entirety. We were told that we are seeking a middle ground in corruption. The Committee wants nothing to do with a middle ground in corrupt practices.

(Applause)

It is in this spirit that we seek the withdrawal of the Motion. It is very hypocritical to withdraw crucial parts of the Report and, yet, want to appear to pass it not for the sake of this country, but for the sake of donors. We must do what we do because we believe it is good for the country and not because we are playing to the galleries. I would like to request hon. Members of this House, especially those who voted for the amendment to stand by the courage of their conviction otherwise, it will be obvious to everybody that they were playing a game, which we wish not to take part in.

(Applause)

The Vice-President (Prof. Saitoti): On a point of order, Mr. Deputy Speaker, Sir. I rise up to make an appeal to my fellow hon. Members of Parliament. Since we started debating this Motion, there has been a great deal of acrimony, name-calling and a great deal of emotion has been generated. The question is not whether we want to fight corruption; we want to fight corruption as a Parliament.

(Jeers)

Hon. Members: Shame!

The Vice-President (Prof. Saitoti): Just a minute! That is what is at stake. We have deliberated on this Motion and an amendment of this House has been made. It is true that it may not suit some people, but do we also believe in democracy? Democracy demands that if you admitted---

(Jeers)

Hon. Members: You are corrupt!

The Vice-President (Prof. Saitoti): No! No! Sorry! Sorry! Let us rise above our emotions when an hon.

Member of Parliament--- I am sorry.

(Loud consultations)

We have debated this Motion, and an amendment has been made to it and I do not think that we can renew a debate on an amendment. The Question should be put and we reject something like this one. I think it is high time we removed this acrimony.

(Several hon. Members stood up in their places)

Mr. Deputy Speaker: Order, hon. Members! Ordinarily, I should not allow any debate on this Motion. It is a question of interpreting whether there has been leave of the House granted or not. I said that leave of the House means there being no objection from any hon. Member. That is what leave of the House is defined as. Since there has been an objection, I have no choice, but to say that the *status quo* remains.

(Applause)

MOTION FOR THE ADJOURNMENT OF DEBATE

ADJOURNMENT OF DEBATE UNDER
STANDING ORDER NO.21

Dr. Kituyi: Mr. Deputy Speaker, Sir. I stand under the provisions of Standing Order No.21 to move a dilatory Motion that the debate on the Report of the Anti-Corruption Select Committee be adjourned. After the events of last evening, I went home and took the so-called "amendment" together with the Report of the Committee and discovered that there was something very glaring. Each of the two main paragraphs of this amendment ends with the following words: "As well as all matter connected there to." If you remove minutes as well as all matters connected there to and appendices as well all matter connected there to, it means that all deliberations in the body of the Report which are related to those minutes and those appendices have been removed.

(Applause)

So, I seek the indulgence of the House that Mr. Deputy Speaker do adjourn the debate on this matter until you have looked at all matters related to the annexes, appendices and minutes that have been decapitated from this Report and tell us what remains that we are yet to bury.

Mr. Deputy Speaker, Sir, with those remarks, I seek your indulgence that the debate be now adjourned.

The Assistant Minister for Education, Science and Technology (Mr. Karauri): On a point of order, Mr. Deputy Speaker, Sir. I think the House is being grossly misled here, because in this Motion, apart from the names, there is the recommendation that the Attorney-General introduces a Bill entitled "The Anti-Corruption and Economic Crimes Bill 2000." So, when the House amended the Motion and approved it, they did not remove that part and amend it. If we say that those who voted for the amendment were rejecting the measures to be taken against corruption, then we are grossly misleading the House and the country, which is not the position.

Hon. Members: Sit down!

The Assistant Minister for Education, Science and Technology (Mr. Karauri): Mr. Deputy Speaker, Sir, those who voted are not for corruption because the Motion is very clear. If the hon. Members have particular personal interest then they will see it the way they are seeing it, but if it is for the good of the country, we will see it the way it is written.

(Jeers)

Mr. Anyona: Mr. Deputy Speaker, Sir, none of these people were here when we fought for the freedom they are enjoying.

Hon. Members: Sit down! Do not waste our time!

Mr. Deputy Speaker: Order! Hon. Anyona did move this amendment that is now bringing all this contention.

Hon. Members: We do not want him!

Mr. Deputy Speaker: Order! You know I am the only one who recognises those who should speak. So, making noise does not help the situation. I know whom I was going to next. So, give him an opportunity, so that we can go to the next person.

Hon. Members: Not Anyona! No way!

Mr. Anyona: Mr. Deputy Speaker, Sir, this House either has rules or has no rules. It is upon the Chair to ensure that the rules of this House are followed.

I would like to make three points: The first point is that it is up to the Chair to interpret whether or not an amendment complies with the rules of this House; it is not my business to do so. However, if you read Appendices (i) and (ii) of the Report, you will realise that we are not talking about expunging the minutes of the Committee. We are talking about matters in the minutes. You should, first, recognise the minutes and then refer to matters in them. So, it is wrong to say that the Committee's minutes are being expunged. That is not correct. Secondly, I would like the Chair to guide the House.

An hon. Member: Sit down!

Mr. Anyona: Mr. Deputy Speaker, Sir, you cannot deal with the House and an individual at the same time.

Hon. Members: No!

Mr. Anyona: You cannot do so, Mr. Deputy Speaker, Sir. I would like the Chair to guide the House with respect to the matter you have just ruled on correctly. However, there is an issue on which you must guide this House. The Motion that was moved under Standing Order--

Mr. Obwocha: Under Standing Order No.21!

Mr. Anyona: No, not under Standing Order No. 21. It was being moved under Standing Order No.50.

Mr. Obwocha: We are now on the Motion that was moved under Standing Order No.21.

Mr. Anyona: Mr. Deputy Speaker, Sir, there is a procedural matter on the Motion that was being moved under Standing Order No.50, which you must clarify. That is the procedure that appertains to matters under Part 10 of the Standing Orders. As far as I am concerned, the matter before the House falls under the provisions of Part 19 of the Standing Orders. So, in this particular case, the rules of the House are being misapplied to mislead Parliament and the country.

Mr. Murungi: On a point of order, Mr. Deputy Speaker, Sir. The point of order I am raising is very important. It relates to the validity of the votes taken by this House on Mr. Anyona's amendment to this Motion yesterday. It is quite clear - it is elementary law - that any vote procured by fraud, or bribery, is null and void.

Hon. Members: Aah!

Mr. Deputy Speaker: Order! Order! If there was any allegation of fraud, you, hon. Members, denied the Chair the opportunity to get that matter aerated and ruled upon.

(Loud consultations)

Order! Order! Indeed, the results of the Division were announced, but no hon. Member raised any objection. You cannot now go back and say that the Deputy Speaker should have sat down to listen to points of order being raised irregularly. I could not do that. So, that is not an issue.

Mr. Murungi: On a point of order, Mr. Deputy Speaker, Sir. I just want to clarify this issue a little more. This afternoon, both in the precincts of Parliament and in this House, hon. Members have been accusing each other of voting for and against yesterday's amendment to this Motion, because some of them were paid money at City Cabanas, and others, in this House.

Mr. Deputy Speaker: Order! Order, hon. Murungi! Hon. Members, the business that is before this House now is the dilatory Motion that has been moved by hon. Kituyi, and not any other. So, I will allow two more very brief comments on this Motion, then I will put the question.

Proceed, Dr. Godana.

Hon. Members: No! He has spoken!

The Minister for Foreign Affairs and International Co-operation (Dr. Godona): Mr. Deputy Speaker, Sir, I have not spoken on Dr. Kituyi's dilatory Motion. I do not know why some hon. Members spin at such a fast rate whenever I rise to contribute to debate. Slow it down; fewer rounds will do.

Mr. Deputy Speaker, Sir, the Motion that hon. Dr. Kituyi has moved is proper and within the procedures of this House. He has moved it under a specific Standing Order - 21 - which provides that a Member may move, in these circumstances, a dilatory Motion to adjourn debate on a Motion. For the benefit of hon. Members who do not have copies of the Standing Orders with them, I would like to quote paragraph 3 of Standing Order No.21, which hon. Dr.

Kituyi, intelligently and cleverly, decided not to tell us about when he was citing his authority. It reads as follows:-

"If Mr. Speaker shall be of the opinion that any such dilatory Motion is an abuse of the proceedings of the House, he may forthwith put the question thereon or he may decline to propose it".

Mr. Deputy Speaker, Sir, earlier on, when the Chairman of this Committee sought the leave of the House to withdraw the Motion, I made an intervention. I said that, to the extent that the leave of the House to withdraw the Report was being sought after the House had already pronounced, very clearly, a resolution on this Motion, it was an attempt to defeat a decision of this House, and that it amounted to an abuse of a process of this House. What is clear this afternoon is that there is a clear attempt to raise frivolous and vexatious procedural issues with a view to derailing the House from its normal conduct of business. I pray that the Chair dismisses this dilatory Motion, so that we can get on with the main business.

(Applause)

Mr. Orenge: Mr. Deputy Speaker, Sir, I am grateful to you for giving me this opportunity. I want to speak in support of the dilatory Motion that has been moved by hon. Kituyi. The reason for my supporting this Motion is this: History is going to judge us very harshly. I would think that, one day, when somebody writes the history of this country, names of hon. Members will not be mentioned when Kenyans talk about this Parliament. They will not talk about hon. Orenge or hon. Dr. Kituyi; they will talk about the Eighth Parliament - what we did as a Parliament when we dealt with the issue of corruption in this country.

Mr. Deputy Speaker, Sir, I pray to you that we reach some kind of consensus and find the way forward to deal with this issue of corruption. I pray that good sense should prevail. When sages, or elders, move together - as when the Israelis meet with the Palestinians - they go out of their way to spend as much time as possible to reach a consensus. The reasons why I am saying this are as follows: One, if we look at the Motion as amended at the moment, we will realise that there are serious flaws, as pointed out by hon. Kituyi. One of those flaws is this: That, we selected this Committee and gave it specific mandates. One of the mandates given to the Committee was to identify the perpetrators of corruption.

(Applause)

In the Motion before the House, as amended, we have removed all the names of the perpetrators of corruption. This means that, that particular mandate, which was given to this Committee, stands compromised. This further means that the Committee has done no work in so far as that particular mandate is concerned. Parliaments do not act in vain. When you force a resolution, my friends, do not pass a resolution--- When the House of Congress passes a resolution, even if it is not a Bill, it is taken seriously. Please, if we pass a Motion, let us take it seriously. Let us ask ourselves: Have we identified the perpetrators in the manner in which we asked this Committee to do?

Secondly, if we look at the recommendations of this particular Committee, we will realise that its Members made recommendations on the way to go about fighting corruption. Part (iii) of the amendment to this Motion is urging this House to disregard all the recommendations that this Committee made. We are now telling you how to go about carrying out investigations. This means that no investigations have been carried out. All this goes to the dignity of this House. That leaves us with hon. Kombo and Members of that Committee from both sides of the House, and I am very proud of the hon. Members from the KANU and the NDP parties who were Members of this Committee for having the sense of conscience of not going against the findings of the Committee.

Mr. Deputy Speaker, Sir, let me finish by saying this: Let us agree on some consensus by giving ourselves two to four weeks. Burundi is taking a long time to deal with the problem of conflict, and corruption is not easy to deal with, but the only reason why we are being rushed is that there are thieves and criminals in this House who are misguiding us. They want us not to mention them, but they will remain thieves, and the public knows that.

(Applause)

Mr. Deputy Speaker: Order! I will now put the Question.

(Question put and negated)

Hon. Members: No! No! Division! Division!

(A number of hon. Members stood in their places)

DIVISION

Mr. Deputy Speaker: Order! It is quite clear that hon. Members wish to have a Division and, therefore, it is so ordered. I will now direct that the Division Bell be rung for five minutes. I will read to you the whole thing, but in the meantime, would the Leader of the Official Opposition and the Leader of Government Business each give the names of two tellers?

Tellers of the Ayes: Messrs. D. Sankori and M. Muihia

Tellers of the Noes: Messrs. A. Nderitu and A. Affey

Hon. Members, now, the Ayes will go to the lobby to my right; that is, those who are for adjournment, and if you are against adjournment, you proceed to the lobby on the left. We will now lock the door and draw the bar.

(The Division Bell was rung)

DIVISION

(Question put and the House divided)

(Question carried by 69 votes to 68)

AYES: Messrs. Achola, Angwenyi, Ayoki, Donde, Jirongo, Ms. Karua, Messrs. Kamau, Kamolleh, Kanyauchi, Kariuki, Kathangu, Katuku, Keriri, Khamasi, Kibaki, Kibicho, Kitonga, Kirwa, Dr. Kituyi, Messrs. Kiunjuri, Kombo, Kones, Dr. Kulundu, Messrs. Kuria, Mrs. Mugo, Messrs. Magara, Maina, Maundu, Mboko, Michuki, Muchiri, Mugeke, Munyasia, Muihia, Muiruri, Muite, Murathe, Murungaru, Murungi, Mwakiringi, Munyao, Mwangi O.K., Mwangi P.K., Mwiraria, Nderitu, Ngure, Nyachae, Prof. Nyong'o, Dr. Oburu, Mr. Obwocha, Dr. Ochuodho, Mr. Omamba, Dr. Omamo, Messrs. Opore, Orengo, Osundwa, Otita, Otula, Parpai, Mrs. Seii, Messrs. Shitanda, Sungu, Eng. Toro, Messrs. Wafula, Wamae, Wamalwa, Weirah and Dr. Wekesa.

Tellers of the Ayes: Messrs. Sankori and Muihia.

NOES: Messrs. Affey, Amin, Dr. Anangwe, Messrs. Anyona, Awori, Biwott, Chanzu, Ekirapa, Dr. Godana, Mr. Haji, Mrs. Kittony, Messrs. Kamotho, Kajwang, Kalulu, Kalweo, Karauri, Col. Kiluta, Messrs. Kimkung, Kochalle, Kosgey, Koske, Lagat, Lengees, Leting, Lomada, Lotodo J.D, Lotodo, F.P.L. Mrs. Mwewa, Maj. Madoka, Mr. Maizs, Eng. Manga, Mr. Marrimoi, Dr. Masakhalia, Messrs. Mbela, Mkalla, Mohammed, Mokku, Morogo W.C, Morogo E.T, Mudavadi, Mukangu, Musyoka, Mwakalu, Ndambuki, Ngala, Ng'eny, Ngutu, Ntimama, Capt. Ntwiga, Messrs. Nyenze, Obure, Okemo, Ombasa, Poghisi, Rotich, Prof. Saitoti, Messrs. Salim, Sang, Sankori, Sasura, Shabaan, Shakombo, Shambaro, Shidiye, Sumbeiywo, Too, Dr. Wako and Dr. Wamukoya.

Tellers of the Noes: Messrs. Affey and Nderitu.

Mr. Deputy Speaker: Order! Order, hon. Members. These are the results of Division on the adoption of the Report of the Anti-Corruption Committee: Ayes, 69, Noes, 68 and Abstentions, 1. Therefore, the Ayes have it.

(Applause)

Debate on this Motion stands adjourned until tomorrow afternoon. Next Order!

Mr. Wamae: On a point of order, Mr. Deputy Speaker, Sir. Did I hear you correctly say that this Motion is deferred until tomorrow?

Mr. Deputy Speaker: Yes.

Mr. Wamae: I thought it is deferred for six months?

Mr. Deputy Speaker: Under what Standing Order? Next Order!

The Attorney-General (Mr. Wako): Mr. Deputy Speaker, Sir,---

MOTION FOR THE ADJOURNMENT OF DEBATE

ADJOURNMENT OF DEBATE UNDER

STANDING ORDER NO. 23 (1)

Mr. Murungi: On a point of order, Mr. Deputy Speaker, Sir. I stand on a point of order to move a Motion under Standing Order 23 (1) "That, this House do now adjourn." Under this Standing Order, a Member may at any time for reasons stated, seek leave to move a Motion that this House do now adjourn. The reasons for which I seek to move this Motion are of a very fundamental nature and they touch on the very operations of this Parliament and especially its departmental committees, in so far as it touches on the Bill which the Attorney-General is about to introduce to be read for the Second Time.

Mr. Deputy Speaker, Sir, this Bill having been read for the First Time, was committed to the Departmental Committee on the Administration of Justice and Legal Affairs of which I am a member.

Mr. Deputy Speaker: Order, hon. Murungi! I do not know what you are referring to because the Mover has not moved anything. So, you are, in fact, anticipating debate. You are referring to which Bill?

Mr. Murungi: Mr. Deputy Speaker, Sir, I am moving a Motion under Standing Order 23 (1) to seek leave to adjourn the House and I am giving reasons why we are seeking that leave. I am not talking about the Motion. I am just giving the reasons why the House should be adjourned before the Attorney-General moves this Bill.

Mr. Deputy Speaker, Sir, I was saying that the Bill which is about to be moved, to be read for the second time was referred to our Departmental Committee and there was a procedural error in the way that Bill was referred to our Committee. This is because a Bill can be referred to the Committee only either by the Minister or by a Member of the Committee. In this case, the Bill was referred to our Committee at the request of hon. Anyona who said he was acting on behalf of the Attorney-General.

Hon. Members: Shame! Traitor!

Mr. Murungi: Mr. Deputy Speaker, Sir, I will be borne out by the proceedings in the HANSARD. We would like to know whether a Member of the Opposition can, in any capacity, represent the Attorney-General who is the chief adviser to the Government of Kenya. The Administration of Justice and Legal Affairs Committee is charged with the duty of considering all legal affairs coming before this House. It is charged with the duty of considering all Constitutional matters. In exercise of our mandate under the standing Orders, we as a Committee, in our attempt to break a deadlock in the Constitutional Review process which was caused by the inability of the political parties represented in Parliament to appoint the 13 Commissioners, summoned the leaders of the political parties represented in this House so that we could discuss with them a formula for appointing the 13 Commissioners so that this process could move forward.

Mr. Deputy Speaker, Sir, the Committee was denied facilities to hold that meeting with the leaders of political parties. We were not given a meeting room and we were denied a Secretariat. After the Committee was frustrated in this exercise, a Motion which was filed by hon. Raila and which I had agreed to second, requesting the Attorney-General to convene a meeting of all the stakeholders so that we could find a way forward, was brought to this House. It is that same Motion which was later again amended by none other than hon. Anyona. This has led to the split of the Constitutional review process into the so-called the Ufungamano Group and the Parliamentary Group which is led by KANU and some hon. Members of the National Development Party of Kenya (NDP).

Mr. Deputy Speaker, Sir, when this Bill was brought before the Committee, the Committee first expressed extreme displeasure and disgust at the way it had been treated in its attempt to fulfil its mandate under the Standing Orders. The Committee felt that having not been respected in the first place, it was wrong for the Bill to be referred to it. We considered that the Committee had been treated as a rubber-stamp Committee to rubber stamp a Report of another Committee of the House, and we said that, as a Committee, we were not going to be misused.

I have the full Report of the Committee here in which we have recommended to the House, as a technical Committee of the House, that this Bill be shelved until such time as Parliament does further consultations into this matter; we look at the various hurdles that have been placed in the process and find a way forward because the Constitution involves all Kenyans.

As a Parliament, we should speak in one voice. We felt that this Bill should be shelved in the interests of this country and that is why I am moving this Motion to have the House adjourned, so that there is more time for this matter to be considered. When some consensus is arrived at, we can come back.

With those few remarks, I beg to move.

Mr. Katuku: Mr. Deputy Speaker, Sir, I arise to second the Motion. I want to put it on record that I am the Vice-Chairman of the said Committee which looked at this Motion and, of course, the Bill. As my colleague has recommended---

Mr. Kajwang: On a point of order, Mr. Deputy Speaker, Sir. There is, of course, a Report of the Committee of which I am the Chairman which was laid in the House. Somebody cannot purport to debate that Report through the backdoor. I have the Report here. So, can the Chair direct the House so that the Report is not debated in a manner likely to undermine the Chairman of the Committee?

Mr. Katuku: Mr. Deputy Speaker, Sir, this Report is procedurally before the House. It was tabled before this House by hon. Magara on behalf of the Committee. That was procedural and it is within our Standing Orders that in case the Chairman is not there or he is not competent to present any Report, any hon. Member of the Committee, appointed by the same Committee, has a right to table a Report in this House. That was complied with and the Report was tabled in the House by hon. Magara. No person at that point---

Dr. Ochuodho: On a point of order, Mr. Deputy Speaker, Sir. Is hon. Kajwang', who is my Constituent, in order to now claim a Report that he refused to table?

Mr. Deputy Speaker: You will not ask Mr. Kajwang' questions!

Mr. Katuku: Mr. Deputy Speaker, Sir, I think I have put the record right on behalf of the Committee: If the Chairman feels that he is not competent to table a Report, another authorised hon. Member of the Committee can do so.

I was saying that the Report is procedurally before the House and I am competent even to second the Motion. It is very important, and it was observed by the committee which looked at this Bill, that there is a need for building consensus on this issue. There is no need of part of this society---

Mr. Munyasia: On a point of order, Mr. Deputy Speaker, Sir. You have heard what hon. Katuku has said. He has said that in the case where the Chairman of the Committee is incompetent, the Vice-Chairman may take over. Is hon. Katuku alleging that hon. Kajwang' has been removed from the Chairmanship of that Committee for incompetence?

Mr. Katuku: Mr. Deputy Speaker, Sir, I did not say that. What I said was very clear and it has to do with the procedure of tabling a Report before

re this House. I am seconding this Motion with one message, that the House must accept to shelve this Bill to give Kenyans a chance to build consensus.

With those few remarks, I beg to second.

Mr. Deputy Speaker: Hon. Members, you heard what hon. Murungi said in his opening remarks. He said that this Bill was sent before the Committee irregularly because it was requested to be forwarded to the Committee by hon. Anyona. He then proceeded to tell us that the Committee then sat and discussed it and brought a Report back to the House. You have to be serious, hon. Members. If the Bill was sent to the Committee irregularly, then it should have been sent back to the House. But if the Committee has discussed it and has produced a Report, which is before this House, then the process was correct. I will, therefore, not allow this Motion. Hon. Murungi did not read out to you the full text of Standing Order 23(2). It states:-

"If Mr. Speaker shall be of the opinion that such Motion for adjournment of the House is frivolous, vexatious or an abuse of the proceedings of the House, he may forthwith put the question thereon or he may decline to propose it".

I decline to propose the question. Proceed, the Attorney-General.

BILL

Second Reading

THE CONSTITUTION OF KENYA REVIEW (AMENDMENT) BILL

The Attorney-General: Mr. Deputy Speaker, Sir, I beg to move that the Constitution of Kenya Review (Amendment) Bill 2000, be read a Second Time.

Mr. Deputy Speaker, Sir, the history of Constitutional making is always in every country very turbulent. It is very regrettable that Members of Parliament are walking out again on this matter, when they should be here participating in this very important Bill called the Constitution of Kenya Review (Amendment) Bill.

Mr. Deputy Speaker, Sir, the history of this Bill has been discussed into in fairly greater detail when the Report of the Committee that was chaired by hon. Raila was debated, discussed and unanimously adopted in this House. You may recall that when it was adopted, it then called upon the Attorney-General to bring to this House the Constitution of Kenya Review (Amendment) Bill. This Bill is about the amendments which this House had already accepted when it adopted the Raila Committee Report, except that I did use my discretion and added a few clauses here and there.

Mr. Deputy Speaker, Sir, the most important thing to notice is that the essence of the Constitution of Kenya Review Act is still intact. What is that

essence? That essence is that the Constitutional review process must be a people-centred process and a people-driven process. When we touch on the powers and functions of the Commission, we will see that they have really not been altered in any significant way.

For example, the guiding principles under the Constitution of Kenya Review Act as was enacted, have not been altered in any way. The guiding principles as far as the Constitutional review process is concerned, remain as they were before. What are these guiding principles? They are : One, being accountable to the people of Kenya; two, to ensure that the review process accommodates the diversity of the Kenyan people, including socio-economic status, race, ethnicity, gender, religious faith, age, occupation, learning and persons with disabilities among others. The third guiding principle is to provide the people of Kenya - and this is very important - that process must provide the people of Kenya with an opportunity to actively, freely and meaningfully participate in generating and debating proposals to alter the Constitution. The other guiding principle is that they must be guided by respect for the universal principles of basic human rights, gender equality and democracy. More important, the process must ensure under part "c", that the final outcome of the review process faithfully reflects the wishes of the people of Kenya. When it comes to the powers and functions of the Commission, they have not altered even one iota, and the powers and functions of the Commission remain as they were under the Constitution Review Act. In fact, all those guiding principles; that, it must be people-driven and that the final outcome must reflect with accuracy, the views of the people of Kenya, are very much intact.

Mr. Deputy Speaker, Sir, also the object and purpose of the Constitutional review, again remain intact. I am emphasizing this because there is a perception outside there that somehow under this Bill, those guiding principles and the purpose for the Constitutional review have changed. They have not changed and those clauses have not been touched upon at all. The object and purpose of the Constitutional review remains intact, which includes guaranteeing peace and national unity and integrity of the Republic of Kenya. This includes establishing a free and democratic system of government. It also includes recognising the demarcations, divisions and responsibilities among the State organs of the Executive, Legislature and Judiciary. Further, it includes respecting ethnic and regional diversities and ensuring that the basic needs of all Kenyans are well-taken care of. Therefore, those important positions have not been altered in any way. That is the first point I wanted to make.

The second point I want to make, Mr. Deputy Speaker, Sir, is with regard to the appointment of the Commissioners. The issue of appointment of Commissioners has been a very keenly debated issue, right from the Bomas of Kenya, through Safari Park and upto now. In fact, if one can say so, really the breakdown in 1999, as far as implementing this position was concerned, revolved around the issue of appointing Commissioners. You may recall that under the current Constitution of Kenya Review Act, various nominating bodies were identified to nominate specific numbers of Commissioners who will sit, making a total of 25. Under the current Act, it was made very clear that although you are a nominating body, when that person has been nominated and he is serving on the Commission; he now starts to serve in his personal capacity and that he will not in any way represent the views or opinions of the body which nominated him. It was even made a breach of the code of conduct if a member of the Commission, sitting on that Commission, tried to espouse the views of the people who nominated him. The duty and functions of the Commission is purely technical. It is technical in a sense that theirs was to go round, collect the views of Kenyans and get the consensus of what the people of Kenya want and reflect that consensus accurately, in the proposals they will make for the Constitutional review process.

Mr. Deputy Speaker, Sir, we even said that if a member breaches the code of conduct, his term on the Commission can be terminated. It was made a ground of that. But in spite of having made those provisions under the Act, somehow, when it came to the actual exercise, various nominating bodies thought, felt and behaved as if the persons they were nominating will be there to represent them on the Commission. That is where the whole process failed. Although the intention was right, when it came to actual practice, that intention was not lived up to, and everybody thought their person is there to represent them. So, it failed and therefore, that issue had to be revisited by the Raila Committee. How can we ensure that the Commission that is appointed remains upto its original purpose of being a technical committee just carrying out professionally, this duty of collecting views and reflecting them in the proposals they make? So, they came up with a resolution that we do away completely, with nominating bodies because it has proved to be unworkable in actual practice. So, they did away with nominating bodies.

Mr. Deputy Speaker, Sir, it was not very clear in the Report how the new Members were to be appointed. It just said "by Parliament". But that is one of the few additions I made in order to make the process of nomination of the Commissioners a very transparent process; a process which will ensure that the best qualified people actually sit in the Commission and they sit there in their own right. What is that process? That process is provided for under the Bill, which I am now moving. It is a process which says that, "this Parliament will, as soon as this Bill is enacted and is in force, advertise for the jobs of the Commissioners." Any person who qualifies can apply to be a Commissioner.

Mr. Deputy Speaker, Sir, some people feel that applying is below their dignity; they would rather be proposed. So, there was that angle left that, even an organisation or a person can also suggest a name of a person he

feels can competently fill that post of a Commissioner. So, the jobs of the Commissioners will be advertised and the applicants can either be persons themselves or can be organisations who recommend persons or even individuals who can say: "So-and-so is fit to be a Commissioner and qualifies to be a Commissioner."

Mr. Deputy Speaker, Sir, if I may pause for a moment, I think that, this is an avenue which may well help this country bring in other competent persons, even if some of them may be sitting in the Ufungamano Initiative. There may be one or two, or three very competent persons sitting in the Ufungamano Initiative. We are saying that, they can apply or organisations can recommend their candidature. The religious organisation are free to, under this proposal, recommend candidates for consideration. The civil society, the Non-Governmental Organisations (NGOs), are free under this proposal, to recommend suitable competent persons for consideration. So, it is an open avenue. It is important that we have one process to undertake this exercise, even if for no other reason; but the expenses involved. I would, therefore, like to take this opportunity, at least, for the various organisation to consider whether this is not an avenue that could bring us together as far as this issue is concerned. I will be addressing some of their concerns as I go along, but I wanted just to mention that, as a fact.

To facilitate that process, it is Parliament through its Select Committee, which will be appointed under the proposed amendment, which will interview the candidates and nominate the best 15, taking into account the diversity of the people of Kenya. But they must be the best 15. Parliament is obligated to consult wisely in order to arrive at the final figure of 15 Commissioners.

Mr. Deputy Speaker, Sir, under Clause 4(iv), in considering the applications under this section, the National Assembly shall consult wisely. Therefore, there is an avenue which I will really appeal to the patriotic Kenyans to see if it can be used, so that we can get moving on this matter. Parliament will then nominate 15 persons and we have also said that, as Commissioners, we have also added another provision of eight extra persons, as alternate Commissioners, because it is provided that the 15 persons, each province must be represented. So, if a Commissioner is unable to attend the meetings of the Commission for one reason or another, or retires completely, dies or becomes bankrupt, or for any other reason, ceases to be a member of the Commission, then rather than going through the entire process again, we have made a provision for eight persons from whom that person would Assembly will recommend 15 persons and eight persons. Those 15 and eight persons who are recommended by this House will then be appointed by the President of Kenya.

Mr. Deputy Speaker, Sir, the proposals have also pushed up a bit some of the qualifications that are required. This is because, really, this is a technical committee and we just want technical competent people to undertake the exercise. We do not want the Commission to be politicised. We want people of integrity who can withstand pressures from any angle, be it from the Executive, the civil society, or from the religious organisation. They should be people who can stand firm and say that, "our responsibility is not to any institutions, or any political parties; our responsibility is to the people of Kenya, and it is to ensure that the views of the people of Kenya are accurately reflected in the proposals."

So, we have said that, seven of the 15 Commissioners should have knowledge and, at least, five years experience in matters relating to Constitutional law. In other words, they must really be lawyers and not just lawyers, but lawyers who have specialised a bit in Constitutional law matters.

Mr. Deputy Speaker, Sir, we have said that, the eight people should be persons who have knowledge and experience in public affairs. The other condition that has been attached, as I stated earlier, is that of the 15 persons, there must be, at least, one from each province of Kenya.

Mr. Deputy Speaker, Sir, previously under the Act, it was that there must be, at least, two persons from each province of Kenya. But now that we have reduced the number from 25 to 15, plus the Attorney-General, as the Ex-officio Member, then we have also reduced the minimum number from each province, from two to one. That is one of the conditions. The other condition is that the total membership of the Commission shall not comprise more than two persons from any one province. This is to ensure equity.

Mr. Deputy Speaker, Sir, it is also provided that, at least, three members of the Commission shall be women. It does not stop the entire Commission from being composed of women members, if it is felt that women are best qualified and they have been involved in the Constitution-making process and, therefore, they should be there. But it has been provide that, at least, three must be women. Then we have the usual clauses which have been there under the current Act.

The other major amendment is the one that does away with district constitutional forums and replaces them with constituency forums. It was felt that, if one wanted to go to the grassroots, we should even go lower than the district level and to the constituency level. So, that is also another amendment which, I think, actually furthers the interests of those who are of the view, like I am, that, the Constitutional Review Process must be people-driven and to be people-driven, you must go to the grassroots level. The district level is higher. We have now gone to the constituency levels.

Mr. Deputy Speaker, Sir, one of the amendments that was not touched is the obligation of the Commission to, without let or hinderance, travel throughout the Republic of Kenya under the current Act.

There has been a lot of improvement on that. It has not just been left vague that the Commission will travel throughout the country. It has now been specifically provided for as a statutory and mandatory obligation, that the Commission shall, in the performance of its duty under this Act, visit every constituency in the country and facilitate fora in those constituencies, to collect and collate views of the members of the public on the proposals to alter the Constitution. So, the vagueness that was there under the current Act, that had provided for the Commission to go round the country to collect views from members of the public and, maybe because of financial constraints, could only visit provincial headquarters or they may not even go to some provinces because of security problems, among other things. Those doubts which have been there, have now been laid to rest. The Commission is now obligated and it is mandatory for the Commission to visit each and every constituency in the Republic of Kenya.

Mr. Deputy Speaker, Sir, on the issue of allocating airtime by the media, there have been some amendments proposed in this Bill. This is because, at the time the current Act was passed, it was only Kenya Broadcasting Corporation (KBC) which was to air the activities of the Commission. However, we have the Communications Commission of Kenya (CCK) which is entrusted with the responsibility of ensuring that television stations give ample time on whatever the Commission will be doing, so that its activities are properly disseminated throughout Kenya. Even for the persons with disability, there is a provision that a sign language inset or sub-titles are placed in all television programmes aired for the purposes of the Constitutional review process and civic education programme, among others. Therefore, when you look into the details of this Bill, you actually cannot know what some people are really quarrelling about.

Mr. Deputy Speaker, Sir, the Commission is supposed to complete its work within a period of 24 months from the date of the commencement of the Act. Under the current Act, the period was almost 36 months. But because of the time lost, that period has now been cut down to 24 months. But we have given a proviso that, if the Commission considers this period inadequate, it may after at least 12 months of the commencement of its work, request for an extension of its period by the National Assembly. As it makes its request for the extension of its period, it may also recommend some minimum amendments to the Constitution or to any other laws as may be necessary, towards the fulfilment of any of the objective of the Constitutional review process which shall be considered by the National Assembly in the usual way. So, although the Commission has a period of 24 months to complete its work and if for any reason, they feel they cannot complete this exercise within those 24 months, then after 12 months, they can ask this House which has the ultimate authority, to extend the period. But in extending the period, minimum amendments can be made to the Constitution to facilitate elections and other things. So, I thought I should draw attention of hon. Members to that.

Mr. Deputy Speaker, Sir, now what happens after the Commission has done its job? I think this is an important question, particularly because of the allegation that somehow, somebody will interfere with the work of the Commission to achieve a certain desired objective. When this Commission is appointed, it will have the same security of tenure as that Commission which was to be appointed under the current Act. Once appointed, they will enjoy the security of tenure except, of course, if a commissioner, on some grounds cannot perform his duties because of physical or mental inability, then a tribunal would be appointed to look into that and to make suitable recommendations. Otherwise, the issue of security of tenure provision that applies to those who have it also applies to the Commission. So, they are very secure.

Mr. Deputy Speaker, Sir, as you will also see from the progress of the work, they do not at any time, once they have been appointed by the President--- Actually, the President's appointment, is really nominal in the sense that he will only be doing some formality or legality. The appointment as I have explained the procedure, is a process which leads to the 15 best people being appointed. Other than that, the President does not have really, any say as far the work of the Commission is concerned. At no stage does he have any say really, in the process of finalising the recommendations before they end up in this Parliament. Whatever things he may say, he will do it like any other Kenyan and, of course, they will be considered along with others. He is entitled to give his views and we cannot deny him of that. But this process does not permit him to alter anything.

Mr. Deputy Speaker, Sir, as I said earlier, the track record of the President as far as I know, is not to interfere with the work of the Commissions; for example, the Koech Report. We know that the Koech Commission was appointed by the President. In fact, it was entirely at his discretion and he was not obligated to consult anybody. He appointed those he wanted to serve in that Commission because he is a lover of education. His initial profession was teaching. So, education is a subject that is very close to his heart. Surely, in those circumstances, if he was a man who wanted to influence the outcome of that Commission, he would have done so, rather than seeing the spectre when the report was produced. So, after recommendations of that commission, the President is disagreeing with certain aspects of it. You can quote many Commissions of such nature, where he has not influenced the outcome. If he was a man to

interfere with functions of Commissions, at least, we would have those examples. But we have examples of a person when he appoints a Commission, he waits for its report, before he disagrees with certain aspects of it. I have a feeling that we cannot take seriously allegations that the President will influence the work of this Commission for his own purposes or even to extend his term, among other things.

Mr. Deputy Speaker, Sir, upon the compilation of its report, the Commission will publish the same. Once it has published the same---

(Mr. F.P. Lotodo stood in his place)

Mr. Deputy Speaker: Order, Mr. Lotodo. Proceed, Mr. Wako.

The Attorney-General (Mr. Wako): Thank you very much, Mr. Deputy, Speaker, Sir. Anyway, hon. F.P. Lotodo is a very good neighbour of mine and I am quite sure that he will now listen to me.

The Commission will compile its report and then it will publish it to facilitate public discussions and further public hearings on the report and so on. What does this mean? A transparent process where the Commission, first of all, goes round in every constituency and having done that, it says that these are the views of the people as far as the new Constitution is concerned. Rather than just keeping it and reporting directly to Parliament, it publishes that report and then there is a period of discussion to see whether, indeed, the Commission has actually reflected the wishes of the people. So, the people are now being given a "second bite at the cake," as it were. In the first bite, they have gone round telling the Commission that this is what they want; a report is done and then the Commission again goes round and asks: "Is this what you told us?" This is what we are recommending. What other transparent system can we have?

After the period of public discussion on the draft report, the Commission will then call a National Constitutional Conference to discuss it again. The National Constitutional Conference will consist of all the Commissioners, all the Members of the National Assembly and three representatives of each local authority in Kenya nominated by the local authority concerned of whom, at least, one shall be a woman. In making those nominations, the local authorities are not confined to councillors; the local authorities will look within the area of jurisdiction to see who are the best brains who can go to the National Conference and debate these key issues as far as this nation is concerned. So, there will be three representatives from each local authority provided that the Nairobi City Council (NCC) shall have eight representatives, at least, two of whom shall be women and Mombasa Municipal Council shall have four representatives, at least, one of whom shall be a woman and each town council shall have one representative. The other category of members are such number of representative of religious organisations, professional bodies, women organisations, Non-Governmental Organisations (NGOs) and such other interested groups as the Commission may determine.

Mr. Deputy Speaker, Sir, religious organisations, professional bodies, women organisations and NGOs have quite a number of roles to play. They can, first of all, recommend persons to be considered for appointment as Commissioners, as I have already explained. Secondly, they can also submit their views at all levels; constituency level and so on - as the Commission is going round, their views on how they want the Constitution to be. Thirdly, they are also given a right to be represented at the National Consultative Forum to participate now in the final meeting that will determine issues.

The representation from those organisations will not exceed 15 per cent of the total membership. It is also said that all the decisions at the National Conference shall be determined by a consensus, but in the absence of unanimity, such decisions shall be carried by a simple majority of members present. The National Conference will be the final meeting as far as the recommendations are concerned, and up to that level, nobody is going to be excluded from participating in airing or giving views on the proposals that they want to alter or the proposals they want for a new Constitution all together.

What happens after that? Under the current Act, the matter then will go to the Attorney-General, who will then take it to Parliament. But here we are adding another mechanism just to ensure that this Constitution is in accordance with the wishes of the people of Kenya. I heard somebody saying that the National Conference is just a hullabaloo; nothing is binding and that should be the end of it. Actually, if you read the proposals very carefully you will find that the decisions of the National Conference shall be final. In other words, the National Conference is not being called for in vain or just as a rubber stamp, it is being called upon by all the leaders of this country to say that this is it, alter here, do that and so on. It is the recommendations of the National Conference that will be final and the Commission will then prepare the final document now in accordance with the recommendations of the National Conference, which is very important.

Mr. Deputy Speaker, Sir, under the Act, we have given two options at that stage. The Commission may submit the report and the draft Bill to the Attorney-General for introduction to the National Assembly, or in consultation with the Electoral Commission of Kenya, refer the draft Bill to a decision of the people of Kenya and seek

their approval in a national referendum. What other opportunity do you want? Subjecting this document, which at every level has been conscious of what the people want; saying here it is at least, indicated by a *kidole* or affirmative vote that this is the Constitution you want, is the essence of democracy. People are now directly participating in making final decisions on the Constitution that they want, and not a Constitution which has been drafted completely in advance, so that when you start going round the country, you are actually submitting that draft Constitution to find out what people want. We all know that in those circumstances, people will agree to what you say because you have come from Nairobi and, therefore, you know better. That is really exploiting peoples' mentality. Constitution-making must not come from top to down. You do not draft and then go and ask: "Is this what you want?" Obviously, they will say "yes". Proper Constitution-making must start from the grassroots level upwards and, therefore, the Bill that will come out of this process is one that will be the peoples'. We have said that apart from that participation, there is also *tia kidole*, put there a vote and say, "Yes, this is what we want". If there is such affirmative vote, then it comes to the Attorney-General who then introduces the Bill in Parliament. Those are really the main amendments which are proposed in this particular Bill.

Mr. Deputy Speaker, Sir, just to sum up, I think that the provisions of this Bill, if they are enacted, can in fact provide the necessary room for everybody to come on board of this legal process. The National Assembly enacted a law which in effect says that if you want to amend the Constitution or have a new Constitution, this is the way. In other words, it provided the legal procedure for carrying out the review process. So, there is a law in place as far as carrying out the Constitutional review process is concerned. Therefore, as a country, we should try to see how those people can come within this legal process. From what I have said, I think there is enough here for whoever is doubting to, at least, give it a try, to come and to be within the process. There is enough room here. As I stated earlier, two or three people from the Commission of the Ufungamano initiative are very competent. There is room for them to come and participate in this process by Parliament, which is not only the legal process but which can also unify the entire country on this very important matter of reviewing the Constitution.

With those few remarks, I beg to Move.

(Applause)

Mr. Raila: Mr. Deputy Speaker, Sir, I rise to second the Bill. I did not catch your eye yesterday. However, I am very pleased to second this Bill today.

This Bill is a product of the Report that was tabled here and approved by this House sometime in April. It was the Report of the Select Committee that was appointed by this House to review the Constitution of Kenya Review Act, 1997, taking into account views of Kenyans. I would like to echo sentiments that have been expressed by the Attorney-General (AG) regarding this Bill. We did say that, as a country, we must be committed to a people-driven Constitutional review process. If you look at all the amendments that are being proposed, you will realise that they all have one thing in view - to try and make this process truly people-driven.

Mr. Deputy Speaker, Sir, there have been a lot of comments in the Media out there, criticising this Bill. A number of the people who have written those critiques are guilty of intellectual dishonesty, because they are not telling the people of Kenya the truth about this Bill. We have restrained ourselves from answering those people through the same media, because of the provisions of this House's Standing Orders, which prohibit us from carrying out the debate outside this House.

Mr. Deputy Speaker, Sir, I would, therefore, like to take a few minutes and talk about the structure of the envisaged process as contained in this Bill.

It has been said that we have done away with the "Three-tier" structure that was designed in the Act we are trying to amend. Nothing could be further from the truth on this issue. The original Act provides for district fora, a National Consultative Forum and a Commission; we have retained that structure. What we have done is that we have removed the district fora and brought in the constituency fora, which are nearer to the people. Under the current Act, the district fora are supposed to be comprised of three people from every location, with whom the Commission is supposed to interact. You will find that, that process is not people-driven. That is why we have taken the process further down to the constituency level and opened it up, so that anybody with views, or suggestions, can do so directly before the Commission. So, village elders, women leaders, religious leaders, youths, the disabled, and others, will have the opportunity to interact with the Commission at the constituency level.

Mr. Deputy Speaker, Sir, we have gone further to say that, after the Commission has gone round the country and collected views from the people, it shall then prepare an interim report, which shall be published widely in the media, and copies of it shall be made available to Kenyans all over the country for them to access, read and form an opinion. Thereafter, we have provided for a national debate. The Commission is obligated to go to every province and hold public hearings, where members of the public will be given an opportunity to express their views on the draft

Constitution and report. Thereafter, we have created a Constitutional Conference in place of the National Consultative Forum.

The current Act provides for a National Consultative Forum. The work of the forum, basically, is consultative. The word "consultative" here means that the Commission is not obligated to take the views that are expressed at that forum. People will come to that forum and express their views after which the Commission will consider the views and decide which ones to take and which ones to leave out. In fact, we thought that, that would not be good enough. That is why we have provided for a National Constitutional Conference. People will debate the views collated at that Conference after which a vote will be taken. The decisions of that Conference will be binding on the Commission.

We have also expanded the composition of that Conference. The current Act provides for three people from every district - a man, woman and a youth. In this Bill, we have opened up the Conference to local authorities. Each local authority will elect three people to the Conference. This means that also municipalities will elect three people each, and town councils one person each. Therefore, the Forum that is stipulated in this Bill is a much bigger body of representation than the National Constitutional Forum that is stipulated for in the current Act. So, after the Conference deliberates on the views and takes a vote, there is a provision for a national referendum. We have said that if the people are not satisfied with the decisions of the Conference, then a referendum shall be held. For the first time in this country's independent history, Kenyans will have an opportunity to vote "yes" or "no" on a Constitution. If all this is not people-driven I would like those people who think otherwise to tell us what "a people-driven Constitutional process" is.

(Applause)

Mr. Deputy Speaker, Sir, I understand that a group of hon. Members of this House - I have been told that they were at one time 91, at another, 92, and that they are now 94; their figure has kept on changing, depending on who and where he spoke about this issue - have gathered and signed a document saying that, after all the processes I have stipulated, namely, after the Commission has gone to the constituencies and gathered the views of the people, the national debate is held, the National Constitutional Conference has discussed the Commission's findings and taken a vote on it, and after the National Referendum has been held, they will oppose the draft Constitution once it is brought here to deny it the necessary two-thirds majority of this House's votes. I ask: If majority of Kenyans vote in favour of that Draft Constitution, who are the about 94 hon. Members to say "no?"

(Applause)

They are trying to tell us that they will vote against what their voters and electors will have voted in favour of. So, one would want to ask the wisdom of these hon. Members, because the voting will happen two years from now, and a number of them do not even know whether they will be alive to come and vote against that Bill when it is brought before this House.

Mr. Deputy Speaker, Sir, "democracy" means that the minority should have their right and majority should have their way, and that is why we have provided for a very democratic process. The Leader of the Official Opposition, while speaking out there in Kisii, said that, already, they have a majority of hon. Members who will come and defeat that Bill when it will come before this House. **Ms Karua:** Mr. Deputy Speaker, Sir, is the hon. Member in order to introduce matters extraneous to the House into the debate when he refers to the Leader of the Official Opposition speaking in Kisii? That is a forum outside Parliament.

Mr. Raila: Mr. Deputy Speaker, Sir, the hon. Member is very conversant with our Standing Orders, to say nothing about the fact that she is also a lawyer by profession. She knows very well the provisions of our Standing Orders; that hon. Members are not allowed to carry debate outside this House, and also to anticipate debate. That is why, in fact, I am trying to censure the Leader of the Official Opposition here for taking the debate outside this House, and then, running away when now he has an opportunity to come and say all those things in the House.

Mr. Deputy Speaker: Order! We did go through that matter and hon. Kibaki stated that he did not take the issue of this Bill out there. The question of the Constitution is not before the House yet.

Mr. Raila: Mr. Deputy Speaker, Sir, my understanding is that he was talking about the Bill and the 94 hon. Members who have signed a document so that they can come and oppose that matter when it comes before the House, and all that is in connection with the Bill before the House. The Bill that will come before this House will be a consequence of the Bill that we are now trying to pass. That is my understanding.

I am trying to say that---

Mr. Anyona: On a point of information, Mr. Deputy Speaker, Sir. As a matter of fact, the list of those about 94 hon. Members is actually appended to the Report of the Committee on Administration of Justice and Legal Affairs that is before the House. The matter is relevant.

Mr. Raila: Thank you, hon. Anyona. We are saying that hon. Members vote in this House through a Division, and that is why I find it strange that other hon. Members would want to vote by signing an anonymous document and saying that they will oppose what is not even before the House. Hon. Members vote through a Division, and therefore, I would say that the hon. Members who have signed that document are as misguided as the document itself that they have signed.

Let me say this: Because of what we are doing here, we believe that it is in the interest of the people of this country, and that we gave the people of this country an opportunity to come and express their views before the Committee when it was sitting at the County Hall, Nairobi. Hon. Members who sit in this House now and who support this Bill represent, in my view, the majority of the people of this country. That is why I want to repeat that we shall not be intimidated by people who purport to speak on behalf of Kenyans without consulting them.

When you go out there and ask Kenyans what they want, they will tell you that they have elected their leaders and given them mandate to speak on their behalf in this Parliament. Every Member of Parliament is expected to consult his people before he comes here to speak. We are not taking away the right of the people of Kenya to participate in the Constitutional review process. That is why we have suggested here the creation of a Commission of 15 Kenyans; men and women of integrity who will work independent of this House. They will go around collecting the views of Kenyans and prepare a document that will be brought before this august House. It is said that this document has given too much power to the Executive. I ask; "where"? The President only comes in when it is time to appoint the Commissioners. The current Act which they are saying is more people-driven also says that it is the President who appoints the Commissioners. The stakeholders that are mentioned in that Act are really nominating bodies. They will nominate and then the President shall appoint.

Instead of those stakeholders who could not agree, we now give that responsibility to Parliament to nominate and then let the President appoint. For those hon. Members of this House who say that this is not democratic, it means that they are actually passing a vote of no confidence in themselves. I have faith in hon. Members of this House that they can independently make a decision. Majority of hon. Members know the Kenyans of integrity who will be members of that Commission. If we pass this Bill, which I hope the House will, we will then proceed to nominate those Kenyans so that the Commission can be established to begin its work immediately. The Commission shall look at the work on hand within one year. When they find that they are not in a position to conclude it within 24 months, they shall come before this House with minimum amendments to the current Constitution aimed at levelling the playing field in the next General Elections so that the review can proceed naturally even beyond the next General Elections. I find this very reasonable.

Mr. Deputy Speaker, Sir, I invite the hon. Members who are criticising this Bill to look at the other Acts because Kenyans are not inventing the wheel. The Ugandan Act says that the President, in consultation with the Minister for Constitutional Affairs, shall appoint the Commission. The Tanzanian Act says that the President shall appoint the Commission alone. In South Africa, it is the Parliament that appoints the Commission. Kenyans are behaving as if they are "re-inventing the wheel."

The Attorney-General (Mr. Wako): On a point of information, Mr. Deputy Speaker, Sir. On that line about other countries, I recently went to India where they are also undertaking a Constitutional review process. The person appointing the Commission is the Attorney-General.

(Laughter)

Mr. Raila: Mr. Deputy Speaker, Sir, with those few remarks, I beg to second this Bill.

(Question proposed)

Ms. Karua: Thank you, Mr. Deputy Speaker, Sir. I rise to oppose this Bill. I will begin by saying that if the amendment says that the Attorney-General appoints where there is a stalemate, that would be agreeable. If it is Parliament that was unable to agree through the Parliamentary political parties on the Commissioners, what magic will be applied this time round to get Parliament to agree on the Commissioners that they will nominate? We are heading straight to another stalemate. The amendments being proposed are not practical.

Mr. Deputy Speaker: Ms. Karua, you will proceed tomorrow.

ADJOURNMENT

Mr. Deputy Speaker: Order! Hon. Members, it is now time for us to interrupt our business. The House stands adjourned until tomorrow, Thursday, 20th July, 2000, at 2.30 p.m.
The House rose at 6.30 p.m.