

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 21st July, 2005

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

QUESTIONS BY PRIVATE NOTICE

DESTRUCTION OF WATER CATCHMENTS IN TAITA-TAVETA DISTRICT

Dr. Ojiambo: Mr. Speaker, Sir, I beg to ask the Minister for Environment and Natural Resources the following Question by Private Notice.

(a) Is the Minister aware that there is on going destruction of water catchments in Mbale and Sagala locations of Taita-Taveta District?

(b) Is he further aware that on 11th May, 2005, and also on 9th and 10th June, 2005, Government lorry Reg. No.GK A755D and Toyota Land Cruiser GK A432H were used to ferry logs of timber from the destroyed forests to unknown destination in the district?

(c) Could the Minister inform the House who issued logging permits to the people involved in cutting trees in the catchment areas?

The Assistant Minister for Environment and Natural Resources (Mr. Kamama): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that there is on going destruction of water catchment in Mbale and Sagala locations in Taita-Taveta District. This is as a result of illegal cutting of trees in Madogo Forest and Sagala area within the district.

(b) I am not aware that a Government lorry Reg. No.GK A755D and Toyota Land Cruiser GK A432H were used to transport timber from the said areas. However, after thorough investigations, it was established that the lorry mentioned herein made a trip from Wundanyi to Thika on 11th May, 2000. It returned to Wundanyi on 12th May, 2005. My Ministry is yet to establish what this lorry was ferrying on the stated dates.

(c) I wish to categorically state that my Ministry has not issued any permit in the months of May and June, 2005, to the people involved in the illegal cutting of trees in the catchment area.

Dr. Ojiambo: Thank you, Mr. Speaker, Sir. This Question was asked in this House before. The Assistant Minister was asked to go and verify where those Government vehicles were on the stated dates and what they were carrying. I do not know why he has not contacted his officers to tell him what those vehicles were ferrying since he was not on the ground. Could he tell us what the two vehicles were carrying?

Mr. Kamama: Mr. Speaker, Sir, I have carried out investigations on this issue. I have also liaised with the relevant Ministry on this matter. However, we have not established what the two vehicles were carrying because they belong to another Ministry. However, I have contacted the relevant Minister to ensure that further investigations are done. If it is found that the lorry was

carrying timber, then serious disciplinary action will be taken against the officer.

Mr. Speaker: Mr. Assistant Minister, this is still a Government vehicle! Did you ask the other Ministry what the lorry was carrying, if it was not carrying logs?

Mr. Kamama: Mr. Speaker, Sir, I have contacted the Ministry. The officials told me that the lorry was not carrying anything suspicious. They further told me that it made a trip to Thika District on official duty.

Mr. K. Kilonzo: Thank you, Mr. Speaker, Sir. This Question is specific. We want the Assistant Minister to tell us where those Government vehicles were on those particular dates and what they were carrying.

Mr. Kamama: Mr. Speaker, Sir, I think I have answered this question. However, I reiterate that it was only GK A755D which commuted between Wundanyi and Thika District. We have information that, that vehicle was on official duty. That is our position.

Mr. Mwandawiro: On a point of order, Mr. Speaker, Sir. Mbale Location falls under my constituency. Could I be allowed to ask a supplementary question since I represent that constituency? I have gone round the constituency asking people to preserve the environment. The officers who have been charged with the responsibility of preserving the environment are involved in logging in Wundanyi and Voi constituencies. Could the Assistant Minister carry out independent investigations on this matter in order for the people of Wundanyi Constituency to have faith in the Ministry?

Mr. Kamama: Mr. Speaker, Sir, I undertake to carry out thorough investigations on this matter. Serious disciplinary action will be taken against those officers, if it is found that they are involved in the illegal cutting of trees.

Dr. Ojiambo: Mr. Speaker, Sir, this Question is very important because it touches on the preservation of our environment. Kenyans have been reminded again and again to preserve water catchment areas. However, those officials are promoting logging. As a result, they destroy water catchment areas. Could the Assistant Minister assure this House that his Ministry will preserve the water catchment areas and Government officials will not cut trees in the forests?

Mr. Kamama: Mr. Speaker, Sir, the protection of water catchment areas is the core function of this Ministry. I assure the hon. Member, who is also a crusader of environmental issues, that we will not entertain Government officials who are involved in corrupt activities. Appropriate action will be taken against those officers, if we find that they were involved in logging.

WATER SHORTAGE IN TIGONI SUB-DISTRICT HOSPITAL

(Mr. Kanyingi) to ask the Minister for Health:-

(a) Is the Minister aware that Tigoni Sub-district Hospital is facing an acute water shortage posing a serious health risk to both workers and patients?

(b) What immediate steps is she taking to ensure that water supply is restored before an outbreak of water-borne and other hygiene related diseases?

Mr. Speaker: This Question is deferred to Wednesday, next week!

(Question deferred)

IMPLEMENTATION OF REP IN SUBA DISTRICT

(Mr. Kajwang) to ask the Minister for Energy:-

(a) Is the Minister aware that the money allocated to Suba District under the Rural Electrification Programme for 2003/2004 and 2004/2005 amounting to about Kshs18 million was not spent in the district?

(b) What steps is the Minister taking to avail the said resources to Suba District forthwith to facilitate speedy connectivity of electricity to health institutions, schools, shopping centres and beaches?

Mr. Speaker: Mr. Kajwang not here! His Question is dropped!

(Question dropped)

REVISION OF AFD-REP QUOTATIONS
IN ALDAI CONSTITUENCY

Mr. Choge: Mr. Speaker, Sir, I beg to ask the Minister for Energy the following Question by Private Notice.

What reasons prompted the unilateral revision of the quotations given by the Kenya Power and Lighting Company (KPLC) to the intended beneficiaries under the on-going AFD Rural Electrification Programme in Aldai Constituency?

The Assistant Minister for Energy (Mr. Kiunjuri): Mr. Speaker, Sir, I beg to reply.

(a) Under the current rural electrification policy, subsidized electricity supply is extended to trading centres and public institutions such as secondary schools, health centres, community water pumps and polytechnics, excluding domestic households. This is because the Government cannot afford to subsidize all consumers since it costs an average of Kshs200,000 to connect a consumer. Given this situation, it was prudent to raise the token contribution by beneficiaries under the programme to Kshs15,000 for the Single Phase and Kshs40,000 for the Three Phase supply.

Mr. Choge: Mr. Speaker, Sir, my Question reads:-

"What reasons prompted the unilateral revision of the quotations given by the Kenya Power and Lighting Company (KPLC) to the intended beneficiaries under the on-going AFD Rural Electrification Programme in Aldai Constituency?"

Could the Assistant Minister tell us what prompted the KPLC to revise the quotations? He should not talk about water pumps!

Mr. Kiunjuri: Mr. Speaker, Sir, I believe I have answered the Question. The KPLC revised the quotation because of high costs of production. Things change everyday. Secondly, it should be remembered that this was for the welfare of Kenyans. Before it cost about Kshs40,000 per pole to connect new consumers. However, under the new programme, we charge Kshs40,000 within a radius of 600 metres. This is an advantage to Kenyans because no Kenyan could be connected with electricity without paying the actual charges.

Mr. Choge: Mr. Speaker, Sir, I have a quotation which was submitted by the KPLC to one of the consumers. The consumer is required to pay Kshs58,000 inclusive of all the taxes. However, subsequent to this, a raise of up to 158 per cent is demanded over and above the Kshs58,000. Could the Assistant Minister justify that increment?

Mr. Kiunjuri: Mr. Speaker, Sir, I would like to see the quotation. The cost of connecting electricity can even rise up to Kshs100,000. For example, if I want electricity to be connected to my house, the highest amount I can pay is Kshs40,000. However, if it is a business premise such as shops or flats, then the cost will go up.

(Mr. Choge laid the document on the Table)

Mr. Kimeto: Mr. Speaker, Sir, you have heard the Assistant Minister say that the cost of electricity supply could rise at any time? The Ministry is planning to supply electricity in every part of this country. What is he doing to reduce the cost of electricity, so that everybody can afford it? People will use electricity to cook and leave trees to grow.

Mr. Kiunjuri: Mr. Speaker, Sir, we have done the much we can and we are supplying electricity to the people. We have even gone ahead and asked anybody near a transformer--- We have a programme called Transformer Maximisation. We have the *Umeme Pamoja* initiative and Kenyans are accessing power very easily. You only require to go to the nearest office. If you are anywhere near 600 metres from a transformer, you are sure of being connected.

Mr. Choge: Mr. Speaker, Sir, I believe the Assistant Minister has now seen the communication from the Kenya Power and Lighting Company (KPLC) Limited. Could he tell the House what reasons led to the revision of the contract signed between Kemeloi Boarding Primary School and KPLC?

Mr. Kiunjuri: Mr. Speaker, Sir, revisions are going on each and everyday. We have set a standard figure that will be paid by public institutions. The hon. Member can come to us and prove that this quotation is for a public institution. If that is a primary school, you are free to come to our offices, so that we can revise the quotation.

ORAL ANSWERS TO QUESTIONS

Question No.359

ESCALATION OF INSECURITY IN UGENYA CONSTITUENCY

Archbishop Ondiek asked the Minister of State, Office of the President:-

(a) whether he is aware of the increased cases of insecurity in Ugunja Town in Ugenya Constituency;

(b) whether he is further aware that armed thugs raided Rangala Girls High School in Ugunja, stole goods, terrorized residents; and the matter was reported to Ugunja Police Station and no action has been taken so far; and,

(c) what he is doing to arrest the situation and protect people in the area, who are living in absolute fear.

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

(a) I am not aware of increased cases of insecurity in Ugunja Town. However, I am aware of an isolated incident which occurred on the night of 12th and 13th March, this year, within Ugunja Town. During the incident, armed robbers killed a watchman and stole assorted items.

(b) Yes, I am aware that on 26th, February, 2005, at about 1.00 a.m., armed thugs broke into Rangala Girls High School and seriously injured the school's watchman, before stealing assorted office equipment. The police from Ukwala Police Station visited the scene and investigations commenced via Police File No.CR631/111/2005. However, the school's administration is not willing to make a statement on what was stolen to help in the investigations.

(c) Those are isolated incidents that should not be construed as an increase in insecurity in Ugunja Town. The residents of the town are going about their business without fear. The level of security deployment through patrols by regular and Administration Police within the town is adequate.

In addition, Ugunja Police Post has a new Toyota Land Cruiser that has enhanced policing capacity in the constituency.

Archbishop Ondiek: Mr. Speaker, Sir, I appreciate the answer by the Assistant Minister. But one wonders why he is saying that the school's administration refused to give a statement. I know very well that they gave a statement and nothing has been done since then. Could the Assistant Minister tell the House when they are going to arrest those robbers?

Mr. M. Kariuki: Mr. Speaker, Sir, the report was made to the police by Fr. Clement Oluoch Boro of Rangala Catholic Church. He was asked to report to the police to make a statement and he has not shown up, up to date.

Mr. Ojaamong: Mr. Speaker, Sir, of late, there have been increased cases of thuggery and armed people breaking into people's houses. That has happened from Busia to Ugenya, which are very close. Our own investigations in Teso have revealed that there is a barracks in Uganda, which is very close to Kenya, where soldiers break out, cross the border and rob Kenyans. What is the Assistant Minister doing to ensure that the Ugandan armed forces do not cross over to Kenya to harass Kenyans at night?

Mr. M. Kariuki: Mr. Speaker, Sir, we have our border patrol. We also have chiefs' camps along the border, Administration Police and regular police patrolling our borders. If any incident of thuggery across the border is reported, action will be taken. I wish to state that incidents of crime in that area have shown a slight decline. In the last six months of the year 2004, there were 38 incidents. During the first six months of this year, 37 incidents have been reported.

Mr. Speaker: Last question by the hon. Member for Ugenya Constituency!

Archbishop Ondiek: Mr. Speaker, Sir, is the Assistant Minister in order to say that an administrator by the name Oluoch has been called severally to go and make a statement, and he has not done so? How sure is he that, that fellow was called, when I come from that place? I know that, that particular person has written a statement and no action has been taken? What is he trying to tell the House? Is he trusting the police or the hon. Member for the area?

Mr. M. Kariuki: Mr. Speaker, Sir, I know that the hon. Member is very emotional about this Question. Fr. Clement Oluoch Boro from the mission is the one who made a report. The police, subsequently, asked him to give a list of items that were stolen from that institution. He has not brought that list.

Mr. Speaker: Very well! Next Question by the hon. Member for Emuhaya Constituency!

Question No.538

TRANSFER OF IDB DEPOSITS
TO EQUITY BANK

Mr. Marende asked the Minister for Finance:-

(a) under what circumstances deposits held by Industrial Development Bank were transferred to Equity Bank; and,

(b) what the total monetary value of the deposits transferred was, and how it compares with the paid up share capital of Equity Bank.

The Assistant Minister for Finance (Mr. Katuku): Mr. Speaker, Sir, I beg to reply.

(a) No deposits held by Industrial Development Bank Ltd were transferred to Equity Bank Limited; and,

(b) in view of the answer to part "a" above, part "b" does not arise.

Mr. Marende: Mr. Speaker, Sir, last week, this Question was deferred to today because I

was handicapped in interrogating the Assistant Minister appropriately. The company file belonging to Equity Bank Limited was reported to be missing from the business names registry. Further, the file relating to that bank, which is kept at the Central Bank of Kenya (CBK), is also missing. I am still frustrated. I have been unable to access those files. But that notwithstanding and, perhaps, so that we can dispose of this Question, my investigations have revealed that Equity Bank Limited did not become a bank until the year 2004. It had a share capital of Kshs250 million.

Mr. Speaker, Sir, it is in the public domain, although the Assistant Minister is denying it, that Equity Bank Limited acquired assets belonging to the Industrial Development Bank, inclusive of several---

Mr. Speaker: Mr. Marende, you are now debating!

Mr. Marende: Yes! I am about to finish, Mr. Speaker, Sir! I am just developing my point. Those assets included several branches in Nairobi. Is the Assistant Minister satisfied that those branches were not sold and that the Industrial Development Bank, which is a State Corporation, complied with the provisions of Section 11 of the State Corporations Act?

Mr. Katuku: Mr. Speaker, Sir, as far as I am concerned, I am satisfied with the transaction which took place. Maybe, the only thing I want to tell the Member, which might be confusing, is that IDB withdrew from retail banking and reverted to the core business of long-term lending. It approached Equity Bank Limited for the take-over of some of its branches, including Bima House Branch which was negotiated through and there is an agreement on how it was transferred, and they paid the required amount.

Mr. Owino: On a point of order, Mr. Speaker, Sir. Is it in order for the Assistant Minister to take the House for a ride? I was an employee of IDB before I came here, and I know IDB has never been a retail bank; it has always been a long-term development bank.

Mr. Billow: Mr. Speaker, Sir, the Assistant Minister is obviously misleading the House. It is true that IDB off-loaded its commercial banking divisions and had deposits in excess of over Kshs60 million that were transferred to Equity Bank. In terms of the transaction, this amounts to single sourcing. Why did the Government not put that offer to sell the commercial banking division of the bank on the market instead of selling it privately to a politically-correct bank?

Mr. Katuku: Mr. Speaker, Sir, the issue here is that this was not one of the politically-correct people. The bank decided to move from commercial activities. In the process, the most prudent thing was to approach any bank to buy that aspect of the bank. So, there is no question of political correctness. It was just prudent to approach this bank to buy shares.

Mr. Bahari: Mr. Speaker, Sir, I think the Assistant Minister is evading to answer the Question. IDB is selling its assets to another bank. We know that in the procedures of procurement, there is a requirement that they must go for open tendering. Could the Assistant Minister table the list of quotations that they have received from other commercial banks so that we can confirm that there was value for money in the transaction?

Mr. Katuku: Mr. Speaker, Sir, there is no way I can table such figures because this was a negotiation between the two banks. I think the Member should have asked me to table the agreement since this was done through an agreement.

Mr. Marende: Mr. Speaker, Sir, so as to comply with the provisions of the State Corporations Act, the Assistant Minister must show that the bank, at the latest by February of the previous year, according to Section 11, tendered its proposals to the Minister and that the bank received approval to proceed and in this case, to sell those assets. Could the Assistant Minister satisfy this House that, in fact, the bank did so by February, last year?

Mr. Katuku: Mr. Speaker, Sir, authority was sought from the Minister and he granted it, and I can table the letters to that effect in due course.

*Question No.110*MEASURES TO CURB WATER
SHORTAGE IN NAIROBI CITY

Mr. Ndambuki asked the Minister for Water and Irrigation:-

- (a) whether she could explain the source of water used in Nairobi City;
- (b) whether she is aware that there has been continued water shortage in the city for the last three years; and,
- (c) what action she is taking to curb the problem.

The Assistant Minister for Water and Irrigation (Mr. Munyes): Mr. Speaker, Sir, I beg to reply.

(a) The water used in Nairobi City comes from the following sources:- Thika Dam, Chania River System, Uwiru Dam, Sasumua Dam and Kikuyu Springs.

(b) I am aware that some estates in Nairobi City experience water shortages due to low water pressure. Nevertheless, the available water is distributed equitably to enable consumers to access the commodity. The main causes for the low pressure are:-

(i). The embankment of Sasumua Dam was destroyed by floods during the long rains of May, 2003. The reservoir currently operates at half its design capacity.

(ii). Widespread illegal water connections and poor infrastructure which contribute to high levels of unaccounted water.

(iii). The unplanned visible development in most parts of the city have contributed to very high unplanned water demand.

(iv). Current water production is not able to cope with the rapid increase in city population.

(c) My Ministry, through the on-going water sector reforms, has taken measures to streamline the water sector in order to provide efficient and reliable water services, not only in Nairobi, but also throughout the country.

Under the new institutional set-up, Nairobi Water Services Board is responsible for water services in Nairobi City. In this regard, the Board has appointed Nairobi City Water and Sewerage Company as the water service provider in the city. The company is fully operational and has already prepared a strategic plan on how it will achieve its mission on provision of affordable water services through the efficient, effective and sustainable utilisation of available resources. The company has started to address all problems affecting operations and maintenance of water and sewerage services, including high unaccounted consumption for water, illegal connections, billing revenue collection, among others, that contribute to poor services.

Mr. Speaker, Sir, my Ministry, through the Nairobi Water Services Board, intends to address the problem of water shortages in Nairobi through short-term and long-term measures as follows:-

(i). Under short-term measures, the following works are on-going. Swapping of transmission pipeline from Ruiru to Kabete and from Sasumua Dam to Kabete in order to restore pipeline transmission capacity,

(ii). Rehabilitation of three boreholes in Karen and 12 boreholes in Dagoretti; and,

(iii). Rehabilitation of Kenyatta Pumping Station to boost supply to the upper areas of Kilimani.

Under long-term measures, the Nairobi Water Services Board has obtained Kshs3 billion from the French Government to:-

- (a) Rehabilitate Sasumua Dam and Associated Treatment Works.
- (b) Rehabilitate Ng'ethu Treatment Works.
- (c) Rehabilitate Mwangu-Ng'ethu Intake Works.
- (d) To construct a parallel pipeline from Gethu Treatment Works to Gigiri Tanks and Gigiri to Kabete.

Mr. Speaker, Sir, my Ministry, through the Nairobi Water Services Board, has obtained Kshs1 billion grant from the World Bank to implement the Nairobi Water and Sewerage Institutional Restructuring Project, with the following projects:

1. Support to Nairobi Water Services Board in capacity building.
2. Support to Nairobi City Water Company in capacity building and commercialisation for efficiency in service provision.
3. Preparation of long-term capital investment programme to address water demands up to the year 2020.

Mr. Ndambuki: Mr. Speaker, Sir, I would like to thank the Assistant Minister for the answer. I also want to thank him for acknowledging that we have water shortages in Nairobi City. Now that Nairobi City Council has received Kshs4 billion to improve water provision, how soon will rehabilitation works start?

Mr. Munyes: Mr. Speaker, Sir, I have said that the Nairobi Water Company is operational. Under the short-term measures, which will take us up to six months, we will streamline the pipeline from Ruiru to Kabete. We will also rehabilitate the three boreholes in Karen and the four boreholes in Dagoretti. We will also improve the Kenyatta Pumping Station to boost the water supply around the Kilimani Area. In a period of six months, we will solve that problem.

Mr. Ndolo: Mr. Speaker, Sir, it is more than a year now since the Nairobi City Council privatised the Water Department. Up to now, Nairobians do not get clean water and most of them do not get water as well and still they are billed by the Water Department. What is the Assistant Minister doing to ensure that the residents of Nairobi City are not billed when they do not get water?

Mr. Munyes: Mr. Speaker, Sir, it is worth noting that the Nairobi Water Company has just started operating and it has started expanding its services in all the estates. As I have already said in my answer, the water sector will improve gradually. We need some time to solve the problems of Nairobi City Council. We have acquired grants to the tune of Kshs1 billion which we intend to use to improve capacity building and commercialisation. We will also try to streamline the company in order to reach all the areas. This is going to take some time. We need time for the company to grow and extend its services in all the areas.

Mr. O.K. Mwangi: Mr. Speaker, Sir, most of the water that is consumed in Nairobi comes from my constituency. The water comes from the Ndaka-ini Water Dam. The Assistant Minister has talked about the rehabilitation of water dams, but he has not mentioned anything to do with the rehabilitation of the Ndaka-ini Water Dam. How much of the Kshs4 billion, which the Assistant Minister intends to use to rehabilitate the Nairobi water system, is set aside for caring for the Ndaka-ini Water Dam, which is the source? A lot of damage has been caused in my constituency around the Ndaka-ini Water Dam and my constituents have not benefited.

Mr. Munyes: Mr. Speaker, Sir, I do not have the details about this. However, we have allocated funds for every constituency. The Kshs3 billion, which has been set aside as a grant for the Nairobi Water Services Board, will be used to improve all the dams that serve the city. We will also set aside some money to conserve the water catchment areas.

Mr. Ndambuki: Mr. Speaker, Sir, I would like the Assistant Minister to assure this House that water will be distributed equitably in Nairobi City. Some areas have a permanent water

shortage whereas other areas have water throughout.

Mr. Munyes: Mr. Speaker, Sir, I would like to assure the hon. Member that we will provide enough water for everybody. However, we need some time to ensure that the company takes root and implements the strategic plan that is now on-going.

Question No.031

PAYMENT OF HARDSHIP ALLOWANCE
TO SUBUKIA TEACHERS

Mr. Wamwere alimuuliza Waziri wa Elimu, Sayansi na Teknologia, ni kwa nini walimu wa shule zifuatazo hawalipwi marupurupu ya kufidia hali ngumu ya maeneo/sehemu wanaofanyia kazi kama walimu wenzao katika shule jirani:-

Shule ya Upili ya Athenai;
Shule ya Upili ya Patel Day;
Shule ya Upili ya St. Marks;
Shule ya Upili ya El Donio;
Shule ya Msingi ya Akuibi;
Shule ya Msingi ya Ol Bonata;
Shule ya Msingi ya Osembo; na,
Shule ya Msingi ya Rigogo.

Waziri wa Elimu, Sayansi na Teknologia (Prof. Saitoti): Bw. Spika, ningependa kujibu.

Eneo la Lower Solai lilitangazwa kirasmi kama sehemu yenye mazingira magumu katika Wilaya ya Koibatek kupitia gazeti rasmi la Serikali ya Kenya, yaani The Kenya Gazette, No. 534, lililochapishwa mwezi wa Novemba, 1997, ilhali eneo hilo ni sehemu ya Wilaya ya Nakuru. Matokeo ya hitilafu hii ni kuwa baadhi ya shule zilizofaa kunufaika katika eneo la Lower Solai hazikuorodheshwa kimakosa wakati orodha kamili ilipokabidhiwa Tume ya Kuajiri Walimu.

Hitilafu hiyo imetambuliwa na mipango inafanywa ili kuthibitisha idadi halisi ya shule zinazopatikana katika maeneo yenye mazingira magumu na walimu wanaohusika. Mara tu itakapothibitishwa, walimu wote katika shule hizo pamoja na zile zilizoorodheshwa na mhe. Wamwere, watalipwa ipasavyo.

Mr. Wamwere: Bw. Spika, miaka miwili iliyopita, niliuliza Swali hili na Waziri huyu huyu akasema kwamba Kamati ya Elimu Wilayani Nakuru itakapopendekeza shule hizo kwa Tume ya Kuajiri Walimu, walimu hao watalipwa marupurupu hayo mara moja. Mnamo 15/8/2003, kamati ya wilaya kuhusu elimu ilitoa mapendekezo ambayo ilitakiwa kutoa, pamoja na orodha ya shule ambazo walimu wake walikuwa wanadai marupurupu. Mnamo 19/4/2005, orodha nyingine ilitolewa kwa Wilaya ikionyesha walimu ambao wanahitaji kulipwa marupurupu na hawalipwi kwa wakati huu. Je, Wizara inahitaji nini ili iweze kudhibitisha ukweli wa orodha ambazo imepewa na Kamati ya Wilaya ili iweze kulipa walimu wanaodai marupurupu yao mara moja?

Prof. Saitoti: Bw. Spika, kama nilivyosema, sehemu ya Solai ilitangazwa kirasmi kuwa katika sehemu ya Koibatek ingawa iko katika sehemu ya Nakuru. Hilo kosa limetambuliwa na mipango inafanywa kuona kwamba walimu wote ambao wanafundisha katika shule ambazo zimeorodheshwa hapa wamenufaika.

(Dr. Rutto moved towards the Dispatch Box)

Mr. Speaker: Who is this hon. Member coming to the Dispatch Box? Dr. Rutto, you are

the shadow Minister for Education, Science and Technology. You will, of course, get the first priority.

Dr. Rutto: I would like to ask the Minister what he is doing to streamline payment of hardship allowances throughout the Republic. That problem does not affect only Solai, but the whole country. What is he doing to correct the situation?

Prof. Saitoti: Mr. Speaker, Sir, I would like to say that, indeed, a major review has been put in place by my Ministry so as to ensure that those teachers who live in hardship areas are remunerated appropriately.

(Ms. Karua walked into the Chamber amidst applause)

Mr. Ngozi: Ningependa Waziri afafanue mpango huu wa kuorodhesha shule ambazo ziko katika sehemu kame utakamilika lini. Amesema kwamba mpango huo unaendelea ili shule hizo ziorodheshwe ili walimu katika shule hizo wapate marupurupu. Tumesikia kutoka kwa mhe. Wamwere kwamba miaka miwili iliyopita ahadi kama hiyo ilitolewa. Je, ni muda gani Wizara itachukua kukamilisha kazi hiyo?

Prof. Saitoti: Bw. Spika, Nikipata mapendekezo kutoka kamati ya wilaya kuhusu elimu katika sehemu hiyo kame, basi nitachukua hatua.

Mr. Sirma: Mr. Speaker, Sir, when the Teachers Service Commission (TSC) implemented payment of hardship allowances it was discriminatory, because it ignored some teachers in certain areas, where other Ministries were paying hardship allowances. What will the Minister do to ensure that the TSC emulates other Government departments in the payment of allowances?

Prof. Saitoti: Mr. Speaker, Sir, my answer is fairly clear. Let the hon. Member give me the names of those teachers, and I will act appropriately.

Mr. Speaker: Last question, the hon. Member for Subukia!

Mr. Wamwere: Bw. Spika, wakati mwingine majibu tunayopewa hayaeleweki. Waziri alisema kwanza kwamba anataka mapendekezo ambayo tayari amepewa. Baadaye, amesema kwamba anataka orodha, na orodha pia amepewa. Makosa ameyakubali pia. Waziri sasa anasema kwamba anafanya mpango wa kulipa pesa hizi. Lakini pesa hizo zimengojewa kwa zaidi ya miaka mitano. Je, anaweza kuliambia Bunge hili atachukua muda gani kulipa marupurupu hayo? Atachukua muda wa siku, mwezi au mwaka?

Prof. Saitoti: Bw. Spika, ningependa kumwambia mhe. Mbunge kwamba tutachukua hatua haraka iwezekanavyo.

Mr. Speaker: Next Question, the hon. Member for Ntonyiri.

Question No.586

OFF-LOADING OF GOVERNMENT
SHARES IN SAFARICOM

Mr. Maore asked the Minister for Information and Communications:-

- (a) how much Telkom Kenya owes Safaricom in terms of connectivity fees;
- (b) whether he could off-load Government shares in Safaricom to Kenyans through the Nairobi Stock Exchange; and,
- (c) whether he could also explain the offer by Vodafone to buy an additional stake in Safaricom.

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

(a) As of 31st May, 2005 Telkom Kenya Limited owed Safaricom Kshs1,593,241,391 in terms of connectivity fees.

(b) The Government contracted a consultant firm, PKF, to look into the operations of Telkom Kenya, and provide dispassionate advice on the way forward with regard to Telkom Kenya's restructuring. The consultants are in the process of finalising their report and submitting it to the Government for consideration and implementation.

(c) The Government has received an offer from Vodafone for purchase of additional shares in Safaricom. It is, however, premature to disclose details of the offer, because it is still being looked into.

Mr. Maore: Mr. Speaker, Sir, before I ask my supplementary question, you have noticed that the Minister has answered his own Question and not the one I asked him. Part "b" of my Question is specifically about Government shares in Safaricom. Now, the Minister is telling us a story about Telkom Kenya and consultants' views which are not yet out. As far I am concerned, there is no restructuring of Safaricom going on. Could he explain to the House what he was answering?

Mr. Speaker: Well, I think the Minister has answered the Question you asked him. It is about Safaricom and off-loading of Government shares but not about Telkom Kenya and consultancy. Go ahead, Mr. Minister.

Mr. Tuju: Thank you very much, Mr. Speaker, Sir, for helping me out.

Basically, I have said that there is a team of consultants looking at Telkom Kenya, and that includes looking at Telkom Kenya's shares in Safaricom.

Mr. Kosgey: Mr. Speaker, Sir, while debating the Privatisation Bill here, we expressed our views very strongly that whenever shares are to be off-loaded, they should be off-loaded to Kenyans, and not to foreigners. This is particularly so in the investment into the mobile phones sub-sector. Could the Minister give this House, and the nation at large, an opportunity to buy shares in Safaricom instead of off-loading them to foreigners, when, indeed, there are Kenyans who are willing to buy those shares? Similarly, with regard to consultancies, Kenyans should be given the first priority.

Mr. Tuju: Mr. Speaker, Sir, the whole point of hiring consultants is so that we can make decisions based on facts. Our decisions should be based on reason and not emotions or passion. That is exactly what we are trying to do. I can assure the House that we are not in the business---

Mr. Kosgey: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: What is it, Mr. Kosgey?

Mr. Kosgey: I have not talked about passion, but about Kenyans owning shares. Kenyans should be allowed to own businesses. Is the Minister in order to talk of passion when Kenyans are demanding a chance to own shares? We are passionate about this because what is involved is our property!

Mr. Tuju: When I said that a decision has not been made, I meant that there are no shares being sold by Telkom Kenya or by the Government.

Mr. Maore: Mr. Speaker, Sir, you will agree with me that this is my first supplementary question. In his response to part "c" of the Question, the Minister says that there has been a move by Vodafone to buy additional Safaricom shares. Yet, he is talking about a linkage between Telkom Kenya and Safaricom. This is a purely contradictory answer. Could he explain the valuation of the shares he is talking about in part "c"? He is talking about an offer having been made by some buyers. The people who wanted to buy the shares are the ones who commissioned the valuation.

With regard to part "b" of the same Question, he should tell us whether politically-correct people, who are fronting for the MTN, have already commissioned their own consultants to do a valuation. Is this not a criminal act that they are engaged in?

Mr. Tuju: Mr. Speaker, Sir, issues regarding Telkom Kenya and Safaricom are very sensitive. I would like to say that we are talking about a company which is very important to this country. It is one of the biggest shareholders. So, I would not like to engage in a detailed discussion about what is going on in that company for the benefit of that company. Having said that, I will say that no shares are being sold. We got an offer from Vodafone. However, if I was to say what has happened historically with respect to Vodafone and Telkom Kenya, some of the people on the other side of the House will not be very happy with me.

Mr. Midiwo: On a point of order, Mr. Speaker, Sir. The Minister is out of order. He appeared before the Committee on Finance, Planning and Trade to talk about this same issue. In that meeting, the Minister gave us his word that when time comes for these shares to be sold, they would be off-loaded at the Nairobi Stock Exchange (NSE) and Kenyans would be included in the privatisation process, that this House recently discussed.

Mr. Weya: On a point of order, Mr. Speaker, Sir. You heard the Minister say that there is an hon. Member on this side of the House who has an interest of shares in Safaricom. Could he tell us which hon. Member this is?

Mr. Tuju: Mr. Speaker, Sir, the hon. Member who has just spoken is a distributor for Safaricom.

(Loud consultations)

Mr. Speaker: What did you say, Mr. Minister?

Mr. Tuju: Mr. Speaker, Sir, the hon. Member asked a question and I answered it.

Mr. Speaker: What was the answer?

Mr. Tuju: The answer was that, the hon. Member who just talked is a distributor for Safaricom.

Mr. Cheboi: Mr. Speaker, Sir, I think the Minister is trivialising the whole issue. We all buy air time cards from Safaricom. Does that make us interested parties as he puts it here?

(Loud consultations)

Mr. Speaker: What is it? Order, hon. Members!

Mr. Samoei: Mr. Speaker, Sir, the Minister should address the substantive issue which has been raised. The substantive issue, which has been raised, is that Safaricom has Government interests, and by extension the people of Kenya. This House is interested in any further sale of shares. We want an undertaking from the Minister that any sale of shares will be done above board and that Kenyans will be given the first priority. We are not asking who the distributors of the company are.

Mr. Tuju: Mr. Speaker, Sir, the structure of Safaricom is very unfortunate. I believe that it is very unfortunate because of some of you who are sitting across the House. That is why, even before we cross the bridge, you start making accusations. The truth of the matter is that, we are not selling shares of Safaricom or Telkom Kenya. Why are you panicking? Is there something that you know and which we do not know?

Mr. Speaker: Order, hon. Members! Mr. Minister, be serious! Even if an hon. Member is a distributor of Safaricom or whatever interests they have, that does not answer the basic issue which

is disregard of public interests. You must forget about the hon. Member and think about the public and address it. That is the issue.

(Applause)

Mr. Tuju: Mr. Speaker, Sir, we are not selling Telkom Kenya and Safaricom shares.

Mr. Speaker: Very well! That should end the matter then. Last question, Mr. Maore!

Mr. Maore: Mr. Speaker, Sir, the Minister said that he received an offer of additional shares and that it was premature for him to disclose details of the offer. He is now telling us a different story on the Floor of this House. There are issues arising that there is a move by the Minister to put his Permanent Secretary to head Safaricom. Is that true or not true?

Mr. Tuju: Mr. Speaker, Sir, I deny those allegations because it is not true. Secondly, if somebody gives you an offer to buy your car, that does not mean that you are selling it.

(Several hon. Members stood up)

Mr. Speaker: What is it? That should end the matter!

Mr. Billow: On a point of order, Mr. Speaker, Sir. Is the Minister in order to mislead this House that there are no plans to sell Safaricom shares when, in fact, Vodafone has offered to buy 10 per cent of the shares, in accordance to the pre-emption rights in the shareholders' agreement?

Mr. Tuju: Mr. Speaker, Sir, first of all, the offer from Vodafone is for 11 per cent of the shares of Safaricom. Essentially, that would give Vodafone 51 per cent of the shares, which would effectively give it majority shareholding. The answer is: We are not selling!

Mr. Speaker: Order, hon. Members! Time is up for Questions. The Question by the hon. Member for Magarini---

The Minister for Labour and Human Resource Development (Dr. Kulundu): On a point of order, Mr. Speaker, Sir. The Question which is next on the Order Paper has been deferred five times. Surely, as a Ministry, we want to be seen to be working.

(Laughter)

Speaker: Order, hon. Members! For a long time now, we have missed the Minister for Labour and Human Resource Development. Owing to that, I have deferred his Questions many times. Since he is here and wants to answer his Question, I will exercise my discretion in his favour.

Mr. Kombe: Mr. Speaker, Sir, although I do not have a written response, I will ask Question No.222.

Question No.222

TERMINAL DUES FOR
MR. CHRISTOPHER KOMBE

Mr. Kombe asked the Minister for Labour and Human Resource Development:-

(a) why Christopher S. Kombe, staff No.212156, a former employee of Marshalls (EA) Ltd. had not been paid his 15 years of service and contributions to the Provident Fund ever since he resigned from the company on 6th December, 1993; and,

(b) what urgent measures he is taking to ensure that Mr. Kombe is paid his dues.

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Speaker, Sir, first of all, I apologise that the hon. Member has not received a written response, although I signed it on 19th July, 2005. But with your permission, I will answer him and if there is something which is not clear to him, I will clarify it.

I beg to reply.

Mr. Christopher S. Kombe, staff. No.212156 and a former employee of the Marshalls (EA) Ltd. has not been paid his terminal dues and contributions to the Provident Fund due to the following reasons. First, Mr. Kombe's terms of employment required that he gives a three months notice or pays the company his three months' salary in lieu of notice before his resignation. He tendered his resignation after he had deserted duty. In that case, he was liable to pay to Marshalls (EA) Ltd. three months salary of Kshs15,990.

(b) At the time of his desertion of duty, he was found to have misappropriated a sum of Kshs18,204.50, which he received from three customers, but did not credit to the company's account. Mr. Kombe owes Marshalls East Africa (EA) Ltd. Kshs10,435 being the balance of the deductions from the Provident Fund, the amount misappropriated and a three-months salary in lieu of notice, which was not served.

Mr. Kombe: Mr. Speaker, Sir, Mr. Kombe resigned within the required period. However, the managing director refused to acknowledge his resignation. After the three months, he decided to leave the job. What was his contributions to the Provident Fund as at the time he left the job?

Dr. Kulundu: Mr. Speaker, Sir, I thought I answered that question. He had Kshs18,204.50. He resigned first and the employer refused to accept his resignation. His second resignation is not known to us. If Mr. Kombe can kindly avail documents to us, we will act accordingly.

Mr. Bifwoli: Mr. Speaker, Sir, the Minister has said that Mr. Kombe deserted duty. Was he interdicted?

Dr. Kulundu: Mr. Speaker, Sir, this is a situation where a worker deserts duty for more than three months. This period of time warrants dismissal.

Mr. Bifwoli: On a point of order, Mr. Speaker, Sir. I have asked the Minister whether Mr. Kombe was interdicted.

However, he has refused to answer it. Is he in order to avoid answering a valid question?

Dr. Kulundu: Mr. Speaker, Sir, what Mr. Bifwoli is saying maybe applicable to the Teachers Service Act.

Hon. Members: No!

Dr. Kulundu: Mr. Speaker, Sir, however, general labour laws of this country stipulate that desertion of duty for three or more months warrants dismissal.

Mr. Kombe: On a point of order, Mr. Speaker, Sir. The Minister has said that Mr. Kombe was dismissed as a result of misappropriating Kshs18,204.50. However, I asked him: What was Mr. Kombe's contributions to the Provident Fund as at the time he resigned? He gave this amount which was misappropriated as the amount that Mr. Kombe had. Is he in order to do that?

Dr. Kulundu: Mr. Speaker, Sir, the amount of of money contributed to the Provident Fund appears on this paper - It is in small print I cannot read. However, I will lay this paper on the table for the benefit of the hon. Questioner.

(Loud consultations)

Mr. Speaker: Order, hon. Members! The Question by Mr. Wamunyinyi has been deferred to Tuesday next week. It will be the first one on the Order paper.

*Question No.317*PAYMENT OF SHARES/DIVIDENDS TO
UFUNDI SACCO MEMBERS*(Question deferred)*

Mr. Speaker: Hon. Members, that marks the end of Question Time. However, I had one hon. Member who wanted to seek a Ministerial Statement.

(Loud consultations)

Order, hon. Members! This House needs to effect insurance on the person of the Speaker. You are forcing me to shout all the time! Can you, please, consult quietly?
Proceed, Mr. Salat!

POINT OF ORDERWANTON DESTRUCTION OF PROPERTY
AND THEFT OF FARM PRODUCE
IN NAROK SOUTH

Mr. Salat: Mr. Speaker, Sir, I rise to seek a Ministerial Statement from the Minister of State, Office of the President, with regard to the wanton destruction of property and theft of farm produce in Narok South by the County Council rangers. As we speak, they have not only evicted the residents of Narok South but also stolen from them. By last night, one woman was robbed of Kshs150,000 while another one was robbed of Kshs30,000. Moreover, 40 houses were burnt down.

Hon. Members: Shame!

Mr. Salat: Mr. Speaker, Sir, we have done our best in trying to talk to the Government to come to an understanding about this. However, they turn around, which makes us wonder who is really in charge. The Office of the President, the Ministry of Lands and Housing, Mr. ole Ntimama and the Ministry of Local Government are involved. For how long are these people going to suffer? Could we put an end to this?

(Applause)

Mr. Speaker: Very well! Any response from the Minister?

The Minister of State, Office of the President (Mr. Michuki): Mr. Speaker, Sir, my portfolio was cited by Mr. Salat. However, if the wanton destruction of property and theft of produce was done by the rangers of Narok County Council, I will certainly pass his concern to the Minister for Local Government.

(Mr. Salat stood up in his place)

Mr. Speaker: Order, Mr. Salat! Mr. Minister, supposing it is a matter of theft, whose business is it?

The Minister of State, Office of the President (Mr. Michuki): Mr. Speaker, Sir, if it is a

matter of theft, the person from whom things have been stolen should report to the nearest police station and the matter will be investigated.

However, as a person, I do not like people who exaggerate things. I know that seven people tried to build little huts at Olmekenyu where they had been evicted from. Naturally, the *askaris* who were guarding the forest had to react and they were removed. That is what Mr. Salat is calling 40 houses. It is seven people who were attempting to go back and their little huts were destroyed. They were seven of them and not 40! If we have to tell this House the truth, that is the truth.

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

Mr. Speaker: Order, hon. Members!

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

Mr. Speaker: Order, hon. Members! Maybe, the Minister should get more information and report to the House on Tuesday, next week. I cannot say he is not telling the truth.

Next Order!

Mr. Awori, has a Procedural Motion and---

Mr. Samoei: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: What is it?

Mr. Samoei: Mr. Speaker, Sir, if you remember, on Tuesday, you directed that the Minister of State, Office of the President issues a Ministerial Statement today on the arrest of innocent Kenyans on the streets of Nairobi. Since the Minister is here, and demonstrations and police brutality have not stopped, I think it is only fair that he tells this House what is going on in our streets.

Mr. Speaker: Mr. Samoei, you are right.

Mr. Michuki, are you ready?

The Minister of State, Office of the President (Mr. Michuki): Mr. Speaker, Sir, I am ready to present the Ministerial Statement.

Mr. Speaker: All right, proceed!

MINISTERIAL STATEMENT

ARREST OF PROTESTORS

The Minister of State, Office of the President (Mr. Michuki): Mr. Speaker, Sir, it is true that I did promise that I would issue a Ministerial Statement today with regard to this matter. With your permission, I would like to make the following statement.

On 19th July, 2005, Mr. Samoei stood on a point of order to request for a Ministerial Statement on the arrest of what he alleged to be innocent Kenyans in the last three days from the date he brought this issue. He alleged that 10 persons apparently were arrested in Kilifi where they were engaged, he said, in peaceful demonstrations. He also alleged that a licence for demonstration had been issued by the police. Six other Kenyans were arrested on allegations that they were engaged in demonstrations that had allegedly been licensed by the police. He raised quite a number of issues.

Mr. Speaker, Sir, he also wanted to know what police officers were doing roaming, in what he termed in their hundreds, and also whether I had declared a state of emergency. I wish to state as follows:-

On 16th July, 2005, at about 11.00 a.m., a group of people carrying placards and twigs demonstrated along the Kilifi-Malindi Road agitating and demanding to go and disrupt a Parliamentary constitutional review meeting. The police officers intercepted them at the junction leading towards the Sun "N" Sand Beach Resort. In the process, majority of the demonstrators ran away, but the police officers managed to arrest six of them. The six who were arrested were: Mr. Hussein Khalid Hamisi aged 27 years; Mr. Ahmed Farid Anrab aged 25 years; Mr. Alex Mwaura Nzwiwi Rabai aged 28 years; Mr. Hassan Griss Kikuyu aged 25 years; Mr. Lucas Fondo Kauma aged 25 years and Mr. Teddy Mwambire Giriama aged 22 years.

They appeared before Senior Resident Magistrate court in Kilifi on 18th July, 2005 and were charged with the offence of unlawful procession contrary to Section 5(1) and (2) of the Public Order Act, Cap.56 of the Laws of Kenya. The case was fixed for hearing on Monday, 25th July, 2005. Each of the accused was released on a cash bail of Kshs10,000 with a surety of Kshs20,000.

Mr. Speaker, Sir, following the statements made by some politicians calling for mass action during the presentation of the Draft Constitution to this House on 19th July, 2005, the Government anticipated trouble from members of the public, which could result in breach of peace. Accordingly, on the material day, that is on 19th July, 2005, police were deployed within the city centre to deter anybody from committing a breach of peace or endangering other people's lives. This did not in any way amount to the declaration of the state of emergency as alleged by Mr. Samoei.

I must add that law abiding Kenyans know that Kenya is not a police State. Every Kenyan is expected to abide by the laws of this country which also guarantee security to citizens and visitors alike. Anybody who is afraid of the law, must have his own reasons which are not for the benefit of the general public.

Mr. Speaker, Sir, on 20th July, 2005, a group of rioters staged a procession within the city centre mainly along Tom Mboya Street, Moi Avenue, Haile Selassie Avenue and City Hall Way. They engaged police in running battles and looted several exhibition shops at Gilvan House along Tom Mboya Street and robbed owners property worth millions of shillings; exactly what we feared! In the process, one person identified as Mr. Walter Ochieng Wasonga was found lying dead in a pool of blood with head injuries along Tom Mboya Street. The body was taken to the City Mortuary awaiting a post mortem report. It is, however, suspected he was engaged in looting and, therefore, killed by *wananchi*.

Hon. Members: That is a lie! Shame! Shame!

The Minister of State, Office of the President (Mr. Michuki): Mr. Speaker, Sir, could you, please, protect me so that I can finish what I am saying?

Mr. Speaker: Order, hon. Members! Let us listen to Mr. Michuki!

The Minister of State, Office of the President (Mr. Michuki): Mr. Speaker, Sir, I would like this House to note, because this is the truth-I gave those instructions-the police were under very firm instructions not to use live bullets while trying to restore law and order. That is exactly what happened.

Under the Public Order Act, the law requires that any person intending to hold a procession, demonstration or public meeting, must notify the regulating officers of his intention at least three days, but not more than 14 days before the proposed date of such an activity. This condition was neither met in Kilifi nor in Nairobi.

Mr. Speaker, Sir, I would like to take this opportunity to urge Kenyans to uphold and respect their own laws, the laws of this country. Enjoyment of whatever freedom is guaranteed by laws passed by this House, and we, as a Government, have an obligation to ensure that those laws are actually obeyed by the police and the people themselves. People must confine their activities within the law. I find no reason why whoever is organising these demonstrations cannot go to a police

station and apply for a licence according to the law.

Mr. Speaker, Sir, therefore, for an hon. Member of this House to continue to designate people who have broken the law as innocent, it is very unfortunate and regrettable.

Thank you.

Mr. Speaker: I will give a chance to Mr. Samoei, Mr. Wario and, lastly, Mr. Kajwang.

Mr. Samoei: Mr. Speaker, Sir, it is, indeed, a tragedy that the Minister has refused to tell this House the truth about the events that are taking place in the streets. As we speak in this House, this City is literally under siege. There are thousands of policemen in the City. In fact, there are hundreds of policemen in the precincts of Parliament. What criminal activity are we conducting in this House, for us to require the protection of thousands of policemen out there? Is it not a shame that, for this House to conduct its business, we have deployed thousands of policemen in the streets of Nairobi? Whatever is going on in the streets--- Live ammunition! It is a very serious matter.

Mr. Speaker: Order! It is not a debate!

Mr. Samoei: It is a very serious matter, Mr. Speaker, Sir.

Mr. Speaker: Order! We are not debating. You are, in fact, debating. You should be seeking clarification. You have finished your bit, and I will go to another hon. Member.

Mr. Samoei: Mr. Speaker, Sir, two Kenyans were shot yesterday. Mr. Ombok was shot with live ammunition and he is in hospital right now. Mr. Ochieng was shot six times by the police, and they went ahead to say that he was a looter. The Minister has told this House that he was killed by members of the public. Honestly, why can we not be decent and tell the country the truth?

(Applause)

Mr. Speaker: Mr. Minister, can you take all of them once? Do you want to finish with one?

The Minister of State, Office of the President (Mr. Michuki): Mr. Speaker, Sir, I thought I would deal with them as they come.

Mr. Speaker: Take that, and the other two will be answered together.

The Minister of State, Office of the President (Mr. Michuki): Mr. Speaker, Sir, when a Member of this House, in broad daylight, conducts meetings in public places and declares his intention to have people walk into this building, it is our duty, as a Government, to protect it. There was a meeting in Serena Hotel and the minutes are there. We got the minutes declaring how this House was going to be invaded by people organised by those who took part in that meeting.

(Loud consultations)

Mr. Speaker, Sir, unless people just want to shout, that is the truth!

Mr. Speaker: Order, hon. Members. If you are not interested, I will go to the next Order.

Mr. Billow: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: No! You will sit down! There is one thing that I must warn Mr. Billow about. I think Mr. Billow has taken it upon himself that unless he speaks, nobody has spoken in this House!

(Applause)

Relax, Mr. Billow, Please!

Mr. Kajwang: Mr. Speaker, Sir, the clarification that I want to hear from the Minister is his understanding of the Public Order Act. The Act does not stop members of the public from protesting

over anything, whether they are in twos, threes or hundreds. That law was changed after the suppressions of the 1990s. We merely said that we need to inform the police that there will be a procession. There is no provision which allows the Minister to cancel any procession. But you heard him speak. He talked about licences and applications, because his mind is still in the old colonial law. We want the Minister to come out clearly. Did those civil society organisations give the Officer Commanding Station (OCS), Central Police Station, a notification that they wished to protest against this illegality, which is now taking place in this House? If so, did he purport to cancel the protest?

Mr. Speaker: Order, Mr. Kajwang! If this House is carrying out an illegality, why are you participating?

(Applause)

You must respect this House. You have to respect this House, if want the audience of this House. If you do not respect this House, you will not have audience.

Mr. Kajwang: Mr. Speaker, Sir, I hear you very clearly! I said yesterday: Why are we meeting in *camera*? You said that you did not stop anybody from coming here. Why are we still meeting in *camera*? This Parliament belongs to the Republic of Kenya! It is for the people of Kenya to meet in public or in the open!

Mr. Speaker: Order! If you wish to draw the Chair to that - because you have been attempting to do that since yesterday - you must also understand that it is my duty to ensure the security of every hon. Member here, you included! You must understand that. I will not bulge under any circumstances. The security of hon. Members is paramount.

(Applause)

Mr. Wario: Mr. Speaker, Sir, to the best of my understanding, all Kenyans are innocent until proven otherwise by a court of law. The Minister has said that those people are not innocent. When did he take them to court? Who proved them guilty? Secondly, look at the presence of police in this town since yesterday. The Minister has said that, that man was killed by *wananchi*. Where were the police? How many people were arrested for killing that man?

Mr. Speaker: I think it is fair that I give a chance to the Shadow Minister.

The Minister of State, Office of the President (Mr. Michuki): Mr. Speaker, Sir---

Maj-Gen. Nkaissery: Mr. Minister, it is my time!

Mr. Speaker: Order! It does help if you do everything in sobriety.

(Loud consultations)

Order, hon. Members! We are sitting in a very safe "haven" here. There are probably many Kenyans who are suffering out there, because some people have broken into their offices and done other things. You cannot close your eyes to reality. So, be careful what you say and do.

Proceed, Maj-Gen. Nkaissery!

Maj-Gen. Nkaissery: Mr. Speaker, Sir, I know our policemen are citizen-friendly. There is no doubt about that. I also know that Kenyans are innocent until proven guilty. We are here because the citizens elected us. How come that we demonise Kenyans by saying that they are breaking the law, when they are coming to present their views? They have been refused to do that. We lost 90 people in the skirmishes in Marsabit. Only yesterday, to show the concern of this Government,

when one *mzungu* died, the President, who is the Commander-in-Chief of the Armed Forces of this Republic, had to attend the funeral. The lives of innocent Kenyans were lost, and the Government did not respond. That is what we are saying. This Government has a duty to take care of its citizens. That is what we are demanding!

Dr. Khalwale: On a point of order, Mr. Speaker, Sir. Is it in order for the hon. Member to refer to a holy man of God, a bishop of the Roman Catholic Church, as a "*mzungu*"?

Mr. Speaker: Order, hon. Members! You cannot keep quiet for a minute? Hon. Members, again I appeal to you to use the Floor of this House as hon. Members. I appeal to you to use the Floor of this House to bring unity rather than discord in the country. Whether one person dies, whether black or green, it is a human life.

(Applause)

I think Maj-Gen. Nkaissery is very insensitive to probably the faith of other Kenyans. Quite frankly, I think as a responsible person, he should not use such words. It is up to you to decide whether you want to rectify your statement or not.

Maj-Gen. Nkaisserry: Mr. Speaker, Sir, I did not say the life of the bishop was not valuable. I said the lives of 90 Kenyans were equally valuable and it was the responsibility of this Government to have ensured that their lives should not have been lost. The 1,000 policemen outside, who are actually citizen- friendly, should be ordered to go and maintain peace outside Nairobi and not inside Nairobi. That is what I said.

Mr. Speaker: Order, all of you! I would like to hear from the shadow minister for internal security: What would you do with demonstrators who, turn progressively to rioting and looting?

Maj-Gen. Nkaissery: Mr. Speaker, Sir, first of all, the best option is to provide security for them. That should be the first move of the Government. It should provide security for them to go and hand over their complaints, and after that they disperse peacefully.

(Applause)

I do not think that some people are fit to be in the Government!

The Minister of State, Office of the President (Mr. Michuki): Mr. Speaker, Sir, I think it is very well using comparative language as between situations. His Excellency the President did not need to go to Marsabit to restore order, because the forces that he commands are already there doing that. Perhaps, when the truth about Marsabit is known by this House, there are some hon. Members here who will regret what they have said.

My understanding of the law is what I stated here. As hon. Muite said yesterday, we should not argue about interpretation because whoever holds a different view has the opportunity to go to court to seek the proper interpretation. So, I think we should abandon that side of the argument. In fact, I do not want to get engaged in it. I think the courts can arbitrate as to the correct law that controls demonstrations.

The laws we are enforcing have been passed by the House, and people are required to behave in certain ways even in a democracy. The essence of democracy is responsibility. People should be responsible for their actions. They should respect what they themselves have decided to be their own way of life. It happens that we have laws in this country, and all that the Government is doing on behalf of the people, in this House and outside, is to ensure that there is law and order.

As I said the other day, this responsibility has been placed on the NARC Government to enforce. I think it should be understood in that context. So, when people organise Kenyans to

behave in the way that they have done, and then expect me to take policemen to guard them and yet they are looting, I think I would rather resign than do that kind of thing.

(Applause)

Mr. Speaker: Order! That is enough. Next Order!

PROCEDURAL MOTION

EXTENSION OF SITTING TIME

The Vice-President and Minister for Home Affairs (Mr. Awori): Mr. Speaker, Sir, I wish to move the following Procedural Motion:-

THAT, notwithstanding the resolution passed by the House on Wednesday 6th of July, 2005 that the sittings of the House on Thursdays be extended from 6.30 p.m. to 7.30 p.m., and pursuant to the provisions of Standing Order No.17, this House resolves that today's Sitting be extended until the business appearing Under Order No.7 is concluded.

The Minister of State, Office of the President (Mr. Michuki) seconded.

(Applause)

Mr. Speaker: Order, hon. Members! There is nothing to be excited about. You will make the decision yourself.

(Question proposed)

Mr. Kajwang: On a point of order, Mr. Speaker, Sir. I have never heard of a Motion seeking to do what is most unlawful, because what that Motion is suggesting is that we can sit here for seven days non-stop. This is because we could as well go on with this Order No.7 for 14 or 30 days. Why does the Vice-President and Minister for Home Affairs think that we can sit here continuously?

Mr. Speaker: Order, Mr. Kajwang! Please, read or listen to the Motion. It does not say "forever".

Mr. Keter: It says so!

Mr. Speaker: Mr. Keter, do you remember yesterday?

(Laughter)

Hon. Members, listen to this very carefully. It says:- "Today's Sitting", and under our Standing Orders, we all know the time when Thursday sitting ends. It ends at midnight. Mr. Kajwang, it is so simple and logical. It is as easy as that. Today's Sitting ends at midnight. Now, if you agree to this because you are the ones who decide to continue, once it strikes midnight, I will adjourn the House, whatever the position of the debate will be. However, it is for you to make the decision, and I want you to make the decision now.

(Loud consultations)

Order! Order! I must listen to the Leader of the Official Opposition.
Proceed, Mr. Kenyatta!

Mr. Kenyatta: Mr. Speaker, Sir, I stand to oppose this Motion.

(Applause)

Can we truly see what we are doing to this country or what situation we are forcing on the people of Kenya? We have the House Business Committee which sits regularly once a week to set out the business of this House, and you know very well that we adjourned Government Business in order to discuss the Motion that is before the House today; a Motion that will affect the lives of every single Kenyan for perpetuity. What we are saying is that, the Government is so desperate to pass this Motion today, without due regard to the lives of its own citizens which it has sworn to protect.

(Applause)

Mr. Speaker, Sir, you told us from the Chair yesterday, and you were very clear, that we should not trivialize this particular situation. Are we not trivializing it now?

(Applause)

You told us that Kenyans have been trying to make a Constitution for over 12 years, and now you want us to conclude the process in six hours?

Mr. Speaker: Me?

Mr. Kenyatta: Mr. Speaker, Sir, it is the Government. I withdraw my remark.

Mr. Speaker: Order! Order! You are aiming your bullets at the wrong side!

Mr. Kenyatta: Mr. Speaker, Sir, I withdraw my remark and, indeed, it is the Government that expects us to conclude debate in six hours.

Hon. Members: In ten hours!

Mr. Kenyatta: Kenyans are watching us. What are we afraid of? What is it that we are so intent on pushing down the throats of Kenyans that we cannot give ourselves adequate time to even come to some sense of agreement?

(Applause)

Mr. Speaker, Sir, I want to remind the NARC Government of the pledges they made to Kenyans; the pledges that now make them sit on the Government side. In their own submissions to the Constitution of Kenya Review Commission (CKRC), they said that, the process of Constitution making is of fundamental importance.

Mr. Ndile: Hoja ya nidhamu, Bw. Spika.

Mr. Speaker: Order! Order, Mr. Kenyatta. When you are contributing to this particular Motion, you should confine yourself to the matter at hand, which is: Should we or should we not pass the Motion?

What is it, Mr. Ndile?

Mr. Ndile: Je, ni jambo la nidhamu kwa Bw. Kenyatta kusema kuwa Katiba hii ni ya maana, na ni baba yake aliyefanya---

(Loud consultations)

Mr. Speaker: Order! Order! Order, hon. Members! Mr. Ndile, to be absolutely moderate, I did not expect that even from you!

(Applause)

Hon. Members: Out! Out!

Mr. Speaker: You must stand up and profusely apologize to the House and to the hon. Member!

(Applause)

Mr. Ndile: Bw. Spika, naomba msamaha kama nimekosa.

Mr. Speaker: Very well, continue, hon. Kenyatta!

Mr. Kenyatta: Thank you very much, Mr. Speaker, Sir. I do recall that you said in this House earlier that, this House has now actually gone down to the level of councillors. Even councillors themselves do not respond like that hon. Member over there!

Mr. Speaker: Order! Order! Order, hon. Members! The Leader of the Official Opposition holds a very high responsibility. Indeed, the Leader of Government Business and the Leader of the Official Opposition must be the ones to give this House guidance, respect and decorum. I do not expect you; I did not expect you and I will not expect you to sink to that level, Mr. Kenyatta! I have already dealt with that hon. Member and you must now also apologize.

Hon. Members: Yes, apologize!

Mr. Kenyatta: Mr. Speaker, Sir, I apologize. But I must say that this House itself needs to look at itself and find out where we have sank to, and it is not about individuals. If we can come to the point of personalizing issues of this nature to that degree, what message are we sending to the country?

(Applause)

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

Mr. Speaker: Will you sit down?

Mr. Kenyatta: Mr. Speaker, Sir, the truth of the matter is that, this House and Kenya is being held hostage at gun point in order to throw down and thrash down a Constitution against the will of many people.

(Applause)

Mr. Speaker: Order! Order! What is it, Mr. Githae?

The Assistant Minister for Justice and Constitutional Affairs (Mr. Githae): Thank you, Mr. Speaker, Sir. You have just heard what the Leader of the Official Opposition has said; that this Government is trying to---

An hon. Member: *Anakula panya!*

(Laughter)

The Assistant Minister for Justice and Constitutional Affairs (Mr. Githae): You have just heard what the Leader of the Official Opposition has said; that this Government is trying to pass the Motion on the Constitution today because we are desperate. Is he in order to mislead this House and yet, the Constitution Review (Amendment) Act gives today as the deadline and we are only upholding the law.

Mr. Speaker: Order, Mr. Githae! Sit down there. When you want to give your views, you should stand up to catch my eye and you will be given an opportunity to contribute. Now, let us get to---

(Loud consultations)

Order! Order, hon. Members! You know, you have to make this decision before we reach midnight, and we are inching towards it every minute.

Proceed, Mr. Kenyatta!

Mr. Kenyatta: As I conclude, I want to remind the NARC Government of its own pledge to the people of the Republic of Kenya. In their memorandum to the CKRC, this is what the NARC position was:

"NARC believes that the Constitution review process should be conducted in a conducive environment which creates sufficient space for every Kenyan to be involved in every stage of the review process".

(Applause)

"Every Kenyan must be able to express his or her views---"

The Minister for Livestock and Fisheries Development (Mr. Munyao): On a point of order, Mr. Speaker, Sir. This is a Procedural Motion. Eventually, hon. Members will say what they want to say up to midnight. Am I in order to ask the Chair to rule---

Mr. Speaker: Order, Mr. Minister! Listen, hon. Members! The Leader of Government Business is seeking the leave of the House to sit to conclude this business. If the Minister who rose on a point of order was listening, the hon. Member quoted what your side of the House was saying; that you need to create an environment to handle this thing. Now, if he cannot say it in this Motion, where will he do it?

Proceed, Mr. Kenyatta!

(Applause)

Mr. Kenyatta: Mr. Speaker, Sir, thank you very much for your protection. I will continue.

"Every Kenyan must be able to express his or her views on any subject safely, freely, openly and without any fear. The restrictions imposed by the State, the so-called former Government regime, on the freedoms of movement, expression, assembly, association and access to electronic media should be removed forthwith. The Constitution making process should provide a national forum for dialogue for Kenyans from all political parties and social classes and promote peaceful co-existence, reconciliation and national reconstruction."

Is this what we are doing through this Motion, or are we actually now antagonising this country even further by allowing discord and divisions within the nation when we, as a House, should be promoting national unity?

Mr. Speaker, Sir, with those few remarks, I beg to oppose.

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

Mr. Speaker: Order! I will dispose of this issue. I will, therefore, put the Question.

(Loud consultations)

Order, hon. Members! Listen very carefully because you will be voting.

(Mr. Muturi consulted loudly)

Order, Mr. Muturi! Will you, please, keep quiet. I am the Speaker, my friend. So, you must live with that fact! I will now put the Question.

(Question put and agreed to)

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

Hon. Members: Division! Division!

Mr. Speaker: Order, hon. Members! I need not count. It is absolutely apparent that the Members demanding for a Division are way above the requirement. I, therefore, grant it.
Ring the Division Bell!

(The Division Bell was rung)

Mr. Speaker: Order, hon. Members! Take your seats. We are going through the Division now. The time having lapsed for ringing of the Division Bell, I now order that the bars be drawn. Any hon. Members outside the Chamber, even the one trying to come in must now go out.

Hon. Members: Out!

Mr. Speaker: Order, hon. Members! The hon. Member is time barred! Close all the doors.

(Loud consultations)

Hon. Members, the following are the rules of the Division. The tellers for the Ayes are Mr. Abdirahman and Mr. Waithaka.

(Loud consultations)

For purpose of maintaining order, I will open that bar to exclude any hon. Member who is disorderly.

The tellers for the Noes are Mr. Boit and Mr. Gitau. When I put the Question, those hon. Members voting "aye" will go to the lobby on the right hand side of Mr. Speaker. Those are hon. Members who agree with the Motion, that the House shall sit until we finish the business of the House. Those hon. Members who are opposed to that proposition will proceed to the lobby on my

left hand side and vote from there. There are time limitations. You will be required to vote within a certain time.

I want to read the relevant Standing Orders for your own knowledge and internalisation, so that we are absolutely sure of what we are doing. I have already directed under Standing Order No.53(1), a Division. I have already named four tellers; two for the ayes and two for the noes under Standing Order No.54.

You will have time to move from here to the voting area. It reads as follows:-

"At the end of five minutes, Mr. Speaker shall direct that the doors be closed. When the doors have been locked and the bar drawn and names of the tellers have been announced, Mr. Speaker shall put the question again and then direct the ayes to the lobby on his right and the noes similarly to his left and the doors of each lobby shall be locked ten minutes thereafter".

So, after I put the question, you must proceed to your various voting lobbies. If you will not have entered that lobby in ten minutes, you will be excluded from voting. So, you must move with due speed and diligence and enter the lobby. Fifteen minutes after locking of the lobby, Mr. Speaker shall call the House to order. If you will have not voted at that time, that is it.

Any hon. Member who will have not voted then, shall forfeit his right to vote. I am reading the Standing Orders. I am not issuing directives. You now understand the urgency in voting.

DIVISION

(Question put and the House divided)

(Question carried by 102 votes to 57)

AYES: Mr. Akaranga, Dr. Ali, Messrs. Angwenyi, Arungah, Awori, Bifwoli, Biwott, Mrs. Chelaite, Messrs. Choge, Dzero, Gachagua, Gitau, Githae, Kagwe, Kagwima, Kamama, Kamanda, Karaba, Kariuki, G.G., Kariuki M., Ms. Karua, Messrs. Karume, Katuku, Kembu-Gitura, Kenneth, Dr. Khalwale, Mr. Khamasi, Dr. Kibunguchy, Prof. Kibwana, Mrs. Kihara, Mrs. Kilimo, Messrs. Kimathi, Kimunya, Kingi, Kirwa, Dr. Kituyi, Messrs. Kiunjuri, Koech, J.K., Kombo, Konchella, Kones, Dr. Kulundu, Messrs. Lesrima, Dr. Machage, Dr. Manduku, Messrs. Manoti, Masanya, Ms. Mbarire, Messrs. Mbau, Metito, Mganga, Michuki, Miriti, M'Mukindia, Mohamed, A.M., Mohamed, A.C., Muchiri, Messrs. Muite, Munya, Muniyao, Munyes, Muriithi, Muriuki, Muriungi, Dr. Murungaru, Messrs. Murungi, Mutiso, J.M., Mwaboza, Mwakwere, Mwangi, O.K., Ms. Mwau, Messrs. Mwenje, Mwiraria, Dr. Mwiria, Capt. Nakitare, Messrs. Nderitu, Ndile, Ms. Ndung'u, Messrs. Ndwiga, Ngozi, Ntimama, Nyachae, N., Nyagah, Obwocha, Onyancha, Oparanya, Opore, Prof. Saitoti, Messrs. Shaaban, Shakombo, Shitanda, Sudi, Tarus, Mrs. Tett, Eng. Toro, Messrs. Tuju, Waithaka, Wambora, Wamunyinyi, Dr. Wekesa, Messrs. Were and Wetangula.

Tellers of the Ayes: Messrs. Abdirahman and Waithaka.

NOES: Mr. Abdirahman, Dr. Awiti, Messrs. Bahari, Balala, Bett, Billow, Boit, Kajwang, Kamotho, Kenyatta, Keter, Kilonzo; C., Kilonzo, J.K.; Kilonzo, M.; Kimeto, Koech, S.C., Kombe, Korir, Kosgey, Maj. Madoka, Messrs. Maoka, Midiwo, Mohamed, A.H.; Moi, Moroto, Muturi, Mwandawiro, Mwanzia, Mrs. Mwendwa, Messrs. Ndambuki, Ndolo, Maj-Gen. Nkaiasserry, Mr. Ntutu, Rev. Nyagudi, Eng. Nyamunga, Messrs. Ochilo-Ayacko, Raila, Dr. Oburu, Messrs. Ogur, Okemo, Eng. Okundi, Prof. Olweny, Messrs. Omamba, Omondi, Archbishop Ondiek, Prof. Oniang'o, Messrs. Osundwa, Owino, Dr. Rutto, Messrs. Sambu, Samoei, Sang, Sirma, Sungu, Twaha, Wario and Weya.

Tellers of the Noes: Messrs. Gitau and Boit.

ABSENTION: Mr. Cheboi.

Mr. Speaker: Next Order!

MOTION

ADOPTION OF PSC REPORT
ON HARMONIZATION OF
CONTENTIOUS ISSUES IN DRAFT BILL

The Minister for Energy (Mr. Nyachae): Mr. Speaker, Sir, I beg to move the following Motion:-

THAT, pursuant to the provisions of Section 27(1) and (3) of the Constitution of Kenya Review Act (Chapter 3(A) of the Laws of Kenya), this House;

(i) adopts the report of the Select Committee on the Review of the Constitution of Kenya laid on the Table of this House on 19th July, 2005, being the recommendations to harmonize the report on the contentions issues in Chapter 4 - Citizenship; Chapter 6 - Bill of Rights; Chapter 11 - The Legislature; Chapter 12 - The Executive; Chapter 13 - Judicial and Legal Systems; Chapter 14 - Devolved Government and Chapter 18 - Constitutional Commissions, adopted by the House on 30th June, 2005, with the Draft Bill adopted by the National Constitution Conference on 15th March, 2004 and the report of the Constitution of Kenya Review Commission; and,

(ii) further recommends that the Attorney-General accordingly publishes a Bill entitled "The Constitution of Kenya Bill, 2005" pursuant to the Draft Bill and the amendments thereto as contained in the report of the Select Committee.

*(The Minister for Energy
Mr. Nyachae) on 20.7.2005)*

*(Resumption of Debate
interrupted on 20.7.2005)*

Mr. Speaker: Order, hon. Members! The hon. Mr. M. Kilonzo was on the Floor of the House. He has 10 minutes.

Mr. M. Kilonzo: Mr. Speaker, Sir, before I go on, I would like to mention that---

(Loud consultations)

Mr. Speaker: Order, hon. Members!

Mr. M. Kilonzo: Mr. Speaker, Sir, I have looked at the HANSARD for yesterday and noticed that, in referring to your orders of removing from the Chamber a number of hon. Members of this House, I expressed an opinion which was, and would be seen, to cast aspersions to the Chair. I beg your leave to withdraw and apologise.

Mr. Speaker: Thank you!

Mr. M. Kilonzo: Mr. Speaker, Sir, when we adjourned yesterday, I was addressing the issue of the recommendations that the Committee has come up with. I was dealing with the issue of

the Executive, as defined. I drew the attention of the House to the views and wishes expressed by the people of Kenya. It amazes me to see, as a matter of fact, that the only thing that these recommendations did not do was to declare that a President of Kenya would be a life President. The Committee has enlarged the Office beyond recognition, and conferred more powers than any Kenyan ever contemplated. You will notice that even in appointing the Prime Minister, the recommendation is that the Prime Minister can be appointed from any hon. Member of the National Assembly, in continuation of the policy of the current Government; that technically, would kill multi-party democracy as understood. It was a firm expression of the wishes of the people of Kenya that the Prime Minister be appointed from the party with the largest number of hon. Members, or a coalition of such parties. Similarly, the proposals make the impeachment of a sitting President of this country impossible. First of all, they have enlarged the word "misconduct" and included words like "prejudicial" and "disrepute," thereby narrowing the conditions under which a President can be removed. That alone, is contrary to the wishes and the aspirations the country had.

On the issue of incapacity, this alone will create a national crisis of monumental proportions because the proposals suggest that Parliament first meets to appoint a tribunal and then later meets to vote whether the President is incapacitated. It has always been the wish of the Kenyan people, as I understand, that the President of this country can be removed through impeachment or incapacity, and we cannot do that unless we have a Senate. Therefore, the Committee has gone beyond what was anticipated by enlarging the office of the President. Therefore, the proposals of this Committee, with utmost respect to the Committee Members, is a threat to national stability.

The proposals are much worse off, that I dare say that looking at them, this country is far much better off with the existing Constitution, as opposed to the proposals the Committee Members are tabling before us. Looking at the proposals again on the Executive, which I will deal with mainly, one would say that we are better off having a Vice-President. After all, someone like my good friend, His Excellency the Vice-President, has done a wonderful job. However, if he were the Prime Minister, I suspect that even in making comments on the Floor of the House, he would have to make a phone call to find out what the President wants him to say.

The other issue I want to address is that of whether or not, we are violating the Constitution. Looking at the Standing Orders---

The Minister for Lands and Housing (Mr. Kimunya): On a point of clarification, Mr. Speaker, Sir. This week, you enlightened us on the need to maintain the integrity of this House. That integrity includes hon. Members of a committee being collectively responsible for the report of the committee they are part of. Mr. Kilonzo was a Member of the Select Committee that has reported here. I want your clarification why hon. Members, who have been listed here as Members of the Committee, can stand here and present contradictory views which they are collectively responsible for?

Mr. Speaker: Order, hon. Members! A committee is a creation of the House. There is no law that commands hon. Members of a committee to be unanimous. Indeed, hon. Members of a committee have a right to vote if they disagree. Hon. Members who disagree have a right to come to this House and vote against what was brought to the Chamber. So, I think he is perfectly in order.

Mr. M. Kilonzo: Mr. Speaker, Sir, before I was interrupted, I was addressing the issue of your opinion and guidance of this House. I took the opportunity overnight, to look at Standing Order No.40. Although it is true that yesterday I said, and I insist, that you cannot declare an Act of Parliament unconstitutional, in the process of contributing to this debate, it is my firm view that Standing Order No. 40, in fact, confers on you the responsibility to make an opinion as to whether a Motion is unconstitutional or not. I have my Standing Orders with me but because of the limited time I have, I will not read it out to you because you know it very well. You have an obligation to,

in fact, declare whether something is---

Mr. Speaker: Order! Mr. Kilonzo, I concluded that issue yesterday. I will not revisit it, neither will I allow you to revisit it. I made a ruling. Indeed, if you read the Standing Orders, it says that, if in the opinion of Mr. Speaker the matter is unconstitutional, then Mr. Speaker shall decline to have the matter discussed. It is not my opinion, that it is.

So, you do not have to revisit it.

Mr. M. Kilonzo: That is much obliged, Mr. Speaker, Sir. I was not revisiting the issue as such. I was going to pose a question to this House. The issue is as follows: Yesterday, you ruled, and I agreed with you, that the fourth document annexed to the report of the Committee is surplusage. It is the recommendations of the Committee that ought to go to the Attorney-General. Looking at the report itself, which is in front of me, you will also notice that the recommendations in it are vague. They are, in fact, extremely nebulous and in many cases, uncertain. In some instances, the Committee is asking Parliament itself to continue deliberating and in some cases [**Mr. M. Kilonzo**]

consulting officials from the Treasury. If you then go further and look at the provisions of the Act, Section 27, it simply means that it is the Attorney-General, who will ultimately draft and publish the Bill. The question I am raising is not whether, in fact, we are violating the Constitution; but simply questioning the process we are engaged in, keeping Sections 30,46, and 47. Right now, this country is wounded and tired. Its blood is on the streets. It is, therefore, looking upon this House to say with certainty whether what we are doing is going to amount to legislation.

Mr. Speaker, Sir, I would like to seek your permission to lay on the Table the opinion of the hon. Attorney-General dated 25th August, 2004.

Mr. Speaker: Permission granted!

Mr. M. Kilonzo: Thank you very much, Mr. Speaker, Sir, I am much obliged. I will lay it now.

Mr. Speaker: Is it duly signed?

Mr. M. Kilonzo: Mr. Speaker, Sir, unfortunately, the copy that I have is not signed.

Mr. Speaker: It is not a document! You must get the signed copy.

Mr. M. Kilonzo: Mr. Speaker, Sir, the Attorney-General is here. He can look at it and confirm whether is the document. He can sign it!

Mr. Speaker: Order! Order, Mr. M. Kilonzo! I will hold hon. Members to their words. If we must stick to the law, everybody must do that. If a paper is not signed, it is not a document. It is a paper with no value and will not be tabled in the House.

The Minister for Roads and public Works (Mr. Raila): On a point of order, Mr. Speaker, Sir. I was a Member of the Parliamentary Select Committee (PSC) on the Constitution Review process when the Attorney-General came to present that report to the Committee. I also have a similar copy that was given to us by the Attorney-General himself. However, it was not signed but the Attorney-General is here. Therefore, the document presented by Mr. M. Kilonzo is authentic!

(Applause)

Mr. Speaker: Maybe Mr. M. Kilonzo can help the Minister for Roads and Public Works. A document only becomes a document when a signature is appended to authenticate the contents thereof.

An hon. Member: Why did he not sign it? He is here!

Mr. Speaker: Let Mr. M. Kilonzo respond!

Mr. Kajwang: On a point to of order, Mr. Speaker, Sir. That document is part of a report

which was filed in this House under the chairmanship of Mr. Samoei. It is the property of this House. We have a right to refer to it because it is the property of this House. How can you deny us the right to refer to a document which is in the custody of this House?

Mr. Speaker: Order, Mr. Kajwang! It is not force that is right. It is right that is right! If you are wrong, however, hard you speak, it will not be right. You are a lawyer like I am. No document is ever a document without a signature even if it is laid a thousand times on this Table. That is the law!

Mr. Samoei: On a point of order, Mr. Speaker, Sir. I was the Chairman of the PSC when the hon. Attorney-General presented his opinion to my Committee. The document that was sent to my Committee then was signed by the Attorney-General and he gave us copies. I ordered then that the signed copy be filed by the secretariat. If need be, it can be accessed because it is, indeed, the property of the National Assembly.

(Applause)

Mr. Speaker: Order, Mr. Samoei: Do you know what I am saying? If you can get the signed copy, bring it by all means.

Please, proceed, Mr. M. Kilonzo!

Mr. Twaha: On a point of information, Mr. Speaker, Sir.

Mr. Speaker: To whom?

Mr. Twaha: Mr. Speaker, Sir, I will refer to your ruling that only a document that is signed is a document. We are in the electronic age of the internet and e-mail. What is your opinion on that?

(Applause)

Mr. Speaker: As I sit here, I am not using any computer!

Proceed, Mr. M. Kilonzo!

(Laughter)

Mr. M. Kilonzo: Mr. Speaker, Sir, you have correctly stated the position on the law of evidence when a person is presenting evidence before a court of law. It seems to me that in a debate of this nature---

Mr. Muite: On a point of order, Mr. Speaker, Sir. You will remember that at the commencement of the contribution by Mr. M. Kilonzo, you told him that he had ten minutes to contribute. However, the ten minutes are long over yet the light is not on. What is happening?

Mr. Speaker: Order, Mr. Muite! As Mr. M. Kilonzo yesterday began to speak, he did not inform us that he was the Official Responder. Therefore, he had 30 minutes. I understand from the Clerks-at-the-table that he has subsequently informed the Clerk of the National Assembly that he is, indeed, the Official Responder and his time is not limited.

(Laughter)

Mr. M. Kilonzo: I am much obliged, Mr. Speaker, Sir. As the Chair is well aware, I am the Shadow Attorney-General. The issue that I am agitating for, I am doing so in that position as the Official Responder.

In light of your ruling that I cannot table this document because it is not signed, and notwithstanding the fact that my learned Senior Counsel, hon. Mr. Amos Wako is present, allow me

to read to you remarks on the legal position by the hon. S. Amos Wako, EGH, EBS, Senior Counsel, MP, Attorney-General, on issues raised by the PSC on Constitutional Review vide letters of the Clerk to the National Assembly, dated 17th August, 2004, under Ref.No.NA/CKR/CORR/2004/7 on 25th August, at the County Hall.

[Mr. Speaker left the Chair]

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

Mr. Temporary Deputy Speaker, Sir, this is what the hon. Attorney-General said and he can contradict me if he so wishes:-

"Chairman, hon. Members of the PSC, I thank you for having invited me to this meeting to give my written legal opinion on the various issues. However, before I give my legal input into those legal issues, permit me to state that I appreciate the tight-rope situation in which we are at this point in time in the constitutional review process. On the one hand, subjecting the new draft Constitution to a referendum in its current form before reaching some reconciliation may polarise the country creating a national crisis. On the other hand, being seen to substantially rewrite the Draft Constitution may also create a national crisis. However, what gives me hope is that during the Bomas Conference, a consensus on the contentious issues was within sight through this Sulumeti Committee. I am confident that if we all focus on the national interest and lay aside the short-term parochial or personal political gain, we should be able to successfully navigate the cross currents and torrents that are part and parcel of any constitutional making process. It is also important to bear in mind that this constitutional review process leading to a new constitution is being undertaken under an existing valid constitutional order with a democratically elected and National Assembly in place. We must, therefore, take a course of action that is least susceptible to a successful legal challenge in court. Let us not take any action which is of doubtful legal validity because it is politically expedient to do so.

I comment on the various issues raised as follows:-

(a) The Constitution of Kenya Amendment Bill (2004) passed by the House on 5th August, 2004. Clause 21(7)(c) of the Bill provides:-

"Every recommendation to the Attorney-General for amendment to the Draft Bill on the contentious issues---"

The Assistant Minister for Justice and Constitutional Affairs (Mr. Githae): On a point of order, Mr. Temporary Deputy Speaker, Sir. Our Standing Orders bar an hon. Member from reading material instead of debating. Mr. M. Kilonzo, is not quoting from that document. In fact, he is completely out of order, he is reading the whole booklet!

The Temporary Deputy Speaker (Mr. Khamasi): Order, Mr. Githae! The rules are very clear on that. If he is quoting from text, he can go ahead and do so.

Mr. M. Kilonzo: Thank you, Mr. Temporary Deputy Speaker, Sir, for your protection. I continue:

"(a) Constitution of Kenya (Amendment) Bill, 2004 passed by the House on 6th August, 2004, Clause 27---"

The Assistant Minister for Energy (Mr. Kiunjuri): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it really in order for the hon. Member to read the whole booklet, so as to

clarify an issue? It can even take him four days to read it! He has limited time to make his contribution!

Hon. Members: It is his time!

The Temporary Deputy Speaker (Mr. Khamasi): Order! I think the Chair is reasonable enough to note to what extent somebody can quote. So, you will not give the Chair directives on what to do!

Mr. M. Kilonzo: Mr. Temporary Deputy Speaker, Sir, much obliged. I continue:

"Clause 27 (1C) provides that every recommendation to the Attorney-General for amendment to the draft Bill on the contentious issues shall be by consensus. All must be supported by the vote of not less than 65 per cent of the hon. Members of the National Assembly present during voting while Section 54(1) of the Constitution provides, except as otherwise provided in this Constitution, any question proposed for decision in the National Assembly shall be determined by a majority of the votes of the hon. Members present and the voting.

After due consideration of this matter, and relevant provisions of the Constitution, I wish to state as follows:

The Constitution of Kenya Review (Amendment) Bill, 2004, is not in itself a Bill to alter the existing Constitution. Consequently, the resultant Act will be enacted subordinate to the Constitution whose provisions must be consistent therewith. Built against this background, Clause 27(1C) of the Bill is clearly in---

Mr. N. Nyagah: On a point of order, Mr. Temporary Deputy Speaker, Sir. In all sincerity, we are flouting the rules of the game in this House. Mr. M. Kilonzo is making---

Hon. Members: Who are you?

Mr. N. Nyagah: You do not know me?

The Temporary Deputy Speaker (Mr. Khamasi): Order, hon. Members! Mr. Samoei, if an hon. Member is standing on a point of order, we are all hon. Members of Parliament, there is no point in asking: "Who are you?" We all know that we are here, let us listen to him!

Mr. N. Nyagah: Mr. Temporary Deputy Speaker, Sir, I am old enough to be his father!

Hon. Members: Shut up!

Mr. Samoei: Mr. Temporary Deputy Speaker, Sir, I did not say that!

The Temporary Deputy Speaker (Mr. Khamasi): Order! Mr. Samoei, I referred to you, I did not really know who it was who said that. I am sorry, if it was not you.

Mr. N. Nyagah: Mr. Temporary Deputy Speaker, Sir, the point of order I am making is that Mr. M. Kilonzo is not making reference to the notes, but he is actually reading the whole document. Could the Chair make a ruling on that?

The Temporary Deputy Speaker (Mr. Khamasi): Mr. N. Nyagah, I have already made a ruling on that issue. Could you leave that to the Chair?

Mr. Weya: On a point of order, Mr. Temporary Deputy Speaker, Sir. Mr. N. Nyagah told Mr. Samoei that he is old enough to be his father. Is he in order to say so?

The Temporary Deputy Speaker (Mr. Khamasi): Hon. Members, we have more serious business today. I believe we should confine ourselves to it. Mr. N. Nyagah, if you ever said that, please, withdraw and apologise. Did you say that?

Mr. N. Nyagah: Mr. Temporary Deputy Speaker, Sir, I am an old man. I am not a little boy! Soon, I will be 60 years old. He is in his 30s! Anyway, if it is offensive to him, then I apologise.

Mr. Samoei: Mr. Temporary Deputy Speaker, Sir, much as it is true that Mr. N. Nyagah is old enough to be my father, in this House, we do not have sons and fathers. Even if he was my

father, he should be respectable enough to call me a hon. Member.

The Temporary Deputy Speaker (Mr. Khamasi): Mr. Samoei, I hope you agree that he has withdrawn his remarks.

Mr. M. Kilonzo, continue!

Mr. M. Kilonzo: Mr. Temporary Deputy Speaker, Sir, before I was interrupted, I was reading the remarks of the Attorney-General---

The Temporary Deputy Speaker (Mr. Khamasi): Order, Mr. M. Kilonzo! I would like to know, how long will it take you to read that document? Could I have a rough idea?

Mr. M. Kilonzo: Mr. Temporary Deputy Speaker, Sir, if you permit me, I could show you the letter?

The Temporary Deputy Speaker (Mr. Khamasi): Am asking you how long it will take you to read that document.

Mr. M. Kilonzo: Mr. Temporary Deputy Speaker, Sir, well I really cannot estimate because my colleagues continue interrupting me. So, this might be as long as it takes to finish because it is one continuous document.

The Temporary Deputy Speaker (Mr. Khamasi): Mr. M. Kilonzo, you are quoting an extract, and should be intelligent enough to let the Chair know approximately how long you will take to go through it.

Mr. M. Kilonzo: Mr. Temporary Deputy Speaker, Sir, with the utmost respect, I think this will take about 10 to 15 minutes.

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs (Prof. Kibwana): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. Member to continue reading to the House a document which you have ruled is not signed and, therefore, is not authenticated?

The Temporary Deputy Speaker (Mr. Khamasi): That is a very valid point. Has the Chair ruled it is a statement that is not acceptable to the House?

Hon. Members: No! No!

The Temporary Deputy Speaker (Mr. Khamasi): Order! If the Chair ruled to the effect that it is not a valid document before the House, then obviously, Mr. M. Kilonzo, is out of order. However, if it has not, then, perhaps, you can continue. The Speaker is listening to this debate and he will soon be here to clarify this matter.

Proceed, Mr. M. Kilonzo!

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

The Temporary Deputy Speaker (Mr. Khamasi): Order! Order! let Mr. M. Kilonzo continue with his contribution.

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

The Temporary Deputy Speaker (Mr. Khamasi): What is it, Mr. Angwenyi?

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

Mr. Angwenyi: Mr. Temporary Deputy Speaker, Sir, is it in order for Mr. M. Kilonzo---

The Temporary Deputy Speaker (Mr. Khamasi): Order! Mr. Sungu, you are a senior hon. Member of this House. I expect you to behave so! You are not the only hon. Member of Parliament, there are very many! Once the Chair catches the eye of one hon. Member, it must not only be Mr. Sungu! Could you, please, sit down and keep quite.

Mr. Sungu: Mr. Temporary Deputy Speaker, Sir, I apologise, but I have not been considered---

The Temporary Deputy Speaker (Mr. Khamasi): Order! Let us listen to Mr. Angwenyi.

Mr. Angwenyi: Mr. Temporary Deputy Speaker, Sir, is Mr. M. Kilonzo in order to be

reading a letter from the Attorney-General, which he read to us yesterday? Why is he repeating what he read yesterday? The time of this House belongs to us all, the Chair cannot give it to one person!

Hon. Members: Who are you?

Mr. Angwenyi: Whom am I? Do you know me?

The Temporary Deputy Speaker (Mr. Khamasi): Order, hon. Members! Order! I took the Chair when Mr. M. Kilonzo was reading that particular document. I believe the Speaker was here throughout. If he noticed that Mr. M. Kilonzo was repeating, he would have stopped him.

Mr. M. Kilonzo, continue and wind up what you are reading!

Mr. M. Kilonzo: Mr. Temporary Deputy Speaker, Sir, the remarks of the Attorney-General will not have any meaning unless they go on record in their totality. So, please, bear with me. He is the Official Legal Advisor to the Government. He gave a legal opinion to a Committee of this House and the remarks I am reading relate to the business on the table. So, please, indulge me. I was reading Clause No.27 (i)(c) of the Bill. The Attorney-General said as follows:-

"Every recommendation to the Attorney-General for amendment to the Draft Bill on contentious issues shall be by consensus or must be supported by the process---"

Mr. Kembi-Gitura: On a point of order, Mr. Temporary Deputy Speaker, Sir. I am seriously perturbed and the Chair knows! Mr. M. Kilonzo is not just a hon. Member; he is also senior counsel. He knows very well the rules of relevance both in the House and the courts of law. That letter is 12 pages. If he is going to read it, so that he just takes the time of the House, then I must say that it is very unfortunate that a senior counsel---

(Loud consultations)

I must finish!

The Temporary Deputy Speaker (Mr. Khamasi): Order, all of you! Mr. Kembi-Gitura, you are just repeating what other people have said. I have given Mr. M. Kilonzo a specific period of time. He said that he will take ten minutes or so. If that time elapses, that will be it! So, whatever it is, we have already done so from the Chair. You can keep your feelings about it.

The Assistant Minister for Finance (Mr. Obwocha): On a point of order, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Khamasi): Order! Mr. M. Kilonzo! What is it, Mr. Obwocha!

The Assistant Minister for Finance (Mr. Obwocha): On a point of order, Mr. Temporary Deputy Speaker, Sir. Mr. Speaker and ourselves have agreed to be honest to ourselves. Mr. Speaker, from the Chair, asked Mr. M. Kilonzo whether that document was signed. He made a ruling that no document that is not signed and authenticated---

The Temporary Deputy Speaker (Mr. Khamasi): Order, Mr. Obwocha! I have already said that Mr. Speaker is listening to this conversation here. If he made that ruling, he will be here within a short time to make another ruling on that. If, indeed, he disqualified that document, it is wrong for Mr. M. Kilonzo to continue reading it!

Proceed, Mr. M. Kilonzo!

Mr. M. Kilonzo: Much obliged, Mr. Temporary Deputy Speaker, Sir. Again, I emphasize that I am reading the remarks of the Attorney-General of this country to the Parliamentary Select Committee (PSC) on Constitutional Review. He was also present when I started. Let me proceed. He said as follows:-

"Clause 27(i)(c) of the Bill provides that every recommendation to the Attorney-General for amendment to the Draft Bill on the contentious issues, shall be by

consensus or must be supported by the votes of not less than 65 per cent of hon. Members of the National Assembly present and voting.

Section 54(1) of the Constitution provides:-

"Except, otherwise provided in this Constitution, any questions proposed for decision in the National Assembly shall be determined by a majority of the votes of the hon. Members present and voting."

After due consideration of this matter, and the relevant provisions of the Constitution, I wish to state as follows:-

"The Constitution of Kenya Review (Amendment) Bill, 2004 is not, in itself, a Bill to alter the existing Constitution. Consequently, the amendment will be an Act subordinate to the Constitution, whose provisions must be consistent therewith."

Built against that background, Clause 27(i)(c) of the Bill is clearly inconsistent with Section 54(i) of the Constitution. That is because a decision on a question under that clause, that is whether or not to recommend an amendment on contentious issues in the Draft Constitution to the Attorney-General---

The Temporary Deputy Speaker (Mr. Khamasi): Order, Mr. M. Kilonzo! The Chair has officially been advised that the Speaker ruled that, that is not a document that has been signed, and we cannot use it here. So, with immediate effect, discontinue reading the report and go back to other matters. You cannot use it here.

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

Order, all of you! That was the ruling from the Chair. It has been confirmed that there was a ruling from the Chair and that position will not change. Mr. M. Kilonzo, continue with other matters and discontinue quoting from that document.

Mr. Sungu: On a point of order, Mr. Temporary Deputy Speaker, Sir. I was only concerned, now that I have been given a voice, that the Attorney-General is sitting there. Whereas the Speaker ruled that, that document cannot be tabled, Mr. M. Kilonzo is quite in order to refer to it as a text. The Attorney-General is sitting there! Could we hear from the horses mouth whether that document is genuine or not?

Hon. Members: He is there!

Mr. M. Kilonzo: Mr. Temporary Deputy Speaker, Sir, you have a made a ruling that is amazing to me but, since I am a person who respects rulings, history will judge me right that the Attorney-General is present. I was reading his opinion to this honourable House. The Parliamentary Select Committee is part of this House. In fact, the document is not a letter as such. It was an opinion in form of remarks. I have no doubt in my mind that, if the Attorney-General was given an opportunity, he would acknowledge that these are his remarks. I am not aware that he has changed that position. By denying me an opportunity to present this document by way of tabling it, or even to read it, this country and House are being denied an opportunity of hearing what, as on that day, the Official Advisor to the Government thought of the Act under which the Motion under consideration has been brought before the Floor of this House.

The Assistant Minister, Office of the President (Dr. Machage): On a point of order, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Khamasi): I will not take that. Proceed, Mr. M. Kilonzo! We want you to wind up.

Mr. M. Kilonzo: Much obliged, Mr. Temporary Deputy Speaker, Sir. One of the most

important issues in any Parliament - and this one particularly - looking at the Constitution and the Standing Orders is an issue of integrity and probity. It seems to me that, in proposing this Motion, the Proposer is clearly violating that concept of probity. We are being asked in part two of this Motion to recommend that the Attorney-General publishes a Bill entitled the Constitution of Kenya Bill, 2005, pursuant to the Draft Bill and the amendments thereto, as contained in the Report of the Select Committee. It is my firm view that, if this House is to pass this Motion, it will be judged so harshly by history. It is going to cause the biggest problem of them all, in the sense that, by creating this Motion, the Government is going to confer on the Attorney-General of this country, a power and authority that he himself does not claim; a power and authority that he has, in fact, disclaimed in the opinion that has been addressed; that he has no capacity, himself, to legislate. The legislative authority of this country, as I have demonstrated in my previous contribution on this Motion, is vested in this honourable House.

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

[Mr. Speaker resumed the Chair]

Therefore, if you look at the Motion, the way it has been drafted, the phrase "further recommends", violates the Constitution because it is not the responsibility of this House, when it comes to legislation, to make recommendations. The responsibility of the House is to legislate and if the country were to be faced by a Parliament that is abrogating its responsibility to legislate, then we are headed for disaster and to the dustbin of history as people who did not perform the trust that had been entrusted on them by the country and the Constitution.

Mr. Speaker, Sir, you will also see in this Motion that the Mover has used the word "accordingly"---

The Assistant Minister, Office of the President (Dr. Machage): On a point of order, Mr. Speaker, Sir. Is hon. M. Kilonzo in order to continue reading from a text in his deliberations?

Mr. Speaker: I have not seen him reading.

Mr. M. Kilonzo: Mr. Speaker, Sir, my good friend has not been listening to what I was saying. I was simply saying that by using the words "further recommends" and "accordingly", it simply means that we are abrogating our responsibility under Sections 30, 46 and 47. On that ground alone, the Motion ought to be denied and refused by this honourable Chamber.

Mr. Speaker, Sir, I would like now, with your kind permission, to address a number of issues that have been addressed in the Report itself which you have. Let me start first of all by referring you to page 1 of the Report itself. I am referring to this document entitled "Report of the Select Committee on the Review of the Constitution" dated July 2005, page 1 - the introduction. I was referring to paragraph 3 which states:-

"The mandate of the Select Committee is under Sections 27 (1) (B), 27 (2) and 27 (3) of Cap.3(A) which provides that the National Assembly shall as in Section 27 (1) (B) submit to the Attorney-General the Draft Bill and recommendations only on the contentious issues as identified and recommended by the Parliamentary Select Committee on the Constitution review for approval by the National Assembly".

Sub-Section 2 says:-

"In considering the Report and the Draft Bill, the National Assembly may undertake consultations to initiate facilities and promote a national consensus on the contentious issues as recommended by the Select Committee on the Constitutional

Review and approved by the National Assembly".

Section 27 (C) says:-

"Within 30 days after the National Assembly submits the Draft Bill to the Attorney-General, the Attorney-General shall publish the proposed new Constitution based on the Draft Bill and amendments as approved by the National Assembly".

Then (II) says:----

Mr. Speaker: Are you reading the whole document?

Mr. M. Kilonzo: No, Mr. Speaker, Sir.

Mr. Speaker: Then point out what we have because we can read.

Mr. M. Kilonzo: Mr. Speaker, Sir, thank you for reminding me that. I wanted to show you that arising from that mandate since I have every reason to believe that you have read it,---

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs (Prof. Kibwana): On a point of order, Mr. Speaker, Sir. Is it in order for the hon. Member, who was my senior at the university and is very learned, to keep on repeating the same points that he made yesterday?

Mr. Speaker: Yes, indeed there are indications that the hon. Member is repeating what he said yesterday. Point out what you want! Mr. M. Kilonzo, can you make your point?

Mr. M. Kilonzo: Mr. Speaker, Sir, yes, let me make my point. My point is that the Committee has gone outside the mandate that it was given. I will go further and say that in going outside that mandate, it is not an accident. It has been done deliberately because the reasons I was reading the provisions at the introduction is to draw the attention of this honourable House that they knew what they were doing and in doing so, they were doing it deliberately.

Mrs. Kihara: On a point of order, Mr. Speaker, Sir. I need your guidance. Is the word "boring" Parliamentary language because the hon. Mover is quite boring?

(Laughter)

Mr. Speaker: Order! You know Parliament seeks to discuss and not to entertain. If the hon. Member is delivering his speech but making points in a manner that does not excite hon. Members, that is perfectly in order.

(Applause)

Mr. Mwandawiro: Jambo la nidhamu, Bw. Spika. Je, ni nidhamu kuendelea kujaribu kufikiria kwamba mhe. M. Kilonzo anayezungumza anasema jambo la kuchekesha ambapo anasema jambo la muhimu sana kwamba hii Kamati imeharibu hii ripoti kwa kuzungumzia habari ya utamaduni? Utamaduni si swala nyeti na Kamati hii ilipewa mamlaka ya kuzungumzia maswala nyeti pekee yake.

Mr. Speaker: Mhe. Mwandawiro, tafadhali nakuomba leo jioni uchukue kile kijitabu cha nidhamu ya Bunge na usome tena ili ujue swala la nidhamu ni nini. Hivi sasa nimetosheka kwamba hilo halikukuwa swala la nidhamu. Endelea, Bw. M. Kilonzo!

Mr. M. Kilonzo: Thank you, Mr. Speaker Sir. The first violation of their mandate is in the preparation of a document that was called Draft Constitution of Kenya, 2005. It is my very respectful and humble view and position that the mandate of the Committee did not include and never included the drafting of a Constitution of Kenya Bill, 2005.

The Assistant Minister, Office of the President (Dr. Machage): On a point of order, Mr. Speaker, Sir. You ruled that hon. M. Kilonzo had 30 minutes to contribute and he has surpassed

those 30 minutes.

Mr. Speaker: Where were you? I told this House that the hon. Member is the Official Responder and there is no time limit.

(Applause)

Mr. Angwenyi: On a point of order, Mr. Speaker, Sir. I accept your ruling but the time for this House belongs to us all. We have got an opinion on this document and if we give one person, whether he is the Official Responder or Official Mover to take all the time of this House consisting of 222 Members, I think it will be unfair, unequitable and against the rules of natural justice.

Mr. Speaker: Order, hon. Members! We operate the business of the House in accordance with the law. The law need not actually be fair. The law is the law. Now, that is what you people have done. However, what the hon. Member ought to do since he is on a very important subject which is that the Committee went beyond its mandate---- Therefore, was the Committee mandated to go beyond its mandate? If you want the Chair's ruling on it, make it precisely and succinctly, point out where it has gone beyond the Committee's mandate, convince me that you are right and then, I will make the decision on it.

The Assistant Minister, Office of the President (Mr. M. Kariuki): I am very grateful---

Mr. Speaker: What is it, Mr. M. Kariuki?

The Assistant Minister, Office of the President (Mr. M. Kariuki): Mr. Speaker, Sir, I think the hon. Member is repeating the argument that he had put forward yesterday. I have a copy of the HANSARD here for avoidance of doubt. A ruling was made by the Chair yesterday about the documents that were laid on the Table here. Just to refresh the hon. Member's memory, this was your ruling:

"**Mr. Speaker:** Order! Order! First of all, I do not know what is agitating the House. You asked for three documents and you have got four. In fact, you have got a bonus. So, if you do not want to look at the fourth document, do not do it; look at the ones you want to look at".

That was the ruling of the Chair, who went ahead to say---

(Loud consultations)

Mr. Speaker: Order! Order! You can sit down, Mr. M. Kariuki! I want the hon. Members on my left-hand side to understand the following: If you want to be protected by the rules, the same protection will be given to the hon. Members on my right side and you must play ball. If you want fairness, give others fairness! It cannot be a one-way traffic.

Proceed, Mr. M. Kariuki!

(Applause)

The Assistant Minister, Office of the President (Mr. M. Kariuki): I was saying with tremendous respect to my good friend, hon. M. Kilonzo that, he is repeating an argument that he had put forward yesterday and he is trying to go round a ruling of the Speaker which was made yesterday. We have to make progress on this debate and any person trying to filibuster should be stopped. What we are now doing is repeat an argument for the sake of wasting time. I am saying that with tremendous respect.

Mr. Speaker: Order, hon. Members! Order! I remember that issue was raised yesterday by

the hon. Member, particularly about the fourth document entitled *The Draft Constitution of Kenya, 2005*. I believe that was the document you were referring to?

The Assistant Minister, Office of the President (Mr. M. Kariuki): Mr. Speaker, Sir, I was actually showing you the report itself; the other document you are holding, which is the actual PSC report dated July, 2005. I was simply saying that when you look at page 15 of the document is---

Mr. Speaker: Can you allow me to finish first?

The Assistant Minister, Office of the President (Mr. M. Kariuki): Sorry, I apologize.

Mr. Speaker: If I may finish first on the fourth document, I said yesterday that the Committee can do only those things that are mandated by the resolution of the House, and the mandate is contained in part (i) of the Motion. As I understand, you are taking objection particularly to part (ii) and the document coming as a result of part (ii). Is that what your objection is all about?

Mr. M. Kilonzo: No, Mr. Speaker, Sir. My argument is a little bit deeper than that. Allow me some indulgence, but looking at the Motion as it is formulated, it goes completely outside the mandate that it was given. Why? Because in part (ii), it is referring to the Constitution of Kenya Bill, 2005, which was never in the mandate; and I have read out to you the mandate.

(Applause)

Therefore, the point I am making is so dramatic, because it will germinate and inform the rest of my argument. In the photocopy of the report that you are holding, we continue seeing a document called clause II, clause III, clause V---

Mr. Speaker: Let me say the following: As I said earlier, and I wish to repeat the same; a Committee of this House is a creature of the House, and the Committee only has power bestowed upon it by the House and no more.

(Applause)

As I understand the law and the resolution of the House, the Committee was supposed to look at the Bomas Draft; the report of the Constitution of Kenya Review Commission and make recommendations on contentious issues as enumerated in part (i) of the Motion.

(Applause)

It does appear to me, like I said yesterday, that this other document is outside the mandate of the Committee.

(Applause)

As a consequence of that, I will strike out---

Mr. Angwenyi: What?

Mr. Speaker: I will strike out---

(Applause)

Order! Order! I will strike out part (ii) of the Motion and the word "and" appearing at the end of part (i). As a matter of fact, it is superfluous.

(Applause)

Once this House has received the report of the Committee and approved it, it is automatic that it goes to the Attorney-General, who will look at the resolutions here and make the Bill. That Bill, according to Section 27, will then go to the referendum. So, it is, in fact, superfluous.

(Loud consultations)

Order! Order! I do not want hon. Members to revisit this issue. It, therefore, follows that any preferred amendments based on part (ii) of the Motion, which is not properly before the House, will not be properly before this House as well.

(Applause)

Yes, what is it, Mr. M. Kariuki?

The Assistant Minister, Office of the President (Mr. M. Kariuki): Mr. Speaker, Sir, I respect your ruling. But I was going to ask the following: Regardless of the title of the document---

(Loud consultations)

Mr. Speaker: Order! Can I hear the hon. Member? I must hear the hon. Member!

The Assistant Minister, Office of the President (Mr. M. Kariuki): Mr. Speaker, Sir, I respect your ruling and I agree with it. But I wanted to add that besides looking at the title of the document, in the event that some recommendations are in that document, and that is within the mandate of the Committee and within Section 27 of the Act, how do we save those recommendations that have been put in a document that has been wrongly titled? That is the direction that I seek from the Chair.

Mr. Speaker: Order, hon. Members! Order! Order! It is very clear to me, and we actually have a report of the Committee on its deliberations and recommendations. Those are the only matters we shall deal with in the House!

(Applause)

If any hon. Member wishes to make an amendment, the amendment must be within the report of the Committee, duly tabled and signed by the Chairman.

(Applause)

That is very simple and straightforward. That is all!

Proceed, Mr. Nyachae!

The Minister for Energy (Mr. Nyachae): On a point of order, Mr. Speaker, Sir. I respect your ruling. However, I want the House to know that, having accepted your ruling, the fact remains that this document is an annex and it contains a lot of recommendations. That is specifically to be pointed out and it will go to the HANSARD. But I am not opposing your ruling.

The Assistant Minister for Foreign Affairs (Mr. Wetangula): On a point of order, Mr. Speaker, Sir. I also respect the ruling you have made, but invite you to look at the Motion. The Motion reads: "That the House Adopts the Report of the Select Committee on the Review of the

Constitution." To that extent, we are together.

If you look at the Report, number 18 that starts from page 12, then you go to page 13 at the top, it says: "That this House adopts the recommendations of the Parliamentary Select Committee as proposed in the appendix entitled "Draft Constitution of Kenya 2000." Never mind the description of the document. Mr. Nyachae laid on this Table three documents; the Report and the draft Bill from Bomas and the Report of the Select Committee which have this document as an integral part of the Report.

Hon. Members: No! No!

The Assistant Minister for Foreign Affairs (Mr. Wetangula): The decency in debates is to be listened to when you are speaking, as I have been listening to hon. Members! I have not interrupted anybody speaking in this House since we started the debate.

Mr. Speaker, Sir, we did debate a Motion in this House where we tabled a Report of the Select Committee that made reference to among other things, the Naivasha Accord and so on and so forth. Those are the ones that have given rise to this document which is not a stand-alone document. It is a mere annex to this Report. I, therefore, want to invite the Chair to rule that the documents presented to this House were three, and there is no document to be struck out. An appendix is an integral part of a document and it remains part of the Report of the Select Committee. Therefore, striking it out does not arise.

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

Mr. Speaker: Order, hon. Members! I think we are labouring over nothing. The Committee can only do as much as empowered by the House. The House mandated the Committee to look at the various chapters of the Bomas draft as set out in (i), and bring that Report to the House.

The Constitution of Kenya Review Commission (CKRC) Act itself orders that once this House approves the Report of the Committee, it goes to the Attorney-General who will extract from the Committee and the House - it then becomes a House decision - and make a Bill out of the Bomas draft, only changing those aspects that have been approved by the House. In fact, I think the Committee was making life easy for the House and the Attorney-General. But since the House is not happy with being assisted, then you just look at the Report itself.

It is not fatal for what the Attorney-General has to do. It is absolutely correct. In fact, I will further add that I think the hon. Members from both sides of the House, must be able to point out any other area where the Committee overstepped its mandate. This is because we must operate within the law.

(Applause)

I do not want Mr. M. Kilonzo to labour over what I have already ruled.

The Assistant Minister for Foreign Affairs (Mr. Wetangula): On a point of order, Mr. Speaker, Sir. On 30th June, 2005, with you, Mr. Speaker, presiding, Mr. Nyachae moved a Motion here. The Motion had an appendix which was a report of a sub-committee of the Select Committee. The danger with the ruling you are making is---

Mr. Speaker: Are you threatening me?

The Assistant Minister for Foreign Affairs (Mr. Wetangula): Mr. Speaker, Sir, I am not. The import of the ruling you have made is to the effect that the Select Committee restricts itself to the seven chapters, which is not true. This is because that Motion that Mr. Nyachae moved, and the

HANSARD will bear me out, had an annexed Report of the Select Committee.

Mr. Speaker: Order, Mr. Wetangula!

The Assistant Minister for Foreign Affairs (Mr. Wetangula): Indulge me to finish, Mr. Speaker, Sir.

Mr. Speaker: Order! Mr. Wetangula, I invite you to look at the Act itself. The Committee and House must operate within the Act. What you are telling me is actually *ultra vires* to the Act. Alright? I have made a ruling by the way and it will stick!

(Several hon. Members on the Government side stood up in their places)

Order, hon. Members! The bit about being Speaker is the potentiality of meting out displeasure to all sides in equal measure. It is your turn on my right to receive the displeasure!

(Hon. Members on the Opposition side applauded)

Order! As you applaud, you are soon receiving my displeasure! I have, in fact, said it is superfluous. It does not in any way fitchet the Report of the Committee. I will not in any way, hinder the Attorney-General from putting into effect what the Committee has recommended in this House, except it will not in any way be construed that the Motion as it is, is in any way defective. It is perfect!

The Assistant Minister for Foreign Affairs (Mr. Wetangula): Mr. Speaker, Sir, could I finish what I was saying?

Mr. Speaker: Why?

The Assistant Minister for Foreign Affairs (Mr. Wetangula): Why not, Mr. Speaker, Sir?

Mr. Speaker: Because I have said so!

The Assistant Minister for Foreign Affairs (Mr. Wetangula): You gave me an opportunity to speak. It is important to hear me.

Mr. Speaker: Mr. Wetangula, I truly recognise the role that you played as the Chairman of the sub-committee that drafted this Report, and you must have put a lot of effort in it. You and your group truly deserve congratulations, but that does not make it personal. I am now saying that there is nothing you will lose out of it.

Ms. Ndung'u: Mr. Speaker, Sir, I wish to state that I do respect your ruling, but I would like to seek your guidance and further clarification. If you look at the Report of the Committee on page 12, there are certain recommendations which the Committee was bringing to the House. If you look at the wording of the recommendations, I would like to seek your guidance on whether your ruling not to accept the annexure will affect or nullify the recommendations of the Committee. Under Section 27 of the law, we as a Committee were required to bring our recommendations. The format of the recommendations was not specified. We said that the recommendations are contained in an annexure to the Report. I would like your guidance on whether or not you are now changing the wording of the Motion and whether any such amendments to the Motion intending to strike out any part of that Motion should, therefore, be given to hon. Members to vote and not a ruling from the Chair.

Mr. Speaker: I have the Report of the Committee in my hand, and every hon. Member ought to have one. The Committee has made recommendations from page 14. The Report is from page 14. If you look at page 1 up to where the hon. Chairman has signed, he is bringing to the

attention of the House what the mandate was from page Nos.1 to 3. Then on page No.4 there is a report of the work of the Select Committee. Then there is the Membership of the Committee. The mode of operation is on page No.5. Then proposed time table is on page No.6. On page Nos. 7 and 8, are the sittings of the Committee. On page No.9 is the establishment of the sub-committee. page No.10 is a continuation and the retreat of the Select Committee. page Nos.11 and 12 are views of the hon. Members of Parliament and the Report of the Select Committee. The conclusion is on page No.12 which ends with the signature on page No.13.

The proper Report begins from page No.14. There are the recommendations in every page, and those are the things that we are going to deal with. Any hon. Member who wants to amend the Report of the Committee must concentrate on the Report and recommendations.

Mr. Angwenyi: Mr. Speaker, Sir, if you look at page 12 of that Report, Section 18(1), reads as follows:-

"The recommendations of a Parliamentary Select Committee are as follows:-

That this House adopts the Report of the Parliamentary Select Committee together with recommendations contained in an appendix entitled, "Draft Constitution of Kenya, 2005".

Mr. Speaker, Sir, that part of the Report---

Mr. Speaker: Order, Mr. Angwenyi! It does not matter what you think about it! If the Committee has no mandate, it has no right.

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

Mr. Speaker: Order! We will not haggle over this. As I have said, we have the Report of the Committee. Let us deal with it! I have made that ruling and it is final.

Now, proceed!

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

Mr. Speaker: I will throw you out now! You had better be careful!

(Mr. Munya consulted loudly)

Order, Mr. Munya! I do not have to say order for the tenth time. I would like to repeat that the Committee was only entitled to do those things that were authorised by the House. The Committee was not authorised to make a draft Bill. That is the job of the Attorney-General. We should consider the recommendations on the Bomas Draft. I would like to hear from the Attorney-General concerning this issue.

Mr. Angwenyi: (Inaudible)

Mr. Speaker: Order, Mr. Angwenyi! What did you say?

Mr. Angwenyi: Mr. Ochola Ogur called me *msaliti* and there are hon. Members here who heard him call me that. I am trying to exercise my rights---

Mr. Speaker: Order! We must keep order in this House. We must keep the integrity of this House. Let us make progress. We are not making progress! Can we hear the Attorney-General?

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, I just want to support your ruling and further to assure this House that according to the Act, what will come to me is the Draft Bill which is the Bomas Draft and, secondly, the Report of the Parliamentary Select Committee on the contentious issues which have been recommended to Parliament and agreed to by Parliament. After agreeing with Parliament, there should have been consultations with stakeholders and then they have now formed a Report which is now before this House. I can assure this House that, in drafting the proposed new Constitution, that is the right word under the Act. It is not a Bill. Under the Act, I am supposed to draft a proposed new Constitution. When it goes to the referendum it will be under

the heading: "Proposed New Constitution". It will not be under the heading of a Bill. In doing that, I will have to look at the Report of the Parliamentary Select Committee and the Bomas Draft. I will then only focus on the contentious issues that had been identified.

(Applause)

Mr. Speaker, Sir, I can assure this House that, in carrying out that exercise, I shall ensure uniformity. I shall ensure consistency. I shall also ensure conformity with the best drafting standards. I will scrupulously follow the law. I hope that lays to rest what we have been arguing about.

(Applause)

I will study the Report, Bomas Draft, debates and everything else. I can assure you that, we shall come out with a Constitution that meets the best drafting standards. The onerous responsibility of drafting the proposed new Constitution is on the Attorney-General, under the Act. I support the ruling by the Chair and I would appeal to both sides of the House to proceed with other matters, rather than go round and round this particular issue.

(Applause)

The Minister for Energy (Mr. Nyachae): Mr. Speaker, Sir, as the Chairman of the PSC on Constitutional Review, I want to confirm to you that, on the basis of the explanation you have given us, we have accepted your ruling.

(Applause)

Mr. Speaker: Mr. M. Kilonzo, is it necessary to belabour those points now?

Mr. M. Kilonzo: Mr. Speaker, Sir---

Mr. Speaker: Order! Mr. M. Kilonzo, you know, I do not want to say that, you are becoming very unmindful of the welfare of your colleagues. This Parliament contains 212 hon. Members. You must now finish your contribution!

Mr. M. Kilonzo: Mr. Speaker, Sir, I wish to, first of all, salute my senior colleague, the Attorney-General, Mr. Wako.

(Applause)

I wish to salute him, again, for putting this matter in its correct perspective. In view of your ruling, Mr. Speaker, Sir, I will be very fast and make my comments on the recommendations of the PSC. That is my responsibility and I ought to do it.

Mr. Speaker, Sir, I will ask you to look at page 15 of the Report; the recommendation that appears under paragraph 23. The Committee recommends that a provision be added in Article 34(1) of the Bomas Draft. It says that one has a right to life "except in the circumstances prescribed by law".

Mr. Speaker, Sir, I beg to differ with that recommendation, insist and request this honourable House to approve and stick to the original Bomas Draft. The right to life should never be qualified. We are given life by God and to say that it will be qualified by circumstance prescribed by law is to subject this country to a potential possibility of a Government that may wish to pass a

law that takes away life in unacceptable circumstances.

Mr. Speaker, Sir, my position on the recommendation in paragraph 24, is firm. The position is clear that we will not want and accept the interference with the freedom of media, as recommended by the Bomas Draft. I am opposed to any attempts, whatsoever, to amend Article 50 of the Bomas Draft Constitution. I will stand firmly defending the rights of the media in Kenya to have the rights and privileges that the Bomas Draft Constitution recommends.

With regard to paragraph 25, Access to Information, Clause 4 of Article 51, my position is clear and firm; that this country will develop only when each Government in power knows that it has a responsibility to give access to information. Therefore, I am appalled by this recommendation and I am opposing it.

On the Legislature, I have a simple comment. It is appearing on page 16, paragraph 26. This country wants the right and privilege of being able to impeach the President. The Senate, or the Upper Chamber, must be retained. Therefore, I am opposed to the mutilation of Chapter 11 of the Bomas Draft Constitution. I am happy to see that the Attorney-General is listening. We do not want any removal of the Senate from the Bomas Draft. This country must have the right to impeach a sitting President; on incapacity or on account of misconduct.

Mr. Speaker, Sir, allow me to very briefly mention the Executive because I have done so before. It seems to me, and I say this without any fear of contradiction, that the Committee misunderstood what it was required to do. What it did is to seek to confer on the Presidency even more power than the people of this country wanted. We must share power. If power is not distributed in this country, we are heading for trouble. My position, therefore, is that, that recommendation ought to be rejected.

(Loud consultations)

The Assistant Minister, Office of the President (Dr. Machage): Mr. Speaker, Sir, I beg the indulgence of the Chair to order that the sound of the microphone be reduced, because it is too loud for us to hear what hon. M. Kilonzo is saying!

Mr. Speaker: Order!

Mr. M. Kilonzo: Mr. Speaker, Sir, I am sorry, my voice was competing with the loud consultations that are taking place on the Floor of the House. Otherwise, I am a soft-spoken man.

Mr. Speaker, Sir, I was saying that the recommendations on the Executive are, in fact, the ones which have forced our people on the streets these last three days. They have gone to the streets to protest because they understand that when we started the process of amending the Constitution, we were going to distribute power so that the Presidency is not seen as winner-take-all or some sort out unassailable position that cannot share responsibility with others. Therefore, I am opposed to the recommendations in paragraphs 27, 28 and 29, particularly the structure of the Executive authority of the Republic. I am also opposed to the recommendation in paragraph 30. I do not mind the State functions of the President under recommendation No.31. He can continue performing those functions.

Mr. Speaker, Sir, on page 18, we have the legislative functions of the President.

Mr. Speaker: Order! Mr. M. Kilonzo, can you wind up?

(Loud consultations)

Mr. Marende: On a point of order, Speaker, Sir. You can see that the atmosphere in the House does not give us a chance to hear what hon. M. Kilonzo is saying!

Mr. Speaker: Order! Order, Members! Please listen! You know also, Mr. M. Kilonzo, when you are there for too long, hon. Members begin to think you should not be there now!

Mr. M. Kilonzo: Mr. Speaker, Sir, I appreciate the comment, but you realise that because of the interruptions that I have suffered, I have only covered recommendations up to No.32. I would like to cover all of them because, after all, that is my function.

I have no quarrels with Recommendations Nos.32, 33, 34 and 35.

(Loud consultations)

Mr. Muite: On a point of order, Mr. Speaker, Sir. I stand on a point of order to seek your guidance, but not to challenge the ruling that you have given. Could you tell this House the source of your authority to make a ruling like that one? Under which Standing Order?

Mr. Speaker: Order, hon. Members! Hon. Muite, what do you exactly mean?

Mr. Muite: Mr. Speaker, Sir, a few minutes ago, this House had to go to Division to decide on the simple issue as to whether we are to extend time or not. On a more fundamental issue about an annexure, a Report by the Parliamentary Select Committee (PSC), it is this House, through a Division, that should make a decision like that. Where is the jurisdiction on the part of the Speaker to make a ruling like that one?

Mr. Speaker: Order, Mr. Muite! There are some things that hon. Members must learn to live with. Firstly, you must understand that no single hon. Member ever possesses all the knowledge in this world. God, in his wisdom, has distributed wisdom and knowledge to all of us, including learning. Secondly, you must appreciate the fact that this House gave me this Chair to be the Speaker. Thirdly, this House gave me the rules of procedure of this House. Fourthly, my position as the Speaker allows me to adjudicate on issues of dispute in this House, particularly on procedure. The question as to whether or not a Committee has exceeded its mandate is a matter to be decided by Mr. Speaker. I have done so and that ends the matter. I beg that, the hon. Member, in pursuing this matter, must be guided by absolute respect to the Chair!

Mr. Muite: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: If you pursue this, I will get rid of you!

Mr. Muite: Mr. Speaker, Sir, I have a lot of respect for the Chair. On this particular issue, the Chair is hopelessly wrong!

(Mr. Muite withdrew from the Chamber)

Mr. Speaker: Order! Hon. Members, that is a direct insult to the Chair! In spite of the fact that the hon. Member has left, as the Chair of this House, I demand that this hon. Member be named. Is [Mr. Speaker]

there an hon. Member to move the Motion?

MOTION

SUSPENSION OF HON. MUI TE FROM
THE SERVICE OF THE HOUSE

Mr. Billow: Mr. Speaker, Sir, what the hon. Member has done cannot go unpunished. In fact, it is not even enough to name him. First and foremost, I propose that hon. Muite, the Member for Kabete, be named by the House. I move that he be named.

Mr. Speaker: Let us hear the Seconder!

Mr. M. Kilonzo: I have worked with hon. Muite for a long time and he is a senior counsel of this country. But I have to say that what he has done this afternoon to the Chair pains me because there is no way a House like this can function unless we respect the Chair.

(Question proposed)

Mr. Speaker: Is there any debate arising?

(Mr. Muite returned to the Chamber)

Mr. Munya: Mr. Speaker, Sir, hon. Muite has only asked the Chair to give guidance on the ruling because of the implications of the previous ruling.

Mr. Speaker: Sorry, I have made a mistake! Under the relevant Standing Order No.89, there shall be no debate. Therefore, I will put the Question that hon. Muite be named straight away.

(Question put and negatived)

Hon Members: Division! Division! Division!

Mr. Speaker: Order, hon. Members! We will go to a Division now! Could the Bars be drawn and all the doors closed?

The following are the Tellers: For the Noes: Mr. Abdirahman and Mr. Wanjala. For the Ayes: Mr. Cheboi and Mr. Munya.

Hon. Members, you already know the rules. Those for the Ayes will proceed to my right and those for the Noes proceed to my left.

Mr. Mwenje: Mr. Speaker, Sir, what are we voting for?

Mr. Speaker: Hon. Member, let me explain. The House, as assembled, heard Mr. Muite, in my view, make a very disrespectful insult to the Chair. You heard an hon. Member moving that he be named. The law does not allow for debate. I put the Question whether or not, he should be named, in my view, for insulting the Chair. The "Noes" had it. They won. But the ones who wanted him to be named sought a Division, which they attained. It is that Question we will now vote for.

If you think he should not be named, proceed to my left. If you think he should be named, proceed to my right. The procedure applies exactly the way we did a few minutes ago. Order, hon. Members! I understand that, Mr. Munya has refused to be a Teller. Why should he do that when he volunteered? Is it to delay the voting?

Mr. N. Nyagah, could you give us another Teller? Mr. Nderitu will be a Teller. Proceed there! The time that was lost will be added.

Order, hon. Members! As we receive the report I wish to make the following correction: Actually, the hon. Member has already been named. What is being voted for is the punishment. You will be voting to suspend the hon. Member for three days.

(Several hon. Members stood up in their places)

Order! You all know the consequences of being named! On the first occasion, you are expelled for three days. It is automatic!

DIVISION

(Question put and the House divided)

(Question carried by 88 votes to 62)

AYES: Messrs. Abdirahman, Arungah, Awori, Dr. Awiti, Messrs Bahari, Balala, Bett, Billow, Biwott, Boit, Cheboi, Chepkitony, Ethuro, Kagwe, Kajwang, Kamotho, Kariuki, G.G., Kenyatta, Keter, Khamasi, Dr. Kibunguchy, Prof. Kibwana, Messrs. Kilonzo, C., Kilonzo, J.K. Kimunya, Kofa, Kombe, Kombo, Korir, Kosgey, Lesrima, Ligale, Maj. Madoka, Prof. Mango, Messrs. Maore, Marende, Ms. Mbarire, Messrs. Midiwo, M'Mukindia, Mohamed, M.A.H.; Moi, Moroto, Muriuki, Mutiso, J.M., Muturi, Mwandawiro, Mwanzia, Ms. Mwau, Messrs. Ndambuki, Nderitu, Ndolo, Maj-Gen. Nkaiiserry, Messrs. Ntutu, Nyachae, Nyagah, N., Nyagudi, Eng. Nyamunga, Messrs. Ogur, Dr. Ojiambo, Messrs. Ojode, Okemo, Okundi, Prof. Olweny, Messrs. Omamba, Omondi, Ondiek, Prof. Oniang'o, Messrs. Oparanya, Osundwa, Owino, Poghisiio, Raila, Rutto, Prof. Saitoti, Messrs. Salat, Sambu, Samoei, Sang, Dr. Shaban; Messrs. Sirma, Sungu, Tarus, Twaha, Waithaka, Wario, Were, Wetangula and Weya.

Tellers of the Ayes: Messrs. Cheboi and Nderitu.

NOES: Messrs. Akaranga, Angwenyi, Bifwoli, Choge, Dzoro, Gachagua, Gitau, Githae, Kamanda, Karaba, Ms. Karua, Messrs. Karume, Katuku, Kembu-Gitura, Dr. Khalwale, Mrs. Kihara, Mrs. Kilimo, Messrs. Kimathi, Kingi; Dr. Kituyi; Messrs. Kiunjuri, Konchella, Dr. Kulundu, Dr. Machage, Dr. Manduku; Messrs. Masanya, Mbau, Michuki; Miriti, Mohamed, A.M.; Mohamed, A.C., Muchiri, Mrs. Mugo; Messrs. Muite, Mukiri, Mungatana, Munya, Munyao, Muriithi, Muriungi; Dr. Murungaru, Messrs. Murungi, Mwaboza, Mwakwere, Mwancha, Mwangi, O.K.; Mwenje, Mwiraria, Capt. Nakitare, Messrs. Ndile, Ndwiga; Ms. Ndung'u; Messrs. Ngozi, Ntimama, Onyancha, Opopo, Shakombo, Shitanda, Mrs. Tett, Eng. Toro, Messrs. Wambora and Wanjala.

Tellers of the Noes: Messrs. Abdirahman and Wanjala.

ABSTENTIONS: Dr. Ali and Mrs. Chelaite.

Mr. Speaker: Order, hon. Members! The hon. Member for Kabete, hon. Paul Muite, stands hereby suspended from the House for three days beginning today. During that suspension, he will be barred from the services of the House and entrance to Parliament buildings.

Open the door and the hon. Member must now be escorted out of Parliament buildings for three sitting days.

(Mr. Muite withdrew from the Chamber)

Let us revert to the debate. Are you finishing now Mr. M. Kilonzo?

(Resumption of Debate)

Mr. M. Kilonzo: Yes, I am finishing. Mr. Speaker, Sir---

The Assistant Minister, Office of the President (Mr. M. Mirugi): On a point of order, Mr. Speaker, Sir. Consequent to your ruling on the annexures to the Report, I would like to seek your direction or guidance in respect of the various proposed amendments that are on the Order Paper, so that we can know how to move forward.

Mr. Speaker: The hon. Member should know that we can only amend the Report of the Committee. Hon. Members are at liberty to amend the Report which has been presented by the Committee.

As for the one that is based on a document extraneous to the Report of the Committee, obviously, they have no legs to stand on.

Mr. Gitau: Mr. Speaker, Sir, I just want to go back a little bit on your ruling, without wasting time. You have mentioned that it is upon us to make any amendment. My understanding of

the removal of the appendix is that we have already amended the Report of the PSC. I want your guidance as to whether that is the position to---

Mr. Speaker: How have you done it?

Mr. Gitau: Mr. Speaker, Sir, the annexures are mentioned in the PSC Report. By removing them, does it mean that this Report is now accurate as it is, or does it stand amended? If it is so amended, is it possible to amend any report without moving an amendment?

Dr. Khalwale: Mr. Speaker, Sir, with utmost respect, I would like to be guided because one, I am not a lawyer and, secondly, I am a new Member of this House. I would like to be guided, so that I do not have the same confusion in future.

Mr. Nyachae moved a Motion which started from (i) with the word "adopts" and ended in (ii) with the word, "Committee".

Mr. Speaker, Sir, the way I understand your ruling, I am tempted to believe that Mr. Nyachae's Motion has been amended by striking out (ii). Does the Speaker have a leeway to amend a Motion without an amendment being brought by an hon. Member of this House?

(Applause)

Mr. Speaker: Order, Dr. Khalwale! I did not amend the Motion. I struck (ii) out!

Order, hon. Members! I am really getting surprised! Do you really want to go through the Report of the Committee, or do you want to deal with extraneous matters? The Report of the Committee is before you! Deal with it! That is what the law mandates!

(Applause)

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

Order, hon. Members! I am not going to re-visit the ruling that I have already made! It sticks!

Mr. Kembi-Gitura: On a point of order, Mr. Speaker, Sir. We, obviously, respect your ruling. We also know that, that is water under the bridge now. It is gone. However, yesterday and the day before--- I am taking over from what Mr. M. Kariuki said. We placed several proposed amendments before you. You endorsed them. When you did that, you took and accepted them on the basis that they were on that annexure that you have struck out.

Mr. Speaker, Sir, I need your direction here, with your kind permission. Let us know whether it is possible now to amend the Report from the Floor of the House, or whether all the amendments that we brought to you have been dealt with. There is only one thing that needs to be appreciated here. Pursuant to Section 27, Cap.3(A) of the Amendment Act, after today, we are not going to see this document again. The Attorney-General is going to work on it. The next time we see it, it will have been proclaimed as a Constitution of the Republic of Kenya. What then, was the work of Parliament? When are we going to say that we are not able to amend? What is the purpose of this debate?

Mr. Speaker: Order, hon. Members! Get this right! Get this absolutely right! When a report of a committee comes to the House, the House has various options. Option one is to reject it completely. Option two is to amend it. That is why you are here. You can prefer an amendment to that Report any time. You can bring it. But it must relate to the Report of the Committee. Otherwise, if you are not going to be allowed to make any amendments, then there is no point of it being brought here in the first place. So, you can amend, but you must amend the correct document.

Mr. Munya: On a point of order, Mr. Speaker, Sir. If you look at the Report of the Select Committee, the recommendations for amendments are in the annexure which you have already declared to be not part of the document here. Now, what is going to the Attorney-General is a Report without recommendations. So, how is the House going to proceed with debate without recommendations?

Mr. Speaker: What are you talking about? Order! Order, Mr. Munya! I fail to understand what it is that the Government side of the House wants. Are you suggesting that the Report presented here is wrong?

Mr. Angwenyi: (inaudible)

(Applause)

Mr. Speaker: Order! Order! The hon. Member for Kitutu Chache, Mr. Angwenyi, you must understand that this is not your Report. It is a Report of the Committee, and it is coming to the House. You have no special interest and you should not have any special interest. You must learn to sit down!

Go on, Mr. Nyachae!

The Minister for Energy (Mr. Nyachae): Thank you, Mr. Speaker, Sir. I just wanted to state that we accepted your ruling earlier on. Now, I want to state, as Chairman of the Committee, that some Members may not agree with me, but I know the Report contains the recommendations.

(Applause)

(Several hon. Members stood up in their places)

Mr. Speaker: Order! Order! What is it, Dr. Machage?

The Assistant Minister, Office of President (Dr. Machage): Mr. Speaker, Sir, you have made very wise rulings. Now that there is no proposed amendment on the Floor of the House, would I be in order to request that you call upon the Mover to reply?

(Applause)

Mr. Speaker: Order! Order, hon. Members! I think I had just made a response to an hon. Member, and I said he could do it if he wants. So, can you finish?

Mr. M. Kilonzo: Mr. Speaker, Sir, I, again, would like to take this opportunity to salute the Chairman of the Parliamentary Select Committee on Constitution Review for the position he has taken---

(Applause)

Dr. Ali: On a point of order, Mr. Speaker, Sir. I have the Report of the Select Committee here. It is in four parts. Part One contains the recommendations on the contentious issues as adopted by the House on 30th June. Part Two contains the recommendations on the provisions of the Bomas Draft which require modification as consequential recommendations in Part One. Part Three is the recommendations on the position in the Bomas Draft. Part Four is the so-called Draft Constitution of Kenya, 2004, which you have thrown out! So, where are the recommendations of the Committee?

The Minister for Energy (Mr. Nyachae): Mr. Speaker, Sir, as a matter of clarification, the

recommendations are contained in the Report. What the Speaker has ruled on is an annexure, which is attached to the Report just for reference. Our recommendations are contained in the Report. If the reference is removed, the Attorney-General, who is going to draft the Bill, will have to make his own references.

Mr. Speaker: Order, hon. Members! Let me make this clear. I agree with the Chairman of the PSC. The Committee was mandated by the House to look at the Bomas Draft on specific Chapters and make recommendations. If you look at the Report before this House, you will find that it refers to various articles on the Bomas Draft. It has made recommendations to this House as to what to do. It is for this House now to decide whether or not it agrees with the Committee, or it does not, on the various recommendations that are contained in the draft. These recommendations are clear.

Mr. Kenyatta: Mr. Speaker, Sir, I am just seeking guidance and clarification on your ruling. You have just made it absolutely clear to this House that what we are supposed to discuss is the Report of the Parliamentary Select Committee on the Review of the Constitution within the mandate that, that Committee was given by this House. The specific areas that the Committee was mandated to look into included Chapter 4 - Citizenship and Chapter 6 - The Bill of Rights.

(Loud consultations)

Mr. Speaker: Order, hon. Kenyatta! I want the House to be attentive, so that you can follow what is being urged, so that when a ruling has been made, you understand what it is all about. As I observe here, many hon. Members are not even paying attention, and after the ruling has been made, they will be the first ones to challenge it. You must listen! Please, for heaven's sake, listen! I do not have to call for order. I am also ready to sit down.

Proceed, hon. Kenyatta!

Mr. Kenyatta: Mr. Speaker, Sir, I am on a point of order to seek your guidance, and clarification, on the ruling that you have just made. We are now discussing, and I think this is very clear to all the hon. Members in this House, the Report of the Parliamentary Select Committee on the Review of the Constitution of Kenya. It is very clear from the Motion that the mandate given to this committee was to look at the contentious issues in Chapter 4 - Citizenship, Chapter 6-Bill of Rights; Chapter 11- the Legislature, Chapter 12- the Executive, Chapter 13 - Judicial and Legal systems, Chapter 14 - Devolved Government and Chapter 18-Constitutional Commissions.

Mr. Speaker, Sir, if that was, indeed, the mandate of the Committee, would I be in order, therefore, to ask that the chapters that were not part of the mandate of this Committee be struck off its Report?

(Applause)

I also beg to seek your guidance on Chapter 2 on page 26; on the Republic, which is outside its mandate.

Mr. Speaker: Could I follow what you are referring to? Which page are you on?

Mr. Kenyatta: I am on page 26, Mr. Speaker, Sir.

(Several hon. Members stood up in their places)

Mr. Speaker: Order! Order! Mr. Kenyatta is the one on the Floor and not everybody else!

Mr. Kenyatta: Mr. Speaker, Sir, further, on page 27, is Chapter 5 on Culture, which was

also not part of the mandate of this Committee. Chapter 7 on Land is also included in this Report, but it is outside the mandate of the Committee. Chapter 9 on Leadership and Integrity on page 29 of the Report is equally included in this Report. Chapter 15 on Public Finance on pages 34 and 46 was not part of the contentious issues that they were mandated to look into. Also chapter 17 on National Security, on page 36 of the said Report, was also not part of the Committee's mandate.

Mr. Speaker: Just a moment, Mr. Kenyatta!

(Loud consultations)

Mr. Speaker: Order, hon. Members! Are you contributing to the Motion, Mr. Kenyatta?

Mr. Kenyatta: I am not contributing, Mr. Speaker, Sir. I am just going through some points so that we can get your ruling on them.

Mr. Speaker: You are talking about what chapter?

Mr. Kenyatta: I am talking about Chapter 17 on National Security, which is on page 36 and Chapter 27 on Transitional Arrangements on page 37 of the same Report, which were also not part of their mandate. The schedule they have referred to under Chapter 9 was also not part of this Committee's mandate. There is also chapter 10 on Representation of the people, which is on page 29. Article 123(d), that refers to the marginalised people of this country, who are important, and sub-paragraph (c), which, as far as I am concerned, refers to the most important group in our nation, which is our women, have been completely deleted. Mr. Speaker, Sir, would I, therefore, be in order to ask that the chapters that I have just mentioned be expunged from this Report and excluded completely from debate in this House?

(Applause)

Mr. Speaker: Order! Order, hon. Members! I want to hear a response from the Committee.

(Loud consultations)

Order, hon. Members! For heaven's sake, there is no shouting any more!

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Speaker, Sir, the hon. Leader of the Official Opposition has made several references to Part Two of this Report, which is headed: Report on Consequential Amendments. It is true that the Report of the Committee is principally on the contentious issues which identified the chapters which are contained in the Motion, for instance, Citizenship and Bill of Rights among others. It is plain logic that if you amend one article of a Constitution it will, of necessity, implicate amendments to other chapters.

*(Loud consultations as Mr. Keter
stood up in his place)*

Mr. Speaker: Order, hon. Members! This Minister must make a response to the Leader of the Official Opposition. He will do so whether you like it or not.

Proceed!

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Thank you, Mr. Speaker, Sir. The various chapters referred to by the Leader of the Official Opposition are those which the Committee noted would be affected by the amendments to the chapters on the contentious issues, which are referred to in the Report. These are like the Bomas Draft which referred to four levels of Government. Since the amendments to devolution are now talking about two levels,

everywhere in the Bomas Draft where the four levels appear have to be changed to read two levels.

(Loud consultations)

Mr. Speaker: Please, I beseech the House to listen to the Minister! Only then, can we make intelligible decisions. Listen to him!

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Speaker, Sir, Part Two, deals with the Consequential Amendments and matters of that nature. When the Attorney-General will be drafting the final constitutional Bill, he has to look at the other chapters so that there is no inconsistency and contradiction in the document.

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

Mr. Speaker: Order, hon. Members! Let us hear from the Attorney-General!

The Attorney-General (Mr. Wako): Mr, Speaker, Sir, as I stated, I will scrupulously follow the provisions of the Act. What the Minister for Justice and Constitutional Affairs has stated is the correct drafting. If a particular chapter has to be amended, and has consequences on other chapters, you will not just amend it and forget the consequences arising from the amendment. Therefore, I will be looking into it very scrupulously. But, at the end of the day, the contentious issues will be identified and recommendations thereof, for amendments and the consequential amendments arising out of that. Therefore, it is dangerous for this House to say that we expunge those chapters which the hon. Leader of the Official Opposition was suggesting. They must be left there as the Parliamentary Select Committee (PSC) on the constitutional review process has, in its honesty, stated; that these are consequential amendments arising out of what we have agreed. Therefore, we should expect that honesty on the part of the PSC. However, on my part, I will be going through them again and ensure that everything is in accordance with the Act.

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

Mr. Speaker: I will hear from Mr. Wetangula first! As I hear from him, I want personally also to understand a few things. When the Minister says "consequential", I want to be enlightened by you or those hon. Members who are in the Committee - because we can obviously understand what "consequential" means. I fully agree that if you amend, say Section 1 to say that there will be no goats in town, and Section 4 says that there will be goats in town, you must amend that to ensure that the effect of Section 1 is the same as that of Section 4. I can understand that! However, what I want to understand from the hon. Member, who is also an hon. Member of PSC and a lawyer as well is: Are there chapters that have been visited by the PSC that have no inter-link at all with the chapters that the Committee was mandated to deal with that have no consequential flow?

The Assistant Minister for Foreign Affairs (Mr. Wetangula): Mr. Speaker, Sir, as the hon. Minister for Justice and Constitutional Affairs and the Attorney-General have said, I will give one example to show that the Leader of the Official Opposition is not right in what he said.

Hon. Members: What page is that?

Mr. Speaker: Order, hon. Members! You will find Chapter 18 listed on the Order Paper as a contentious issue!

The Assistant Minister for Foreign Affairs (Mr. Wetangula): Mr. Speaker, Sir, Chapter 18 deals with Constitutional Commissions. There is a recommendation that these commissions be

reduced to five. I will draw your attention to page 27. You will find that in the Draft Constitution there is Chapter 5 which contains a Constitutional Commission called "The National Commission on Culture". Since it is not among the five that are recommended, as a consequence of the recommendations, we must visit that chapter.

Mr. Speaker: That makes sense!

The Assistant Minister for Foreign Affairs (Mr. Wetangula): Mr. Speaker, Sir, that is what we have done in all the other chapters. However, I will go back to the point that I was raising here earlier. On 30th June, 2005, a Motion came to this House presented by Mr. Nyachae. Annexed to it was a report of the sub-committee of the PSC that the Committee had adopted and it became its report. This House adopted that report in that Motion. That report in part said that the document from Bomas Conference was voluminous and needed to be edited so that articles that can best be dealt with in legislation and policy be removed from the Draft. The House passed that Motion.

In executing our mandate, we visited that Motion that the House had passed and had become part of our mandate. You will then find that in the Report, there will be recommendations such as taking the Administration Police Force out of the

[**The Assistant Minister for Foreign Affairs**] Constitution and leaving it to legislation. It is up to this House to agree with the Committee or not, that any Government, whether my colleagues move to our side or not, can decide to change the structure and format of an administrative police force. We do not have to visit the constitution to make such a change. This is a matter that is in legislation. It is a mandate that this House gave us---

Mr. Speaker: Order, Mr. Wetangula! Since yesterday we have been talking about following the Act and being faithful to it. The Act gave to the House and the Committee power to look at the Bomas Draft on specified areas. I believe it is the specified areas, as directed by the Act, that were picked and condensed into this Motion. Since I know Mr. Kenyatta and everybody else must think and accept that where there must be an amendment as a consequence of an amendment provided for by the contentious issues, that you must do, even if it is not among the contentious issues. That must follow. If it was not part of the contentious issues, as identified by the Act, and as isolated in the Motion, where did you get power to deal with it?

The Assistant Minister for Foreign Affairs (Mr. Wetangula): Mr. Speaker, Sir, if you look at the Act, Section 27, it says: "The Select Committee on the Review of the Constitution of Kenya will identify issues and bring them to the House. The House will approve and then promote national consensus by talking to other stakeholders."

By this House approving the Motion I have referred to, we did not go outside the mandate in the Act at all. The House approved the seven chapters and---

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

The Assistant Minister for Foreign Affairs (Mr. Wetangula): Mr. Speaker, Sir, I would like to beg of my colleagues to listen because I have not interrupted anybody since we started here. This House itself, in executing the mandate from the Act, gave authority to the PSC, to look at the seven named chapters and went further and said that we look at matters that belong to legislation and policy. If the Clerks can bring the HANSARD, it will bear me out. My memory is very clear. We have not, as the PSC gone beyond the mandate given by this House. Indeed, we have invited the House to approve the Report. If any hon. Member wants to move an amendment to the Report, the correct thing to do is to move it, we debate it and vote.

Mr. Speaker: Can I get it from---

Mr. Sungu: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Please, one at a time! Hon. Members, you must appreciate that you are too many and I am only alone here!

Mr. Kenyatta, having heard what--- I am persuaded by what the Minister for Justice and

Constitutional Affairs has said. Can you now isolate, to this House, the chapters that are not dealt with, as a consequence of the ones that the Act authorised?

Mr. Samoei: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order! He must answer me! Let him answer that!

Mr. Samoei: Let me help!

Mr. Speaker: Order! You cannot help! He is the one who raised the issue! Mr. Samoei, I have a lot of faith in your leader. He is very eloquent and able to express himself!

Mr. Samoei: I was proposing to help the House!

Mr. Speaker: Let him respond to that first!

The Minister for Roads and Public Works (Mr. Raila): On a point of order, Mr. Speaker, Sir.

Mr. Samoei: Let me assist, please!

Mr. Speaker: I will come to you!

Mr. Kenyatta: Mr. Speaker, Sir, first and foremost, I am very glad to hear what Mr. Wetangula said. He talked about promoting national cohesion. I am wondering whether we are promoting consensus by what we are doing in this House today.

First, I would like to draw your attention to Chapter 10 - Representation. Where have the marginalised groups and women of this Republic appeared as a contentious issue?

Secondly, on Chapter 7 on Land, where was that an issue? Those have nothing to do with contentious issues!

Mr. Speaker: Prof. Kibwana, do you want to respond to it? I am sorry, I have to get these things right. Everybody must be patient now.

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs (Prof. Kibwana): Mr. Speaker, Sir, I really think that your guidance is quite important in terms of establishing the authority of the proposed amendment by the Parliamentary Select Committee. In terms of agreeing on that, in the first instance, we had to amend what was contentious. We had to amend that on the basis of the consultations that the Committee held. It is also important to appreciate that there were others who were outside Parliament, and who were contributing to this process.

Mr. Speaker, Sir, on the question of land, if you look at devolution it, will also be implicated because within the proposed amendment, there is the relationship between the centre and the district governments in terms of land holding. A land commission is part of the commissions that were authorised for consideration. That is a fact.

Mr. Speaker, Sir, if you look at Part 3---

Mr. Kenyatta: On a point of order, Mr. Speaker, Sir.

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs (Prof. Kibwana): I am on a point of order, Mr. Kenyatta!

Mr. Speaker: Order, all hon. Members! It does help us if, at this stage, we really listen and be cool. This is the stage, from yesterday, where we are actually addressing issues. This is the stage that requires sobriety. I call upon hon. Members to approach these issues with open minds and honesty. If a matter flows from the commissions and it has to be connected with land, say so. If it is not so, say so. For heaven's sake, let us listen to Prof. Kibwana because he is helping the House and the Speaker. This time we must be sober *kabisa!*

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs (Prof. Kibwana): Mr. Speaker, Sir, if you look at Part III, I think that is where there are other issues to consider. It is on page 42.

Mr. Speaker: Hon. Members, could all of us look at page 42 of the Report since we want to be together on this issue?

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs (Prof. Kibwana): Mr. Speaker, Sir, we have agreed that Part I of the Report consists of the contentious issues. It has been agreed that Part II consists of consequential matters like the story of the goat that you told us. Part III is where we have to focus and ask ourselves: "Are those recommendations implicated in terms of the contentious and consequential issues?"

Mr. Speaker, Sir, if you look at the death penalty, which I do not agree with, it is in the Bill of Rights which is one of the Chapters that are contentious. If you look at Article 61, that is on health, that again is in the Bill of Rights; that is the economic, cultural, socio-health on---

Mr. Speaker: Is health among the contentious issues?

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs (Prof. Kibwana): Mr. Speaker, Sir, it is one aspect in terms of the Bill of Rights.

Hon. Members: No! No!

Mr. Speaker: Order, hon. Members! Honesty pays! If it is in the Bill of Rights, it is! You must agree with it. There is no point of saying "no".

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs (Prof. Kibwana): Mr. Speaker, Sir, Article 138 on Ethics and Integrity, the Ethics and Integrity Commission is on commissions and the suggestion there was that the commission itself must be acknowledged within the Constitution but in terms of the law which supplies the detail of it, is what should go into ordinary legislation. You cannot actualise most of these commissions if you do not have attendant ordinary legislation to do so. So, that is in the Commission.

COMMUNICATION FROM THE CHAIR

SHORT BREAK FOR MEMBERS

Mr. Speaker: Shall we have a break? It is very unusual. Just sit there and I will be with you in a minute! Just relax!

*(Business was interrupted temporarily as
(Mr. Speaker left the Chair at 8.15 p.m.)*

(Mr. Speaker resumed the Chair at 8.20 p.m.)

(Resumption of Debate)

Mr. Speaker: Order! Order! Order! I will allow Prof. Kibwana to continue making his contribution. How long will you take, Prof. Kibwana? I need to do the following after I have heard Prof. Kibwana: I will allow Mr. Kenyatta to ask a question and then, I will suspend the sitting of the House for 15 minutes; then, we will resume and continue with our Business.

An hon. Member: For what? That is too much time!

Mr. Speaker: For what? I am a human being!

All right, proceed, Prof. Kibwana!

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs (Prof. Kibwana): Thank you, Mr. Speaker, Sir. In terms of Chapter Ten on page 43---

Mr. Speaker: Order! Order! Order! Hon. Members up there; please, listen to the presentation so that you can know what is going on.

Please, Prof. Kibwana, proceed!

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs

(Prof. Kibwana): Thank you, Mr. Speaker, Sir. I think Chapter Ten on page 43, is self-explanatory from Article 102(3)(a)---

Mr. Speaker: Hold on for a moment, please! Let me follow you! I am sorry, I have to follow you every inch of the way. Did you say page 43?

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs
(Prof. Kibwana): Yes, Chapter Ten with the heading "Representation of the People". Article 102(3)(a) and Articles 111 to 119 are on Representation of the People, which is a contentious chapter.

Mr. Speaker: Yes.

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs
(Prof. Kibwana): When we move on to Chapter 11, on the Legislature, Article 123(1)(3) on the membership of Parliament, it is also a contentious chapter.

Mr. Speaker: Yes!

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs
(Prof. Kibwana): When we go to Chapter 12, on the Executive, Articles 154, 156(2)(a)---

Mr. Speaker: Just one moment, please!

(Loud consultations)

Order, hon. Members! I want us to follow the proceedings, because I do not want to repeat what Prof. Kibwana is saying later. Those hon. Members who are not willing to follow the proceedings, please, do not take us back. Prof. Kibwana is referring to page 44 on the Executive in the Committee's Report. If you look at your Order Papers, the chapter on the Executive appears as a contentious issue. Are we all together there?

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs
(Prof. Kibwana): Yes, that is contentious, up to Article 182. Chapter 14 is about Devolved Government, which is also contentious. That is on the devolution of Government.

Mr. Speaker: Devolution of Government, Chapter 14?

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs
(Prof. Kibwana): Yes! Chapter 15 is consequential to the extent that if you amend the district governments, the public finance is implicated.

Mr. Speaker: I am not getting you properly.

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs
(Prof. Kibwana): It is on page 46, Mr. Speaker, Sir.

Mr. Speaker: Sorry, I do not have page 46, Mr. Clerk. The document I have ends on page 45.

(The Clerk-at-the-Table handed over the document to Mr. Speaker)

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs
(Prof. Kibwana): On page 46, the recommendation which is there is that, there should be an in-depth analysis of it with an expert from the Treasury because the moment you amend a devolved part, then we must get the sharing of finance between the Central Government and the district governments right. So, that is consequential, looking at public finance so that the amendments on devolution are in tandem with the chapter on public finance.

Mr. Speaker: But is it part of the contentious issues?

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs
(Prof. Kibwana): Mr. Speaker, Sir, the devolution is contentious. But it is consequential because

when we amend the devolved Government, so that now there are less parts than before, the way in which the finances were flowing to all the devolved parts originally, there will be implications. That is why there is not a specific amendment. It is just consequential, so that, for example, if there were funds going to another level of government, apart from the district government, then that would have to be looked at.

Mr. Speaker: In any case, if I may interject, I see the recommendations. The Committee recommends that the provisions be refined. I presume to follow recommendations on devolution.

Hon. Members: Yes!

Mr. Speaker: Okay! That makes sense to me!

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs (Prof. Kibwana): Mr. Speaker, Sir, the National Symbols whether they should be in the Constitution or not, I think that is for Parliament to debate and determine.

Mr. Speaker: Let us be honest Prof. Kibwana! It is not consequential. That is outside the mandate. So, I order that it goes.

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs (Prof. Kibwana): Yes, Mr. Speaker, Sir.

Mr. Speaker: Proceed!

The Assistant Minister, Office of the President (Prof. Kibwana): Mr. Speaker, Sir, in terms of the Public Service, Chapter 16, the Kenya Correctional Service as well as Administration, both are in the current Constitution under the Executive and also to some extent tied to Commissions. So, those two, because of their relationship with the Executive and the devolved Government, I think that is why it is necessary for them to be looked at.

Mr. Speaker: Just stop there! I want to take one at a time! Public Service and the Kenya Correctional Service, was it supposed to be a Commission?

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs (Prof. Kibwana): Mr. Speaker, Sir, there was to be a Commission for the Kenya Correctional Service as well as the Administration Police Service, although this is a special Commission. It is not like the Human Rights Commission because of the security implication. On the annexure on both the Executive and devolution, there is also room to discuss how the Administration Police serves those levels.

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

Mr. Speaker: Order! Prof. Kibwana, you know when I follow things, I do so! When I do not, I do not! I really want to be very honest. You must convince me on these two; whether they actually fit in any of them. I am not convinced! Are you convinced yourself?

Mr. Mwenje: On a point of order, Mr. Speaker, Sir. I sat in this Committee at Bomas. It was chaired by Maj. Madoka. It is an issue that really took us long. I do not think they had the mandate to touch this particular one. It was agreed that the Administration Police Service should remain separate. It was very clear that the Administration Police should remain separate, because the aim is not to mix it with the regular police. I want to submit that it was wrong to touch on Article 17, as it had been deliberated on for a long time.

(Loud consultations)

Mr. Speaker: Order, hon. Members! Give me the opportunity to finish with this hon. Member, because he is trying to convince me and the House. If you cut him short half-way, you are

denying the House and the Chair the benefit of getting his knowledge. Let me see whether he can convince me, because I have told you, Prof. Kibwana, that I am not very convinced on these two. Prof. Kibwana, attempt to convince me and the House!

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs (Prof. Kibwana): Mr. Speaker, Sir, in actual fact, what is required in Article 270, is that, although the Kenya Correctional Service is established within the Constitution, it is required that there should be a facilitating law which gives need to the Kenya Correctional Service. As you and the House know, there are bodies which are established under the Constitution, like a human rights body, and then there is the facilitative law. I think Article 154 is merely seeking that the Service be established, first within the Constitution and then its body is to be within an Act of Parliament.

Mr. Speaker: Could I tell you what I think?

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs (Prof. Kibwana): Yes, Mr. Speaker, Sir.

Mr. Speaker: Quite frankly, first I must thank you because you have helped us a lot. You have argued very eloquently on most of those chapters except these two. Just look at Article 17; on the Administration Police. You are saying that Parliament is invited to deliberate on the merits and demerits of establishing an independent administration police force.

When a Select Committee is set, its business is to make recommendations, for the House to adopt. That is not a recommendation; it is an invitation for Parliament to deliberate.

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs (Prof. Kibwana): Mr. Speaker, Sir, Article 154 is saying that the Kenya Correctional Service will, in the first instance, be established under the Constitution and secondly---

Ms. Ndung'u: On a point of information, Mr. Speaker, Sir. We had proposed to do away with the Provincial Administration in our proposals on devolution. Therefore, since the Administration Police is centrally attached to the Provincial Administration, it was consequential that we address this issue.

Mr. Kenyatta: Mr. Speaker, Sir, with all due respect to my colleague, she is just touching on other areas but not responding to the specific ones I have raised. I am certain that there are other colleagues who will also respond to the ones she is raising. How will Article 71 be deleted? What has Article 71 in the Draft got to do with consequential arrangements? It has nothing to do with it! Where do marginalised groups and women come into consequential arrangements?

Mr. Speaker: Mr. Kenyatta, just take me slowly through the document in the same way he did.

Mr. Kenyatta: Mr. Speaker, Sir, the draft report---

Mr. Speaker: On what page?

Mr. Kenyatta: Mr. Speaker, Sir, on the actual Bomas Draft. Everybody is in agreement with you that issues that are consequential to chapters that are contentious can be dealt with. If you look at the Report---

COMMUNICATION FROM THE CHAIR

SHORT BREAK FOR MEMBERS

Mr. Speaker: Hon. Members, I think I had indicated that I need to suspend the sitting for 15 meetings. The Chair is tired. I need a 15-minutes break. The sitting stands suspended for half-an-hour. We shall return here after 30 minutes. The Mace will be put down and we will be back after half- an-hour.

(The Mace was lowered)

*(The Sitting was temporarily
suspended at 8.30 p.m.)*

(The House resumed at 9.00 p.m.)

(Resumption of Debate)

Mr. Speaker: Order, hon. Members! We are back to session and, hopefully, a little bit refreshed. We will take over from where we were! Who was on the Floor? I think it was Mr. Kenyatta.

Mr. Samoei, do you want to contribute?

Mr. Samoei: Mr. Speaker, Sir, I want to state as follows:-

I do not think there is any hon. Member here who disagrees that any consequential amendment that will be necessitated by the amendments proposed by the Committee on the chapters that were approved by the House--- The chapters are named there. I think we can agree, as a House, that nobody has a problem with any consequential amendments that are necessitated by the amendments proposed by the Committee on the chapters listed. I want to make a small reference on Chapter---

Mr. Speaker: Mr. Samoei, it is good to make progress. You have stated a very important issue on consequential amendments and we have accepted it.

Mr. Samoei: Yes, Mr. Speaker, Sir.

Mr. Speaker: Can we identify those consequential amendments, so that we can get rid of them or accept them?

Mr. Samoei: Mr. Speaker, Sir, I think that is a function that can be done ably by the Attorney-General. We need to just tell the Attorney-General the consequential amendment.

(Applause)

Mr. Speaker: Very good! Now, let us have that as a resolution of the House. All consequential amendments are accepted and that, the Attorney-General is directed to incorporate them. Is that okay?

Mr. Samoei: That is right, Mr. Speaker, Sir.

(Applause)

Mr. Speaker: Very good! Now, come to the next one!

Mr. Samoei: Mr. Speaker, Sir, in the Report of the Committee, there are chapters that were never contentious, and yet the Committee has recommended that they be changed!

(Loud consultations)

Mr. Speaker: Order! Let him finish! That is the only way we can finish this business in good time. I am sure it is in the interest of the House to finish this matter in good time and in a spirit of agreement.

Proceed, Mr. Samoei!

Mr. Samoei: Mr. Speaker, Sir, I have in mind the Chapter on The Republic, which is on page 26. Article Five is perfect because it is consequential.

The Minister for Water and Irrigation (Ms. Karua): On a point of order, Mr. Speaker,

Sir. It is quite clear that several Members, including the Member who was immediately on his feet, are seeking what would amount to amendments. There is a procedure on how to move an amendment to the Report. It cannot be moved orally when contributing without certain procedures being followed. Could you rule on procedure so that we do not just adopt a new method unknown to the rules and practice of this House?

(Applause)

Mr. Speaker: Order! I have acquired a new title called "Mr. Procedure".

(Laughter)

If you will recall, the issue was raised, which was the exceeding of the mandate by the Committee. Initially, we began with the very first part, which is the Motion itself. As a consequence of that, I ordered that Part (ii) exceeded the mandate. Now, the matter we have in front of us now is not amendments; it is pointing out to the House and to the Chair, possible areas where the Committee may have exceeded the mandate. Now, that does not require an amendment. It requires the decision of the Chair, and that is exactly what I am doing. So, I hope we understand that.

(Applause)

In fact, if any Member wishes to touch on any matter that is within the mandate of the Committee, which is not challenged, the only way you can do that is by a proper amendment. I have said that before.

Proceed!

Mr. Samoei: Mr. Speaker, Sir, on the same page 26, Article Seven on the Capital---

Mr. Speaker: Can I take it from the Committee? Was The Republic part of the contentious issues?

Hon. Members: No!

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs (Prof. Kibwana): Mr. Speaker, Sir, the only reason why Articles Five, Six and Seven were seen as consequential is that, when you change devolution, then words like "boroughs" have to go because now you are only left with districts. That is why, therefore, Article Five, in terms of territory, is responding to the changes in devolution.

Mr. Speaker: What is your response?

Mr. Samoei: Mr. Speaker, Sir, what I do not agree with is the Capital on Article 7, which is under the "Republic". It has nothing to do with consequential amendments on the other item. In so far as it refers to consequential amendments as a result of the chapters that are contentious, I have no problem with it, but Article 7 on the Capital has nothing to do with the consequential amendments. It has nothing to do with whether we have a devolved system or not.

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs (Prof. Kibwana): Mr. Speaker, Sir, the earlier provision was stating that the Capital City of Kenya will always be Nairobi, but because of the spirit of devolution, according to the Bomas Draft, that will not be necessary because it has been said that even some principal central services will have to go to other districts instead of being located in Nairobi. For example, in Tanzania, the capital city does not have to be Dar-es-Salaam.

Mr. Speaker: Order, Prof. Kibwana! you can devolve the Government, but you cannot devolve the capital. The capital is the centre of the Central Government, and it is the location that is

at issue.

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs (Prof. Kibwana): Mr. Speaker, Sir, if the House feels that the Capital City of Kenya must always be in one place and we cannot change it - it was a part of devolution - I do not think this is something that one can insist on. But that was the spirit.

Mr. Speaker: Hon. Members, it is already a fact that Nairobi is the Capital City of Kenya. That was not a matter in contention. That goes out!

Capt. Nakitare: On a point of order, Mr. Speaker, Sir. We have exhaustively discussed this document and I would like to move that the Mover be now called upon to reply.

Mr. Speaker: Order, hon. Members! I can understand that, but I must also understand the following: Major issues are being raised and we must deal with them. Please, have patience! I will listen to you when I think that these fundamental issues have been dealt with. For the time being, we have fundamental issues to deal with. My imagination does not make devolution to devolve the capital. I think the Capital City cannot be devolved. It must remain central.

The Assistant Minister for Roads and Public Works (Mr. Kones): On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order! Why do you interrupt me when I am making a ruling?

The Assistant Minister for Roads and Public Works (Mr. Kones): Mr. Speaker, Sir, I wanted to get a clarification.

Mr. Speaker: You may be an hon. Member of the PSC, but that does not make you to be above the Standing Orders. I have made a ruling on that. It was not part of the contentious issues.

The Assistant Minister for Roads and Public Works (Mr. Kones): Mr. Speaker, Sir, under the spirit that you developed earlier on that; with regard to any issue that touches on the issues that are contentious, we cannot refuse to adopt it. I was wondering whether, by you declaring that Nairobi will be the Capital City and the Committee had decided that it should not be the case, we actually over-reached our mandate.

Mr. Speaker: Order! You over-reached that because it was not part of the contentious issues. We must also understand the following: Whatever Constitution we pass, it can be amended if the circumstances are such that it is necessary to do so. We hope it will not, but the fact of the matter is that constitutions around the world are amendable and should be amended.

The Assistant Minister for Roads and Public Works (Mr. Kones): On a point of order, Mr. Speaker, Sir. My only problem arises when you think that we over-stepped our mandate.

Mr. Speaker: I have said yes!

The Assistant Minister for Roads and Public Works (Mr. Kones): Mr. Speaker, Sir, why so, and yet we are under devolution?

Mr. Speaker: Order! Sit down now!

Assistant Minister for Roads and Public Works (Mr. Kones): I think we need to be told why?

Mr. Speaker: Relax, Mr. Kones! I would love it very much if you put it in the Constitution that the Capital of Kenya shall be in Doldol.

Proceed!

Mr. Samoei: Mr. Speaker, Sir, if you go to page 27, Chapter 5, on National Commission on Culture, the Committee has proposed that the National Committee on Culture be removed from the Constitution and be taken for legislation. I want to state as follows; that under the chapter on national or Constitutional Commissions - Chapter 18 - the Committee was mandated to discuss issues which pertained to Chapter 18 of the Constitution and not beyond. If the Committee wanted to discuss---

(Ms. Ndung'u stood up in her place)

Mr. Speaker: Please, let him finish! I will give you a chance. Let him conclude!

Mr. Samoei: Mr. Speaker Sir, if the Committee wanted to scrap any Constitutional Commissions, there are about four Constitutional Commissions listed on Chapter 18. Those are the ones which the Committee was mandated by this House to look at and assess the operations of the Commissions listed in Chapter 18 of the Bomas Draft.

Mr. Speaker: Very well, Mr. Samoei. I will now hear from Ms. Ndung'u.

Ms. Ndung'u: On a point of order, Mr. Speaker, Sir. Is it in order for the hon. Member who has just spoken to suggest that the Committee has done anything other than a recommendation which was brought to the House, and which was agreed on by the Committee when he was the Chairperson, to say that we shall reduce Constitutional Commissions, which include what he is talking about and that, therefore, the one he is talking about is inconsequential? Please, do not mislead this House!

Mr. Speaker: Let me get it right! I will come to hon. Ndung'u. By the way, do not let me lose focus. I remember that the hon. Minister for Roads and Public Works has attracted my attention several times and I intend to go back to him.

Hon. Ms. Ndung'u, look at the Motion on the contentious issues. The Motion says:

"Adopt the report of the Select Committee on the Review of the Constitution of Kenya laid on the Table of the House on 19th July, being the recommendations to harmonise the report on the contentious issues contained in the chapters stated."

Looking at what hon. Samoei has pointed out, I want the hon. Ndung'u to respond. The Article on the National Commission on Culture is on Chapter No.5 and not 18. So, how do you relate this?

Ms. Ndung'u: Mr. Speaker, Sir, the structure of the National Commission on Culture in Chapter 5 gives it a Constitutional Standing, which means that if we had set Constitutional Commissions as a Chapter and Chapter 18 was contentious, there is a direct correlation between the two. Therefore, if under the Chapter on Constitutional Commissions, it was decided that we would only have four or five, then the rest had to be provided for in the legislation. That is why I am saying that it is a consequence of discussion under Chapter 18.

Mr. Speaker: You will get answers the way you ask questions. If it was the Commissions that were contentious, then we should have said Commissions generally and not Chapter 18 - National Commissions. Does that not follow logically, Ms. Ndung'u?

(Applause)

An hon. Member: No!

Mr. Speaker: Order, hon. Members! Let her respond!

Ms. Ndung'u: Mr. Speaker, Sir, if you look at Chapter 18, the definition of a Constitutional Commission and everything that it entails with it is the reason for which, in terms of cost and what it is all about, the PSC in Naivasha decided to reduce the number of Constitutional Commissions. The crafting of the National Commission on Culture makes it a Constitutional Commission. It is not among the five that were agreed upon in Naivasha. Therefore, consequentially, it had to be removed to legislation.

Mr. Speaker: Mr. Attorney-General, do you have any comment?

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, as my learned colleague was stating, if you look at Chapter 18 on Constitutional Commissions, in particular Clause 297 on Page 200 of

the Bomas Draft, the key phrase there are the words "in addition to other Constitutional Commissions established in this Constitution." Therefore, although it is Chapter 18, it has reference to all commissions mentioned in this Constitution, of which the Culture Commission is one. It is a consequential amendment.

(Applause)

Mr. Speaker: Mr. Samoei, can you respond to Clause 297; "in addition to"?

Mr. Wanjala: Who is Mr. Samoei?

Hon. Members: *Wewe!*

Mr. Speaker: Order, Mr. Wanjala!

Mr. Samoei: Precisely, Mr. Speaker, Sir. We agreed that we were going to be faithful to the Consensus Act in handling this matter. The responsibility to identify contentious issues was given to the PSC. In the exercise of their mandate, the PSC came here with a report detailing, as is listed in the Order Paper, the chapters that are listed there. There are seven other chapters on various other commissions, for instance, the Culture Commission, the Land Commission, the Kenya Police Service Commission, the Administration Police Commission and others. If it was the intention of the Committee, they should have listed those as well as contentious chapters.

(Applause)

Mr. Speaker: Mr. Samoei, just a moment; relax! On the proponent of the view as stated by the Attorney-General and Ms. Ndung'u, I invite your attention to page 195, Article 287, which says: "This Chapter applies to all Constitutional Commissions---

Hon. Members: That is right!

Mr. Speaker: Order! Pause there before you say: "That is right!" Now, listen to the bombshell:

"Except where specific provision is made to the contrary elsewhere in this Constitution"

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, actually I had seen that. Where it says: "Except where specific provision is made to the contrary elsewhere in this Constitution," all that it means is this; as you see, this chapter starts by making general provisions applicable to all commissions. For example, Article 288, Objects and Independence of Commissions; Article 289, Incorporation; Article 290, Composition of Commissions; Article 291, Staff of Commissions; Article 292, General Functions of Commissions; Article 293, Proceedings of Commissions; Article 294, Removal from Office; Article 295, Funds of Commissions and Article 296, Annual and Other Reports of Commissions. Therefore, all it is stating is this; that, in this Constitution, there are other commissions where specific provisions have been made touching on these general provisions. Where there is a commission which does not touch on the general provisions that I have outlined, these general provisions will apply. However, if those other commissions may have touched on specific provisions on objects and auditing--- The words, "Except where specific provisions are concerned" must only relate to the mandate of the general provisions of commissions. That is why Article 297 comes in and mentions specific commissions. This also relates to other commissions in the Constitution. That is why one has to read articles 287 and 297 together, and then you will get the overall picture. That is why that other issue is consequential.

Mr. Samoei: Mr. Speaker, Sir, using the Attorney-General's own argument, it is, therefore, correct that if you will make reference to the other commissions, it is only to the extent of the items that touch them on this particular chapter. That is in so far as the incorporation and composition of

that commission is concerned. You cannot, therefore, use his argument to delete a whole commission.

Mr. Speaker: Hon. Members, I think I am about to be persuaded that unless there is another view from other hon. Members---

Mr. Billow: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order, Mr. Billow!

Hon. Members, I am almost persuaded by Mr. Samoei. I would like any hon. Member to disassociate me from this side.

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs (Prof. Kibwana): Mr. Speaker, Sir, if you look, for example, at the National Environment Commission (NEC), Article 93, on page 58 of the Bomas Draft, Article 93(1) simply talks about the establishment of the NEC. Article 93(2)(a to m) talks about the functions of the NEC. Article 93(3) talks about the way the NEC will work. That is, the Commission shall promote, facilitate public participation, discussion and so on. That is all about that Commission. The provisions now of Constitutional Commissions in terms of the numbers, incorporation as a body corporate as well as the number of people that it will have, for example, three and not more than ten, those are anticipated. One must read Article 98 together with provisions in Chapter 18. Otherwise, the NEC will not have membership and so on.

If you look at the National Lands Commission (NLC) also, it is assumed that because of where it is placed, for example, in the chapter on Environment and Natural Resources, it is placed there in terms of the environment. But when it comes to the details of how many members it should have, that is reserved to the Chapter on Constitutional Commissions. That is where the one that provides for them in the consequential part of the report is correct.

The Assistant Minister for Foreign Affairs (Mr. Wetangula): Mr. Speaker, Sir, in addition to what Prof. Kibwana has said, I invite you to look at page 212 of the Draft. In definition, Constitutional Commission means a commission established as such by this Constitution. That means that all commissions, even those that are outside Chapter 18, are Constitution Commissions and, therefore, they fall within the mandate of the committee to deal with. It is very clear and I think the argument that is being pursued does not hold any water. Invite you to dismiss that argument and we move on.

(Applause)

(Loud consultations)

Mr. Speaker: Order!

Mr. Samoei: Mr. Speaker, Sir, the Act is very specific. The Act says that this Parliament shall only deal with contentious issues only, as identified by the Select Committee. It does not give a general provision that we are going to amend this or that. The Select Committee was very specific. It said Chapter 18. If the Committee wanted Constitutional Commissions, they would have said so. Let us not confuse issues.

Mr. Speaker: Order!

Mr. Angwenyi: On a point of order, Mr. Speaker, Sir. The reason why Chapter 18 - Commissions - became contentious is because we realised that we are going to burden this country with Constitutional Commissions. That is why those commission were listed as contentious issues. So, you cannot say that we should restrict ourselves only to Chapter 18. If we do that, then the objectives of listing that chapter on commissions would have been lost.

(Applause)

Mr. Speaker: Order! It is about time I made a decision on this. Sorry! I must make a decision now. I must make a decision because, somehow, somebody has to make a decision, and that happens to be me. Now, I will proceed to do so. In the law of interpretations, which my colleagues here are very well aware, the principle is as follows:-

Where a matter is expressly stated, you take it the way it is. In this case, the contentious issues, as identified by the Select Committee, are set out in the mandate given to the Committee. It states:-

"Contained in the following chapters!"

The chapters are mentioned one by one. I am of the considered view that where there is no generality in the contentious issues, then you become particular. In this case, this was not general, but particular. Therefore, any commission outside Chapter 18 was not a contentious issue. Therefore, that goes.

Could you now finish!

Mr. Samoei: Mr. Speaker, Sir, it, therefore, follows that Chapter 7 on the Commission on Land is not contentious.

Mr. Speaker: No! Order, Mr. Samoei! The issue on Chapter 7 is consequential upon devolution and it is directly related to devolution and, therefore, was validly a contentious issue and I think it is rightly there.

Mr. Samoei: Mr. Speaker, Sir, let me invite you to page 29.

Mr. Speaker: I do not think we will go there. Mr. Samoei, you must live with my decision and I have made the decision that correctly interpreted that land issue to be part of the devolved government, and when you re-arrange the devolution, it follows naturally that you have to address the mode of the new devolution. It is correct and it must be there. Now, go to the next one.

Mr. Samoei: Mr. Speaker, Sir, I agree with you in so far as it is consequential and we had made that decision. However, On page 29, Article 85 deletes the National Land Commission on the same reasoning that it is part of Article 18 on Constitutional Commissions and that is the place where I am saying it is acceptable.

Mr. Speaker: Order! Hon. Samoei, I think I have made the decision and it stays.

Mr. Kombe: On a point of order, Mr. Speaker, Sir. Whereas the land article is taken to be contentious, I had an amendment which is on the devolved government. I do not know where exactly to place this amendment because---

Mr. Speaker: Order! Mr. Kombe, you can approach the Table for advice, but for the time being, we are on a totally different issue. Order! Hon. Kombe, you must keep order; you must not become disorderly. You must sit there and listen, and do as you are told.

Mr. Samoei: Mr. Speaker, Sir, I think I will live with your ruling that any commissions outside the commissions in Section 18 are not affected.

Mr. Speaker: Thank you. That is finished. *Hiyo kwisha!*

The Minister for Roads and Public Works (Mr. Raila): Mr. Speaker, Sir, I was wondering that maybe your eye was not seeing my side as I have attempted several times to catch your eye.

I want to raise two issues. One has to do with procedure and the other one has to deal with the proposed amendments. I invite you to look at Page 40 of the report, dealing with the Seventh Schedule Transitional and Consequential Provisions, and that is 128 Section 9(i) on Public Administration, which says:

"Provision be made for chiefs and assistant chiefs to be retained in the devolved district government".

In as far as I am aware, this was not a contentious issue at all!

(Applause)

Mr. Speaker: Which page?

The Minister for Roads and Public Works (Mr. Raila): On Page 40 of the report, dealing with the Seventh Schedule Transitional and Consequential Provisions, and that is 128 Section 9(i) on Public Administration, which says:

"Provision be made for chiefs and assistant chiefs to be retained in the devolved district government".

As far as I am aware, this was never a contentious issue at all! Are we together, Mr. Speaker, Sir? If there was an issue over which Kenyans were unanimous, it was that the Provincial Administration must go!

(Applause)

Where has that been invented from by the Committee?

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs (Prof. Kibwana): Can I answer him, Mr. Speaker, Sir?

Mr. Speaker: You will answer him, but let him finish first.

The Minister for Roads and Public Works (Mr. Raila): Mr. Speaker, Sir, I want to move on to part three---

Mr. Speaker: Hon. Raila, can I get that question replied to by the Committee?

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs (Prof. Kibwana): Mr. Speaker, Sir, the clear provision of Bomas was that the Provincial Administration was to go. But the provisions were that, those people who had been chiefs and assistant chiefs would not be sacked, but deployed into the Government in other status. Therefore---

(Loud consultations)

Mr. Speaker: Order! Order, hon. Members! Order! It appears to me that there are hon. Members here who have actually no business in improving this document. I think they are just here to cause trouble! Those who want to cause trouble, can I ask the Serjeant-At-Arms to open the door wide open so that they can go and leave those hon. Members who want to do this business to do it in peace?

Proceed!

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs (Prof. Kibwana): Mr. Speaker, Sir, if the House looks at Clause 246 of the Bomas Draft---

Mr. Kimeto: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Will you sit down, please, Mr. Kimeto? What is it?

Mr. Kimeto: Thank you, Mr. Speaker, Sir. You have mentioned that those hon. Members here who have no business in improving this document should leave and go. My request is this: This baby we called the Constitution is from Bomas and it was brought here to Parliament and the procedure was that the Committee should deliberate on the contentious issues and report its recommendations to the House. Now, the Committee brought its report here just the day before yesterday, and a majority of hon. Members here, whom you are saying should leave the House, have not gone through the reports which are before the House!

(Laughter and applause)

Mr. Speaker: Order! Order! The Member of Parliament for Sotik Constituency must be commended for his honesty. He is quite honest. But I am just assisting you. If you listened very carefully, you are being taken through the document and you are being taught actually what is there. So, listen to it!

Mr. Kimeto: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order! You will go out! Messrs. Mwandawiro and Kimeto, please, relax and listen!

We are going through this document, which you have a copy of. Get hold of the document and the Order Paper and listen very carefully. You will be able to follow.

Proceed!

Mr. Kimeto: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order! Mr. Kimeto, please, sit down.

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs (Prof. Kibwana): Mr. Speaker, Sir, the Seventh Schedule, which starts at page 244 of the Bomas Draft, is on Transition and Consequential Provision. On page 246, No.9, the recommendation was: Members of the Provincial Administration; assistant chiefs, chiefs, district officers, district commissioners and provincial commissioners, when the system is dissolved all these public officers were to report to the Public Service Commission for deployment because they were not being sacked from their jobs. But because the system was ceasing, they would be deployed by the Public Service Commission. So, the recommendation here was simply that chiefs and assistant chiefs should, instead of going to the Public Service Commission, be redeployed within the district government. That is the suggestion.

Mr. Speaker: Order! Who raised it?

An hon. Member: Mr. Raila.

Mr. Speaker: I want to go back to the hon. Member who raised that issue. This is on Transitional and Consequential Provisions on the draft. Read it on the draft. If you look at page 246, at the very top, it is headed "the Executive." Do you see that?

The Minister for Roads and Public Works (Mr. Raila): No, Mr. Speaker, Sir. This is a schedule and not part of the chapter on the Executive. This is because in the Executive head there, there is only 8. But below 8 we have got Provincial Administration and then there is 9. This is a separate subject completely, which has nothing to do with that. But basically, the letter itself here is very clear. It says:

"Upon holding of Elections referred to in Section 6 the system of administration comprising assistant chiefs, chiefs, district officers, district commissioners, provincial commissioners, commonly known as the Provincial Administration, shall stand dissolved and all public officers serving under the system of administration shall report to the Public Service Commission for redeployment."

Mr. Speaker, Sir, the spirit here is that the Provincial Administration and devolution are incompatible. Here we are saying it is in tandem as chiefs and the system, and yet it was not also a part of the---

Mr. Speaker: Mr. Raila, I want to ask you the following question: The Bomas Draft said that district commissioners, provincial commissioners, chiefs and assistant chiefs will be deployed to the Public Service. Do we expect all chiefs and assistant chiefs to troop to Nairobi for employment?

The Minister for Roads and Public Works (Mr. Raila): Mr. Speaker, Sir, the point here is that, they are being retained in the devolved district government. That specifically completely cancels the letter and spirit of devolution. This is an issue that was very exhaustively discussed at

Bomas, and yet it was also not part of the contentious issues which were identified by the Committee.

Mr. Speaker: Mr. Raila, I want to understand this issue very well, and also the House to listen very carefully. In some of these instances we are not dealing with principles and abstract. We are dealing, in the end, with real people. At the end of it all, you are dealing with human beings. These are practical things we must face. As a House, we are not only legislators, but we are also leaders and human beings. In addition to being hon. Members of Parliament, you are also human beings and leaders.

(Prof. Anyang'-Nyong'o consulted loudly)

Order! Who is this, busy greeting others?

An hon. Member: Prof. Anyang'-Nyong'o!

Mr. Speaker: Order, Prof. Anyang'-Nyong'o! Where have you been the whole day, then when you do actually make an appearance at the very tail-end of a very laborious day, you come to disrupt the House with greetings? Sit there, still!

(Mr. Kimeto consulted loudly)

Mr. Kimeto, you will go out soon!

The Minister for Roads and Public Works (Mr. Raila): Mr. Speaker, Sir, you have asked a question, but we are dealing with a transitional situation, because you are only referring to the people who are now currently employed in the Provincial Administration. That is why it has been proposed that they will be re-deployed. The principle here is whether we want to retain the Provincial Administration. This is the issue that was discussed very extensively then. As far as I am concerned, it was not one of the contentious issues to be deliberated on.

Mr. Speaker: Could anybody answer the hon. Minister on that issue?

The Assistant Minister for Foreign Affairs (Mr. Wetangula): Mr. Speaker, Sir, in addition to what Prof. Kibwana said, what Mr. Raila is saying is true; that the Bomas Draft recommended the abolition of the Provincial Administration. As PSC, we have slotted the Executive and Provincial Administration on Page 246, to fall under the Executive Chapter. This is a consequence of what we have done in Devolution and Executive. The PSC has not in any way purported to retain the Provincial Administration. Section 9 of this Schedule says that the chiefs, district officers, assistant chiefs, district commissioners and provincial commissioners, commonly known as the Provincial Administration, shall report to the Public Service Commission for redeployment. We are conscious of the fact that, chiefs and assistant chiefs in this country are not transferable from one location to another. So, there will be no redeployment from the head office. There will be a government at a devolved level called the district. All we are saying is that as provincial commissioners (PCs), district commissioners (DCs) and district officers (DOs) report to Nairobi; chiefs and assistant chiefs report at the devolved government at the lower level for redeployment. Never mind whether they will still be called chiefs or not. As you did say, they are human beings and must be treated humanely, whether there is a new Constitution or not.

(Applause)

Mr. Speaker: Order, hon. Members! Do I then understand the recommendation here as a transitional issue? Do I understand that it is making the current holders of office to be redeployed in those locations by the devolved government? But after natural attrition, or after those will have got

out, there will be no position for chief? Is that what I understand?

The Assistant Minister for Foreign Affairs (Mr. Wetangula): Mr. Speaker, Sir, in a way, yes. But once the Constitution is in place and we hold elections, it is entirely up to the district administration to decide what to call those people. All we are concerned with is not whether they are going to be there as provincial administration or not. We are concerned about where they would be deployed. That is what we looked at, as a consequence of devolution.

Mr. Speaker: So can I put the following question---

Mr. Kajwang: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order! You know, Mr. Kajwang, you do not have to quarrel if you want to speak? You really do not have to quarrel.

Mr. Kajwang: It is not only one side!

Mr. Speaker: I can actually see one side, if I please! I have concentrated on this side for a long time!

Hon. Members: Ahh! Ahh!

Mr. Speaker: I can ask an hon. Member--- In fact, the hon. Minister for Roads and Public Works is taking the position on the side on my left! Let me ask the hon. Minister for Roads and Public Works. You have heard that the intention of the Committee is to ask chiefs and assistant chiefs, upon the passage of the new Constitution, to report to the devolved government at the district headquarters for deployment. Might that have been the intention?

The Minister for Roads and Public Works (Mr. Raila): Mr. Speaker, Sir, in as far as we are not retaining the positions of chiefs and assistant chiefs, I have no problem.

Mr. Speaker: Very good! I think that is very clear.

The Minister for Roads and Public Works (Mr. Raila): They must be very specific.

Mr. Speaker: I think the Attorney-General is listening very carefully here! I think the intention, as I understand, is to have the chiefs and their assistants to report to the devolved government for deployment in their areas. Is that what we understand? Mr. Raila, are you happy with that?

The Minister for Roads and Public Works (Mr. Raila): I am happy with that, Mr. Speaker, Sir.

Mr. Kajwang: Mr. Speaker, Sir, the Provincial Administration is not the same thing as the Executive as described in Part 8 above. There are two---

Mr. Speaker: But we have passed that section!

Mr. Kajwang: Mr. Speaker, Sir, give me one minute. I have not spoken for a long time.

Mr. Speaker, Sir, it is not a question of where somebody reports for deployment. That is not a constitutional issue. If you say that they will report to the Public Service Commission (PSC), the PSC is actually their employer even now. Their letters of employment come from Nairobi and not any other district. Those guys are under the PSC, as we talk now. So, to suggest that they report to the PSC is the correct thing to do. We are not going to make constitutions---

Mr. Speaker: Order! There is no cause for unnecessary annoyance. It is not helpful. If you are annoyed all the time, we may never know when you truly are annoyed.

(Laughter)

So, please, let us relax. I am glad hon. Raila has conceded. If you look at pages 244 to 246, where the Committee derives this recommendation, it is titled "Transitional and Consequential Provisions." Once the new Constitution comes into being, Provincial Administration is abolished. But the people who hold those positions are alive and kicking. So, we are saying they have to go somewhere for re-deployment. For the chiefs and assistant chiefs, the nearest is their district

headquarters. For the senior ones, they will go to Nairobi for re-deployment. I think this is what we understand the position to be. Are you happy with it, hon. Raila?

The Minister for Roads and Public Works (Mr. Raila): I am happy, Mr. Speaker, Sir.

Mr. Samoei: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order! Mr. Samoei, you were given all the time. Here is Mr. Raila who has not spoken the whole afternoon, and you want to stop him. Now, again, the question is, are you fair?

Mr. Samoei: I am sorry, Mr. Speaker, Sir.

The Minister for Roads and Public Works (Mr. Raila): Thank you, Mr. Speaker, Sir. I now invite you to look at Part Three of the Report, which is to be found on page 42. I have had the privilege and opportunity to chair the Parliamentary Select Committee on Constitution Review. To my understanding, the recommendations of the Committee are usually very clear and precise. But if you go through these chapters, take for example, Chapter 136, Death Penalty, it says that Parliament should make a decision on whether or not the death penalty should be provided in the Constitution in view of the principle of right to life for all persons. If you go to Article 137, Health, it says that Parliament should determine whether the term "reproductive health" should be included or not, since it is covered under the right to health.

Mr. Speaker: Just a moment, Minister. You know, it helps to complete the thing, because we could get a wrong impression. You are reading half the Article and leaving the other half. You must complete it. If you look at Article 137, you have read up to where it says "under the right to health." But there is another recommendation, and you must read it.

The Minister for Roads and Public Works (Mr. Raila): Mr. Speaker, Sir, the Committee recommends that the article be retained as in the Bomas Draft Constitution.

Mr. Speaker: So, it is not changing!

The Minister for Roads and Public Works (Mr. Raila): Mr. Speaker, Sir, let me go on to page 43.

Mr. Speaker: Hon. Raila, that is not an issue because it is not changing.

The Minister for Roads and Public Works (Mr. Raila): Mr. Speaker, Sir, the Committee recommends that Parliament determines whether the one-third rule is in addition to the one-third principle in Articles Nos. 122 and 123 in relation to the principle of affirmative action. It recommends that Parliament should determine that. When is Parliament going to do that?

Mr. Speaker: Order! I can help there. Please, sit down, hon. Raila. I can help in the following manner: Where the Committee has not made a specific recommendation, the House cannot go into it. It means, therefore, that the original provision in the Draft remains.

The Minister for Roads and Public Works (Mr. Raila): Mr. Speaker, Sir, therefore, the Committee has touched on irrelevancies on issues over which they did not agree on.

Dr. Khalwale: On a point of order, Mr. Speaker, Sir. Now that the Minister has mentioned that particular article, and given the fact that I have given notice to move an amendment on the Bomas Draft on that very article, I request that I be heard on what I am seeking to do in my amendment.

Mr. Speaker: Order, hon. Members! I have said, and this is the rule, that the mandate of the Committee was to look at the various issues and make recommendations. When the recommendations come to this House, the House has various options. Firstly, to refuse them completely, and secondly to amend them or agree with them totally. Where the Committee has not made any recommendation, this House will not sit as a Committee and deal with the issue. So, Articles Nos. 111 to 119 must remain exactly the way they are in the Bomas Draft.

The Minister for Roads and Public Works (Mr. Raila): Mr. Speaker, Sir, therefore, then that will also apply to the rest.

Mr. Speaker: Order, hon. Members! It is about time some hon. Members in this House

must understand the basics of even an ordinary village meeting. When a decision has been made by the Chair, it should be respected and we do not belabour it again. I have said and I insist, that where the Committee has not made a recommendation, the House will not go into it. Simple!

Mr. Kimeto: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: You will go out now!

The Minister for Roads and Public Works (Mr. Raila): Mr. Speaker, Sir, the report that was tabled before the House and which was approved by the House referred to the recommendations of the PSC as passed in Naivasha. However, the recommendations which now appear in this report have departed very fundamentally from the recommendations which were made in Naivasha.

Mr. Speaker: Order, Mr. Minister! I do not think we need to go back. That was said a long time ago and we agreed that we check out in the Draft where there is departure. I have invited you now to tell us where the departure is.

The Minister for Roads and Public Works (Mr. Raila): Mr. Speaker, Sir, the Naivasha Report was laid on the Table of the House---

The Assistant Minister for Foreign Affairs (Mr. Wetangula): On a point of order, Mr. Speaker, Sir. I would not like to interrupt my good friend, but the Motion that I have referred to, which hon. Nyachae moved here, had included the Naivasha Accord, but on the Floor of the House, he amended and deleted it. So, the Naivasha Accord is no longer a determining factor. We have all along been guided by yourself in that fashion.

Mr. Speaker: I want to finish this particular issue now. This issue was raised by the Leader of the Official Opposition correctly, in my view, and we have made tremendous progress on it. I am asking whether there is any more departure from the mandate of the Parliamentary Select Committee on the Constitution of Kenya Review?

The Minister for Roads and Public Works (Mr. Raila): Mr. Speaker, Sir, if it is true that the Naivasha Accord was removed, then the hon. Members are not justified in keeping on blaming us for deviating from the Naivasha Accord when the Naivasha Accord was thrown out of the window through the amendments by the Chairman of the Parliamentary Select Committee on the Constitution of Kenya Review. So, I am now going to ask the Speaker that, if that is the case, we should then get an opportunity [**The Minister for Roads and Public Works**] to make substantive contribution on the proposed amendments, which have been disposed of by the Committee. We have not yet discussed those specific proposals.

Mr. Speaker: Is there any further departure?

Mr. Muturi: Mr. Speaker, Sir, on page 43 of the Committee's Report, Chapter Ten is on the Representation of the People. If you look through the Motion, you will find that, that was not one of the contentious issues which we identified. Therefore, in keeping with the practice that we have adopted, it should also similarly be struck out.

Mr. Speaker: I have already finished with that.

Mr. Bahari: Mr. Speaker, Sir, if you look at page 34 of the Report, Item 98, you will find that Chapter 15 - Public Finance, Clause 2, is a consequential amendment. On Item 99, the Committee has recommended that Article 253, Clause 2, on the procurement of public goods and services, be amended by inserting the words "relating to procurement and assets disposal" immediately after the word "policies". I do not understand how this is a consequential amendment.

The Committee has also recommended that Article 256, Clause 2, on the Controller of Budget, be amended by deleting the words "who has extensive experience in economics and the management of public finance". I wonder how this is also consequential. To which chapter is it contentious?

Mr. Speaker: Order! Hon. Bahari, we have already disposed of that issue. However, look at

it this way: If I may take you back home, you will be having a devolved Government in Isiolo and if you will require the calibre of the person mentioned here, it may bring some trouble. So, this is meant to localise the necessary requisite qualifications at the devolved Government; the local manpower. It is consequential upon devolvement. I have finished with that already and I will not go back to it.

Mr. Wambora: On a point of order, Mr. Speaker, Sir. You will notice that hon. Members are beginning to repeat themselves. Could we ask the Mover to reply?

Hon. Members: No! No!

(Loud consultations)

Mr. Speaker: Order, hon. Members! Things must be done in an orderly fashion. We have finished with the issue raised earlier; which is going beyond the mandate. That matter is now gone! All we have left is the PSC Report within the mandate given by the House. We have, therefore, finished that matter. I will not have any hon. Member telling me that the PSC has gone beyond its mandate here because we have finished. We will now revert to the Motion at this stage on substantive issues. At this time, the usual rules of debate apply! It is no longer the expunging of the documents. We are back to debate and back to the rules of the House.

Mr. M. Kilonzo, did you not finish?

(Loud consultations)

Order, hon. Members! I will not allow the hon. Member to take all the time.

If you will not be mindful of the interests of other hon. Members; and if the other hon. Members cease to like to listen to you, there are procedures through which they can make sure you do not speak to them.

Mr. M. Kilonzo: Mr. Speaker, Sir, I will be very brief because most of what I had left to say has been said. The issues as to whether the mandate had been exceeded has been addressed.

I take great exception to the recommendations of the Committee in Paragraph 31 at page 17 on State functions of the President on the issues, pertaining to the Prime Minister and on such other issues because they go to the very root of the desires of the Kenya nation in making representations to the Constitution of Kenya Review Commission (CKRC) Act. I oppose the proposals that have been made on the President hiring and firing the Prime Minister, and that the Prime Minister should not be taken from the Floor of the House because it will destroy multi-party democracy.

Mr. Speaker: Order, Mr. M. Kilonzo! You are now reading!

Mr. M. Kilonzo: No, Mr. Speaker, Sir.

Mr. Speaker: Order! It appears to me that you have absolutely no regard to this House and the other hon. Members. In fact, you are now repeating yourself. The repetition is becoming tedious! You are duly warned that I may, at any time, stop you!

Mr. M. Kilonzo: Mr. Speaker, Sir, I will subscribe to your ruling and wish to address one or two other things that I have not addressed. This House should consider the way forward as to how we are going to get this country out of the situation that it is in. We have people rioting in the streets. We also have the police surrounding---

Mr. Speaker: Order, Mr. M. Kilonzo! I now terminate your speech!

(Applause)

Mr. M. Kilonzo: Thank you, Mr. Speaker, Sir.

The Minister for Lands and Housing (Mr. Kimunya): Mr. Speaker, Sir, let me first of all thank you for taking us through this Report so that hon. Members understand it. You have also made a ruling that we can either amend or adopt it as it is. Technically, Motions of amendment should be brought in this House by 1.00 p.m. So, we cannot amend this Report even as we debate. Given that situation, however long we debate, agree or disagree with it, we cannot amend it. In the interest of looking at where we are going, I would like to propose that we call a vote on it. Since we have had enough time to debate, we should either adopt it or not.

Mr. Speaker: Hon. Members, I will hear one or two hon. Members. Could I first hear Mr. Raila?

The Minister for Roads and Public Works (Mr. Raila): Mr. Speaker, Sir, we are dealing with the Constitution of the Republic of Kenya.

Mr. Speaker: Order, Mr. Raila! I have not acceded to the request and it is not up for debate. What I have given you the Floor for is to contribute to the Report.

The Minister for Roads and Public Works (Mr. Raila): Mr. Speaker, Sir, I want to begin by saying that the Motion before the House is a very serious one. This Motion will go down as the most momentous Motion that has ever been discussed by this august House.

I will begin by proposing that in dealing with this matter, we should not hurry hon. Members. Hon. Members should be given sufficient time and opportunity to debate this matter exhaustively. As it was in Bomas, where we went through this draft chapter by chapter, article by article, at the end of this, this will be required here in this House.

I would like to take issue with recommendations that have been made by hon. Members of the PSC on some very trivial issues. If you look at the recommendations in Article 17(1), on Citizenship by Marriage, for example, the Bomas draft says:

"A person who has been married to a citizen for a period of at least seven years is entitled, on application, to be registered as a citizen."

Mr. Angwenyi: On a point of order, Mr. Speaker, Sir. The same hon. Members have been contributing to this Motion initially on contentious issues and we are really tired. I would like to call upon the Mover to reply.

Hon. Members: No! No!

Mr. Speaker: Order, hon. Members! I think I am tempted to give ten more minutes before I put the question.

Mr. O.K. Mwangi: On a point of order, Mr. Speaker, Sir. When Mr. Kimunya stood up and sought your ruling on the question on whether or not we can amend this report, you did not give a ruling on that--

Mr. Speaker: How many times do you want me to do that? I really do not know why hon. Members do not listen! I have given that ruling several times. In fact, the latest applies to you! I have seen what you intend to do, which is to amend a non-recommendation by the PSC. We intend to amend the Bomas Draft which has not been dealt with by the Parliamentary Select Committee (PSC). I have already ruled that you cannot do it. How many times do you need to be told?

(Applause)

Mr. Raila, continue!

The Minister for Roads and Public Works (Mr. Raila): Mr. Speaker, Sir, it is my understanding that, ultimately, we are going to be given an opportunity to vote on these proposed amendments, article by article. That is the way I understand it. That is because these are amendments to the Constitution. In Bomas, we did vote for this article and, therefore, we would like to invite your ruling over this issue. At the end of this, we are going to vote article by article.

Mr. Speaker: Order, hon. Members! Some hon. Members have been here long enough. When you get a report, you discuss it. I have said there are several options. I have repeated them over five or six times now! You have several options:-

- (a) Amend it.
- (b) Adopt it in full.
- (c) Reject it completely.

Those are the only available avenues. There are no others.

The Minister for Roads and Public Works (Mr. Raila): Mr. Speaker, I take it that amendments---

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

Mr. Speaker: Can you give him an easy time?

The Minister for Roads and Public Works (Mr. Raila): Mr. Speaker, Sir, it appears as if hon. Members are only interested in taking my time.

Mr. Speaker, Sir, let me, for record, speak about Chapter 12, which deals with the Executive. Chapter 12 is drafted in a manner in which, save for the---

Ms. Mwau: On a point of order, Mr. Speaker, Sir. We have discussed the report exhaustively and we are just repeating ourselves. Could the Mover be asked to reply?

(Applause)

Mr. Speaker: Order! You will make that decision. I will now put the Question.

(Question, that the Mover be now called upon to reply, put and agreed to)

(Loud consultations)

(Mr. Ogur stood up in his place)

Order, Mr. Ogur! Order, hon. Members! Just stand a little more, so that I can see whether you have the numbers. You have more than the requisite number and I order for a division!

Ring the Division Bell!

(The Division Bell was rung)

DIVISION

(Question put and the House Divided)

(Question carried by 94 votes to 64)

AYES: Messrs. Akaranga, Ali, Angwenyi, Arungah, Awori, Mrs. Chelaite, Messrs. Dzoro, Gachagua, Gitau, Githae, Kagwe, Kagwima, Kamanda, Karaba, Kariuki G.G.; Kariuki, M., Ms. Karua, Messrs. Karume, Katoo, Katuku, Kembu-Gitura, Khamasi, Prof. Kibwana, Mrs. Kihara, Mrs. Kilimo, Messrs. Kimathi, Kimunya, Kingi, Kirwa, Dr. Kituyi, Messrs. Kiunjuri, Koech, J.K.; Kombo, Konchella, Kones, Dr. Kulundu, Messrs. Lesrima, Ligale, Dr. Machage, Dr. Manduku, Messrs. Manoti, Masanya, Mbau, Ms. Mbarire, Messrs. Mganga, Michuki, Miriti, M'Mukindia,

Mohammed A.M.; Mohammed A. C.; Muchiri, Mrs. Mugo, Messrs. Mukiri, Munya, Munyao, Munyes, Muriithi, Muriungi, Dr. Murungaru, Messrs. Murungi, Mutiso, J.M.; Mwaboza, Mwakwere, Mwancha, Ms. Mwau, Messrs. Mwiraria, Dr. Mwiria, Capt. Nakitare, Messrs. Nderitu, Ndile, Ms. Ndung'u, Mr. Ndwiga, Mrs. Ngilu, Messrs. Ngozi, Ntimama, Nyachae, Nyagah, N.; Obwocha, Onyancha, Opore, Prof. Saitoti, Messrs. Shakombo, Sudi, Tarus, Mrs. Tett, Eng. Toro, Messrs. Tuju, Waithaka, Wambora, Wamunyinyi, Wanjala, Wekesa, Were and Wetangula.

Tellers of the Ayes: Messrs. Boit and Waithaka.

NOES: Mr. Abdirahman, Prof. Anyang'-Nyong'o, Dr. Awiti, Messrs. Bahari, Balala, Bett, Billow, Boit, Kajwang, Kamotho, Kenyatta, Keter, Dr. Khalwale, Dr. Kibunguchy, Messrs. Kilonzo C., Kilonzo K., Kilonzo M., Kimeto, Kombe, Korir, Kosgey, Maj. Madoka, Messrs. L. Maitha, Prof. Mango, Messrs. Maore, Marende, Midiwo, Mohammed, M.A.H.; Moi, Moroto, Muturi, Mwandawiro, Mwanzia, Ndambuki, Ndolo, Maj-Gen. Nkaisserry, Messrs. Ntutu, Nyagudi, Nyamunga, Dr. Oburu, Messrs. Ochilo-Ayacko, Ogur, Dr. Ojiambo, Messrs. Ojode, Okemo, Eng. Okundi, Prof. Olweny, Messrs. Omamba, Omondi, Archbishop Ondiek, Prof. Oniang'o, Messrs. Oparanya, Osundwa, Owino, Poghisi, Raila, Dr. Rutto, Messrs. Sambu, Samoei, Sungu, Twaha, Wamwere, Wario and Weya.

Tellers for the Noes: Messrs. Bahari and Nderitu.

Abstentions: Messrs. Chekpkitony, Mungatana, Mwangi, O.K., and Mwenje.

Mr. Kombe: On a point of order, Mr. Speaker, Sir. I want to go on record that I had sought an amendment on Chapter 12, The Executive, and I was not given time to move it. I also had amendments on Chapter 14, Devolved Government. The Chair advised me that it was not yet time, but that time has never come.

Mr. Speaker: Order! Order, Mr. Kombe! This is not the time for that.
Proceed, Minister.

The Minister for Energy (Mr. Nyachae): Mr. Speaker, Sir, let me take this opportunity to thank you for your perseverance. We have had a lot of exchanges. I also want to thank all the hon. Members, especially those who served in the Parliamentary Select Committee on Constitution Review. I am grateful that the Report that we presented here has been adopted.

With those remarks, I beg to move.

(Question put and agreed to)

(Several hon. Members stood up in their places to claim a division)

Mr. Speaker: Order! The Division has been claimed and the hon. Members who have claimed it are more than the requisite number. I, therefore, grant the Division and order for the Division Bell to be rung.

(Division Bell was rung)

Mr. Speaker: Order, hon. Members! It has been brought to my attention that some Tellers are deliberately being slow on this issue. Tellers are ordered that they cannot subvert the process of the House!

DIVISION

(Question put and House divided)

Mr. Speaker: Order! Order! Can we have the Tellers present the results of the Division now?

Mr. Moi: Mr. Speaker, Sir, I would like to present the results of the Division. As you know, a travesty has been committed today.

(Applause)

Mr. Speaker: Order! Order! Will you present the results of the Division, Mr. Moi?

Mr. Moi: Mr. Speaker, Sir, as you know---

Mr. Speaker: Order! Order! If the hon. Member is unwilling or unable to grant the results, will another hon. Member do it!

Mr. Moi: Mr. Speaker, Sir, you know what has happened here today.

Mr. Speaker: Order! Mr. Moi, you are disorderly! Will the Serjeant-at-Arms ensure he goes out! You must go out!

(Mr. Moi handed over the results to Mr. Nderitu and withdrew from the Chamber)

Mr. Speaker: Now, go ahead! Will you give it to the losing side?

Hon. Members: How did you know which is the losing side?

Mr. Speaker: Order! Order! The Tellers know who the losing side is. Now, please, announce the results!

Mr. Boit: Mr. Speaker, Sir, I now wish to announce the results.

(Question carried by 102 votes to 61)

AYES: Mr. Akaranga, Dr. Ali, Messrs. Angwenyi, Arungah, Awori, Biwott, Mrs. Chelaite, Messrs. Choge, Dzoro, Gachagua, Gitau, Githae, Kagwe, Kagwima, Kamanda, Karaba, Kariuki, G.G.; Kariuki M., Ms. Karua, Messrs. Karume, Katuku, Kembi-Gitura, Kenneth, Dr. Khalwale, Mr. Khamasi, Dr. Kibunguchy, Prof. Kibwana, Mrs. Kihara, Mrs. Kilimo, Messrs. Kimathi, Kimunya, Kingi, Kirwa, Dr. Kituyi, Messrs. Kiunjuri, Koech, J.K.; Koech, S.C.; Kombo, Konchella, Kones, Dr. Kulundu, Messrs. Lesrima, Dr. Machage, Dr. Manduku, Messrs. Manoti, Masanya, Ms. Mbarire, Messrs. Mbau, Metito, Mganga, Michuki, Miriti, M'Mukindia, Mohamed, A.M.; Mohamed A.C.; Muchiri, Mrs. Mugo, Messrs. Mukiri, Munya, Munyao, Munyes, Muriithi, Muriungi, Dr. Murungaru, Messrs. Murungi, Mutiso, J.M.; Mwaboza, Mwakwere, Mwanicha, Ms. Mwau, Messrs. Mwenje, Mwiraria, Dr. Mwiria, Capt. Nakitare, Messrs. Nderitu, Ndile, Ms. Ndung'u, Messrs. Ndwiga, Mrs. Ngilu, Messrs. Ngozi, Ntimama, Nyachae, Nyagah, N.; Obwocha, Onyancha, Oparanya, Opopre, Prof. Saitoti, Messrs. Shaaban, Shakombo, Sudi, Tarus, Mrs. Tett, Eng. Toro, Messrs. Tuju, Waithaka, Wambora, Wamunyinyi, Wamwere, Wanjala, Dr. Wekesa, Messrs. Were and Wetangula.

The Tellers of Ayes: Messrs. Moi and Waithaka.

NOES: Mr. Abdirahman, Dr. Awiti, Prof. Anyang'-Nyong'o, Messrs. Bahari, Balala, Bett, Billow, Boit, Chepkitony, Kajwang, Kenyatta, Keter, Khaniri, Kilonzo C.; Kilonzo, K.; Kilonzo, M.; Kimeto, Kombe, Korir, Kosgey, Ligale, Maj. Madoka, Messrs. Maitha L., Prof. Mango, Messrs. Maore, Marende, Midiwo, Mohamed, M.A.H.; Moi, Moroto, Muturi, Mwandawiro, Mwanzia,

Ndambuki, Ndolo, Maj-Gen. Nkaisserry, Messrs. Ntutu, Nyagudi, Eng. Nyamunga, Dr. Oburu, Messrs. Ochilo-Ayacko, Ogur, Dr. Ojiambo, Messrs. Ojode, Okemo, Eng. Okundi, Prof. Olweny, Messrs. Omamba, Omondi, Archbishop Ondiek, Prof. Oniang'o, Messrs. Owino, Poghio, Raila, Dr. Rutto, Messrs. Sambu, Samoei, Sungu, Twaha, Wario and Weya.

Tellers of the Noes: Messrs. Nderitu and Boit.

ABSENCES: Messrs. Mungatana and Mwangi, O.K.

ADJOURNMENT

Mr. Speaker: Hon. Members, it is now time for the interruption of business. The House is, therefore, adjourned until Tuesday, 26th July, 2005, at 2.30 p.m.

The House rose at 11.40 p.m.