

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Tuesday, 25th April, 2000

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

## PRAYERS

## ORAL ANSWERS TO QUESTIONS

*Question No.061*

### MEASURES TO CURB WILDLIFE MENACE IN LAIKIPIA

**Mr. Kiunjuri** asked the Minister of State, Office of the President, what urgent measures he is taking to ensure that wildlife menace in Lanching, Sosian and Muthengera in Laikipia West and Marura, Matanya, Sirima, Sweet Waters and Njogu-ini areas of Laikipia East is curbed.

Mr. Speaker, Sir, I have not received any written reply from the Minister of State, Office of the President. You are on record having said that we should be given written replies before Ministers and Assistant Ministers answer any Question.

**Mr. Speaker:** The Minister of State, Office of the President!

**An hon. Member:** Mr. Nassir!

*(Maj. Madoka walked into the Chamber)*

**Mr. Speaker:** Next Question!

**An hon. Member:** The Minister concerned has come!

**Mr. Speaker:** Let him settle down, Dr. Ochuodho's Question!

**Dr. Ochuodho:** Mr. Speaker, Sir, no written reply has been supplied to me, but I beg to ask the Question.

*Question No.043*

### ESTABLISHMENT OF FISH DEVELOPMENT AUTHORITY

**Dr. Ochuodho** asked the Minister for Rural Development:-

(a) when the Government will

establish the Fish Development Authority as recommended by Parliament; and,

(b) what plans the Government has to promote fish consumption and marketing in the country.

**The Minister for Rural Development** (Mr. Mohamed): Mr. Speaker, Sir, I beg to reply.

(a) The Government will establish the Fish Development Authority when a Bill is enacted by Parliament and funds are available.

(b) My Ministry has plans to improve the quality and safety of fish and fishery products to promote fish consumption and marketing in the country. These plans are being implemented and the outcome of this is:-

(i) Protecting and safeguarding the health of consumers by ensuring that measures vital for safe fish and fishery products are taken. Various officers, trained in fish inspection and quality control, have been deployed in strategic areas. In addition, quality control laboratories are under construction in Kisumu, Mombasa and Nairobi.

(ii) Ensuring that competitive trade practices are observed to prevent fraud and deception.

Surveillance system is in place to prevent and stamp out unorthodox fishing practices.

(iii) Improving the environment where fish are handled, processed, stored and distributed through provision of sanitary facilities and structures at the landing beaches.

**Dr. Ochuodho:** Mr. Speaker, Sir, despite fish being the livelihood of the people from the Lake, who are also co-operating with this Government, the Government has not taken seriously the development of Nyanza Province. We know that the export of fish to the European markets has been banned. Could the Minister tell us how much money has the Government specifically put aside to ensure that the ban is lifted?

**Mr. Mohamed:** Mr. Speaker, Sir, the Government attaches great importance to the fish development and that is why I said so many things have been put in place, including laboratories and many other facilities.

Mr. Speaker, Sir, I do not have with me the exact amount of money which the Government will spend this year, but if need be, I can provide the figure.

**Mr. Otula:** Mr. Speaker, Sir, could the Minister tell us what the Ministry is doing to ensure that the Bill on the fish industry is brought to this House for it to be passed?

**Mr. Mohamed:** Mr. Speaker, Sir, as I said earlier on, the Government is intending to bring the Bill, subject to availability of funds. When we get money, we will bring the Bill.

**Mr. Kaindi:** Mr. Speaker, Sir, it is clear from the records that most fish consumed in the Far East come from Mombasa. That is an important resource which is being pirated by unscrupulous traders, because it is believed that Kenya does not have the capacity to protect deep sea fishing in Mombasa. What plans has the Minister put in place to ensure that, that important resource, which people from Ukambani would readily accept, is protected from those unscrupulous traders?

**Mr. Mohamed:** Mr. Speaker, Sir, that important resource of Kenya will be protected. The Government has put in place many measures to protect trawlers from fishing in our seas.

**Mr. Wanjala:** Mr. Speaker, Sir, now that the Minister has told us there are plans to provide structures at the landing beaches and there is an organisation called Lake Victoria Environmental Management Programme, how much money was allocated to that organisation in order to build landing beaches?

So far, several co-operative societies, especially from my own constituency, have applied to develop beaches. How much money have you allocated Budalangi Constituency in order to build those landing beaches?

**Mr. Mohamed:** Mr. Speaker, Sir, I have a problem. I do not have the figures, but we are putting in place a number of measures to improve the environment and cleanliness of our landing beaches.

Mr. Speaker, Sir, one, we are fencing off some of the landing areas to exclude domestic animals and extra activities, draining and paving beaches' compounds and providing toilets. We are spending a lot of money, but it is only that I do not have the figures with me.

**Dr. Ochuodho:** Mr. Speaker, Sir, it is very unfortunate that with regard to the listing of fish exportation to Europe, that their sister partner countries have done a lot.

Indeed, for Tanzania, the European Union has already lifted the ban. Information that we have is that one person within this Government, perhaps on the Front Bench, is against the lifting of the ban on fish exportation to Europe. The Minister is aware that this House passed a Motion sometime last year calling for the establishment of this Fish Development Authority.

If the Government knew that they did not have money, why did the Ministry support the passing of that Motion?

**Mr. Mohamed:** Mr. Speaker, Sir, the ban on fish from Lake Victoria by the European Union was imposed sometime last year, due to some hygiene problems in our region.

It is also true that it is only in Tanzania where the ban has been lifted. Kenya and Uganda are still working hard to ensure that this ban is lifted.

Mr. Speaker, Sir, I am doing everything possible to make sure that this ban is lifted. In fact, I will be travelling to the Lake Victoria region next week to see to it that the cleanliness that is required is in place.

Mr. Speaker, Sir, I would like to request Dr. Ochuodho to accompany me during the tour, so that we can talk to his constituents and other fishermen in that area.

**Mr. Speaker:** Next Question!

*Question No.036*

ALLOCATION OF MUHORONI SUGAR  
COMPANY LAND

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

(a) if he is aware that part of the land forming the nucleus estate of Muhoroni Sugar Company has been allocated to individuals; and,

(b) who the allottees of the said land are, and what criteria was used in allocating the land.

**The Minister for Agriculture** (Mr. Obure): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that part of the nucleus estate of Muhoroni Sugar Company has been allocated.

(b) The allottees of the said land are as follows:-

<u>Name</u>	<u>Hectares</u>	<u>Amount</u> <u>Paid(Kshs)</u>
Mr. B.M.K. Ogol	63.4	1,097,912
Mr. H.N. Oyugi	85.2	830,058.50
Mr. H.S. Owuor/ Mr. Juma	75.62	1,394,000
Mr. J. Osiemo	49.22	1,753,507
Prof. Ominde	34.2	Nil
Mr. D. Amayo	43.33	834,254
Mr. R.R. Ojor	47.2	1,651,450
Mr. A.A. Achoki	20.4	265,175.80
Mr. P. Wambura	24.77	417,500
Mr. P. Ogada	8.8	177,263
Mr. P. Oloo-Aringo	27.557	Nil
Rev. Anyul Odaha	24.77	228,500
Hon. Ndolo Ayah	19.02	324,000
Prof. S. Keya	43.84	556,925
Hon. D. Otieno	30.52	Nil

Mr. Speaker, Sir, a total of 669,000 hectares has been allocated under that arrangement.

**Mr. Osundwa:** Mr. Speaker, Sir, it is the stated policy of the Government to expand sugar factories to meet the national sugar demand which is 600,000 tonnes of sugar per year, against a production of 400,000 tonnes. We have a shortfall of 200,000 tonnes. Why did the Ministry allow those individuals to "grab" this estate belonging to a Government parastatal, paying paltry sums of money? Why a departure from the Ministry policy of expanding sugar factories?

**Mr. Obure:** Mr. Speaker, Sir, this allocation of the nucleus estate was done on the justification that the land was marginal and undeveloped at the time. It was hoped that the individuals who were allocated this land would put more investments and more resources to develop this land for purposes of cane production.

**Dr. Omamo:** Mr. Speaker, Sir, I happen to know those plots that were allocated quite intimately. I must admit that despite what the Minister is saying, these plots must have been allocated to what this House knows as "politically-correct" individuals. It is, however, important for one to be "politically-correct", but my quarrel is that those plots are still lying idle; they are fallow. Some of them have not been paid for. Could the Minister take appropriate steps to repossess those plots which have not been paid for, and then order that all the land allocated must be put under sugar cane?

**Mr. Obure:** Mr. Speaker, Sir, I agree with the sentiments by both hon. Osundwa and hon. Dr. Omamo, that we need to increase the acreage under cane in order to meet the requirements of white sugar in this country. In respect to what hon. Omamo has said, I am aware that there are individuals who were allocated some of that land who have not fully developed them and they are not under cane production. But I am also aware of a few of them who have done very well. In the case of those who have not developed their land, we will pursue the question along the lines suggested by hon. Omamo. In other words, to enforce and make sure that the land is put under cane production.

**Mr. Angwenyi:** Mr. Speaker, Sir, could the Minister repossess that land and give it to the landless people of Kenya? Since they were giving it out at Kshs1,000 per acre, they could as well give it to the landless who do not have money and who are still being asked to pay Kshs60,000 per acre for the former EATEC farm.

**Mr. Obure:** Mr. Speaker, Sir, it was hoped at the time that, because the land was undeveloped, the individuals who had been allocated the land would put it into cane production. For those who have not done so, I would rather pursue the option of enforcing measures to make sure that the land is put into sugar cane production.

**Mr. Muite:** Mr. Speaker, Sir, all public land in this country is held by the Government of the day on trust for the Kenyan people. Could the Minister tell this House why, if there is any land that the Government does not need for whatever reason and wishes to allocate it to private individuals, that land is not advertised and sold to the highest bidder, instead of the present very untransparent practice of giving land to individuals at a throw-away price?

**Mr. Obure:** Mr. Speaker, Sir, I want to clarify that the land that we are talking about here was the nucleus estate belonging to Muhoroni Sugar Company. The shareholders at that time decided to take that action. This was not, therefore, public land exactly in the context which hon. Muite has raised. But I want to assure this House that the policy on some of these public lands is being reviewed and it is the intention of the Government in future, to ensure that such allocations are a thing of the past.

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

*Question No.097*

PROVINCIAL BREAKDOWN OF HIV/AIDS VICTIMS

**Mr. Muchiri** asked the Minister for Medical Services:-

(a) whether he is aware that thousands of Kenyans are dying annually due to HIV/AIDS leaving their next of kin in financial difficulties of paying high hospital charges;

(b) what is the breakdown of victims per province and the death rate for the past three years; and,

(c) what precautionary measures the Government has taken to reduce the death rates and

assist the victims in payment of medical bills. I do not have the written answer to this Question.

**The Assistant Minister for Health (Dr. Wako):** Mr. Speaker, Sir, the Ministry has said that it has already sent the written answer to the House. I am not sure why the hon. Member has not received it yet.

Mr. Speaker, Sir, I beg to reply.

(a) I am aware that thousands of Kenyans are dying annually of HIV/AIDS. It is the Government policy that those taking treatment for HIV/AIDS in public hospitals should not be charged. However, those in private hospitals have to pay.

(b) The breakdown of the victims per province and the death rates for the past three years, is as follows:-

The numbers of people infected with HIV/AIDS in 1996 were as follows:- Nairobi Province - 134,950; Central Province - 207,272; Coast Province - 102,412; Eastern Province - 187,791; North Eastern Province - 9,495; Rift Valley Province - 254,164; Western Province - 170,183 and Nyanza Province - 403,563. The total number of people infected with HIV/AIDS in 1996 was 1,469,883.

In 1997, Nairobi Province had 142,881 people infected with HIV/AIDS; Central Province - 236,297; Coast Province - 104,203; Eastern Province - 234,137; North Eastern - 10,308; Rift Valley 277,385; Western Province - 178,061 and Nyanza Province - 441,394. The total was 1,624,686 people.

In 1998, Nairobi Province had 150,642 people infected with HIV/AIDS; Central Province - 262,520; Coast Province - 137,374; Eastern Province - 280,380; North Eastern Province - 11,020; Rift Valley Province - 297,792; Western Province - 220,800 and Nyanza Province - 477,821 people. The total number of people infected with HIV/AIDS in 1998 was 1,838,349.

The number of deaths are---

**Mr. Speaker:** Can you table that list if you will do the same?

**The Assistant Minister for Health (Dr. Wako):** Yes, Mr. Speaker, Sir. That will be okay with me.

**Mr. Speaker:** Please, table the whole list.

**The Assistant Minister for Health (Dr. Wako):** Thank you, Mr. Speaker, Sir.

*(Dr. Wako laid the list on the Table)*

(c) The Government has taken the following precautionary measures in a bid to reduce HIV/AIDS infections.

(a) Prevention of infection rates through:-

(i) advocacy and promotion of behaviour changes among the Kenyan populace;

(ii) teaching about HIV/AIDS in schools; and,

(iii) establishment of HIV/AIDS units in the Ministries and constituencies.

(b) Safe blood transfusion through acquisition of screening equipment and reagency in our hospitals.

(c) (i) Health workers training to manage Sexually Transmitted Diseases (STDs), including HIV/AIDS counselling and disease surveillance;

(ii) prolonging of lives of patients through home-based care and support; and,

(iii) provision of STD drugs and those for opportunistic infections, including anti-tuberculosis drugs, which are available free in public hospitals.

As you all know, there is no cure for HIV/AIDS.

**Mr. Muchiri:** Mr. Speaker, Sir, you have heard that the rate of HIV/AIDS infection is very high. As I am talking now, there are hundreds of Kenyans who are detained in hospitals because they have failed to pay the hospital charges. There are also several dead bodies which cannot be removed from the mortuaries because Kenyans cannot pay the mortuary charges. Could the Government consider reducing the charges for HIV/AIDS victims as well as writing off the mortuary charges for these people? These people are leaving their next of kin in poverty.

**Dr. Wako:** Mr. Speaker, Sir, I think the hon. Member heard my answer. I have said that it is the Government policy that those seeking treatment in public hospitals will be treated freely. But in private hospitals, it will be difficult for the Government to make any ruling.

**Mr. Muchiri:** On a point of order, Mr. Speaker, Sir. The Assistant Minister has not answered part "b" of my question which was about the mortuary charges, which are exorbitant.

**Dr. Wako:** Mr. Speaker, Sir, we will consider that.

**Dr. Kulundu:** Mr. Speaker, Sir, could the Assistant Minister tell us what plan the Government has in place to ensure that the anti-viral therapy drugs, such as AZT and the rest are available to Kenyans, by seeking concessional rates from the manufacturers of these drugs as it has been done in South Africa?

**Dr. Wako:** Mr. Speaker, Sir, plans are under way to do that, but we have not yet succeeded.

**Dr. Murungaru:** On a point of order, Mr. Speaker, Sir. The Assistant Minister has evaded answering that question. It is well known that those anti-viral drugs which are very useful in the management of HIV/AIDS are very cheaply available from India, Greece, Italy and in actual fact, from the whole of Eastern Europe. Could the Assistant Minister take immediate steps to allow importers of pharmaceutical products to bring in those products so that those who are suffering from HIV/AIDS can be assisted? They are cheap since they only cost about 10 per cent of the current price in the country.

**Dr. Wako:** Mr. Speaker, Sir, this is a very good suggestion which we are considering. But we are trying to see whether we can use anti-viral free methods because countries like Venezuela have done it. We are actually talking to them to see whether it can be done in this country.

**Mr. Wamae:** On a point of order, Mr. Speaker, Sir. Is it in order for the Assistant Minister to refuse to give the time frame within which he will implement the project? He has just said that they are thinking about it.

**Dr. Wako:** Mr. Speaker, Sir, hon. Wamae should know that, for each patient in hospital in this country, the Government is spending Kshs500,000. In all the hospitals in the country, the Government is spending that amount per patient. Over 50 per cent of all the patients in this country are infected with the HIV/AIDS. Therefore, we are talking of an enormous amount of money. That is why we are saying that, we will take into consideration the use of anti-viral drugs from the donors.

**Mr. Gatabaki:** Mr. Speaker, Sir, is the Assistant Minister aware that the donors and the international community are sceptical about funding the AIDS programmes in Kenya for fear of the theft of the money? There is a lot of corruption going on. This is preventing the donors from participating in the fight against AIDS in Kenya; because of the enormity of corruption in the Government.

**Dr. Wako:** Mr. Speaker, Sir, that is false! The major donors are giving money to the Ministry of Health. A big percentage of the money goes to the fight against the HIV/AIDS. There is a lot of transparency in the way the money is managed.

**Mr. Kathangu:** Jambo la nidhamu, Bw. Spika. Ugonjwa wa UKIMWI uliripotiwa nchini Kenya mwaka wa 1984. Mpaka wakati huu, watu 500 hufa kila siku kutokana na UKIMWI. Watu 120 hufa kutokana na ajali za barabarani kila siku! Je, Waziri Msaidizi ana haki kusimama hapa, na kuzungumza kana kwamba anawahimiza Wakenya waendeleo kufa kutokana na UKIMWI, ilhali Serikali haifanyi kitu chochote?

**Dr. Wako:** Mr. Speaker, Sir, that is not a point of order! It is actually a question. But the Ministry of Health is doing all that is possible to fight the disease. Actually, it is sensitising Kenyans to reduce the rate of HIV/AIDS infections in the country. This should be done by all of us, and not only the Ministry. Hon. Members went to Mombasa and they know everything! We are urging them to help us to reduce spread of HIV/AIDS.

**Mr. Speaker:** Next Question, Mr. N. Nyagah.

**Mr. N. Nyagah:** Mr. Speaker, Sir, you can see that, I am sitting in a different position today. First, the Front Bench is in the habit of abusing Standing Orders. I have no answer to my Question!

Mr. Speaker, Sir, you need to be very firm and strict! Mere words will not help the Front Bench to give us answers! I have been looking for my answer from the Commissionaires, but they do not have it!

**Mr. Speaker:** If I may ask, why do you find it so difficult to forward Questions to Parliament?

**Dr. Wako:** Mr. Speaker, Sir, as far as we are aware, the Question was forwarded to the Clerk's Office in Parliament. Actually, I rang when I arrived in the House!

**POINT OF ORDER**  
MOBILE TELEPHONES  
DISALLOWED IN THE CHAMBER

**Mr. Maore:** On a point of order, Mr. Speaker, Sir. We have been having a problem that might need your special attention, maybe even to amend the Speaker's Rules. We have hon. Members who get in with mobile telephones! When the Speaker's Rules were made, mobile telephones were not in circulation!

**Mr. Speaker:** What are you saying?

**Mr. Maore:** Mr. Speaker, Sir, I am saying that there is an hon. Member whose mobile telephone is ringing in the pocket. Could we have a definite ruling from the Chair regarding mobile telephones?

**Mr. Speaker:** Order! Mobile telephones, or any other gadgets that have the ability of distracting the attention of this House from discharging its lawful duties, are disallowed in Parliament. I do not think I really need to tell hon. Members not to bring those toys here! I think hon. Members must use their own intelligence and find out that, it is offensive to the general House to have those gadgets disrupting the business of the House! Those Members must remove those toys now! Which hon. Member has the toy?

**Mr. Kiunjuri:** On a point of order, Mr. Speaker, Sir. It is not only the Ministers! We had only one Member, although all the Ministers have them right now! They even have guns! What action will you take so that they do not come with them in the House?

**Mr. Speaker:** Order! Hon. Kiunjuri, I think you are already famous for making un-substantiated claims! I think we were dealing with a serious matter in the first place! Now, you have veered off again, trivialising what we had already ceased ourselves to. So, will you please stop distracting the House from attending to this particular issue? In any case, what I am now telling the whole House is that, we will take very unkindly, any Member who will bring any gadget that will distract the attention of the House. It is not true to say that, it is only the Front Bench to my right! I think the other day, hon. Mwenje was caught by the Chair himself! Sorry, I apologise to hon. Mwenje! It was hon. Karisa Maitha! I do not want anybody to become a victim again! The House might just expel that Member some day!

**Mr. Kiunjuri:** On a point of order, Mr. Speaker, Sir. I can substantiate my claims! Could you inspect the Ministers! They have guns! Could they be inspected?

**Mr. Speaker:** Order! Hon. Kiunjuri, would you like me to strip you here, to see whether you have a gun? That is below the dignity of Members to be stripped naked here! So, will you be a little more serious than you have been so far? Next Question, Mr. N. Nyagah.

*(Applause)*

*Question No.029*

FORMULATION OF HOSPITAL INSURANCE  
SCHEME LEGISLATION

**Mr. N. Nyagah** asked the Minister for Health:-

- (a) what plans the Government has in formulating a hospital insurance scheme legislation that will protect the over 65 years and the under five years citizens of this country;
- (b) whether there is any consideration by the Government to create community-based-insurance programmes; and,
- (c) since a Kenyan family spends up to 15 per cent yearly of its income on health, whether the Government could make health insurance compulsory to all employees, so as not to pay at a health centre, but repay in advance to an insurance player.

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

(a) The Government does not have an immediate plan to formulate a hospital insurance scheme legislation to protect the over 65 years and the under five years, as the current National Insurance Hospital Fund (NHIF) Act provides a cover for them, though on a limited scale.

(b) There are no immediate plans, at the moment, to create community-based-insurance programmes, as the NHIF serves the purpose of such community based insurance programmes.

(c) The NHIF is a compulsory contributory social health insurance scheme for employees who contribute according to their ability. The Government is however looking at the possibility of increasing the number of benefits available to the contributors.

**COMMUNICATION FROM THE CHAIR**

BREACH OF STANDING ORDERS IS  
CONTEMPT OF HOUSE AND CHAIR

**Mr. Speaker:** Just one moment, Mr. N. Nyagah! I have now been able to establish from the Clerk at the Table that indeed, the Ministry of Health has not sent an answer to any of the Questions. Therefore, the warning that I am now giving the Minister for Health or any other Minister for that matter, is that a deliberate breach of the Standing Orders is contempt of this House and the Chair and the House may, in unison, take appropriate action against any Government Minister or any other Member who deliberately flouts the rules of the House.

**An hon. Member:** "Name" them!

**Mr. Speaker:** Order! We may begin by "naming" you now.

*(Laughter)*

So, I am now giving the final warning that, henceforth, this House may be forced to take appropriate action to compel Ministers to order their own public officers to do a public duty for which they are paid, namely; to type and forward to this House answers to questions which this House demands of them.

**Mr. Munyao:** On a point of order, Mr. Speaker, Sir. You heard as I did, an Assistant Minister assuring this House that a copy of this answer was sent to the Clerk of this House. Could that Assistant Minister stand and apologise to the House?

**Mr. Speaker:** He is here and he has heard what you said.

**Dr. Wako:** Mr. Speaker, Sir, that is the information we received from the officers. Now that we have not received the answer, I apologise and I promise that I will investigate and find out why this has not happened.

**Mr. Speaker:** Order! I think the House does take that apology. However, I think the most important thing, as far as the Chair is concerned, is that your own civil servants are playing around with you and through you, the House. It is about time that civil servants were told that the House cannot stand any more of these jokes and they must take seriously the work of Parliament. **Mr. Angwenyi:** On a point of order, Mr. Speaker, Sir. Could it be in order for this House to enact a law empowering Ministers to take action over their public servants so that they can accept directions from their Ministers?

**Mr. Speaker:** Order! I suppose in our collective anger, we may just compel every civil servant to do what we please and I am sure the Leader of Government Business is hearing what you are saying. I think the House is tired of being told that answers cannot come to the House because some civil servant paid to do that job cannot do it because of contempt of the House or just because that person is not willing and ready to do his job. Unless, of course, you want to amend the Standing Orders to remove the requirements that Ministers must give answers to hon. Members; otherwise, we cannot continue like this. I do not know what the Leader of Government Business has to say about it.

**The Vice-President** (Prof. Saitoti): Mr. Speaker, Sir, first of all, I came in while this matter was going on. However, if indeed information has come to this House that an answer cannot be provided to this House because a Permanent Secretary is unwilling to do so, I think once such information is provided and furnished to us and to me, I will ensure that this matter is looked into within the Government. This is because I have not heard of a situation where a civil servant for that matter will refuse to furnish the answer to come to this House.

**Mr. Speaker:** Very well, we will leave it at that.

**Mr. Gatabaki:** On a point of order, Mr. Speaker, Sir. Would that not be expecting too much from a Government which, for all practical purposes, is already dead?

*(Laughter)*

**Mr. Speaker:** Order! Mr. Gatabaki, the Leader of Government Business, according to my ability to judge, is very alive. You have just got an assurance from Prof. Saitoti who is alive that what the House requires will be done. I think the best thing for us to do is that since collectively we have agreed to have these things done, the best thing is that we proceed from now on and see the progress. There is no point of us crying over spilt milk. Next Question! Mr. N. Nyagah?

(Resumption of Question No.029)  
(by hon. N. Nyagah)

**Mr. N. Nyagah:** Mr. Speaker, Sir, here is a situation where we are confining our people to early retirement in their graves. This Government has no respect for the 65 years olds in that it is not prepared to bring an Act here. If you look at the clause on this--

**Mr. Speaker:** Ask your question since you have not done so.

**Mr. N. Nyagah:** Mr. Speaker, Sir, I am going to ask that question now. The NHIF spent Kshs380 million in the transformation of this organisation into a parastatal. It is a Kshs50 billion industry and within the clauses it shows and emphasises on profit margin and yet, this is not a profit-making organisation. Is the Ministry prepared to bring an amendment to this House to enable us to take into consideration the maximum benefits to the 65 years olds and the five years olds so that they can be looked after by this industry?

**Dr. Wako:** Mr. Speaker, Sir, yes, we are actually prepared and we have gone further by working with the Department of Social Services on the amendment for the 65 year olds. However, retirees can still be voluntary contributors to NHIF and get their benefits.

**Mr. Twaha:** Mr. Speaker, Sir, since the Government has stopped supplying insulin to district hospitals, what does the hon. Assistant Minister expect diabetes patients to do?

**Mr. Speaker:** What has supply of insulin got to do with insurance? Mr. Twaha, is it relevant? **Mr.**

**Wamae:** Mr. Speaker, Sir, we all know that NHIF is keeping a lot of money which they are investing as fixed deposits with commercial banks and putting up prestigious offices. Would the hon. Assistant Minister direct it to give more generous compensation to the members than they are doing at present?

**Dr. Wako:** Mr. Speaker, Sir, yes, we are actually trying to give more generous compensation to the contributors. In the new amendments, we took into consideration this fact, but still the Ministry is prepared to take in a little more. However, we will do so once we tackle the issue of the overall health scheme for the country which will come to Parliament.

**Mr. N. Nyagah:** Mr. Speaker, Sir, here is a situation similar to that promise by the Government that there will be water for all people by the year 2000. This Government is not ready to turn the NHIF into a health scheme. However, can the Assistant Minister explain why the Government is not prepared to create a community-based insurance programme and yet, the community is disadvantaged? If you look at part "c" of the Question, it says: "The Kenyan family spends up to 15 per cent of its total income". So, how do you expect those retirees at the age of 65 to have an income to pay for the insurance schemes?

**Dr. Wako:** Mr. Speaker, Sir, according to its original design, the NHIF is supposed to be a community-based health scheme. Currently, it has a population of 1.5 million. If we increase our contribution, its benefits will go to artisans, non-professionals, taxi operators, fishermen, curio dealers and the rest of the people. We will then be having up to 3 million people who will be contributing to NHIF which will cover 21 million Kenyans. In that way, we might not be able to require the community-based insurance programme because this will act as a community insurance programme for the whole country.

**Speaker:** Next Question, Col. Ronald Kiluta!

*Question No.021*

#### RECONSTRUCTION OF MATHAUTA BRIDGE

**Col. Kiluta** asked the Minister for Roads and Public Works;

(a) whether he is aware that the Mathauta Bridge connecting Masinga and Itunduimuini was washed away by floods during *El Nino* rains;

(b) whether he is further aware that this road is at the moment impassable; and,

(c) what action he has taken to build another bridge.

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

(a) I am aware that Mathauta Bridge connecting Masinga and Itunduimuini was washed away by the floods during the *El Nino* rains.

(b) I am also aware that this road is not passable at the moment.

(c) I have not been able to take action on this bridge because it is programmed to be repaired after four other bridges that have been given priority by the Machakos District Development Committee (DDC).

**Mr. Ojode:** On a point of order, Mr. Speaker, Sir. I think this Question should not have been replied to by the



Assistant Minister for Roads and Public Works because *El Nino* Emergency Funds are kept under the Office of the President. That is why he cannot give us a satisfactory answer.

**An hon. Member:** Yes, that is true!

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

**Mr. Mwakalu:** Mr. Speaker, Sir, my reaction is that, a leopard is a leopard, whether yellow or green. We have collective responsibility in this Government and I can answer the Question provided I give the correct answers. Questions should be answered collectively.

**Mr. Speaker:** Very well. Col. Kiluta?

**Col. Kiluta:** Mr. Speaker, Sir, you have heard the Assistant Minister say very clearly that the bridge is programmed to be repaired after four other bridges have been repaired, according to the priority given by the Machakos District Development Committee. I have attended all the DDC meetings in Machakos and there is not a single bridge that we gave on priority. Could the Assistant Minister produce the DDC Minutes here before we proceed with his answer, to prove that this bridge was not prioritised? I can assure him that there was no such priority!

**Mr. Mwakalu:** Mr. Speaker, Sir, minutes or no minutes, the Machakos DDC did indicate the requirement for Kivaani Bridge on Road E484 to be repaired---

**Mr. Maore:** On a point order, Mr. Speaker, Sir. Is the Assistant Minister in order to start answering his own question which we do not know? The hon. Member for Masinga has asked the Assistant Minister to table the Minutes of the specific DDC meeting?

**Mr. Speaker:** Order! As a matter of fact, do you require a DDC to put back a bridge that has been washed away? Mr. Assistant Minister, do you really need a DDC to agree that a bridge that was there and was washed away should be put back?

**Mr. Mwakalu:** Mr. Speaker, Sir, to be very specific, there were four bridges that had been washed away and they needed funds which were made available as follows:

The Kivaani Bridge, Wevatha Drift on Road E10 and Kathiani Bridge on Road E484 and Thwake Bridge Road C101--- All these roads have been given funds and are in the process of being repaired. If and when those four roads are completed, it will then be possible to undertake the fifth one in that order.

**Col. Kiluta:** On a point of order, Mr. Speaker, Sir. Is it in order for the Assistant Minister to mislead this House? He says in his answer that there was a priority list given by the Machakos DDC. Could he first of all produce that priority list because his answer is misleading? There has never been any because I have never missed a DDC meeting. Could he first of all tell this House where he got this answer from because it is false?

**Mr. Mwakalu:** Mr. Speaker, Sir, I do not have those minutes. Those minutes can be requested for provided that they confer or confirm with what we are saying. The Machakos DDC requested for four bridges to be repaired in accordance with their requirements. The Ministry has given money towards that end and work is in progress. If and when that work will be completed shall necessary funds be made available for the fifth bridge.

**Mr. Wambua:** On a point of order, Mr. Speaker, Sir. Is it in order for the Assistant Minister to come here unprepared? I am also a Member of Parliament from Machakos District and there is nothing like what he is saying! Could he tell this House when this priority was given because there is nothing like that? Why did the Assistant Minister come into this House unprepared to answer a Question? He is telling us nothing?

**Mr. Mwakalu:** Mr. Speaker, Sir, funds were sought for the Thwake Bridge on Road C101 and in January-February, 2000, the Ministry made available Kshs500,000 towards that end. Kivaani Bridge, Road E484 also required money for the 1999/2000 financial year and we made available Kshs500,000 and work is in progress. Likewise, Kathiani Bridge---

**Mr. Ndilinge:** On a point of order, Mr. Speaker, Sir. Is it in order for the Assistant Minister to start derailing the House by answering other questions which have not been asked by the Questioner? It appears that the Assistant Minister is just "cooking up" his own answers. We all know that *El Nino* Emergency Funds are under the Office of the President and the Minister who is supposed to answer this Question should be hon. Sharif Nassir, not hon. Mwakalu!

**Mr. Mwakalu:** Mr. Speaker, Sir, the work on these bridges was not under the *El Nino* Emergency Fund, but it came directly through our Ministry which has made the necessary financial provisions and work is in progress in that direction.

**Mr. Speaker:** Very well. Mr. Mwakiringo's Question!

*Question No.038*

PAYMENT TO PLAINTIFFS OF  
CIVIL CASE NO.548

**Mr. Mwakiringo** asked the Attorney-General:-

- (a) whether he could inform the House why the plaintiffs of Civil Case No.548 of 1991 (Mombasa) have not been paid to date while judgement in their favour was passed on 9th February, 1993; and,  
(b) when the plaintiffs will be paid.

**The Attorney-General** (Mr. Wako): Mr. Speaker, Sir, I am unable to reply for reasons explained to the Questioner. The reasons are that, the Question did not give sufficient details of the parties to the case and also the court in which the case is filed. The Questioner has now given me the details and no wonder, that is why we were not able to trace the files because the Government and the Attorney-General are not party to the case whatsoever. So, the file could not have been in my office. It is purely a case between private citizens.

**Mr. Speaker:** Is that so, Mr. Mwakiringo?

**Mr. Mwakiringo:** Mr. Speaker, Sir, that is true, but we have agreed that I will give him a copy of the details for his guidance and we agreed that I give him two weeks to come back with the answer.

**Mr. Speaker:** No, he will not come back at all! If it is a case between private citizens, the time of the House will not be taken away for nothing! Ask the lawyer representing the party concerned to execute the judgement; unless of course, you have information and facts that the Attorney-General or an arm of the Government is hindering the due execution of that decree.

**Mr. Murungi:** On a point of order, Mr. Speaker, Sir. Is it in order for the House to be misled that, if this is a case involving two private citizens, the hon. Member cannot ask any Question regarding that case, while we know that the Attorney-General, as the Chief Legal Advisor of the Government, should be the person responsible in this House on all matters concerning the administration of justice?

The two private citizens are before a court which is a public institution. Could the Attorney-General answer the Question?

*(Applause)*

**Mr. Speaker:** Order! Order! I will not do that. The Attorney-General is the Legal Advisor to the Government of Kenya. He is not the legal advisor at large; to the general public. The general public are entitled to have their own legal advice free from the interference of Government. Therefore, we do not want the Attorney-General to generally meddle around with the disputes between the members of public. I am sure, unless there is something the Government is doing to stop the private citizen---

Unless the Attorney-General is doing something to hinder the execution of the decree, I do not see how he comes in. So the Question is dropped!

**Mr. Kajwang:** On a point of order, Mr. Speaker, Sir. This matter may be in court and may have delayed since 1991. We know that there is a problem in the courts in trying to execute these cases very fast. Whom do we ask about the expediency of these cases in court other than the Attorney-General?

**Mr. Speaker:** Order, hon. Kajwang! To the best of my understanding, if the case has been heard and determined by the court and a decree has been issued, as it appears to have been in this particular case, then it is the duty of the lawyer in charge of the case, the plaintiff or the defendant, whatever the case may be, to take out execution procedures. If there is a lawyer who has been employed by this party and it is through his fault that this matter cannot proceed because of the inability of the---

*(Loud consultations)*

Order, hon. Members! What is so important there, that you do not want to hear what I am saying?

If it is the fault of a lawyer employed by the plaintiff or the defendant, whatever the case is, that the matter cannot proceed, the right complaint should be to the Law Society of Kenya or to the Complaints Commission. I know that it is a very difficult thing for ordinary Kenyans to complain against lawyers - although I am one of them. So, I do not know how they do it but I would advise hon. Members to help their constituents, not only in the House but also outside the House.

**Mr. Kathangu:** Jambo la nidhamu, Bw. Spika. Hivyo ni kusema kwamba mhe. Mwakiringo hawezi kunena na Mkuu wa Sheria katika Bunge hili ili tusikie ni shida gani ipo? Ni lazima apeleke shida hiyo kwa Chama cha Mawakili wa Kenya?

**Mr. Speaker:** Order! Sijasema hawezi kunena; anaweza kunena mchana kutwa. Lakini hatutachukua nafasi ya Bunge hili kujadili mambo ambayo majibu yake hayatapatikana hapa.

**Mr. Murungi:** Mr. Speaker, Sir, I totally agree with what you are saying, but is it in order for the Attorney-General to mislead this House that he did not have sufficient details about this case when he was given a copy of the judgement which shows that this case was in the High Court of Kenya at Mombasa, Civil Case No.548 of 1991? What more details did he need so as to get that file?

**The Attorney-General (Mr. Wako):** Mr. Speaker, Sir, I was given a copy of this judgement 10 minutes ago. Did you expect me to have telephoned Mombasa when I am expected to be in the House?

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

**Mr. Speaker:** Order, hon. Members! First of all, those hon. Members who are lawyers should actually help this House! They should be telling this House that, because of the principle of confidentiality between an advocate and a client, the Attorney-General would find it extremely difficult to get the documents from the plaintiff's lawyer.

**An hon. Member:** No, that is not true.

**Mr. Speaker:** Order! If you know so much, then why should we continue? As far as I am concerned, a matter between two private citizens is not within the portfolio of the Attorney-General. Even all these Ministers present here can only answer Questions which are within their responsibilities. That should end that matter there.

**Mr. Mwakiringo:** On a point of order, Mr. Speaker, Sir. But we have already agreed that the Attorney-General comes back to answer the Question within two weeks?

**Mr. Speaker:** Order, Mr. Mwakiringo! Your agreement has been superseded by my striking out the Question as being incompetent.

*(Question dropped)*

*Question No.061*

MEASURES TO CURB WILDLIFE

MENACE IN LAIKIPIA

**Mr. Kiunjuri** asked the Minister of State, Office of the President, what urgent measures he is taking to ensure that the wildlife menace in Lanching, Sosian, Muthengera, Laikipia West and Marura, Matanya, Sirima, Sweet Waters and Njogu-ini areas of Laikipia East is curbed.

**The Minister of State, Office of the President (Maj. Madoka):** Mr. Speaker, Sir, I apologise for having come late. However, I beg to reply.

Mr. Speaker, Sir, I am aware of the wildlife menace, both in Laikipia West and Laikipia East. The Government, through the Kenya Wildlife Service, is doing all it can to try and ensure that crop damages caused by wildlife in those particular areas are stopped. We are doing this through the construction of powered electric fences to reduce the movement of animals.

Equally, to help, we have translocated 10 elephants from that area to Meru West and we will continue to try and construct as many electric fences as possible.

**Mr. Kiunjuri:** Mr. Speaker, Sir, it should come to your notice that Ministers are used to giving very rude answers. They always say; "when funds are available". Ministers should have a better way of answering Questions. From the answer given by the Minister, it clearly indicates that the Government is taking the lives of wildlife more seriously than the lives of our people. This problem has been there in Laikipia District since Independence and nothing is being done about it. The area they have covered is not even a quarter of the affected area.

Is the Minister aware that the farmers surrounding these parks have not harvested anything for the last 10 years?

**Maj. Madoka:** Mr. Speaker, Sir, I do not think he has asked me any question!

**Mr. Speaker:** What did you say, Mr. Kiunjuri? The Minister did not get your question.

**Mr. Kiunjuri:** Is he aware that farmers in Laikipia have not harvested anything for the last 10 years because whatever they plant is destroyed by wildlife? Do not forget that you are not offering us any relief food.

**Maj. Madoka:** Mr. Speaker, Sir, I am not aware.

**Mr. Muchiri:** Mr. Speaker, Sir, I happen to know that area very well. It is a semi-desert. If elephants have been destroying crops for the last 10 years, what assistance has the Government been giving to the residents of that area?

**Maj. Madoka:** We have done quite a lot to help the community in the area. In fact, we have funded community projects in that area to the tune of Kshs12 million.

**Dr. Murungaru:** Thank you, Mr. Speaker, Sir. The matter that has been raised by hon. Kiunjuri is a very

serious one. It is about poverty and people's lives. That area - all around the Aberdares, Laikipia and Mt. Kenya - many families have been impoverished by wildlife. When we talk to the Kenya Wildlife Service (KWS) personnel, we are told that there is inadequacy of personnel to deal with the wildlife. Can the Minister provide more personnel whether KWS or regular armed forest guards, to assist farmers to keep the wildlife where they belong so that this conflict is diminished?

**Maj. Madoka:** Mr. Speaker, Sir, we acknowledge that we do not have enough personnel, but the number has been determined by the available resources. But we are looking at the possibility of recruiting more personnel for the KWS.

**Mr. Kiunjuri:** Mr. Speaker, Sir, the Minister said that they have given Kshs12 million towards the fencing of the area. Can he tell us which fences they are using the Kshs12 million on, because I am only aware of Kshs1.9 million being used at Matanya area? Where is he using the rest of the Kshs10 million?

**Maj. Madoka:** Mr. Speaker, Sir, the Kshs12 million I spoke about was money donated for various projects to help the community and not for erecting the fences.

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

**Mr. Speaker:** I am sorry, time is running out! Let us now go to Questions by Private Notice.

### QUESTIONS BY PRIVATE NOTICE

#### PROVISION OF WATER TO TAKABA RESIDENTS

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

(a) Is the Minister aware that people of Takaba are constantly under threat from monkeys, which are viciously attacking residents of Darwed Centre in pursuit of drinking water?

(b) What arrangements has the Ministry made to ensure immediate provision of adequate water for both human and animal consumption?

**The Minister of State, Office of the President (Maj. Madoka):** Mr. Speaker, Sir, I beg to reply.

(a) I am aware of fresh reports about this incident in Takaba. But on checking on the actual ground, we have not established that, that is true.

(b) The provision of water for human beings is the responsibility of the Ministry. As the area is not gazetted as a game park, the KWS or the Ministry, is not taking any steps to provide water for the animals.

**Mr. Amin:** Mr. Speaker, Sir, I think, the Minister is deliberately refusing to answer the Question.

*(Loud consultations)*

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

**Mr. Amin:** Mr. Speaker, Sir, I was trying to say that the Minister is deliberately avoiding to answer the Question by saying that it should be referred to the Ministry of Environment and Natural Resources. This Question had been sent to the Office of the President two weeks ago and he should have re-directed it to that particular Ministry. Would he now answer this Question properly?

**Mr. Speaker:** In the first place, it is about water. Why did we put it under the Office of the President?

**Hon. Members:** It is about monkeys and wildlife!

**Mr. Speaker:** Yeah!

**Maj. Madoka:** Mr. Speaker, Sir, I think, it is because of the question of monkeys fighting with the people of Takaba!

**Mr. Speaker:** I think, we saw it on television. Did we not?

**Hon. Members:** Yes!

*(Laughter)*

**Mr. Shaaban:** Mr. Speaker, Sir, I have been informed by my hon. colleague, that, as a result of the fight between the monkeys and the people of Takaba, five monkeys have died and eight people have been injured. This is a matter about security. I am also being told that not only the monkeys, but also the hyenas and even some lions are now coming to this trading centre to look for water. As a result, the people of Takaba are endangered by wildlife. Could the Minister ensure the security of the residents of Darwed so that they are free from the disturbances of wildlife? I am

afraid more people might die as a result of the fight between the monkeys and the people of Takaba. This is not a simple matter; it is a matter of survival.

**Maj. Madoka:** Mr. Speaker, Sir, we are keeping a special vigil in that particular area to ensure that the people are not disturbed by those wild animals.

**Dr. Ali:** Thank you, Mr. Speaker, Sir. The issue of monkeys and human beings fighting is not only confined to Takaba. Even in my constituency, people and monkeys fought several times one man was killed by the monkeys while several monkeys were also killed. The Government should make sure that they provide dams and boreholes in those areas so that monkeys and human beings can live comfortably. Can the Minister guarantee that?

**Maj. Madoka:** Mr. Speaker, Sir, we have taken note of those remarks, but I cannot guarantee at this stage.

**Mr. Shaaban:** On a point of order, Mr. Speaker, Sir. It is evident that the problem of monkeys does not affect only one constituency. Probably, a major part---

*(Loud consultations)*

**Mr. Speaker:** Order, Members! Order, Mr. Karume! This is a very serious issue. By the way, it is not fiction. So, can we listen to him? Proceed.

**Mr. Shaaban:** Mr. Speaker, Sir, it is evident that the problem of monkeys fighting with human beings is not only confined to hon. Amin's constituency, but it is also affecting several parts of North-Eastern Province because of lack of water. Could the Minister---

**The Assistant Minister, Office of the President (Mr. Haji):** On a point of order, Mr. Speaker, Sir. Can the hon. Member clarify whether these monkeys are refugees from Somalia or they are from Kenya?

*(Laughter)*

**Mr. Shaaban:** Mr. Speaker, Sir, these monkeys are not refugees! They live in Kenya; they are Kenyans! The menace caused by these monkeys is of great concern and it affects many parts of North-Eastern Province. Many people could die as a result of fighting for water between those monkeys and human beings. Could the Minister---

**Mr. Angwenyi:** On a point of order, Mr. Speaker, Sir. Is it in order for hon. Haji, who is an Assistant Minister, to ask a question to the other Minister?

**Mr. Speaker:** Order! Order, Mr. Angwenyi! The Standing Orders say that any Member may rise from his place on a point of order, to draw the attention of Mr. Speaker to some disorder in the House. Any Member includes a Minister. So, he is perfectly alright, unless you can show to me that Mr. Haji is not a Member.

**Mr. Shaaban:** Mr. Speaker, Sir, my question was: Since this fight for water is likely to continue and many more Kenyans and monkeys might die, could the Minister carry out further investigations and also direct his DCs to go to those areas and if, necessary, ensure that there is enough water for the monkeys so that they do not come to attack the people of these trading centres to avoid more people from being killed? This is a serious matter. It is not the way the Minister is taking it; it is a matter of survival. Even the long rains have not come. They are late by two months and more people are likely to die.

**Maj. Madoka:** Mr. Speaker, Sir, I know monkeys are a menace not just in North Eastern Province; but even here in Karen, they are a menace. So, we do appreciate the problem of monkeys. When this incident took place at Darwed we did, in fact, send the entire district security committee to see what needs to be done. So, we will continue to take action.

**Mr. Katuku:** On a point of order, Mr. Speaker, Sir. Hon. Shaaban asked the Minister very clearly whether he can consider providing the monkeys with water. He has avoided answering that question. Can he tell us whether he is in a position to provide water for these monkeys because they were also created by God? They have been unable to provide water for human beings, can they provide it for monkeys?

**Hon. Members:** Hakuna maji!

**Maj. Madoka:** Mr. Speaker, Sir, I think, when I was making my first answer to this Question, I did say we are not going to take special measures to provide water for the monkeys. Our priority will obviously be for the human beings.

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

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

In view of complaints from tea growers regarding the manner in which Kenya Tea Development Authority (KTDA) intends to procure tea bags, fertilizer and also embark on the construction of nine tea factories, what is the Minister doing to safeguard the interests of tea farmers?

**The Minister for Agriculture** (Mr. Obure): Mr. Speaker, Sir, I beg to reply.

The interests of the farmers in regard to procurement of tea bags and fertilizer are safeguarded through ensuring that there is in place, a mechanism which guarantees open, transparent and competitive tendering. The tender for the tea bags and fertilizer will always be awarded to the lowest qualified tenderer. In order to ensure that this procedure is strictly complied with, the Government will be represented in the tender committee by the Permanent Secretary, Ministry of Finance and Planning, the Permanent Secretary, Ministry of Agriculture and Rural Development, and the Director of Agriculture and Rural Development, alongside representatives of the tea farmers. Thereafter, decisions of the tender committee will be subjected to ratification by the Board of Directors.

Mr. Speaker, Sir, I am aware that in the past, tea farmers have suffered through losing money, particularly on supplies of fertilizer because the KTDA Headquarters procured more quantities than were actually required. We have changed the procedure and we will ensure that individual tea companies identify the requirements of the individual farmers, which they will then forward to the KTDA upon which the tenderers will supply the required quantities. In this way, we will avoid the question of waste and excessive procurements.

Mr. Speaker, Sir, in line with Sessional Paper No.2 of 1999, and The Tea (Amendment) Act, 1999, the Government is in the process of empowering the farmers and manage the affairs of the tea industry with effect from 1st July, 2000. I believe that from that date onwards, the affairs of the tea farmers will be protected by farmers themselves.

**Mr. Kathangu:** Mr. Speaker, Sir, I wish to take this opportunity to thank the Minister for giving me a written answer. Although the answer he has provided me with is very shallow, he has, at least, tried.

From this reply, I note that the Minister has, very technically, avoided mentioning tea factories. However, he has talked about tea sacks. About two months ago---

**Mr. Speaker:** Order, Mr. Kathangu! I know that many hon. Members are interested in this Question. So, be precise in asking your questions.

**Mr. Kathangu:** Mr. Speaker, Sir, we are talking about an issue where farmers lose about Kshs9 billion to the KTDA. I would like the Minister to tell us whether it is possible for him to lay on the Table, the list of quotations submitted to the KTDA for the supply of tea bags, so that we may know the lowest and the highest bids?

**Mr. Obure:** Mr. Speaker, Sir, regarding construction of factories, I would like to inform hon. Members that, where decisions are taken to construct factories on behalf of farmers in various areas of the country, transparency and competitive tendering will be applied.

In the case of procurement of tea bags by the KTDA, I would like to assure the hon. Member that the question of tendering for those tea bags was monitored very closely. I am prepared to lay on the Table of this House all the documentation, including the technical analysis that was made available after that exercise, to prove that, indeed, the exercise was transparent. I believe that the farmers got the very best they could in the circumstances.

**Mr. Muite:** Mr. Speaker, Sir, I have seen and read a copy of the report by the probe committee on the KTDA. Since that committee found the current KTDA Board guilty of wrong-doing, does the Minister agree that the real solution to all these problems is to remove that Board forthwith, appoint a caretaker Board and charge it with the responsibility of overseeing free and fair elections per factory from the grassroots right up to the KTDA Board? Does the Minister agree that, that is the correct way of going about matters?

**Mr. Obure:** Mr. Speaker, Sir, that is only one of the ways of going about this problem. I had that option; but I also had other options, which I considered. In view of the developments that are taking place, and considering that the current KTDA Board of Directors was elected by the farmers themselves, I felt a little reluctant to remove them and have them replaced by my own appointees. In the circumstances, in the course of the next one month or two, elections of the various boards will be carried out to meet the requirements of Sessional Paper No.2 of 1999 as well as the provisions of The Tea (Amendment) Act, 1999. In the circumstances, I decided that this was an exercise which would be better done by the farmers themselves. That is why I took that option.

**Mr. Gatabaki:** Mr. Speaker, Sir, is the Minister aware that the life of the current tea factory company boards was supposed to end on 31st December, 1999, and that he was the one who extended their life for another six months? Could he now assure this House that he will not extend the life of those boards for another six months, and that the Government will take seriously, the liberalisation of the tea industry?

**Mr. Obure:** Mr. Speaker, Sir, the life of the current directors of the various tea factory companies and that of the KTDA Board is supposed to end on 20th June, 2001.

**Mr. Speaker:** Mr. Minister, do you mean the life of the offices of the factory boards of directors?

**Mr. Obure:** Mr. Speaker, Sir, I mean their terms of office. However, in light of the fact that we are carrying out this liberalisation exercise--- Hon. Members are aware of the consultations that are going on towards the liberalisation of the tea industry. Last week, we had a meeting in Kericho; we will have another in Nyeri for the purpose of extending the consultation exercise to tea farmers themselves. The truth of the matter is that the life of current KTDA Board ends at mid-night, on 30th June, 2000; there is no intention whatsoever to extend it for even a single day.

**Mr. Kathangu:** Mr. Speaker, Sir, I would like the Minister to tell us why, for instance, the construction of Buret Tea Factory is going to cost us Kshs125 million; the construction of a tea factory in Kisii District, Kshs450 million; and, that of each of seven other tea factories is going to cost us Kshs350 million, when we know that the construction of a normal two-line factory will not cost more than Kshs120 million. Where do these variations come from?

**Mr. Obure:** Mr. Speaker, Sir, that looks like a very "large" question. I have not familiarised myself with the facts the hon. Member has quoted. If he so wishes, those facts sound like material for a very good Question for this House.

**Mr. Speaker:** Hon. Members, that ends Question time. All the other Questions by Private Notice that have not been answered will be deferred to tomorrow afternoon, and we will not make a similar mistake then; Question time will be exactly one hour.

**Mr. Kathangu:** On a point of order, Mr. Speaker, Sir. Would it be possible for this House to give the Minister for Agriculture another time to come and tell us about the variations I have asked about as well as the quotations and analysis regarding the tender for the supply of the tea bags, which he said he is ready to lay on the Table?

**Mr. Speaker:** What is your reaction, Mr. Obure?

**Mr. Obure:** Mr. Speaker, Sir, I will be prepared to lay on the Table, details of the analysis relating to the tender for the supply of tea bags to the KTDA. On the question of the variations in costs of constructing the tea factories the hon. Member has mentioned, I said that, that is not part of the Question I was dealing with. I suggested that hon. Kathangu brings a Question to that effect, so that we can come and give a very comprehensive answer to this House.

**Mr. Speaker:** Mr. Minister, I notice in the Question the phrase "... and also embark on the construction of nine tea factories, what is the Minister doing to safeguard the interests of tea farmers?". The Question is not only on the acquisition of fertilizers and tea bags, but also on the construction of tea factories.

**Mr. Obure:** Mr. Speaker, Sir, I replied to that part of the Question. I said: "In respect to construction of tea factories, I will be prepared to ensure that all the tendering for construction, electrical, civil, and other works, is done in an open, transparent and very competitive basis". I will ensure that, that is done. The other question that hon. Kathangu has raised is in respect of the actual costs of the construction of each of the nine tea factories around the country, to which I replied that, that sounds like material for a very good Question for this House, and attempted to persuade the hon. Member to raise that Question, so that we can come back with all the facts.

**Mr. Speaker:** Very well; I am very sure that Mr. Kathangu will be persuaded to bring that Question to the House. End of Question Time. Next Order.

#### USE OF POLYATOMIC APHERESIS IN HIV/AIDS MANAGEMENT

**(Dr. Kulundu)** to ask the Minister for Medical Services:-

Why does the Government still allow Dr. Basil Earle Wainwright, alias Dr. Stone, to use polyatomic apheresis in the management of HIV/AIDS cases in the country?

*(Question deferred)*

#### RELOCATION OF KENYA ORCHARDS LIMITED

**(Mr. Kikuyu)** to ask the Minister for Lands and Settlement:-

(a) Is the Minister aware that the Kenya Orchards Limited has moved from Machakos to Nairobi and that the company is currently disposing of its land in Machakos?

(b) Is the Minister further aware that in the said land are two public institutions which have been

built through local community effort?

(c) Could the Minister ensure that the sale is halted until the land on which the said institutions stand is excised from the main title deed?

*(Question deferred)*

NON-PAYMENT OF ALLOWANCES TO  
MIGORI COUNCILLORS

**(Mr. Onyango)** to ask the Minister for Local Government:-

(a) Is the Minister aware that most of the councillors of Migori County Council have not been paid their allowances and dues for the last fifteen months?

(b) How much money does the county council owe the councillors in allowances and other dues?

(c) Could the Minister ensure that the money is paid urgently to save the councillors from financial and social embarrassment?

*(Question deferred)*

**BILL**

*First Reading*

THE CONSTITUTIONAL OFFICES  
(REMUNERATION) (AMENDMENT) BILL

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

**MOTION**

ADOPTION OF REPORT OF SELECT COMMITTEE  
ON CONSTITUTION OF KENYA REVIEW ACT

THAT, this House adopts the Report of the Select Committee on the Constitution of Kenya (Review) Act, 1997, that was laid on the Table of the House on Thursday, 6th April, 2000.

*(Mr. Raila on 19.4.2000)*

*(Resumption of Debate  
interrupted on 20.4.2000)*

**The Minister of State, Office of the President** (Mr. Sunkuli): Mr. Speaker, Sir, one of the criticisms levelled by those---

*(Several hon. Members withdrew  
from the Chamber)*

**Mr. Speaker:** Mr. Sunkuli, you can just wait until the hon. Members who wish to withdraw from the Chamber have done that. Those hon. Members who wish to withdraw from the Chamber, please, do it quietly. Proceed, Mr. Sunkuli.

**The Minister of State, Office of the President** (Mr. Sunkuli): Mr. Speaker, Sir, one of the criticisms against the Report is that it proposes the giving of wide powers to the Executive, which is, of course, not true. These proposals do not give any overwhelming powers to the Executive. The President will be required to select 15 names from 21 names carefully selected by this House. That, in fact, is bestowing legislative powers rather than executive powers. For a change, this House has power, but if the Act is amended, it does not have it. It is important that whenever we create



any sort of institution in this country, it must have "a parent", because if it does not belong to the Executive, the Judiciary or the Legislature, then to whom will it belong? It will operate as "an orphan", because the present Act is "an orphan". The present Act is not attributable to any organisation that is known by the Constitution of this country. That is why it is not true to say that the Select Committee has given a lot of powers to the Executive.

Mr. Speaker, Sir, I would like to say that in modern Kenya--- It was possible to say that in the late 1980s and 1990s, the Government could be blamed for certain things that were against democracy, but in the year 2000 and apparently for the better part of this decade, the biggest enemy of democracy in this country will be the Non-Governmental Organisations (NGOs). That will be the modern weed that will "eat" democracy. Why will this happen? This is because we have gone to elections on a multi-party system twice. For example, we had elections in 1992 and 1997 and all the time we elected hon. Members of Parliament and a Government. I would like to inform this House that after that was done, there came some people who did not stand for elections - and if they did they were not elected - but who decided that they were the only ones who would make decisions that would affect the lives of Kenyans. If you elect a Government and at the same time say that it does not have powers, and that those who have not been elected are the ones who will make decisions, then what is the meaning of democracy in this context? The NGOs that are coming up will "kill" democracy and they are the ones who will make decisions when, in fact, they have not been elected.

There is a Company Law which is called "lifting the veil". If we were to lift the veil of those NGOs and ask who they are, you will understand why I am saying that it is a very unfair deal for Kenyans to tell the NGOs that they will make decisions rather than the Members of Parliament. There are some---

**Ms. Karua:** On a point of order, Mr. Speaker, Sir. Is it in order for the hon. Member to claim that under the law, as it is, NGOs will make decisions whereas he knows very well, having been one of those who drafted the amendment to that Act, that NGOs, like the rest of the Kenyans, are participants and not the sole decision makers? Is he in order to mislead this House?

**The Minister of State, Office of the President** (Mr. Sunkuli): Mr. Speaker, Sir, I was saying that the NGOs that met at Safari Park Hotel arrogated themselves the responsibility of making law in this country, and directed those of us who did not belong to the NGOs there to make no amendments to the law, which we intend to do now.

I was speaking about lifting the veil of those NGOs. When you look at the NGOs, you can easily give them human names here. Some of the NGOs solely belong to Members of Parliament, while others partially belong to them. This is because if you look at an organisation like the Central Government for Development (CGD), you will find that it actually belongs to hon. Kiraitu Murungi. There is no need for calling it "CGD"!

**Ms. Karua:** On a point of order, Mr. Speaker, Sir. Is it in order for the hon. Member to start maligning fellow Members of Parliament? The "CGD" is not one of the bodies that is mentioned in the Constitution of Kenya Review Act. It is certainly not one of the bodies, and apart from breaching the Standing Orders by naming an hon. Member without a Substantive Motion, is he in order to mislead the House? The Act is open for everybody to see.

**Mr. Speaker:** Order! Order, both sides of the House! I do not want this debate to be unduly interrupted and allow an hon. Member to breach the rules of the House.

I want every hon. Member to know how far he or she can go and how far he or she cannot go. So, please, let us have a flowing debate. If you are on the Floor, do not breach the rules of the House. Proceed, Mr. Sunkuli.

**The Minister of State, Office of the President** (Mr. Sunkuli): Mr. Speaker, Sir, if I can mention the NGOs that do not involve Members of Parliament, there is one person who runs four NGOs. So, he is actually four NGOs! For instance, Dr. Willy Mutunga is the Chairman of one NGO; a convener of another NGO; a member of another NGO and the Treasurer of another NGO. All these people subdivide themselves into NGOs and then say: "You must negotiate with us" and, yet, they are just one person. This is one person subdividing himself into so many NGOs.

*(Laughter)*

**Ms. Karua:** On a point of order, Mr. Speaker, Sir. You have ruled time and again that members who cannot defend themselves in this House should not be mentioned.

**Hon. Members:** Aah! Aah!

**Ms. Karua:** Mr. Speaker, Sir, I have not finished my point of order, so you can boo after I finish.

**Mr. Speaker:** Order! Order!

**Ms. Karua:** Mr. Speaker, Sir, the debate before the House is about the Select Committee chaired by hon. Raila and the Constitution of Kenya Review Act. Could the hon. Member substantiate by naming the NGOs that Dr. Willy Mutunga is being accused of and how they relate to the debate before the House?

**Mr. Speaker:** Order, Members! I appeal to the House, let us have the debate flow. As far as I am concerned,

what is at issue here is whether or not Kenyans have the chance to participate. As I understand, the Members who walked out last time said that they represent Kenyans. In fact, I agree with them totally. They, like these Members here, represent Kenyans. What I understand hon. Sunkuli to be raising is the point that "one person with four hats" is saying he is more Kenyan than the one with one hat. I think it is a very legitimate argument.

**Ms. Karua:** On a point of order, Mr. Speaker, Sir. If indeed, one person has four NGOs, it would be correct. I am calling for substantiation, since I am sure that the position is not true. Is it in order for any Member to utter things they cannot substantiate? Let him name them.

**Mr. Speaker:** Mr. Sunkuli, you are now duty bound to substantiate your claim.

**The Minister of State, Office of the President (Mr. Sunkuli):** Yes, Mr. Speaker, Sir. I will bring a certified copy of all the NGOs in which Dr. Willy Mutunga appears, beginning from Clarion, down the line. It is not---

**Mr. Speaker:** Who are they?

**Mr. Achola:** On a point of order, Mr. Speaker, Sir. There is more to this argument than what we are seeing. I would request the Chair to let hon. Karua declare her interest in all this NGO affair?

**Mr. Speaker:** Order! She is a Member of Parliament and is entitled to participate.

**Ms. Karua:** (Inaudible)

**Mr. Speaker:** Order, hon. Karua! You are entitled to listen and you are also obligated to listen. One thing you are not allowed to do - I certainly will not allow you to do - is to unreasonably "harass" the Member on the Floor, to derail him.

**Ms. Karua:** What about me? I can be "harassed"?

**Mr. Speaker:** No way! Not when I am here!

*(Applause)*

**The Minister of State, Office of the President (Mr. Sunkuli):** Mr. Speaker, Sir, I will table those documents. It is very important to understand because I am actually making the point about representative democracy. Who represents Kenyans? We have been called "illegal" as Members of the Committee. We are not illegal. We are, in fact, the only ones who represent Kenyans in matters concerning law-making. That is the point I am trying to make. Those who criticise us will do so on both sides of the issue. If we went to the other side of the issue today, they would still criticise us. If you look at some elements of the church called the NCKK, I can declare today to you that the NCKK is a fully-owned subsidiary of one political party on that side. It never differs from that party and it is never on our side.

**Ms. Karua:** On a point of order, Mr. Speaker, Sir. Can the hon. Member substantiate that the NCKK is a fully-owned subsidiary of a political party? I think this House has a right to know.

**The Minister of State, Office of the President (Mr. Sunkuli):** Mr. Speaker, Sir, if you look at the public thinking of those behind the NCKK, then compare and contrast it with the public thinking of the Democratic Party, they are one and the same, just like they are one and the same with the thinking of the Law Society of Kenya. I am a member of the Law Society of Kenya.

**Ms. Karua:** On a point of order, Mr. Speaker, Sir. The Democratic Party of Kenya, to which I belong, has been mentioned. The Member on the Floor said that the NCKK is a wholly-owned subsidiary of a political party. Can he now substitute that in fact, it is a wholly-owned subsidiary of the Democratic Party of Kenya? I bear in mind the fact that there is a difference between NCKK's views being similar to those of any party, and being a wholly owned subsidiary of another entity. I believe the Chair has a duty to protect all parties including those in the Opposition, and in this case the Official Opposition.

**Mr. Speaker:** Order! First of all, I do not want to be dragged into refereeing your party differences. I am paid here to ensure that the rules of this House between Members of the House and not between political parties are properly utilised. I would like to ask you hon. Sunkuli, as a lawyer, is the NCKK a company subscribing shares so that one can buy those shares in order to either own it wholly or partially?

*(Laughter)*

**The Minister of State, Office of the President (Mr. Sunkuli):** Mr. Speaker, Sir, I am talking here about "a political company in figurative terms". I suppose even in this House metaphors are allowed. I was saying that I belong to the LSK and never does the LSK summon its members to be able to declare what it stands for. The same people who speak as the LSK, another time as Clarion and another time as something else---

**Ms. Karua:** On a point of order, Mr. Speaker, Sir. I called for substantiation and I need guidance from the Chair. You have often ruled that a Member is responsible for the accuracy of what he says. My colleague on the other

side, categorically said that the NCKK is a subsidiary of the Democratic Party of Kenya. Can he substantiate or withdraw? It will be double standards if he is allowed to now come out of it by saying it was a figurative speech. He did not use it figuratively!

**Mr. Speaker:** Mr. Sunkuli, you have a duty to substantiate!

**The Minister of State, Office of the President** (Mr. Sunkuli): Mr. Speaker, Sir, you also have a duty to protect me because I am speaking in the English language. The only language I have heard you rule as out of order is to use the word "hyena". I have not used such a word. I am saying that in political terms, the NCKK and the DP are one and the same. They speak the same language. They visit the same site. They go to Ufungamano and Limuru together. They go everywhere together. They are not distinguishable in any sense and so is the LSK as it is now. It will never go to a place, for instance, where KANU is because that is not where they belong.

**Mr. Mbela:** On a point of information, Mr. Speaker, Sir. Will it help, if I say that the statements which Rev. Mutava Musyimi reads are written in the evening by his wife Wairimu who is a member of DP?

*(Laughter)*

**Ms. Karua:** On a point of order, Mr. Speaker, Sir. I think that this House is going to lose its respect with the public, if we allow personalised attacks to pass and the Chair does not protect members of the public. We have listened time and again when highly-placed members of the society are protected by the Chair. Hon. Mbela has said that the statements read by the NCKK Secretary-General are written by his wife Wairimu. I went to school with her and I do not think that is her name. Is it in order to drag in the names of people who are not in the House in a manner that is derogatory?

**Mr. Speaker:** Order! One thing you want me to do, as I sit here, is to know everybody's wife and husband, so that whenever everybody mentions whatever name, then I have to stand up and say it is not correct. Please, all of you, will you keep the wives and husbands out? Will you now concentrate on facts? I do not want people to be up and down all the time. Proceed.

*(Laughter)*

**The Minister of State, Office of the President** (Mr. Sunkuli): Mr. Speaker, Sir, I hope you understand that we are trying to pull the veil away from this thing called Safari Park and Ufungamano. Those are people and ordinary Kenyans, and the representatives of the people have the right to ask: Who is in Ufungamano? I told you the other day that if I went to Safari Park I know who I will meet there, just like we sing in church that I know whom I will meet when I go to heaven. When I go to Safari Park, I will meet these people who come under different banners but are one and the same person. That, in fact, extends to the community level. The only way to do justice in Kenya is for each tribe to be represented and not each NGO to be represented. It is only here in this House that you will find everything represented, beginning from communities, religions to everything.

Mr. Speaker, Sir, if you look at the Law Society of Kenya (LSK), three-quarters of the counsel are from one community and yet, they claim to speak for the rest of us. I think it is time we changed the LSK Act, so that every province has its own Law Society. As we know now, LSK should be abolished because it is not a genuine one. The same people will speak for the LSK today and tomorrow, you find them speaking in NCKK as members. The next day, they will be speaking as members of CLARION and CDG among other NGOs. These are the same people making a lot of "urban noise." Luckily, the population of Kenya of 28 million people shows that there are only 2 million people living in Nairobi. These are the two million people that those NGOs make noise on their behalf? What about the rest of the country? I think it is time that we went rural because that is where our people live. Most of our people in this country live in rural areas. We should spend more money in civic education in rural areas and not educating the already educated people in urban areas. I think some of this money should even now be directed to matatu drivers who are killing our people and not just on buying people good cars. This is because I know of a person who runs an NGO and he recently got some money with which he bought himself a good plot in Nairobi.

**Ms. Karua:** Just like you!

**The Minister of State, Office of the President** (Mr. Sunkuli): Just like you!

**Mr. Speaker:** Order! We really cannot have it this way. There must be---

**Ms. Karua:** Just like him!

**Mr. Speaker:** Order, hon. Karua. For heaven's sake, you may not like what he is saying. But so long as he is within the rules, please, listen to it.

**The Minister of State, office of the President (Mr. Sunkuli):** Mr. Speaker, Sir, I want to urge this House to make a point for democracy; to stand up and say that, as far as we are concerned, and because we are the ones making history, Parliament is the one that makes laws. Those people outside there will be consulted, but the law must be made by us.

Mr. Speaker, Sir, we intend to appoint a Commission comprising entirely of people from outside Parliament, to go to the country and ask for views from people entirely outside Parliament. But once the distillation time comes, the time for law-making arrives, it is hon. Members, not those at the Galleries or outside here who will make the laws. That is all we are saying. Those who are calling the name of the people in vain should abandon their strategy. This is because everybody nowadays is talking about people-driven when, in fact, they do not mean the people at all, but they just mean themselves.

Mr. Speaker, Sir, as I have said, there is a new terminology called "civil society". The one in capital letters refers to hon. Members here. Otherwise, "civil society" in small letters are those people who are actually the civil society. Civil society has become an arm of act. I want to repeat hon. Munyasia's words - a cash crop, a cash crop where people go and make money. Anything that is current--- If today you begin discussing the Constitution, they come and say it is their thing. If tomorrow you start discussing malaria, it is their thing. You start talking about poverty alleviation, they have arrived. The same people, so long as they know it is funded--- If it is not funded, they have nothing to do with it. If there was no promise, for instance, of some funding for civic education, these educators who want to educate the people would never come here. That is why there is nobody looking for money to build girls' schools, although we know that we require over 100 girls schools in this country. That is actually how to empower the women of this country. From a woman's youth, we should give her education and not just to make her an hon. Member of Parliament. But none of those NGOs want to do anything that will actually change the lives of Kenyans. It is us who were elected on some promise and hope we gave to our people. It is only us who can determine how their future will be because we have their mandate and they have a way of dealing with us. If today NGOs promise heaven and they do not deliver it, what punishment will the people give them? They were not elected. But if we fail our people today, there is a way that we can be punished because we will not see this House again. That is democracy. The wind that is going to "eat" democracy in this country is the so-called "NGOs". I beg to support.

*(Applause)*

**Mr. Anyona:** Mr. Speaker, Sir, I would like to apologise to the Chair and the House because of the quality of my voice. I have some very severe flu which affects my voice. I would like to apologise for that.

Mr. Speaker, Sir, I would like to contribute to this Motion in two ways. One, I would like to start by proposing an amendment to the Motion. Secondly, if time allows me, I would like to make some comments on the actual Report.

*(Loud consultations)*

**Mr. Speaker:** Order! Can we listen?

**Mr. Anyona:** Mr. Speaker, Sir, I would like to move the following amendment to the Motion:- THAT, the Motion be amended in the following manner:-

- (a) by replacing the full stop at the end of the third line with a semi-colon; and,
- (b) by adding the following words thereof:- and further recommend that the Attorney-General introduces the Bill to the House in accordance with the recommendations contained in this report proposing amendments to the Constitution of Kenya Review Act 1997.

*(Applause)*

Mr. Speaker, Sir, because of the controversy that has been raised in the past about the manner in which the Motion which established this Committee was handled, I would like to ensure that the amendment that I am proposing does meet the requirements of the Standing Orders. In terms of Standing Order No.47, it is required that a notice of an amendment to a Motion must be given in writing to the Speaker or the Clerk. I would like to say that has been done. The notice was given to the Clerk on 18th April, 2000. So, we have complied with that particular provision.

The second more contentious argument is in respect of Standing Order No.48 (1). It requires that the amendment be relevant to the Motion. I would like to say this complies, because all that we are asking is that once the Report has been adopted, the Bill will be brought in accordance with the Report. So, that is relevant to the Motion.

Mr. Speaker, Sir, Standing Order No.48 (2) has been used to malign this Committee and its Report. It

requires that an amendment should not directly negate the intention of the Motion. Again, I would like to confirm that this amendment does not in any way negate the intention of the Motion. If anything, it completes the Motion.

Mr. Speaker, Sir, I would like to explain the House the purpose of the amendment.

The Motion seeks the adoption of the Report before the House. The Motion does not say exactly what will happen once the House adopts the Report. Therefore, in a sense, the Motion leaves the matter hanging in abeyance, or in some kind of vacuum and blank cheque, and anything can happen. We have heard people saying here before that when you have this kind of Motion, the Attorney-General (AG) could go and take his sweet time. In fact, it is not even implied in the Report that the AG is required to bring a Bill to the House. So, it was felt that it is important to complete that process by stipulating in the Motion itself that the purpose of the Report and the resolution of the House is that it will require the AG to bring a Bill to the House to amend the Constitution of Kenya (Review) Act, 1997.

Mr. Speaker, Sir, as I said before, we do not want to be accused again of giving another blank cheque of manipulation and gimmicks, because they are not there at all. We thought that, that should be done. Therefore, the amendment that I have proposed kind of fills that vacuum, removes the problem of blank cheque and stipulates clearly that the Attorney-General will be required to bring a Bill to the House once the Report has been adopted by the House. I think I would like to explain briefly about the Bill. There was a lot of anxiety when the Report came to the House as to what the intentions were. People asked: "What will happen to the Report, because there was no Bill attached to it?" This is because it was expected that there would be a Draft Bill attached to the Report to show that was its intention. The Committee discussed that carefully and we felt that, first of all, when you attach a Bill to a Report of the House, the House can do nothing about it. The House can only deal with the Report.

So, really, at that particular point in time, the Draft Bill is superfluous. But it is true that the Committee did prepare a Draft Bill together with the officers from the AG's Chambers. But it was felt that to present that Bill at that point in time would mean that the Committee was acting in a somewhat prejudicial manner, implying that, that is what the House would be required to pass. In a way, we would be giving Parliament and the AG again some kind of straight-jacket; that the House must work within the confines of that Draft Bill and that the AG himself should act in accordance with that Draft Bill. We felt that it was much better that there should be a full debate in the House and, of course, we were not expecting some people would run away from the debate, but new ideas would be generated, so that nobody claims that the Committee claims monopoly of wisdom. Therefore, we expected that the Report would be used as a working document to bring up new ideas and at the end of that debate and once the Report had been adopted, amended, expanded, or done whatever, the Bill would then be drafted to reflect the debate in the House.

*[Mr. Speaker left the Chair]*

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

Mr. Temporary Deputy Speaker, Sir, in that sense, therefore, it was also felt that the office of the AG should have a free hand. I know that there has been a feeling here that we must tie the hands of the AG. That is what we did in the Safari Park meetings. We now realise that once you tie the hands of the AG, you cannot again ask him to call a meeting, or to do this or that. That is why in the original Motion, it was impossible to get the AG to call together all the stakeholders who had disagreed. Therefore, it was felt that in order to restore the rightful place of the office of the AG, or what is called the State Law Office--- Maybe it will sound better for some people when we talk about the office of the AG, because they see the image of Mr. Amos Wako in it. If you like him, it is alright and if you do not like him, then, it is wrong. We are talking about the constitutional office called the State Law Office and, therefore, we felt that we do not want to make the mistakes of the Safari Park meetings. In fact, one of the questions we were asked by one of the experts is: How could you ever expect to succeed in a process of this kind when you have completely left out the State Law Office? In fact, we were told that the process was unconstitutional. Those who appeared before us were very qualified legal experts who had no interest in our own politics.

Mr. Temporary Deputy Speaker, Sir, we have talked about strengthening the institutions of this country. You cannot do that if you at the same time marginalise offices which are established constitutionally. We felt that to get this process back on track, it was important to begin to give the offices like the State Law Office its rightful place. One of the other questions that we were asked was--- I will come back to it. During the drafting of the Bill, one of the legal experts asked us: What does the word "comprehensive" mean? What is its legal meaning and import? Of course, the reason behind was that the office of the AG was not given the opportunity to do the drafting; it was done by the Drafting Committee, and that was the will of the Safari Park meeting. Therefore, we felt that it was in the best interest of this process and the country that we should draft a Bill for the AG, then bring the Report to the House, have a full debate in the House, the Press and among the members of the public. Therefore, after that, the AG should have a free

hand to take on board any ideas which would be helpful to this process.

**Mr. Temporary Deputy Speaker, Sir,** the intention of this amendment is to see that as soon as the House passes this Motion, the AG will be under obligation to bring the Draft Bill. I would not say that he will be under obligation to bring the Draft Bill as it was drafted by the Committee, but it is merely a guide based on the recommendations which we made in the Report. But we want a Bill which will help solve this crisis and in the terms in which we understand it: "Make this process all inclusive." Therefore, we as a Committee, have no objection at all if the AG would feel that there are any good ideas which will come up in Dr. Kamau Kuria's Bills. I do not know how "Bills" which he has drafted in some private legal office become Bills. I thought a Bill was a term which relates to Parliamentary usage; that you cannot sit in an office, draft a piece of paper and say it is a Bill. I do not understand that. But whatever the case---

**Ms Karua:** You are mistaken!

**Mr. Anyona:** Mr. Temporary Deputy Speaker, Sir, my colleague says I am mistaken. I may well be, but what we are saying is: Whatever Dr. Kamau Kuria and anybody else may have drafted in his office--- In this case, we also had rejoinders from the Law Society of Kenya (LSK) and other people, and some of them were very abusive. But we said: We are not interested in the insults; we are interested in the substance and we did take whatever we thought was of substance in those proposals. In fact, we had put some of those proposals in the Report. We, therefore, expect that immediately the debate is over, the AG will publish a Bill which will then come to this House, be debated and I hope it will become the basis for a convergence in this constitutional review process. This is because the Bill reflects merely the views which the Committee was given by those who appeared before it.

**Mr. Temporary Deputy Speaker, Sir,** there were two groups which appeared before the Committee. One group was the political veterans. These are people who are respected in this country, and they were all in unison in the recommendation that has been made in the Report. They were in unison about the fact that this is a united country. That this country cannot afford the extravagance of tribalism, ethnicity and personal aggrandizement. And that, the Constitution of this country must be the rallying point of this nation, not an individual, a community or anything else. That is what we have reflected in this Report.

There was also another group called the Kenya African Mau Mau Union. These were very eloquent old men.

**Ms. Karua:** What tribe?

**Mr. Anyona:** Well, they were all Kikuyu, if you want to know what tribe they were. But, I can assure you, they may be Kikuyu by name, but their hearts are of true Kenyan African nationalists in every sense of the word. If that is what is important, I am very glad, that all the four who appeared were Kikuyu. That is as much as I want to say about the amendment.

**Mr. Temporary Deputy Speaker, Sir,** if I may say something about the Report itself: There has been some talk here, that the Committee that was set up was illegal, because the original Motion was meant to call the so-called "stakeholders" together, and that the amendment hijacked that process, and was unlawful in terms of Standing Order No.48(1). The truth of the matter is, that if you read the original Motion, its intent was to break the impasse in the review process. The Motion then went on to suggest one of the ways of doing that. According to the Motion, one of the ways of doing that was to ask the Attorney-General to convene a meeting of the so-called "stakeholders," so that they could resolve the stalemate. The argument was that the Attorney-General did not require any extra sanction from Parliament to call a meeting of the so-called "stakeholders," because that was already in the Act. The Attorney-General had in fact called one meeting which aborted. He could call another one which could succeed or not. In any case, a resolution of the House itself, would not be sufficient sanction for the Attorney-General to act in a particular manner in a process of this kind. So, we felt that, that methodology of dealing with the intent of breaking the stalemate would not be viable.

So, we had to look for another possibility. There were several. There was the question of calling the Inter-Parliamentary Parties Committee (IPPC) informally, to meet and see if there could be agreement. But then, we had a problem, because the IPPC only operated in informal circumstances when we did not have an Act of Parliament in place. Now we have an Act of Parliament in place, how does the IPPC deal with it? In any case, with an Act of Parliament in place, the final responsibility in breaking the stalemate remains with Parliament. So, it was felt - those who did not attend these meetings may not know - when we had a meeting with the President in the old Chamber, that the House cannot run away from its responsibility. It must create a mechanism through which this matter could be resolved. Some of us felt that the right way was to set up a committee of the House which would act on behalf of the House. Because, we would have left a vacuum, and I can assure you that there were people who were hoping that we were going to go on recess without anything in place, so that they could call mass action and precipitate an artificial crisis in the country, and then there would be calls for recalling Parliament. You know what that means! Some of us said that we would like to create a committee of the House, so that if there was a matter to be dealt with, the committee of the House would be in place, so that the House did not have to be recalled and create an emergency and crisis in the

country. That is how the idea of a Select Committee came about, and that is how the amendment of the original Motion came about.

Mr. Temporary Deputy Speaker, Sir, the argument that was advanced at that point in time, was that, this was a negation of the intent of the Motion. Mr. Speaker explained very clearly, that the intent of the Motion was in breaking the stalemate. The rest were methodologies of doing it, and that we were preferring to change one methodology with another. So, those who have been arguing that this Committee was illegitimate are wrong, because there was a proper amendment of the Motion in the House to seek for the establishment of the Committee. Secondly, that there was absolutely no breach of Standing Order No.48(1), which people like Kamau Kuria have been touting out there.

Mr. Temporary Deputy Speaker, Sir, as far as the terms of reference are concerned, again, a crisis having arisen once, it would have been a very bad for Parliament to allow another crisis to develop after that. So, it was felt that Parliament must now be entirely responsible to the people of Kenya for this process. In fact, that is what Kenyans were asking for. They were asking Parliament: Where are you? Why do you not take charge of this thing? Give us a solution. Now, I think, Parliament was nervous because they felt there were very many hecklers, and we took a long time the same way we did with IPPG. But in a way, it was also a good thing to do. That, Parliament was also acting democratically, because the final responsibility must lie with Parliament.

So, we felt the Committee should do three things: First, find out the flaws in the Act. It is very sad that hon. Kibaki is not here, because when we met in the old Chamber with the President, hon. Kibaki said that the clergy had identified a minimum of 33 flaws in the Act.

**Ms. Karua:** On a point of order, Mr. Speaker, Sir. Is it in order for hon. Anyona to start debating matters that were discussed outside the House?

**Mr. Anyona:** Mr. Temporary Deputy Speaker, Sir, I do not know what is outside the House. Hon. Karua's party was represented by a cautory of officials.

**Ms. Karua:** Informally!

**Mr. Anyona:** Well, informal or not informal, this is the truth. Truth whether formal or informal is the truth.

Mr. Temporary Deputy Speaker, Sir, we were told this, not only in the old Chamber, but everywhere, including the newspapers, that this Act was so flawed. And hon. Kibaki was very loud about it. My position has always been that there were no flaws in this Act. The Act was the way we designed it. It was agreed that this was the way to design it, so we should have been more honest to say that the goodwill was lacking and we now had to spill it all out. So, we said there were flaws. The first thing was to deal with these flaws, secondly, establish the Commission and thirdly, co-ordinate the process because once, this process starts, we do not want any other hiccups. If there are hiccups, then Parliament should have a role of ensuring that it is being run smoothly.

Mr. Temporary Deputy Speaker, Sir, then the question of Membership came up, which has been another issue. We have been accused of having included hon. Members who objected. The point is that according to the procedures of the House, once the House has appointed a Committee, the House Business Committee is required to nominate the Members. That is what happened. Then the Deputy Leader of Government Business came to the House and read out the names procedurally. Some people objected and said that they did not want their names to be included. They refused to take their places in the Committee. We have been accused of having included their names in the Report. All we have done is to record the historical fact that a Committee was established, Members were nominated by the House Business Committee, the names were read out before the House, and that they did not take their places in the Committee for different reasons, and that at least, two of them having participated in the Committee, absconded the Committee, but they did not resign legally. In spite of what happened here, the correct position is that once the House Business Committee has appointed you as an hon. Member of the Committee, and the name has been presented before the House, the only option if you do not want to serve in the Committee, is to resign under the provisions of Sections 121 of the Constitution of Kenya. There is no other way. You cannot do it by protesting in the House, shouting in the Press or by going to Ufungamano House.

**Ms. Karua:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. Member to claim that the names which were included in the Committee had been agreed upon by the House Business Committee when the record of the HANSARD of 16th December, 1999, on page 17-29 clearly shows that those names were not agreed upon by the House Business Committee? The Speaker, subsequently ruled that those names must be expunged. Could the hon. Member now contest the ruling of the Chair? Is it in order?

**Mr. Anyona:** Mr. Temporary Deputy Speaker, Sir, I am not contesting the ruling of the Speaker. All I am saying, and if you like, this is my opinion, and I express this opinion on that basis, is that in spite of what had happened, the correct position constitutionally is that once I am a Member of a Committee, the Chair has no right to remove me, the party has no right to remove me and nobody has a right to remove me. I can only resign under Section 121 of the Constitution of Kenya. I would like to invite hon. Martha Karua to go and read the Constitution. That is the only way out.

Therefore, the hon. Mwai Kibaki and those who went away, never ceased to be hon. Members of that Committee. In actual fact, they were Members of that Committee and still are Members of the Committee. They did not attend meetings and they were just absent.

*(Applause)*

Mr. Temporary Deputy Speaker, Sir, with regard to the question of the Commission, clearly, the problem was in the provisions of Sections 3 and 4 of the Act, which was, if you like, a gentleman's agreement. This agreement did not work. It would have been ridiculous for this Committee to come back with either the same formula or a formula basically the same as that formula. To say that there should be an effort to cajole people and reconcile them, I can assure you, I have been through a lot of these things and I have developed a lot of patience. I have been very patient in this issue, but I reached a stage where I realised that it was not possible to bring people together because they did not want to be together.

Many times in the Drafting Committee, hon. Sunkuli was almost forced to walk away because certain accusations were made against KANU. I told them that hon. Sunkuli was an hon. Member of the Committee and he was telling them the truth about what his side was saying, and I did not think that it was right to crucify him. That is how we managed to end up together. Mr. Kivutha Kibwana wanted to walk away, but we cajoled him and he did not walk away. We stayed together. But I realised for once that in this process, it was not going to be possible for people to come together.

The truth of the matter is that some of these people do not believe in the review of the Constitution. They want to use it as an excuse to make a case for capture of power. I do not know whether the hon. Martha Karua will challenge me again, but the Democratic Party of Kenya (DP) loudly said that it did not want reforms until after the year 2002. Clearly and everywhere, it went telling its people that it did not want reforms.

**Ms. Karua:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Anyona in order to mislead the House that DP has said that it does not want reforms, when it is on record as stating that the Constitutional Review must and should be complete before the next general elections? Perhaps, it is his party that does not want reforms. Is he in order to mislead the House?

**The Minister of State, Office of the President (Mr. Sunkuli):** On a point of information, Mr. Temporary Deputy Speaker, Sir. I want to inform hon. Anyona that, in fact, hon. Kiraitu Murungi once when seated with me here, told me that the DP's intention was to leave the stalemate where it was and anybody who tried to unstick it, would get into trouble.

**Mr. Anyona:** Mr. Temporary Deputy Speaker, Sir, I would like to respond to the point of order. The point is that some of us---

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

**The Temporary Deputy Speaker (Mr. Musila):** Order, hon. Martha Karua! I think the Chair ruled and urged that you should cause as few interruptions as possible. I think that was a point of information. Hon. Kiraitu Murungi is not here to dispute what hon. Sunkuli has said and you cannot dispute it.

**Ms. Karua:** Mr. Temporary Deputy Speaker, Sir, I do not intend to dispute it.

**The Temporary Deputy Speaker (Mr. Musila):** So, what is your point of order?

**Ms. Karua:** Mr. Temporary Deputy Speaker, Sir, my point of order is that a person who is not in the House ought not to be dragged into the debate when there is no method of bringing in the accuracy of what he said.

**Mr. Anyona:** Mr. Temporary Deputy Speaker, Sir, the DP has the advantage of "eating its cake and having it." It can eat it and it still has it. It has it today, tomorrow and many years to come. This is not possible because this is another country that we are talking about now. You cannot twist Kenyans around your little finger for ever. You are treating other people as if they do not know what is going on. I have been in this game much longer and I know these things because I have been told around these corners---

**Ms. Karua:** We are not a one-man party!

**The Temporary Deputy Speaker (Mr. Musila):** Order, hon. Karua!

**Mr. Anyona:** Well, it is better a one-man party than a conglomerate of tribalists!

Mr. Temporary Deputy Speaker, Sir, it was, therefore, necessary to change the mode of appointment. It was, therefore, felt that the mode of appointment must be controlled by Parliament. There is no group of people that you could leave to control the mode of appointments and hope that it would work.

Mr. Temporary Deputy Speaker, Sir, if I may say something about the so-called "stakeholders", we have been told about 54 stakeholders. Who are they? When we were sitting in the Attorney-General's office as the Inter-Parties Parliamentary Committee (IPPC), we invited applications from people and we got thousands of applications. We went



through them. Many of them were about the actual review of the Constitution. So, we said that we would put them aside. Some were about "do it this way", and so we said that we should put these together to create a mechanism and those became 54 stakeholders. But these were not the only ones. An impression is being created that there were only 54 stakeholders who were involved, but they were not. In any case, it was quite clear from the very beginning that in a matter of constitutional reform, the stakeholders can only be Kenyan citizens individually and collectively. Even this coinage of "Wanjiku, why do you want a constitutional process with a tribal bend? "Wanjiku" is a beautiful name and there are beautiful girls called Wanjiku.

The other day people came to the Committee and told us: "If you have Wanjiku, we also have Halima". So, why not have Moraa or any other name? You can see that the idea is to try and incite a certain section of our community to believe that this is their thing.

Finally, I want to say this: There can be no question of a parallel Government. There can be no question of mass action. If you go across the country, there is no mass action. This is just talked here in Nairobi and written in the newspapers! Kenyans believe in Parliament! We want Parliament to make sure that this process succeeds. A process is people-driven because you go and take the views of the people. A process is not people-driven by the people who control the process. Those people would like to control the process, and then say it is people-driven. People like the Official Leader of the Opposition, and the other Opposition parties who have walked out in the name of their community, are misleading their communities. Their communities are not with them. They have not consulted them. It is a betrayal and we will never succumb to blackmail!

With those few remarks, I beg to move, and request Prof. Saitoti to second.

**The Vice-President** (Prof. Saitoti): Thank you very much, Mr. Temporary Deputy Speaker, Sir. In seconding this amendment, let me say at the very outset that I do not intend to take very long, because I have already made my contribution. In fairness to other hon. Members, I do not think I will take long.

Suffice to that, I would like to say the following: If you read the Report very carefully, you will find that, in actual fact, it mentions the Kenya Constitution Review Act of 1997. It mentions certain aspects in the Act where amendments are to be made. Therefore, in adopting this Report, it is envisaged that a Bill will be brought to the House by the Attorney-General. What the amendment seeks is to state explicitly that once this Motion is passed the Attorney-General will bring a Bill incorporating the various recommendations contained in this particular Report. I think I should not go further than that, other than to say one thing, which I think is important.

First and foremost, I think it ought to be known that the Committee has done a very good job. The Committee did not say that it is the President who will appoint the commissioners. That is the misinformation that went out. The Committee has recommended that it is a Committee of this House that will come up with a list of 21 candidates who will become Commissioners. The list will then be presented to the President, who will pick 15 commissioners. There is no doubt at all that once the Bill comes here for debate, it will set out the modalities in which the 21 names will be sought.

The other thing which I think is important is that, the Committee, as opposed to what has actually been given out publicly for the purpose of distortion, was not reviewing the Constitution of Kenya. Rather, the Committee had the sole objective of setting the framework for the Constitutional Review process. So, if the Report is adopted, we will debate on a Bill presented here by the Attorney-General. Once we agree on the Bill, the review process will start. This is what we wanted to be done. But I think the Committee has done us a great deal of good. It has anticipated the fact that there must be a nation-wide debate on the constitutional matters. Kenyans will have a say on what country they require. It is in this respect that I commend the Committee for coming out with a suggestion that once the Commission is put in place, it will go all over the country to form what we call the "constituency forums," where people of all walks of life will offer their views freely. That is what is called "all-inclusive." It is not a Commission that will sit around and arbitrarily write us a Constitution. It will listen to the views of all Kenyans. Once it writes the first draft of the Constitution, it will be subjected to a national debate, which is divided into two. One will, once again, go to various parts of the country, listen to the people, hold seminars and forums and allow the people to comment on the draft Constitution. What better method do you want? Thereafter, a national conference will be held where all leaders, including religious leaders, will also have the opportunity to give in their critics. There can be no doubt that after that kind of appraisal, a document will be produced which will have taken into account the views of the people. Then, it will be returned to Parliament where it will be debated on. It can only be adopted by a two-thirds majority in this House. So, I think this to me is the most transparent way of dealing with the matter and doing justice to the people.

Mr. Temporary Deputy Speaker, Sir, I would like to finish by saying that I have been impressed by the very active role of hon. Ms. Martha Karua. Let me say this: Ms. Martha Karua has been consistent in her commitment to parliamentary obligations since she entered this Parliament.

**Ms. Karua:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Member in order to change from the debate at hand and start mentioning me, as though the debate was about Martha Karua? That may make me

lose the support of my people! Could he keep my name out of his contribution?

**The Vice-President** (Prof. Saitoti): Mr. Temporary Deputy Speaker, Sir, I am surprised that the hon. Member feels unhappy when I am paying compliments to her. I think I have said this one and I would like to state why. As we were discussing this matter here almost all the Members of her party, save for herself, walked out. I do remember that in 1997, when we were discussing the same matter on the constitutional process, while other Members of Parliament went to Ufungamano, Ms. Karua stuck to her parliamentary obligation. I salute her!

**Ms. Karua:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I am not the subject of debate! Is it in order for the debate to be changed from the constitutional review process to Martha Karua?

**The Temporary Deputy Speaker** (Mr. Musila): I thought the Vice-President was complimenting you! But if you object, then the Vice-President may stay clear of that!

**Ms. Karua:** I do not want to be complimented!

**The Vice-President** (Prof. Saitoti): Mr. Temporary Deputy Speaker, Sir, anyway, let me finish by saying that; whatever she sees these things, she will stand strong in the history of Kenya. There is no doubt about that. I have no doubt about that!

I would like to end very quickly by saying that it is the freedom of every Member of Parliament to either remain and participate in debate, or walk out. But I think where it goes wrong is when a Member of Parliament says that he will not participate in the debate, and goes into the streets to urge wananchi to riot, burn people's property and fight each other.

That is not what we were elected here for. Indeed, there is something which is very strange and ridiculous. We were appointed by wananchi here to come and debate on their behalf. They actually elected us to come to this Parliament. They did not elect us to go to the streets. I am sure wananchi must be feeling very let down on this matter. But what has really happened today? Members have walked out. They have gone to seek for mass action. Well, the religious bodies and those in Ufungamano have said "No".

Mr. Temporary Deputy Speaker, Sir, if anything else, their route is going to be a peaceful one. So, where are the Members who have walked out of here? They are neither in Parliament nor with the churches. I can only urge them that if, indeed, this debate does end on this Motion, when we do come to discuss the Bill when it is presented here, may all the hon. Members come here so that we can all put our heads together and discuss it. Let us hear their side of the story. They can even be able to persuade us first. They may come up with better ideas than we do have and, maybe, we may very well amend it.

Mr. Temporary Deputy Speaker, Sir, I beg to second.

*(Question, that the words to be added be added, proposed)*

**The Temporary Deputy Speaker:** (Mr. Musila): Mr. Biwott?

**The Minister for Tourism, Trade and Industry** (Mr. Biwott): Mr. Temporary Deputy Speaker, Sir, are we still on the amendment or just contributions?

**The Temporary Deputy Speaker** (Mr. Musila): We are still on the amendment.

**The Minister for Tourism, Trade and Industry** (Mr. Biwott): Mr. Temporary Deputy Speaker, Sir, I support the amendment.

**Mr. Anyona:** On a point of order, Mr. Temporary Deputy Speaker, Sir. We consulted with the Speaker and he said that because there may not be time to discuss the two separately, Members are free to discuss both in the course of the amendment.

**The Temporary Deputy Speaker** (Mr. Musila): Well, in that case, I can put the Question straightaway.

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

*(Question of the Motion as amended proposed)*

**The Minister for Tourism, Trade and Industry** (Mr. Biwott): Mr. Temporary Deputy Speaker, Sir, I arise to support the recommendations made by the Parliamentary Select Committee on the Constitutional Review process. The report as presented is very elaborate and answers all the questions that have been raised in the past. It is so good that I think its failure to capture the minds of the people has only occurred because we have become bad salesmen. I

think all it requires is good salesmanship. The facts are correct. The presentation is correct and the effectiveness of this Constitutional Amendment Act will have the impact which the wananchi want. So, I think the most important aspect of getting the message to the people is to secure a space in all the dailies in order to get the message directly to the people by publishing all the contents of the Report from page one to the last page. This is so that the people themselves can read and understand it. This is because failure to do that will allow those who are distortive to have a field day in distorting what is otherwise very good.

Mr. Temporary Deputy Speaker, Sir, I say so because if you look at the number of the composition of the Commission itself, you will find it is quite reasonable. They talked about 21 which is to be reduced to 15 by the President. I think that part of it might need some amendment. This is because why give the President a headache of choosing, out the 21, who shall form the 15? I think Parliament ought to be bold enough and take a decision as to one figure. That is either 21 or 15 and then the President can perform his constitutional role to appoint the chairman as suggested. In that way, we will leave the President to do his good job and all the difficult and nasty part of it, we can handle it here as we have handled everything in this House.

Mr. Temporary Deputy Speaker, Sir, in that presentation, the Committee has quite rightly ensured that every aspect of representation is included in it. For example, they have talked about women. So, there is already an in-built gender factor there. They have also talked about re-distribution through all the provinces making sure that at least one person comes from a province with a maximum of two. What more representation do you want? They have also ensured that there will be legal experts who can give people the professional content that is necessary.

Mr. Temporary Deputy Speaker, Sir, when you come to the constituency forum, you will find that the Committee has also done its job very well. They have made it possible so that the people-driven concept is actually manifested with the people themselves. It is direct at the grassroots itself where every member is able to relate to the Commissioners directly without the necessity of going through anybody. In that case, this type of representation which involves all the stakeholders and representatives is much better than the one which is being mentioned everywhere. If you look closer at the composition, you will find that in that district forum you have Members of Parliament, the clergy, community leaders, councillors, community-based organisations which may include the NGOs and individuals. Therefore, the question of stakeholder representation and people-driven Constitutional Review is actually manifested in that recommendation. There is nobody who can challenge that there is a better representation by mwananchi than through that district concept. This is why I am saying that it is necessary to get this message right across to the mwananchi by publishing the entire Report so that this salient aspect can come into being. If that happens, then all the arguments that have been advanced against the Parliamentary Select Committee Report will dissipate.

Mr. Temporary Deputy Speaker, Sir, there is also a further consideration that after the district forums, there is also a second chance for Kenyans to debate further the document as presented by the Commission. First, that the Report will be made available and, therefore, the wananchi will be able to have access to what is being recommended.

Mr. Temporary Deputy Speaker, Sir, how transparent can it be? It should be as transparent as anything else. It also talks about a national conference where all those who are participating will have a second chance to air their views and further to ensure that their views have been taken into account. But the most important aspect of this Report is the fact that it has been able to tackle the problem that bedeviled the earlier Constitutional Review Act. That is, the actual omission and the total absence of dispute resolution mechanism. We have now got a resolution mechanism established through the recommendation for the appointment of a Select Committee of Members of Parliament to oversee the operation of the Constitutional Review process in such a way that, it will ensure that there will be no stoppage and no friction as it has happened in the past.

Mr. Temporary Deputy Speaker, Sir, we failed in the last Act because that aspect of dispute resolution mechanism was totally absent. By suggesting that Parliament should take that role squarely on its own portfolio was the right thing to do because it is this House which is supreme and it is the House that generates all these legislations and it is this House which is responsible for any Acts which are passed here.

Why did we fail in the past? We failed because we went to Safari Park Hotel and the Safari Park Hotel meeting was not the result of those who are agitating; it was the result of the goodwill of this House, to remove a Bill which was already before the House and to take it out there to be discussed at the Attorney-General's Chambers. I happen to have participated in it and I know the whole process. It was the Parliamentarians who messed on inter-party basis, which decided that we should subject that Bill to public scrutiny and then we suggested the Bomas of Kenya be the venue. But at the Bomas of Kenya, we never resolved the whole thing; it further complicated the whole issue. We had to come back to the Attorney-General's Chambers where we had further discussions and decided that we had better take it to Safari Park Hotel. We took it to Safari Park Hotel and we had a few people whom hon. Anyona has mentioned; a few self-seekers. They came in there and they were self-propelled. There were no representatives and a lot of them had their own masters outside waiting to brief them. Each time there was a problem, they briefed them.

Mr. Temporary Deputy Speaker, Sir, despite the fact that the Committee was formed to draft the Bill, we still

had that Act flawed. Nobody can say that, that Act was not flawed. If anything, everybody has said that it was flawed and there was need to review it. The problem was who was to initiate the review. In the absence of a dispute resolution mechanism, there was nobody who could handle the whole thing. The Attorney-General, the President and this Parliament were "impotent". But Parliament has now given itself the role which it should have. It is, therefore, wrong for anybody to suggest that, any so-called stakeholder has been deprived--- This is because it is not true. Those who are arguing that way are perhaps ignorant of the true process through which the last Act went. Therefore, I am pleased that, at least, we have a Committee which we can be proud of; a Committee which has brought the document which will remain in this House as long as Kenya lasts, because it is a permanent document and it is a well-thought out and a well-written document.

Mr. Temporary Deputy Speaker, Sir, with regard to the question of civic education, I think the Committee has also seen the right light because there must be one person who determines the syllabus; otherwise, you will be teaching different subjects all together. In this case, we will be educating the people about the Constitutional review process. Who is best qualified to design that syllabus other than the Commission itself which will be directing the review process? It is important that we make it clear that all the other syllabi are irrelevant. The only one which is relevant is the one which will come through the Commission and which will come into force the moment we pass this Act.

Mr. Temporary Deputy Speaker, Sir, our critics have talked so much about the role of Parliament. In fact, some have gone to the extent of saying that Parliament is illegitimate. Others have gone to the extent of saying that, whatever is produced in this House is not people-driven and yet we have over 200 people who are directly elected by the people; the people who will be discussing the Constitutional Review in that constituency!

For those who have gone to the church and decided that they are the right people, I would say that, they should be careful lest they become the Pharisees who were quoted by Jesus. They went to the synagogue and said: "God we are the holiest and listen to us, do not listen to that pagan praying there, he is a sinner. He is no good." At the end of the day, it was that man whom they did not like, who was listened to and the Pharisee himself was found to be wanting. I think in this case, we can draw a parallel on that because it is actually what the people themselves want that is important. If you look closely, you will find that, it is not actually the Christianity that is bothering these people, it is not the church. It is the church which they are actually hiding behind. It is community interests which are being hidden behind the cross. It is wrong for any community to assume that in this daylight it is possible to dupe other people. I think everybody is very clear about what is going on.

**Ms. Karua:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Could the hon. Member be asked to substantiate which community or communities are hiding behind the church? He has made that statement and he is responsible for the accuracy of that statement! Could he kindly substantiate the statement?

**The Minister for Tourism, Trade and Industry** (Mr. Biwott): Mr. Temporary Deputy Speaker, Sir, indeed, I am responsible for the accuracy of my own statement. I repeat that, what is going on at Ufungamano House is actually more of a community interest than public interest. I am not going further than that because, first of all, I am wondering why it should concern hon. Ms. Karua. Is she, perhaps, suspicious? Is it because "the chicken is coming home to roost?"

**Ms. Karua:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Could the hon. Member substantiate his statement? We need your guidance! He has made a statement that there is a community which is hiding behind the religious group. It is only fair that the Members of this House are given the details of which community the Member is referring to and the truth of those allegations. This is an important national debate; let the Member be brave enough to name that community, whether Kalenjin or otherwise.

**The Minister for Tourism, Trade and Industry** (Mr. Biwott): Mr. Temporary Deputy Speaker, Sir, I think there is no doubt that hon. Nicholas Biwott is brave. I am brave. I am repeating that it is community interest that is bothering other people. If you are bothered, then I think the message has come home.

Mr. Temporary Deputy Speaker, Sir, with regard to the Parliamentary Select Committee, I happen to have been a Member of the House Business Committee and so was hon. Martha Karua and those who were there. It is true that when we proposed the names of those hon. Members who were to be members of this Committee, hon. Martha Karua and hon. N. Nyagah, were opposed to it. The duty of the House Business Committee was to appoint those names and we did it in their presence. We decided that it was up to them to come to this House and resign. "A roll-call" was read in this House and each Member was supposed to indicate whether he or she was going to be in the Committee or not, and that happened. So, there is no question of anybody being excluded in that Parliamentary Select Committee. It was as fair and as representative as possible.

**Mr. Anyona:** On a point of information, Mr. Temporary Deputy Speaker, Sir. I think we have got to set the record right. If the House Business Committee advised the hon. Members to come to the House and resign, then that was a wrong advice. They could only come and move an amendment to have their names removed by the House or resign in accordance with Section 121 of the Constitution of Kenya.

**Ms. Karua:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for an hon. Member to contest the ruling of the Chair of 16th December which stated that those names be expunged? If any hon. Member thinks that is not the law, they cannot contest the ruling of the Chair. But if the Chair is sufficiently convinced, it can issue another ruling!

**The Temporary Deputy Speaker (Mr. Musila):** To the best of my recollection, last week on Thursday, the Chair did make a ruling on that particular matter. So, I would not like to go into that. If he said he will make a ruling, then let us wait for it. In the meantime, the debate should continue!

**Mr. Anyona:** Mr. Temporary Deputy Speaker, Sir, I was not talking about the Speaker's ruling. I was giving hon. Biwott some information to the effect that those Members could not come here and resign. They could only come here to move an amendment that their names be deleted and the House would then debate whether to delete them or not.

**The Temporary Deputy Speaker (Mr. Musila):** Very well, Mr. Anyona, your information has been taken. Continue, Mr. Biwott.

**The Minister for Tourism, Trade and Industry (Mr. Biwott):** Mr. Temporary Deputy Speaker, Sir, I am grateful for that information although what I have said is consistent with what he is saying. We told those Members who were there that we could not do anything about the nomination of those hon. Members to the Parliamentary Select Committee because it was in accordance with the Standing Orders and also Constitutional. It was up to them to come and remove themselves here through whatever process which was available. Those names came to the Floor of this House and everybody had a chance to decide. What I am trying to say is that there has never been any malice in the intention of the Parliamentary Select Committee. The intention was to at least make the Constitution of Kenya Review Act to be operational because it was stuck and it had to be unstuck. It could only be unstuck by this House and we did the right thing. They came here and decided not to participate, but that was within their right. But it is a pity that some hon. Members cannot sit in this House and tell us what exactly is wrong with the recommendations of the Parliamentary Select Committee. This could have been a golden opportunity for them to correct it instead of going to Ufungamano. We only go to Ufungamano House for salvation, reconciliation of man and wife, and to find our way to heaven. But it is in this House that we generate legislation. We are here with the full mandate of the people of this country. I am quite sure that all those who are sitting in Ufungamano House, be they religious groups or otherwise voted for a Member of Parliament. So, why can they not have faith in the Member of Parliament whom they voted for to come here and tell us what ideas they have?

Mr. Temporary Deputy Speaker, Sir, those people who are spearheading the Ufungamano initiative are misleading the people of this country because they are producing documents which cannot be legalised. To talk about mass action amounts to blackmail. As hon. Anyona has said, the people in the countryside are not with them at all! It is only those people in Nairobi. That kind of approach does not help at all. What constitutional advancement can anybody make through mass action? Mass action is civil disobedience! These people are involving religious people, but religious people are there to preach peace, goodwill, unity and better understanding. How can we understand each other when we are having mass action and threatening people here and there? Who are they threatening? Why not come to Parliament and say what you want? Here we have all the privileges on how to go about this issue. So, we would like to appeal to all Kenyans to support the Parliamentary Select Committee's recommendations. It is those recommendations that can advance this country into the next stage. Let every Kenyan contribute through the forum which has been set up directly but not through individuals. If you look at the composition of the Commissioners they have appointed, it is neither transparent nor representative. If one was to go by gossip, which I do not want to do, it is being said that there was a lot of quarrel. They are not even agreeing amongst themselves, let alone advancing something that is credible.

Mr. Temporary Deputy Speaker, Sir, I think it is time that Parliament took its role seriously and it is for every Member of Parliament to accept that all other Members of Parliament are equal, and that every community in this country is equal to the other community. There is no community which has got superior ideas or interests than the other. We have got to accept that we have got one country and one people who have got one common good. To try to undermine that through other methods is not good.

Earlier on when he was contributing, hon. Sunkuli said something which needs to be re-emphasized. If you look at the list of those people who are calling themselves "stakeholders," they are actually one and the same thing. In some cases, they are representatives of NGOs and we know that NGOs are not free in themselves. We know that they are an extension of other forces which are funding them. Those people cannot be taken seriously because they do not represent national interests. They represent other interests which are not disclosed because they are not transparent. We do not know when they were formed or what they were mandated to do. All we know is that they are pressure groups. So, we need to know that every Kenyan has the ability to assess and see through any machinations. One cannot hide behind veiled curtains.

Mr. Temporary Deputy Speaker, Sir, let us not allow this diversion where people are being made to believe that there is something called people-driven and parliamentary-driven. In fact, if there is any institution which is people-driven, it is this Parliament. If there is any system which has been devised now and which will ensure that the people drive it, it is this Parliamentary Select Committee's recommendation. They have talked about the grassroots, the unit being the constituency, where everybody is. The church is there and all organisations, including NGOs are there. The religious priests are actually practising there. There is also the councillor who is the grassroots representative. The elders are there, the women are there and the disabled are there and everybody we need to attend to. Those have been given direct access to the Commission. What more do you want for it to be people-driven? Is it the Ufungamano group? Even if we asked people where is Ufungamano, they do not, first of all, know where the building is, or what is the meaning of Ufungamano. If you talk about the religious organisations, they know of their priests. Where else can an individual access himself to his priest, other than in his own village, which the Parliamentary Select Committee's recommendation have recognised?

Mr. Temporary Deputy Speaker, Sir, it is important that we publicize the contents of this Report because, it is only by the people themselves reading the actual contents, word by word, will they be able to know the difference. We should not allow people to use the expression "people-driven" any more. That is being dishonest to wananchi. We want any other challengers to show any faults in the Report as it is at the moment. Let them focus on the Report which the Parliamentary Select Committee has produced and criticise it, because it is meaningful. Any good idea that will improve what we have, especially at this time when we are still amending it, will be welcome. But we cannot welcome it by calling for mass action. Mass action will not produce the Constitutional Review Act. It will not produce the Constitution that people want. It will produce chaos and we know what chaos will lead to and especially at this time when we need to be united, when we need to show the rest of the world that we have a viable Government, we have viable systems in this country; we have a legal system; we have law-abiding citizens and we know what enterprise is.

Mr. Temporary Deputy Speaker, Sir I think we should refrain from making wild statements that tend to discourage investors. There was an hon. Member who had supported some action, I think, that Member must have been young in the early stages when land transfer programme was being effected in this country. We went through the land transfer programme and it succeeded. In other places, they have not succeeded. So, we do not want to go through stages which other countries are creating out of their own problems, because they tend to scare investors.

Let me, finally, urge all those who are boycotting this debate to see sense and support the national cause; that is, the Parliamentary Select Committee's Report.

With these few remarks, Mr. Temporary Deputy Speaker, Sir, I beg to support.

**Mr. Kajwang:** Thank you very much, Mr. Temporary Deputy Speaker, Sir.

**Ms. Karua:** On a point of order, Mr. Temporary Deputy Speaker, Sir. We appear to have abandoned debate on the amendment of the Motion as proposed by hon. Anyona. Looking at Standing Order No.46, the manner of debating Motions and amendments is exactly the same. I do recall that after hon. Anyona moved the amendment which was seconded by the Official Leader of Government Business, Mr. Temporary Deputy Speaker rose and proposed the question. Thereafter, debate commenced as though the amendment did not exist. According to the Standing Orders, two questions cannot be put at the same time. The question on the proposal for the amendment and the question on passing the amendment cannot be put all at once. I am therefore, seeking your guidance whether it is in order to proceed with the debate on the Motion when the amendment has not been disposed off. I am saying this, knowing fully well that this particular debate has been riddled with irregularities. I would also like to draw your attention to Standing Orders No.46 through to 48 on the procedure that should be adopted. It will amount to a fatal blow if we continue with the debate as though there was no amendment moved and without giving us a chance to contribute to the debate. I oppose the amendment. Is it in order to proceed with the debate and to gag us?

**Hon. Members:** It was debated!

**The Temporary Deputy Speaker** (Mr. Musila): Order! Order, hon. Karua! You are quite right, but I would like to explain here that, after the question was proposed, there was no person wishing to contribute. You were not even sitting on that side of the House. Indeed, I would have allowed debate if there was anyone willing to contribute. Therefore, I proceeded and put the question to the amendment which was carried. Then, I proceeded and proposed the Motion which we are now debating. Proceed, Mr. Kajwang'.

**Mr. Kajwang:** Mr. Temporary Deputy Speaker, Sir, you have already ruled. I think this is now heckling.

**Ms. Karua:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I am very sorry to rise on a point of order twice. It is true I was not on my seat, I was at the Bar. Mr. Temporary Deputy Speaker never sat after proposing the question on the amendment. Both questions were proposed without Mr. Temporary Deputy Speaker sitting. We are distorting the procedures of this House.

**The Temporary Deputy Speaker** (Mr. Musila): Order! Order, hon. Karua! I think, we have given you adequate time. There is no question about me standing here, proposing a question---

**Ms. Karua:** You know what you did!

**The Temporary Deputy Speaker** (Mr. Musila): Order, hon. Karua! I cannot propose a question and put it at the same time. Order, hon. Karua!

**Ms. Karua:** You never sat down---

*(Ms. Karua argued from her seat)*

**The Temporary Deputy Speaker** (Mr. Musila): Order! Hon. Karua, I believe you know the rules of the House. I am on the Chair, standing and you continue arguing. I think, I am knowledgeable enough. I cannot definitely propose a question---

**Ms. Karua:** You did!

**The Temporary Deputy Speaker** (Mr. Musila): Order, hon. Karua! I cannot propose a question and put it at the same time. Therefore, your point of order is overruled.

**Mr. Anyona:** On a point of order, Mr. Temporary Deputy Speaker, Sir. First of all, there was an impression that I was entitled to the right of reply. I was consulted by the hon. Karua and I told her I have no right of reply under this kind of amendment.

**Ms. Karua:** I did not consult you!

**Mr. Anyona:** Well, I thought you are talking about honesty. So, I did say that under these procedures, I had no right of reply. Secondly, you proposed the question and sat down. Then, the hon. Biwott wanted to contribute on the amendment and he sought your guidance whether he should contribute both on the amendment and the Report. You ruled that he should contribute on the amendment and allowed him to proceed. Then, I intervened to inform the Chair that there had been consultation with the Speaker earlier on and it is common practice here that in some cases, you can debate both the amendment and the original Motion together. In this particular case, the Speaker had advised that since there may not be enough time, Members are free to debate both the amendment and the original Motion. That is how I managed to do it, myself. Otherwise I would not have been able to debate on the Report.

Mr. Temporary Deputy Speaker, Sir, it is at that point in time that you decided to put the question. Truly, this particular amendment was a procedural amendment because there was no different substance from the original Motion. So, in your own wisdom as the Chair, you decided to put the question and I see nothing unprocedural about that.

**Ms. Karua:** Is that a ruling?

**Mr. Anyona:** No, it is my opinion.

**Mr. Maundu:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I think, this is a very important Motion and issues that are being raised by the hon. Karua are rather disturbing. Is it possible for you to look at the records once again and give a comprehensive ruling, so that we do not illegitimise such an important Motion?

*(Applause)*

**The Temporary Deputy Speaker** (Mr. Musila): Mr. Maundu, I am very clear in my mind. Mr. Anyona has clarified very clearly what happened. As a matter of fact, you were not even in the House. Therefore, may we continue with Mr. Kajwang'?

**Mr. Munyasia:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is hon. Karua in order to mislead this House that she did not know that you had put the question on that amendment when, at the time you put that amendment, she was standing by you? After all of us had said "aye", when you asked those who were opposed to say "nay", she said "nay"; she was the lone voice that said "nay". So, is she in order to turn around and say that she did not know that the question had been put? In fact, I wanted to raise the matter that Ms. Karua was not respecting this House's rule regarding voting. One is not allowed to vote from the Bar.

She had not quite entered into this Chamber when the question was put. Where she was standing at the time the question was put to vote is like being at the Bar. She voted from there!

**Ms. Karua:** On a point of order, Mr. Temporary Deputy Speaker, Sir. It is true that I was at the Bar when the question was put to vote. If the hon. Member failed to raise a point of order then, it is too late for him to do so now. You were proposing the question to the amendment.

Mr. Temporary Deputy Speaker, Sir, however, to my amazement, without sitting, you proceeded to propose the next question. That is a distortion of the---

**The Temporary Deputy Speaker** (Mr. Musila): Order! Order! Ms. Karua, it would appear that you are trying to provoke the Chair, so that you can be excluded from our proceedings. I am sorry; I will not take that action. Mr. Kajwang', proceed!

**Mr. Kajwang':** Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me the opportunity to contribute to this Motion. I would, first of all, like to say that I was honoured to be a Member of this Committee, and that I enjoyed working throughout its sessions.

When I was a lecturer of law at the Kenya Polytechnic in 1982, I came to this House to listen to a very important debate. On that day, I sat in the Public Gallery. The Attorney-General then was hon. Kamere. I saw him from the Public Gallery standing somewhere herein, and said: "This House made this Constitution, and this House will this afternoon change this Constitution". That afternoon, Parliament wanted to include Section 2A into the Constitution. I was not very happy with that idea, but I could not say anything. Then, I saw hon. Kibaki stand up and support that Motion. On that day, hon. Orenge and hon. Abuya-Abuya tried to raise points from somewhere here. Then, hon. Njonjo asked: "Who is that, Mr. Speaker?!", and I saw the two hon. Members go under the Table. That was a very bad afternoon. I made some noise to the effect that what was going on was not very proper, and I was whisked out of the Gallery. I went back to the Polytechnic and told my students that I had witnessed an amendment being passed very fast; I had never seen something like that happen before.

Mr. Temporary Deputy Speaker, Sir, what I want to illustrate is that this House made the Act we now want to amend. We have the power to amend this Act, and nobody should tell us that we should go back to Ufungamano House, or to Bomas of Kenya, or County Hall, or any other place, if we want to amend it. This House made this Act, and this House has the power to amend it. This is what people think about us.

*(Applause)*

One thing that everybody else and the Press has not told this country is that the Safari Park Hotel talks on the Constitutional Review process ended in a deadlock. The Press has not told us this; all those people who have spoken on televisions and radio have not said this. The Safari Park Hotel talks ended in a deadlock because those talks never settled the question of the appointment of commissioners to the Constitution of Kenya Review Commission. Those talks ended up setting up a small committee called the "Sulumetti Committee" which, later on, reported back to other stakeholders and said: "We have looked into every issue and agreed. But on how to share the Commission's seats, we are sorry, we could not agree". They published the Constitution of Kenya Review Commission Bill, 1997, which was passed in this House without agreement on the modalities by which the Commission seats would be shared out among the various stakeholders.

Therefore, to say that we should go back to Safari Park Hotel and agree on a modality of sharing the Commission's seats is like saying that we should go back to where we came from. There is nothing new that will come out of any other Safari Park Hotel talks, because previous such talks ended up in a deadlock regarding the sharing out of the Commission's seats. Also the Sulumetti Committee and the subsequent County Hall talks ended in a deadlock on how the Commission's seats should be shared. This House has the responsibility of making sure that the impasse is, at once, removed, so that we can go on with the process.

Mr. Temporary Deputy Speaker, Sir, that Bill was brought to this House with a lot of flaws, and we passed it without agreeing on how to share the number of seats in the Commission. However, later on, we realised why we could not agree on this issue. We did not agree on this issue because people realised that everybody wanted to become a Commissioner, so that he would be a delegate of the person who would have appointed him, or her. The National Development Party (NDP) wanted two seats, because we had certain numbers in Parliament, and because we wanted somebody to represent our party's interests. The ruling party's Secretary-General was emphatic that his party should either have seven seats or there would be no deal. This was because KANU had realised that people wanted to go into the Commission to represent their interests. So, there were vested interests.

People did not agree on how to share the seats in the Commission because each group had vested interests; they thought that the Commission would be delegates conference. Of course, the Commission was not to be a delegates conference. In a delegates conference, people have vested interests; they know what to vote for, vote against, and what to agree to, once they participate in the conference. Delegates conferences are characterised by "arm-twisting", "pulling", and other things. You cannot have a Commission that is like a delegates conference; it will not work anywhere in the world, because its members will disagree on everything. If the members of the Commission go to its sittings with the mentality of delegates, they will not move in any given direction. The members will not even elect their chairman, because everyone will say: "Anybody who is elected the Chairman, he, or she, will be the greater stakeholder". We talk about stakeholding because we think of people going into the Commission as if they are holding some steak of meat. There is no meat to be eaten in the Commission. We have told those gentlemen that there is no steak in the Commission.

Mr. Temporary Deputy Speaker, Sir, in any event, who is this person being referred to as "the stakeholder" in the Constitutional Review process? Just for the purpose of argument, let us assume that Prof. Kivutha Kibwana of the



National Convention Executive Council (NCEC) is a stakeholder. He is a stakeholder, first, as the convenor of the NCEC. Secondly, he is a stakeholder as a member of the Law Society of Kenya (LSK). Thirdly, he is a stakeholder as a member of a church, or whatever faith he belongs to. He is further a stakeholder because of his sex; I have heard that the Women's Political Caucus is also a stakeholder. So, the men's political caucus must also be a stakeholder. Of course, the stakeholders are citizens of Kenya. Prof. Kibwana is also a stakeholder because he is a member of a political party; I do not know which party he belongs to. He is, further, a stakeholder because he is a Kamba. How can one divide himself into so many stakeholdings?

*(Applause)*

Things cannot work that way. One must choose one way by which to be represented as a stakeholder. He should decide whether he wants to be regarded a stakeholder because he is a lawyer, a Kamba, a member of a church, or whatever. That is where we went wrong. The only stakeholder in this country is the citizen, and the only institution that represents the interests of this country's citizens is Parliament. I was voted into this Parliament by 39,000 people, who sent me here to debate on their behalf, everything that concerns the law and the Constitution of this land. Those people have not sacked me yet, and I am doing my job. So, Prof. Kibwana cannot tell us that because he has the NCEC, which he has convened with a *Muhindi*, he can now control this country. He cannot turn around and speak on behalf of the people of Kenya and say that they should now go to the streets. When he talks to the people of Kenya, who does he address? Then, he says that Parliament is irrelevant in the constitution-making process!

This Parliament is full of people who have no brains. Of course, he taught me and he is a professor, but I have some brains. I can assure Prof. Kivutha Kibwana this. Let us go to Dr. Kamau Kuria, who is another friend of mine. He is the Chairman of the Law Society of Kenya (LSK) and, therefore, he is a stakeholder there; he is a member of the ICJ and he is also a stakeholder. I would like to inform this House that Dr. Kuria is a member of the CPK and, therefore, he is a stakeholder; he is a man and so he is a stakeholder; he is a citizen and, therefore, he is a stakeholder. I would further like to say that Dr. Kuria is a stakeholder since he belongs to the DP; he is a Kikuyu and, therefore, a stakeholder. Where shall we go with these stakeholders? He is a member of the Central Province Assembly which was formed the other day.

*(Applause)*

I would like to say that the only thing about this stakeholder business is that there are some people who are too vocal in this country. They are too loud, have a lot of money and the Press is with them and so every time Prof. Kibwana talks, one thinks that the country is talking. When Dr. Kuria talks, you think that the whole of the LSK is talking. He is just representing a few elite people. So, I have told these stakeholder business people to leave us a lone, because we are the real stakeholders in this country and we represent the real stakeholders.

Mr. Temporary Deputy Speaker, Sir, look at these people who call themselves stakeholders, for example, the National Convention Executive Council (NCEC) and the CCCC--- I would like to inform this House that Prof. Kibwana and Dr. Willy Mutunga are members of both the NCEC, the CCCC, the LSK, Human Rights Commission (HRC), the Catholic Church, the Anglican Church and the National Council of Churches of Kenya (NCCK). All these are from one community, and this cannot happen. These people claim that they talk for the people and, yet, they have not talked for the people from Subaland and Turkana District. I would like to say that this country is bigger than Central Province.

Let me tell this House something. One time when I was a student at Makerere University, Mr. Milton Obote who had just been elected the President of Uganda was accused of rigging the elections by the Democratic Party of Uganda (DP) which had lost the elections to the UPC. Although President Obote had lost in the Buganda Province, they were saying that the Buganda people had rejected him and President Obote told them that Buganda is not Uganda. So, I would like to say that Central Province is not the Republic of Kenya.

The people of Kenya have spoken through this Parliament, and we will continue to speak through this Parliament. We have said that if this House adopts the Select Committee's Report this is what is best for the country. We went to the structure and after looking at all those scenarios, we said that Parliament is at the heart of this change. We said that Parliament will play the major role, direct and drive. I would like to say that when Parliament drives, it is the people who are driving. This is because Parliament is not anything unless people put it together.

Mr. Temporary Deputy Speaker, Sir, the biggest mistake that was made in this country was to think that Parliament and the President could be excluded. How do you exclude a Head of State, when you want to go and negotiate whether there will be a Head of State or not?

*(Applause)*

This is a serious matter. The Constitution can even state that we shall not have a Head of State, if that is what Kenyans want; then you tell the sitting President that as you are discussing whether he will be there or not to get out as if he is not a stakeholder and never got votes in this country from people who support him. This was a big mistake. We further say that the Attorney-General (AG) should be out. You want to make a law in this country and there is a Constitution which is running, and you tell the AG that as you make the law, he should be out. Those are grievous mistakes made by people who have never seen where a law is made. I do not know the kind of law that Prof. Kibwana teaches at the University, but I am sure that he teaches about the current Constitution. In that Constitution, there is a President, Parliament, Judiciary and the AG; the State Law Office. How do you make a new Constitution without basing it on the institutions that you have? If they make it that way, I hope they will not go anywhere with it. But if they were to succeed, this is what will happen; tomorrow after they have made it and it is passed by the House, hon. Kajwang's lobby group will come up and I will get hon. Otula and hon. Kanyauchi to have their lobby groups and say that we want to change the Constitution. After that somebody will tell us that we will have to go to the House, but we will refuse. We will tell him that we did not go to the House when the other Constitution was being changed. These people will then tell us that we must follow the law because there is a President and a court here, but we will insist that we should put those people aside. What we are trying to say is that we shall be governing this country in chaos. Every five or two years, a group will come up and say that it wants to change the Constitution, and when it is asked to follow the law, it will say that we have to put it aside, because that is what we are trying to do. We are trying to put the current Constitution aside to make a new Constitution. The next day, somebody will put the new Constitution aside to make another new Constitution. How many Constitutions will we have in 20 years?

*(Applause)*

So, anybody who wants to make law must follow the law and anybody who wants to make a new Constitution must follow the one which is in place. You cannot compare us with Uganda. I would like to inform this House that, that country broke down; people went to war and President Museveni shot himself to power. So, after coming to power, you make new friends and appoint members of your Cabinet and the Consultative Council, because there is no other law other than the law of the guy who shot himself to power. But in this country, we have had a Government running elections since 1963. There is no vacuum. So, how can somebody say that there is a vacuum which must be filled by NGOs and funny religious groups?

Mr. Temporary Deputy Speaker, Sir, I come from a place which is predominantly represented by Legio Maria. If you have not heard of Legio Maria, in South Nyanza, it is a very big denomination. I would like to say that this denomination is not represented, which is a very serious matter. I also come from a fisherman's constituency. The whole of Subaland is a fishing land. The fishermen in this area are a big group, which is bigger than Prof. Kibwana's group, but they are not represented. Who will represent them?

I would like to say that some people who are vocal, in Nairobi, could reach Bomas of Kenya and Safari Park Hotel and write some papers, and somehow some of their papers as hon. Anyona has told you were correct and so they were referred to as the stakeholders. Just because you could reach the Safari Park Hotel and Bomas of Kenya and write some papers, are you a stakeholder?

I would like to say that this House will pass this Report because I can see that it is very happy with it. Are we not passing it? Mr. Temporary Deputy Speaker, Sir, after we have passed it, we will urge the AG to bring a Bill before the House, which we will also pass because we want to go to the countryside and ask the people the kind of Constitution they want so that this country can be a new country.

Mr. Temporary Deputy Speaker, Sir, that is all I had to say.

Thank you very much.

*(Applause)*

**The Minister for Environment** (Mr. Nyenze): Thank you very much, Mr. Temporary Deputy Speaker, Sir. I would like to support the recommendations of the Parliamentary Select Committee. Parliamentary democracy is legitimate; Parliament is the one that makes laws and we have legislators who are very qualified. For anybody to say that they can do without Parliament, can make a Constitution or amend it in another place outside Parliament, they are cheating themselves.

The Ufungamano group is composed of people who are not elected and it is very unfortunate that we have a few hon. Members who have joined those religious groups and NGOs. The right people to make laws and amend the

Constitution are the peoples' representatives and this is the right place to do that.

Those who are talking about parallel governments or alternative governments that they want to form are also making a big joke because there is a Government in place and Kenyans do not want chaos. They want peace to do their businesses, trade and move to places of their choice without being injured or hurt. Those who are advocating for anything else to be done outside Parliament want to precipitate chaos into this country and we have to condemn them in the strongest terms possible.

They have talked about mass action. I am sure that Kenyans do not want chaos. They do not want to ruin what they have gained over the 30 plus years that they have been living in peace. It is just a few people who are blind to the wishes of the majority Kenyans. The people who are power hungry and want to get to State House are the ones who are advocating for mass action. I can assure you that this will not be done. It can never be achieved because Kenyans do not want chaos. This country is being ably led and ruled by the President. He has a Government in place. What many Kenyans may not know is that the Press has tried to create an impression that there is a vacuum. Surely, there is no vacuum; there is a President in place, the laws of the land and the Constitution that is used to govern this country. At no time has there been any chance for people to start forming an alternative government.

We want to have peace so that we can go about our businesses. What these fellow legislators who have walked out should have done is to address the problems that affect Kenyans most like rebuilding our infrastructure, combating the spread of HIV/AIDS, trying to fight insecurity together with us and those kinds of things. Walking out is a sign of cowardice. If you cannot debate the issues here with the other legislators the option left for you is to keep quiet and listen. Walking out is a very bad thing to do. You have been elected to come here and represent your people.

I am a stakeholder and I do not think that I can ever go to Ufungamano at any time to purport to be representing people because that is not Parliament. Parliament is the supreme authority in this land to make laws and it is the place where major decisions are made in governance of any country and it should be respected. The dignity of the House should be upheld as we have always been reminded. It is very wrong for people to walk out, start singing and making noise. Some few NGO's which are based in urban centres, and more so in Nairobi, have sort of started assuming leadership of this country. NGO's have a hidden agenda and unless they are checked they will cause chaos.

We also know very well that some of these NGO's, for the purpose of getting funded, they have to make a lot of noise to justify their activities and show the donors that they have something to do and that they are conducting civic education. They are doing this just to make the donors give them money. This is greed, hypocrisy and it should be stopped at all costs. Some people have formed several NGO's. We know that they have been getting funds. They cannot account for these funds, but they are the ones being used to cause chaos in this country. There is a Government in place and Kenyans love their Government and their President. Kenyans elected the legislators here in this House and they will not allow all their gains to be wiped out either through mass action, demonstrations or unrest. Nobody wants to lose their lives.

It was wrong for those hon. Members to have incited people. To tell them the truth, since the first day they walked out, Kenyans have refused to identify with them. That is why they are always meeting either in the Old Chamber or they are out there talking. Nobody wants to follow them because no one wants chaos. We are very fortunate to have His Excellency the President ruling this country because this is a man who has devoted all his time to preaching peace, love and consideration for the less fortunate. That is why if you look around at all the countries surrounding us, Kenya is an island of peace. There are wars in countries like Somalia, Sudan, Ethiopia and Eritrea, but in Kenya there is peace. Surely, do the legislators want us to be like those countries?

**Mr. Ochillo-Ayacko:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the Minister to continue making irrelevant remarks when we know that what is being debated is the Report?

**The Minister for Environment (Mr. Nyenze):** Mr. Temporary Deputy Speaker, Sir, I am talking about the Report, but I just wanted to elaborate that without this Constitution getting the required support, there will be a lot of chaos as advocated by the people who walked out. I do not think it is wrong to say that His Excellency the President has preached peace and we should at all times cherish and protect that peace. We are lucky and that is why we do not want chaos in this country. If we do not talk about what we have achieved, how will people know? If we do not talk about these things, how will the masses outside know the dangers of engaging in other constitutions that will be made outside Parliament? This was not to digress, but to remind hon. Members that His Excellency the President has contributed to the peace that we have. That is why I am not ashamed to say that the President is God-given and people-elected. We pray that he continues to rule.

The recommendations by the Parliamentary Select Committee are very appropriate. We had very qualified people in the Committee like hon. Anyona. He is someone who knows law in and out and is one of the oldest Members of Parliament seated here. He has a lot of experience and in most cases I see him quoting from the Standing Orders without referring to that booklet. We had very qualified lawyers in the Committee who came up with a very good Report. We should support it by all means. The church should preach peace. The *Bible* says: "No government is

formed without the blessings of God."

Mr. Temporary Deputy Speaker, Sir, church leaders at Ufungamano House should know there is no government without a Constitution. There is no government that God can allow to prosper and continue ruling if it is not blessed by Him. Therefore, they should support the Government of the day, instead of doing what they are doing. It is a pity that NCKK is seen to be fighting only for a section of a certain community in the country. Most of those NGOs and churches which are affiliated to NCKK and hon. MPs who walked out are from one community. This community is not Kenya. There are so many people who have been left out in Ufungamano House. For example, my church is AIC and it is not represented in Ufungamano House. The chairman of our regional church council, Pastor Rev. Ndeme Munyoki, does not know what is going on in Ufungamano House. If all churches are represented in that group, surely, why not AIC which is a dominant church in Ukambani? So, which churches are represented at Ufungamano House?

Mr. Temporary Deputy Speaker, Sir, a few days after those people met at Ufungamano House, they held a rally at Uhuru Park which was attended by very few people. The following month we saw a big congregation of other churches which were left out by the Ufungamano group. That group supported the Raila-led Parliamentary Select Committee on Constitutional Review process. Those churches were the majority. Which are those other few churches represented in Ufungamano group? They are churches from Central Province. Let me tell our friends, hon. Members and church leaders from Central Province, that by doing what they are doing, they are isolating themselves more from the rest of Kenyans. They may think that supporting the Ufungamano Initiative is a short cut to State House, but I would like to tell them that it is a long route they are taking and other people might reach there before them. You should have supported this Report because it is the only gentleman's way of doing things. It is sad that you do not support anything that you do not agree with; you protest and walk out. What about if all other people walked out of you and said the Ufungamano Initiative is a Central Province affair? Would you not be left out alone? So, your actions will isolate you even more. I urge you to rethink your position.

Mr. Temporary Deputy Speaker, Sir, I am very happy that not all hon. Members from Central Province walked out. I can see hon. Kamotho. With all due respect, he is a Kikuyu and this shows that even they are in this process. I think it is a positive thing. Even hon. Karua, staying here shows that people of Central Province are also represented here. So, this is not a tribal thing. Ufungamano group is a group of a few misguided people with self-interest and they want to get to State House by all means. What you are doing to Kenyans will reflect very badly on you because they will group against you and you will not go to State House. This is because they know that if it is not one of you, then hon. Anyona or hon. Raila should not get the credit in this process. This is trying to intimidate other people by saying that if they do not agree to what you want, you will go to the streets. Suppose I go to Kambaland and urge wananchi to go to the streets, what will happen? You do not have the monopoly of mobilising people. If you want to go to the street and fight, know that there are better people than you. If we get to that situation, you will lose. Let us not reach that far. If legislators incite wananchi to war, how sure are you that you will win? Let it be taken correctly and, please for heaven's sake, and for the sake of peace, let nobody talk about mass action. This is because most of hon. Members who staged a walk-out own most of properties in Nairobi. If shops were to be burned, what will happen to their properties? Maybe I do not have a property in Nairobi, but I know mass action will destroy everything in Nairobi because this is where it will be concentrated. Who are the biggest investors in Nairobi? Do not be blinded by mass action. You are trying to detonate a bomb. This is a power cage where you are trying to ignite something that will consume you. For heaven's sake, do not incite wananchi to go to the streets. Peace will give us prosperity. We need God's blessings. Let us support the Constitutional Review Process in this House.

Mr. Temporary Deputy Speaker, Sir, there is no way we will keep the President out of this process, saying that he is not a stakeholder. The President is the biggest stakeholder because he got more votes than anybody else in this country. Who else got as many votes as the President? So, let us not kick off other people because they do not belong to our tribe.

Mr. Temporary Deputy Speaker, Sir, the citizens of this country have a lot of confidence in Parliament. That is why after they were called for mass action, they refused to go to the streets. When those hon. Members failed to incite wananchi to mass action, they started saying: "You know mass action can also be pervasive by our people refusing to do certain things?" This is very wrong. For heaven's sake, nobody wants their children and families to be hurt. Those of us who have not lived in a country where there has been chaos will talk about mass action.

**Mr. Munyasia:** On a point of information, Mr. Temporary Deputy Speaker, Sir. I wish to authoritatively inform hon. Nyenze that after they had been rebuked by religious leaders, our colleagues who matched out of this House are now behaving like trapped rats in a cage and they are considering coming back to vote on this Motion.

*(Applause)*

**The Minister for Environment** (Mr. Nyenze): Thank you hon. Munyasia. In fact, I had forgotten to mention that the Parliamentary Select Committee consisted of very intelligent people like Messrs. Kajwang' and Musyoka, who are very learned lawyers; Messrs. Munyasia, Biwott and Anyona, very intelligent legislators and hon. Raila with charisma. Who can dispute the fact that we had the best brains in the Committee that this country can produce?

Mr. Temporary Deputy Speaker, Sir, after our people refused to go to the streets and demonstrate, now those hon. Members are hovering like vultures here and they do not want to come in. But I think you will see them sneaking in one by one because I have been told by a friend that they are considering coming back. It will depend on whether we want them back or not. Anyway, they can come and support this Motion.

#### ADJOURNMENT

**The Temporary Deputy Speaker** (Mr. Musila): Order! Hon. Nyenze, sorry to interrupt you. You may continue with your contribution tomorrow.

Hon. Members, it is now time for the interruption of business. The House is, therefore, adjourned until tomorrow, Wednesday, 26th April, 2000, at 9.00 a.m.

The House adjourned at 6.30 p.m.