

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 4th November, 2003

The House met at 2.30 p.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

NOTICE OF MOTION

BILL TO PROVIDE FOR ENHANCED COMPENSATION FOR DESTRUCTION OF WILDLIFE

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

THAT, in view of the huge losses incurred by farmers as a result of crop destruction by wildlife; noting with concern the continued loss of human life as a result of wildlife menace; this House do grant leave to introduce a Bill for an Act of Parliament entitled "The Wildlife Conservation and Management (Amendment) Bill, to provide for full compensation of crops destroyed by wildlife and further provide for increased compensation for loss of human life to Kshs10 million and for matters incidental thereto, and related therewith.

QUESTIONS BY PRIVATE NOTICE

ILLEGAL ALLOCATION OF FUNDS BY DPNAK

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

(a) Is the Minister aware that a group calling itself the Disabled Persons National Alliance of Kenya (DPNAK) has unlawfully taken millions of shillings from school leavers in Meru North District?

(b) What urgent measures is he taking to save innocent school leavers and parents from the heavy losses?

Mr. Deputy Speaker: I am informed that this Question will be answered by the Minister for Gender, Sports, Culture and Social Services.

The Assistant Minister for Gender, Sports, Culture and Social Services (Mrs. Chelaite): Mr. Deputy Speaker, Sir, I beg to answer.

(a) I am aware that the organisation has benefited financially from the members of public in the Meru North District, through its training programmes.

(b) The matter is being referred to the Office of the President to conduct investigations on the activities of the unregistered organisation, with the view to prosecuting the offenders as a

safeguard against future inconvenience to members of the public.

Mr. Muriungi: Thank you, Mr. Deputy Speaker, Sir. The wording of the answer by the Assistant Minister makes the answer not look serious at all. When she says that this organisation has benefited financially, I think they have not only benefitted but also fleeced the community. Millions of shillings are involved in this, if a student is charged over Kshs6,500, and over 500 people have gone through the programme that has no functional value. The chairman of the organisation is a confident trickster who has taken these millions in the name of promising employment. Are we going to have the money that was taken away from the students refunded to the parents?

Mrs. Chelaite: Mr. Deputy Speaker, Sir, as I said before, we have challenged the Office of the President to conduct investigations which we have taken very seriously. The issue of the parents getting their money back can only be done after investigations have been carried out and the culprits taken to court. This is an unlawful act. We have checked with the Government Organisations Coordinating Bureau and confirmed that the organisation is not registered. So, they are, therefore, acting illegally.

Mr. Sasura: Mr. Deputy Speaker, Sir, the Assistant Minister is really surprising the House. She has said that this is an illegal organisation. She concedes that it is true that the organisation has fleeced Kenyans millions of shillings. She is also saying that she now wants to institute investigations against the organisation. Could she tell us why she let those people collect thousands of shillings from Kenyans because she was aware of the fact that the organisation had not been registered, even without any investigations being conducted? Why did she let the organisation collect money from Kenyans in the first place?

Mrs. Chelaite: Mr. Speaker, Sir, we could not have known that they were conducting the illegal business because they are not registered. When they were discovered; and I am happy to report to this House that even the hon. Member who asked the Question is aware that the issue was forwarded to the DDC, It was discussed at length, and all the members of DDC from that district were present. After the discussion, the director rushed to court to sue our DC together with our District Social Development Officer (DSDO) to protect himself from being arrested.

Mr. Kimeto: Mr. Deputy Speaker, Sir, the Assistant Minister has said that these people have benefited from this group. Were they registered to swindle from the school leavers? If they were not registered, why did she use the word "benefited"? How could thieves be beneficiaries? Why did the Ministry not arrest them and take them to court immediately?

Mrs. Chelaite: Mr. Deputy Speaker, Sir, I think the hon. Member did not hear what I said. The word "benefited" meant that the person illegally collected a lot of funds. I have said that it is not a registered organisation. It was not formed to benefit the group. He conned the people of Meru and when he was discovered, he rushed to court before he was arrested. So, the case is in court at the moment.

Mr. Muriungi: It is obvious that this person took a lot of money from unsuspecting school leavers. The Assistant Minister has already said that this organisation is unlawful. Before we have a case similar to the shipping job scandal in this country, could the chairman of this organisation be taken to jail while investigations are going on?

Mr. Deputy Speaker: Order, Mr. Muriungi. That is an unfair question. Do you expect the Assistant Minister to order someone to go to jail? Do you not know that the procedure is that he should first be taken to court and then whatever decision is taken is upheld? Could you rephrase your question?

Mr. Muriungi: Mr. Deputy Speaker, Sir, this person can be charged with running an unlawful organisation.

Mr. Deputy Speaker: You can say that he be taken to court, but you cannot say that he be

taken to jail. The Assistant Minister cannot take anyone to jail.

Mr. Muriungi: He should be taken to court.

Mrs. Chelaite: Mr. Deputy Speaker, Sir, we have taken action. That is why we referred the matter to the Office of the President which is in charge of prosecution. I am sure that action will be taken immediately.

Mr. Deputy Speaker: Very well!

Next Question, Dr. Ojiambo!

INSECURITY IN FUNYULA SOUTH

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

(a) Is the Minister aware that in the period of less than two years, virtually every business premises and businesspersons' homes in Funyula South have been broken into and property stolen by armed robbers?

(b) Could he inform the House the number of people who have been killed, and those who have been wounded by armed robbers in Funyula Division, during the last two years?

(c) Could the Minister inform the House as a matter of urgency, when he is sending to Sio Port Police Station a vehicle and a boat for land and lake patrols respectively?

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

(a) From the year 2001 to date, a total of 19 business premises and four businesspersons' homes have been broken into and property stolen by armed robbers.

(b) During the same period as in "a" above, two people have been killed and 13 wounded respectively by armed robbers in Funyula Division.

(c) Sio Port Police Station was allocated a new vehicle in September, 2003. At the moment the police boat at Port Victoria will continue to be used in patrolling Sio Port, Osieko areas and Lake Victoria.

Prof. Ojiambo: Mr. Deputy Speaker, Sir, I want to thank the Assistant Minister for trying to answer this Question, but letting us also know more facts about this issue. Having 19 premises and four homes broken into, two people killed and 13 maimed is a big loss in a mere ward. As I talk, the OCS at Sio Port Police Station has got only an old Land Rover from Busia. Recently, one Land Rover was taken to the district headquarters where it is being used by the OCPD for surveillance. Sio Port Police Station does not have a new vehicle or any motorboat. Would the Assistant Minister tell us how soon the Ministry is going to send a new vehicle and a motor boat to Sio Port Police Station for surveillance because the situation is bad?

Mr. Tarus: Mr. Deputy Speaker, Sir, having mentioned that Sio Port Police Station had been allocated a vehicle in September, 2003, I need to confirm that, that vehicle has been sent. In addition, I cannot confirm that we are able to provide the boat now. I know that there are plans to improve the management of security at Sio Port Police Station and the entire area of Lake Victoria. I undertake to ensure that this action is carried out immediately. We will confirm to the hon. Member in the next one week about the vehicle scheduled to be sent to Sio Port Police Station.

Dr. Manduku: Mr. Deputy Speaker, Sir, the Assistant Minister has said that in September, 2003, they sent a Land Rover to Sio Port Police Station. But the hon. Questioner has said that, that vehicle was taken away from Sio Port Police Station by the OCPD. Could he tell us whether this is the same vehicle which was taken by the OCPD or it is another one? Is he going to send a vehicle to Sio Port Police Station?

Mr. Tarus: Mr. Deputy Speaker, Sir, I said the vehicle was allocated to Sio Port Police Station and not any other area.

Mr. Sungu: Mr. Deputy Speaker, Sir, considering that our beloved Vice-President and Minister for Home Affairs lives in this area, and given the fact that one vehicle cannot really patrol a whole division, could the Assistant Minister undertake to send more vehicles, and particularly look at the question of boats? There are many police boats lying idle in Kisumu which could be refurbished and used for patrolling the lake to protect Kenyan fishermen who are being harassed daily by Ugandan police. Could he undertake to do that so that we can provide adequate security to this area, considering the fact that our Vice-President and Minister for Home Affairs lives there?

Mr. Tarus: Without commenting on his special reference, I want to say that we have a programme to ensure that security is provided in all areas of the country. Considering the kind of problems that the Lake Victoria region has had in the past, we will give it special attention once we have the necessary resources to provide appropriate facilities for the police in that region to be able to handle the security problems from time to time.

Dr. Ojiambo: Mr. Deputy Speaker, Sir, considering that this is a grave situation which requires urgent attention, could the Assistant Minister assure us that a vehicle will be sent to Sio Port Police Station and that this issue will be treated as an emergency? It does not have to wait until funds are available.

Mr. Tarus: Mr. Deputy Speaker, Sir, we shall make sure that the vehicle that was allocated to Sio-Port Police Station is taken there.

REPAIR OF KITAMBAASYE PRIMARY SCHOOL

(Mr. M. Maitha) to ask the Minister for Education, Science and Technology:-

- (a) Is the Minister aware that Kitambaasye Primary School in Matungulu Division has had its roof blown off by the wind?
- (b) What is he doing to ensure that the school is assisted to do the required repairs?
- (c) How much money has been released for the repairs?

Mr. M. Maitha: Mr. Deputy Speaker, Sir, the Question I asked was with regard to Kithuyani Primary School, and not Kitambaasye Primary School. I had talked to the Assistant Minister to request for the Question to be deferred, until I ask the right Question with regard to Kithuyani Primary School.

Mr. Deputy Speaker: Mr. M. Maitha, what in effect you are saying is that you are withdrawing the Question? What are you saying, Mr. M. Maitha? Do you want the Question to be deferred?

Mr. M. Maitha: Mr. Deputy Speaker, Sir, I beg to request that the Question be deferred.

Mr. Deputy Speaker: Is the Minister for Education, Science and Technology here? The hon. Member wants the Question to be deferred, because he says the school referred to in the Question is different from the one he had in mind. What does the Minister have to say about that?

The Assistant Minister for Education, Science and Technology (Mrs. Mugo): Mr. Deputy Speaker, Sir, we noticed that the roof of that school has not been blown off. So, we will bring the right answer when he files the right Question.

Mr. Deputy Speaker: So, the Question is deferred!

(Question deferred)

UPGRADING OF MODOGASHE HEALTH CENTRE

Mr. Dahir: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Health the following Question by Private Notice.

- (a) What action is the Minister taking to post a Laboratory Technician to Modogashe Health

Centre?

(b) When will the same health centre be upgraded to a sub-district hospital?

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

(a) I have already posted Mr. Yusuf Hassan Ali, PIN No.93069459, a medical laboratory technologist to Modogashe Health Centre.

(b) Modogashe Health Centre was upgraded to a district hospital via Notice No.4715 of 15th May, 2002. However, funds to upgrade and improve the existing facilities will be provided in the next financial year. In the meantime, the MOH, Garissa, has been given Kshs21.7 million under Head 335 - Operations and Maintenance, to support rural health facilities in the district, including Modogashe.

Mr. Dahir: Mr. Deputy Speaker, Sir, while I thank the Assistant Minister for that answer, could he assure this House that the Laboratory Technician who has been posted to Modogashe is on permanent basis and not temporary? Recently, when we made a tour there, he had been there for a few days and then left.

Mr. Konchella: Mr. Deputy Speaker, Sir, the Laboratory Technician is supposed to have reported by yesterday. Unless otherwise, we know he is there, and he will be there as long as possible.

Mr. Bahari: Mr. Deputy Speaker, Sir, If I heard the Assistant Minister very well, he said that this health centre was upgraded to sub-district hospital status in 2002, when it was gazetted. Could the Assistant Minister explain why no funds have been allocated to the health centre in the Printed Estimates of this financial year?

Mr. Konchella: Mr. Deputy Speaker, Sir, I believe it must have been an oversight, but the funds that are available in the health centres in the district as a whole are enough to maintain the needs of this health centre until the next financial year, when we plan to upgrade what they require urgently; that is a theatre, an X-ray unit and more accommodation in the hospital.

Mr. Deputy Speaker: Mr. Dahir, ask the last question, since this Question appears to have been satisfactorily answered. So, we do not need to take more time on it.

Mr. Dahir: Mr. Deputy Speaker, Sir, I just want an assurance from the Assistant Minister that the Vote for Modogashe Health Centre will be given this year and not next year, because this is a health centre that serves two constituencies.

Mr. Konchella: Mr. Deputy Speaker, Sir, I can assure the hon. Member that we have put it in the programme for development within the next financial year, and subsequently, in the next two years.

ORAL ANSWERS TO QUESTIONS

Question No.555

DEATH OF NDUNG'U IN POLICE CELL

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

(a) if he could explain the circumstances under which Mr. Joseph Kamau Ndung'u, ID No.469787, died at Thika Police Station cells on 30th September, 2001 and his body transferred to Nairobi City Mortuary the same night;

(b) what disciplinary action he has taken against the Officer Commanding Station, Thika, and his officers; and,

(c) what compensation the victim's family will receive.

The Assistant Minister, Office of the President (Mr. Tarus): Mr. Deputy Speaker, Sir, I

beg to reply.

(a) I am not aware that Mr. Joseph Kamau Ndung'u, ID No.469787 died at Thika Police Station on 30th September, 2001. Records indicate that Mr. Joseph Kamau Njoroge Ndung'u was the then acting officer in charge of Thika Police Station at the time. There is no report of a dead person by that name on the said date.

(b) Arising from my response to part "a" above, part "b" of the Question does not arise.

(c) Arising from my response in part "a" above, part "c" also does arise.

Mr. Muiruri: Mr. Deputy Speaker, Sir, this is a very, very sad day. I was an hon. Member of Parliament in the Eighth Parliament, and I did not want to raise this matter because I thought, probably, the KANU Government could cover it up. Now, I am surprised that the NARC Government is covering it up.

Mr. Deputy Speaker, Sir, on 30th September, 2001, nine people died in police cells in Thika Police Station; 18 were treated in Thika General Hospital for serious wounds, and the nine people died under police custody. Mr. Kamau Ndung'u was employed by Securicor Company in Githurai. When he was arrested, he was boarding a bus destined to Mangu at Thika. He was taken to the cells and he is among the nine people who died under police custody. I have a cutting of the whole story from the *Daily Nation* newspaper, which says that six people were beaten to death in police horror cells. How then---

Mr. Deputy Speaker: Order, Mr. Muiruri! Could you clarify the date that you mentioned?

Mr. Muiruri: Mr. Deputy Speaker, Sir, this happened between 10.00 p.m. and midnight of 30th September, 2001. Nine people who were battered by the police died in the cells. One week after the incident, that man's body was recovered in the Nairobi City Mortuary by relatives. Was the Assistant Minister misled, or he knows what he is talking about?

Mr. Tarus: Mr. Deputy Speaker, Sir, may I give the true position? On 30th September, 2001, at Thika Police Station cells, a fight arose between Kamiti Prison inmates who had been booked in the cells, and the newly arrived suspects who had been brought from different police cases. During the fight, the following died while in the police cells: Paul Elima Katengu, Thomas Kamau, Francis Njuguna Mwandika, Joseph Njoroge Kangethe and Simon Muturi. By then, I.P. Joseph Kamau Njoroge Ndung'u was the acting officer in charge of the police station. After investigations, the following were charged before court of law for negligence in the performance of their duty contrary to Section 128 of the Penal Code: I.P. Joseph Kamau Njoroge Ndung'u, then acting OCS; I.P. Abdul Hajji, then duty officer; P.C. Francis Mwangi, P.C. Wycliffe Otieno and P.C. Julius Murigi. The relevant files are police file No.261/727/01 and court file No.2158/01. Before the case was finalised, the following officers died: I.P. Abdul Hajji and P.C. Julius Murigi. The other three were convicted.

Mr. Deputy Speaker, Sir, there is no case of cover-up. At least, this Government is not aware of any cover-up of any case. If the hon. Member has information on whether there was attempted cover-up of the same cases, we are willing to pursue the case further.

Mr. Serut: Mr. Speaker, Sir, the Assistant Minister has given us the names of the police officers who arrested and placed him in the cells. But he has not told us what happened to Joseph Kamau Ndung'u who was arrested with others. Could the Assistant Minister tell this House what happened to Mr. Ndung'u?

Mr. Deputy Speaker: Mr. Assistant Minister, is he the same person? There is a Mr. I.P. Joseph Kamau who was in charge of the police station. Is it a different person?

Mr. Tarus: Mr. Deputy Speaker, Sir, we are aware that Mr. Joseph Kamau Ndung'u was the Acting Officer Commanding Station (OCS). But the Question indicated that Mr. Joseph Kamau Ndung'u had died. We do not have records that, indeed, Mr. Joseph Kamau had died.

Mr. Deputy Speaker: Just a minute! Have you addressed Mr. Serut's question?

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

Mr. Deputy Speaker: Just a minute, Mr. Muiruri! Everything is being done here to assist you! Mr. Serut asked a question! Could the Assistant Minister answer the question?

Mr. Tarus: Mr. Deputy Speaker, Sir, Mr. Serut asked a very valid question. I see a discrepancy in my answer. I can see that the whereabouts of Mr. Joseph Kamau Njoroge Ndung'u are not clear. I ask the House to give me more time to investigate that case.

Mr. Muiruri: On a point of order, Mr. Speaker, Sir. It is very important to make this matter very clear. To start with, the answer in my possession is totally different from the answer he has read. That is why I have said that there was a cover-up. He now admits that all that happened. But, in his original answer, he said that he was not aware of anything.

Mr. Deputy Speaker: Mr. Muiruri, it is true that this is a serious matter!

Mr. Muiruri: Yes, it is, Mr. Deputy Speaker, Sir!

Mr. Deputy Speaker: I believe that the House has tried to assist you. Through Mr. Serut's question, the Assistant Minister has accepted that he now sees a discrepancy. Therefore, he has requested the indulgence of the House to give him more time to investigate. I think it is a valid request.

(Mr. Muiruri stood up in his place)

Just a minute, Mr. Muiruri! Therefore, I have granted that request and the Question is deferred until next week.

Mr. Tarus: Mr. Deputy Speaker, Sir, I think we could have a valid answer on Tuesday next week.

Mr. Deputy Speaker: You see, Mr. Muiruri, it pays to be patient. We are through with that Question.

Mr. Ogur: On a point of order, Mr. Deputy Speaker, Sir. Who is that man? Who is Mr. Ndung'u; Is he a police officer or not? Who is he?

Mr. Deputy Speaker: Order, Mr. Ogur! You can come on Tuesday afternoon and you will know who he is.

(Question deferred)

Question No.419

TARMACKING OF RWAMBWA- MAUMAU ROAD

Mr. Shitanda, on behalf of **Mr. Wanjala**, asked the Minister for Roads, Public Works and Housing:-

(a) whether he is aware that numerous sections of Road C29, Rwamba-Maumau, are completely damaged, rendering Maumau town in Budalang'i Constituency inaccessible; and,

(b) whether he could ensure that the road is tarmacked to enable farmers to transport their produce to Kisumu.

Mr. Deputy Speaker: Where is Mr. Wanjala?

Mr. Shitanda: Mr. Wanjala is attending a workshop in Mombasa.

Mr. Deputy Speaker: So, he asked you to ask the Question on his behalf?

Mr. Shitanda: Yes, Mr. Deputy Speaker, Sir.

The Assistant Minister for Roads, Public Works and Housing (Eng. Toro): Mr. Deputy Speaker, Sir---

Dr. Godana: On a point of order, Mr. Deputy Speaker, Sir. Hon. Members must take this House seriously. The hon. Member has said that Mr. Wanjala is attending a workshop in Mombasa. To the best of my knowledge, that workshop ended yesterday and hon. Members who attended it are already in this House!

Mr. Deputy Speaker: The most important thing to me is whether Mr. Wanjala was unable to come and he authorised Mr. Shitanda to ask the Question on his behalf. What did you say, Mr. Shitanda?

Mr. Shitanda: Mr. Deputy Speaker, Sir, Mr. Wanjala called and asked me to ask the Question on his behalf. I do not know what is wrong with that hon. Member!

Mr. Deputy Speaker: Very well! I have granted that request! Mr. Assistant Minister, answer the Question!

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

(a) I am aware that Rwambwa-Maumau Road, C29, was destroyed by floods during this year's long rains.

(b) I am already making sure that the road is tarmacked to enable farmers to transport their produce to Kisumu. This financial year, 2003/2004, the road has been provided with Kshs35 million for feasibility studies and detailed engineering designs. Tenders for consultancy services have already been advertised.

Mr. Shitanda: Mr. Deputy Speaker, Sir, we all know the history of feasibility studies on our roads in this country. I would like to know from the Assistant Minister whether the necessary funds to tarmac the road have been provided for, and not feasibility study. Could he tell us where the funding for the tarmacking of that road will come from?

Eng. Toro: Mr. Deputy Speaker, Sir, I would like to assure the hon. Member that pre-qualification for consultancy services was done last month. The budget of Kshs35 million is for design. We cannot allocate more money until design work is complete, so that we can know how much the road is likely to cost.

Mr. Manoti: Mr. Deputy Speaker, Sir, the Assistant Minister is very good at answering the Questions. If you go around the country, the roads are very bad. There are no roads which are being repaired anywhere. Since that road is very bad, could he take immediate measures to, at least, murrum it, while we are waiting to have it tarmacked?

Eng. Toro: Mr. Deputy Speaker, Sir, we are going to take immediate measures. In the short term, the Ministry is issuing Kshs1 million to the District Works Officer, Busia. A budgetary provision of another Kshs5 million under the Fuel Levy budget has been made. The funds will be released to the district for improvement of the road in question.

Mr Bahari: Mr. Deputy Speaker, Sir, many constituencies in this country do not even have a kilometre of tarmacked road. I would like the Assistant Minister to tell us what criteria is used to allocate funds for the repair of roads in this country.

Eng. Toro: Mr. Deputy Speaker, Sir, I would like a clarification on that. Allocation of money to which roads? Is it for tarmacking, gravelling, grading or which?

Mr. Bahari: For tarmacking!

Mr Deputy Speaker: Mr. Bahari, who gave you permission to speak? This is not a public

baraza where you just jump up and talk!

Mr. Shitanda: Mr. Deputy Speaker, Sir, could the Assistant Minister tell us when that feasibility study will be completed and which year will that road be tarmacked?

Eng. Toro: Mr. Deputy Speaker, Sir, as I said, we have already pre-qualified consultancy services not only for that particular road, but also for other roads. We are prevailing upon the consultant engineers to work with diligence, so that we could get the designs as early as possible. They should take, at least, a minimum of six months, so that we could be able to proceed with the allocation of funds. I can assure the hon. Member that, this time round, we are very serious in the Ministry. There will be no waste of time, either in construction or design periods.

Question No.467

REPAIR OF KANYUMBUNI-ADA ROAD

Mr. Deputy Speaker: Is Mr. Rai not here? He is not here and there is no information about his whereabouts. Therefore, I will drop his Question!

(Question dropped)

Question No.730

PAYMENT OF ARREARS TO
PYRETHRUM FARMERS

Mr. Kimeto asked the Minister for Agriculture whether he could inform the House when pyrethrum farmers will be paid their accrued arrears.

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

The Pyrethrum Board of Kenya (PBK) has paid a total of Kshs100 million to growers in the last three months, and plans to pay Kshs72 million in November, 2003. The Board envisages to continue paying the farmers' outstanding payments from the proceeds accrued from the sale of pyrethrum. The Board, working together with my Ministry, is looking into the possibility of identifying other agents so as to dispose of the accumulated stocks of pyrethrum. As part of this, we are examining a strategy that would link production and marketing so that the problem of not paying farmers can be resolved for good.

Mr. Kimeto: Thank you very much, Mr. Deputy Speaker, Sir. I thank the Assistant Minister for answering my Question. I would like to inform him that the PBK owes farmers over Kshs1.2 billion. The amount of money the Assistant Minister has said will be paid to the farmers is just peanuts. Could he ensure that the Board pays the farmers half of the Kshs1.2 billion it owes them to enable them produce more pyrethrum? I am saying this because pyrethrum is one of the cash crops that earn this country foreign exchange.

Mr. Khaniri: Mr. Deputy Speaker, Sir, I cannot undertake to pay pyrethrum farmers half of Kshs1.2 billion that is owed to them. As I stated in my reply, we can only pay farmers from the proceeds of pyrethrum sales. At the moment, the Board is holding two categories of stocks of pyrethrum which have not been sold. One of them is 320 metric tonnes of crude extract worth Kshs1.1 billion and the other one is 3,800 metric tonnes of unprocessed flowers worth Kshs400 million. We can only undertake to pay these farmers once we sell the pyrethrum that is in stock.

Mr. Rotino: Mr. Deputy Speaker, Sir, the Question of pyrethrum farmers not being paid for the crop they have delivered to the PBK has been asked in this House many times. Could the Assistant Minister assure this House that all money owed to pyrethrum farmers is paid before June, 2004? These farmers have started uprooting their crop because of delayed payment. Secondly, could the Assistant Minister tell us what has made the Board not to pay pyrethrum farmers, and yet it has been selling the crop?

Mr. Khaniri: Mr. Deputy Speaker, Sir, as far as I am concerned, I have answered that question. It is true that the farmers have delivered the pyrethrum, and we have it in stock because we have not found a market for it. Therefore, we cannot raise money from any other source to pay the farmers until we sell the pyrethrum we have in stock.

Mr. Mukiri: Mr. Deputy Speaker, Sir, over Kshs150 million belonging to pyrethrum farmers was deposited in Euro Bank. If this money is recovered from the officials who deposited the money in that bank, it will go a long way in paying these farmers. Could the Assistant Minister tell us how far they have gone in recovering this money because the farmers are really suffering?

Mr. Khaniri: Mr. Deputy Speaker, Sir, that matter is *sub judice*.

Mr. Deputy Speaker: Mr. Mukiri, have you got what the Assistant Minister has said?

Mr. Mukiri: Mr. Deputy Speaker, Sir, he has said that the matter is *sub judice* but he has not told us what he means by that.

Mr. Deputy Speaker: Mr. Assistant Minister, you should explain that!

Mr. Khaniri: Mr. Deputy Speaker, Sir, all of us know that this matter is before a court of law and as a result, we cannot discuss it in this House until it has been determined by our capable courts.

Mr. Deputy Speaker: Ask your last question, Mr. Kimeto!

Mr. Obwocha: Mr. Deputy Speaker, Sir, on behalf of Mr. Kimeto---

(Laughter)

Mr. Deputy Speaker: Order, Mr. Obwocha! Mr. Kimeto, ask your last question.

Mr. Kimeto: Mr. Deputy Speaker, Sir, bearing in mind that pyrethrum farmers have got children in primary and secondary schools, could the Assistant Minister consider taking some money from the Consolidated Fund to pay them? If this is done, it will assist the farmers who are languishing in poverty pay school fees for their children in secondary schools and universities.

Mr. Deputy Speaker: All right! Mr. Kimeto, you should end your question so that the Assistant Minister can reply!

Mr. Khaniri: Mr. Deputy Speaker, Sir, the Government, through my Ministry, is exploring all possibilities available to ensure that the pyrethrum farmer is paid his dues. The PBK is seeking authority to borrow Kshs888 million to clear these arrears. Once this authority is granted, we will clear all the arrears before we even sell the pyrethrum we have in stock.

Mr. Cheboi: On a point of order, Mr. Deputy Speaker, Sir. I would like to ask the Assistant Minister a question because my constituency produces 40 per cent---

Mr. Deputy Speaker: Well, I can use my discretion to give you a chance to ask the Assistant Minister a question, but you should not rise on a point of order! Be honest now. Is it a question or a point of order?

Mr. Cheboi: Mr. Deputy Speaker, Sir, it is a question.

Mr. Deputy Speaker: Okay. I will give you a chance to ask your question.

Mr. Cheboi: Mr. Deputy Speaker, Sir, I have said that my constituency produces 40 per cent of the total amount of pyrethrum delivered to the PBK. About three months ago, I asked a

Question in this House in connection with non-payment of pyrethrum farmers and the Minister promised to pay them in instalments. The Assistant Minister has said that he will pay Kshs72 million to farmers in November, 2003. Will this payment be for this month, last month or for the month of July? What has been happening in the last few months is that the PBK has been paying farmers for the crop they delivered last year, and yet there are some farmers who planted pyrethrum the other day and delivered their crop to the PBK. This is quite unfair to them. The Assistant Minister will pay pyrethrum farmers for the crop they delivered in which month?

Mr. Khaniri: Mr. Deputy Speaker, Sir, fortunately, they will be paid for the crop they delivered in the month of July, 2003.

Question No.524

POSTING OF SURGEON TO NYAMIRA
DISTRICT HOSPITAL

Mr. Obwocha asked the Minister for Health when she will post a surgeon to Nyamira District Hospital to save the patients who need urgent surgical treatment.

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

The Ministry posted a surgeon to Nyamira District Hospital on 8th July, 2003, but he absconded and has been interdicted. The Ministry will post another surgeon to the hospital within two weeks.

Mr. Obwocha: Mr. Deputy Speaker, Sir, Nyamira District Hospital has not been having a surgeon for the last two years. I have asked two Questions in this House in connection with that. Now that the Assistant Minister has promised this House that he will post a surgeon to that hospital in two weeks' time, could he give us the name of the surgeon who absconded duty? How can a doctor abscond his duty of treating patients? Who is this surgeon?

Mr. Konchella: Mr. Deputy Speaker, Sir, the surgeon who was posted to the hospital this year was Dr. Oigara, but he disappeared mysteriously. We are tracing him with a view to sending him home.

Mr. Mwandawiro: Bw. Naibu Spika, ukosefu wa madaktari na wauguzi wengine katika hospitali, hasa za mashambani, ni tatizo kubwa. Hivi ninavyozungumza, wodi moja katika Hospital ya Wilaya ya Taita-Taveta imefungwa kwa sababu ya ukosefu wa wauguzi. Je, Wizara ya Afya ina sera gani ya kuhakikisha kwamba sehemu za mashambani zinapata madaktari na wauguzi wakutosha?

Mr. Konchella: Mr. Deputy Speaker, Sir, we will continue to recruit doctors to manage our health centres as funds become available. This week, the Public Service Commission of Kenya is interviewing 40 specialist doctors. I will post a surgeon to the hospital within the next two weeks.

Mr. Mganga: Mr. Deputy Speaker, Sir, we had agreed in this House that I be called "Mr. Mganga" and my colleague there be called "Mr. Mwandawiro." All the HANSARD reports attributed to him are brought to me.

Mr. Deputy Speaker: That is why I gave you an opportunity to differentiate yourself.

Mr. Mganga: Thank you, Mr. Deputy Speaker, Sir. The Assistant Minister has said that he is going to post a surgeon to the hospital in the next two weeks. About three months ago, I requested the Assistant Minister to post a surgeon to Voi Hospital and he promised to do so within two weeks. Voi Hospital, which is the major hospital between Voi and Mombasa, has not had a surgeon for the last eight-and-half years. Could the Assistant Minister put a proactive programme in place to ensure

that all district hospitals and other hospitals which need a surgeon have one? If one absconds, or moves away for any reason, it should never take more than two weeks to replace him.

Mr. Konchella: Mr. Deputy Speaker, Sir, that is why we are recruiting 40 specialist doctors and most of them are surgeons. They will be posted to those hospitals once the recruitment is over.

Mr. Obwocha: Mr. Deputy Speaker, Sir, let the Assistant Minister be honest. If he is saying that he is going to interdict this doctor, is he going to do so based on his personal reasons for not going to Nyamira Hospital or is this based on either performance or availability of facilities? Why is the Assistant Minister interdicting this doctor? Has the surgeon given reasons why he cannot take up that post in Nyamira District Hospital?

Mr. Konchella: Mr. Deputy Speaker, Sir, I have said that we are tracing him and we have stopped his salary. We hope that he will come to the Ministry to explain why he has absconded duty and then appropriate action will be taken.

Mr. Obwocha: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to mislead this House on the reasons why the doctor is being interdicted by stopping his salary? How could he interdict the doctor without knowing the reasons why he has not taken up his job? There is no water in Nyamira District Hospital to be used while operating patients. What are the reasons for interdicting this doctor? Have they tried to find out why he did not report to the hospital?

Mr. Konchella: Mr. Deputy Speaker, Sir, I think I have answered this question. This man has disappeared. We are tracing him because we do not know where he is. We can only interdict him by stopping his salary to force him to come and explain why he absconded duty.

Mr. Mganga: On a point of order, Mr. Deputy Speaker, Sir. If the officer has absconded from duty, the proper Civil Service regulation is that he is suspended and his salary stopped. If the Assistant Minister says that he has interdicted him, it means that he is continuing to pay him half salary. Is it in order for the Ministry to continue paying half salary to an officer who has literally absconded duty?

Mr. Konchella: Mr. Deputy Speaker, Sir, there is nothing wrong with that. However, this action has been taken immediately.

(Laughter)

Question No.434

TERMINATION OF KENYA RAILWAYS
TENANCY AGREEMENT

Mr. Sungu asked the Assistant Minister for Transport and Communications whether:-

(a) he is aware that the tenancy agreement between the Kenya Railways Corporation (KR) and the Kenya Railways Tenants Welfare Association (KRTWA), Nairobi, is being terminated by the Corporation without following the due process of the law; and,

(b) what he is doing to ensure that the tenants' investments at the cargo shed are protected in the event that the kiosks and stalls are pulled down.

The Assistant Minister for Transport and Communications (Mr. Ligale): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am not aware that there is an agreement between the Kenya Railways Corporation

(KR) and the so-called Kenya Railways Tenants Welfare Association (KRTWA).

(b) The Kenya Railways carried out an orderly and peaceful lockup of the sheds involved. None of the structures were pulled down. The tenants and sub-tenants were later allowed to take away their stock and other materials.

Mr. Sungu: Mr. Deputy Speaker, Sir, although the Assistant Minister is my very good friend and neighbour, I am very disappointed by that answer. If somebody pays rent for occupying either land or any property, there is an implied contract between the tenant and the landlord.

Mr. Deputy Speaker, Sir, would the Assistant Minister confirm that these people were removed because this land was illegally and irregularly allocated to politically-correct individuals? Could he also confirm that the purpose is to give this land to those individuals rather than those tenants?

Mr. Ligale: Mr. Deputy Speaker, Sir, no land has been given to anybody. The Kenya Railways wanted this shed so that it could improve it for its own use.

Mr. Mbau: Mr. Deputy Speaker, Sir, could the Assistant Minister clarify why a church is occupying a shed that is supposed to be used for storing goods transported from Maragwa to other parts of the country? The goods cannot now be stored there because the shed has been let out to a church.

Mr. Ligale: Mr. Deputy Speaker, Sir, that is an entirely different question. We are dealing with the sheds in Nairobi. However, if the hon. Member wants to ask about a shed in Maragwa, I will be ready to answer it.

Mr. Deputy Speaker: I agree with the Assistant Minister. How would he know that, that is happening unless it is brought to his attention? That is an entirely different question. However, Mr. Mbau, you are welcome to put up that Question.

Mr. Sungu: Mr. Deputy Speaker, Sir, the Assistant Minister is aware of this issue because we used to "eat fish and *ugali*" with him in those sheds. It is not correct for this land to be allocated to private individuals. I know for certain, for example, that in Kisumu, Kenya Railways land has been allocated illegally and irregularly to private individuals. Would he undertake to revoke those allocations and give preference to the tenants who are occupying the land although they are just operating small kiosks?

Mr. Ligale: Mr. Deputy Speaker, Sir, I am not aware of these *ugali* eating sessions with my friend. Nevertheless, be that as it may, I would like to confirm to the hon. Member that His Excellency the President has already appointed a Land Commission headed by a very prominent lawyer, Mr. Paul Ndungu, to look into any land that may have been illegally or irregularly allocated. This morning, we had an interim report of that Commission at a forum that I attended at a hotel in town. As soon as the Commission has submitted its report with recommendations on how to repossess that land, it will be re-allocated to those deserving cases.

Mr. Deputy Speaker: Next Question, Mr. Kombe!

Question No.410

PREVENTION OF DAMAGE BY OCEAN
HIGH TIDES AT NGOMENI VILLAGE

Mr. Kombe asked the Minister for Environment, Natural Resources and Wildlife what measures he is taking to prevent high tides from the Indian Ocean from destroying the houses at Ngomeni village along the seashore.

The Minister for Environment, Natural Resources and Wildlife (Prof. Maathai): Mr. Deputy Speaker, Sir, I beg to reply.

Tides are a natural phenomenon that are responsible for the regularly changing sea level

noticed more clearly at the shoreline. The formation of tides is linked to the gravitational pull between the moon, the sun and the earth. They occur at specific times depending on the alignment of the moon and the sun with the earth surface.

I believe very little, if anything, can be done about such a natural process. However, in other parts of the world, the sea has been managed and even reclaimed through engineering works like dykes and embankments.

Under the current environmental legislation, it is illegal for any human settlement, or property to be sited within the tidal range; that is, below the high water mark area. As it would be unlikely for traditional villages like Ngomeni to be sited within the tidal range, the hon. Member may have been referring to the problem of coastal erosion which is affecting Ngomeni and several other locations along the Kenyan coastline. Again, coastal or beach erosion arises from ocean currents and waves that cause shoreline changes. Sediment transport from one part of the beach to another is a natural process that happens constantly, and could be as a result of many factors, some of which originate---

(Loud consultations)

Mr. Deputy Speaker: Order, Members! We need to consult quietly. We cannot even hear what the Assistant Minister is saying. She is giving a very important reply to an important Question. Please, may we consult quietly!

Proceed, Prof. Maathai!

The Assistant Minister for Environment, Natural Resources and Wildlife (Prof. Maathai): Mr. Deputy Speaker, Sir, sediment transport from one part of the beach to another is a natural process that happens constantly and could be as a result of many factors, some of which originate from as far as inland as the catchment areas of the rivers draining into the sea.

In many instances, affected developers and property owners have responded to the situation by constructing sea defences to protect against the impacts of the sea. However, isolated efforts by individual property owners to check natural processes cannot be sustainable in the long run. The Ministry is vigorously working towards maintenance of the natural defence mechanisms through protection of the natural ecosystems; that is, the coral reefs, mangroves and associated ecosystems that form barriers against sea actions. The ten marine protected areas along the coast and the regulated harvest of mangroves is aimed at this kind of protection of lives and property of the coastal inhabitants.

Mr. Deputy Speaker, Sir, let me reiterate that the responsibility of protecting the environment cannot and should not be the task of one organisation or Ministry. We need the support and co-operation of everybody, and most importantly, the support of communities living adjacent to natural resources. I call upon the hon. Member to help my Ministry by sensitising the local community at Ngomeni Location to take a more active role in the conservation and protection of our natural environment by encouraging settlement in safe distances from tidal action.

Mr. Deputy Speaker: Well, that is quite a lengthy statement. Perhaps, it suffices.

Mr. Kombe, let us hear what you have to say.

Mr. Kombe: Mr. Deputy Speaker, Sir, the houses---

(Mr. Salat consulted while standing)

Mr. Deputy Speaker: Order, Mr. Salat! You are completely out of order. You left your seat to talk to another hon. Member just like another hon. Member, did two weeks ago, and you are

standing there consulting loudly. You are in the Chamber! Could you stand up and apologise to the House?

(Mr. Salat bowed to the Chair)

Very well. Hon. Members who wish to consult may do so, but you do not stand and give us a show!

Proceed Mr. Kombe!

Mr. Kombe: Mr. Deputy Speaker, Sir, the houses that were damaged were well over 200 meters away from the high water mark. As a result, sea waters washed away the sand. That process has continued for over 20 years, and now the waters are clearing the houses. In the first case they cleared Benezi Bay at Ngomeni. Right now, the waters are in the process of clearing the path leading to Formosa Bay.

Could the Assistant Minister consider putting up a wall or a gabion on the seashore to protect the remaining houses? Houses are constructed very far away from the sea, but the sea waters are continuing to wash away the sand---

Mr. Deputy Speaker: Very well! Mr. Kombe, you must stop asking questions endlessly. Let the hon. Assistant Minister to reply.

Prof. Maathai: Mr. Deputy Speaker, Sir, I am not aware that my Ministry would be considering putting up an embankment, dyke, or a wall against the sea. We do know that due to climate change, there has been a tendency for the sea to rise. This could explain, perhaps, the encroachment of the sea on the villages. So, in the first instance, I would advise the villagers to move away from the level where the sea is approaching. It may be very difficult. However, the most I can do is, perhaps, to ask the Natural Environment and Management Authority (NEMA) to visit this site and assess what can be done. But as an immediate action, perhaps, the village should consider moving away from the sea.

Mr. Hassan: Mr. Deputy Speaker, Sir, I appreciate the Assistant Minister's effort to make a very good academic reference. It is very common with this Ministry, whenever there is a human-wildlife conflict, to say that people should move away. You remember what happened about the lions---

Mr. Deputy Speaker: The question is not about wildlife. It is about the sea.

Mr. Hassan: Mr. Deputy Speaker, Sir, sorry, I am using it as a reference. The Assistant Minister is again talking about people moving from near the sea. What specific plans will the Ministry put in place to help the people of this particular village, and the whole country in general?

Mr. Deputy Speaker, Sir, we have a problem with this Ministry in terms of talking about the lives of people more than wildlife and other natural disasters.

(Loud consultations)

Mr. Deputy Speaker: Order, hon. Members! What is going on here? This should be the last time I am asking hon. Members to consult quietly. I will be watching carefully those who will not consult quietly. They will have to leave the Chamber. I hope we do not have to do that. Please, consult quietly!

Proceed, Prof. Maathai!

Prof. Maathai: Mr. Deputy Speaker, Sir, the sea and wildlife are two very different issues to deal with. While we can move wildlife, we cannot very much move the sea. So, the suggestion I gave, that NEMA will be requested to visit the area and assess what can be done, probably, is the

best I can do.

With respect to wildlife, I have said many times that if we encroach on the habitats of wildlife, the most likely thing to happen is that there will be a human-wildlife conflict. However, I do not think we can compare the two issues.

Mr. Kombe: Mr. Deputy Speaker, Sir, I do not think the Assistant Minister is fair when she asks me to go and liaise with the people of Ngomeni to have them move from their current habitat because they have erected permanent structures. Therefore, it is not possible for them to move with those structures. Could she think of taking urgent measures, or sending the NEMA she is talking about to that place, assess and see if it will be possible for something to be done? For example, gabions could do.

Prof. Maathai: Mr. Deputy Speaker, I do promise that NEMA will be asked to go and assess the situation. However, considering that this is the sea, surely, we would have to wait until NEMA gives us a suggestion as to whether we need to move the people or not. This is because even if we were to build an embankment or a dyke, it would not be done as fast as the hon. Member would wish.

Mr. Deputy Speaker: Hon. Members, that brings us to the end of Question Time.

POINTS OF ORDER

EVICITION OF PASTORALISTS FROM LAIKIPIA DISTRICT

Mr. Kamama: On a point of order, Mr. Deputy Speaker, Sir. Last Wednesday, I sought a Ministerial Statement from the Minister of State, Office of the President, regarding the on-going eviction of pastoralists, from Baringo and Samburu Districts, from Laikipia District. I would like the Minister of State, Office of the President, in charge of internal security who, undertook to issue the Ministerial Statement today, to do so.

Mr. Deputy Speaker: Mr. Tarus, did you hear what Mr. Kamama said? You are to issue a Ministerial Statement on alleged eviction of people, from Baringo and Samburu Districts, from Laikipia District. Are you ready to do so?

The Assistant Minister, Office of the President (Mr. Tarus): Mr. Deputy Speaker, Sir, I would like to request the House to allow me to issue the Ministerial Statement tomorrow. I had discussed the matter with Mr. Kamama. I had told him that it was not possible for me to issue the Ministerial Statement today. So, I will issue the Ministerial Statement tomorrow.

Mr. Deputy Speaker: Very well, you will do so tomorrow.

RE-OPENING OF KMC

Dr. Godana: On a point of order, Mr. Deputy Speaker, Sir. Slightly more than a week ago, I did ask for a Ministerial Statement from the Minister for Livestock and Fisheries Development regarding the planned opening of the Kenya Meat Commission (KMC), which he promised in this House early this year. The year is ending and, with the drought setting in, animals are beginning to die in some of our northern areas and it is just about time, if the KMC was to be opened, that the social responsibility that it used to discharge by taking livestock that would otherwise succumb to drought, was attended to. May I know, for the second time, whether the Minister is going to issue the Ministerial Statement today?

Mr. Deputy Speaker: Is the Minister for Livestock and Fisheries Development here?

Could somebody take a brief for him on a Ministerial Statement sought by Dr. Godana on the re-opening of the KMC?

The Minister for Co-operative Development (Mr. Ndwiga): Mr. Deputy Speaker, Sir, I request the indulgence of the House. I will make sure that he gets the information.

Mr. Deputy Speaker: Hon. Members, I do not seem to have requests for other Ministerial Statements.

Mr. Wario: Jambo la nidhamu, Bw. Naibu Spika. Bunge hili linafahamu kwamba Serikali iliyopita haikuwa na Wizara ya Mifugo. Hii ni mara ya tatu kwa Waziri wa Mifugo na Ustawi wa Uvuvi, na Waziri Msaidizi, kutohudhuria vikao vya Bunge hili. Je, ni haki wao kutohudhuria vikao vya Bunge?

The Minister for Co-operative Development (Mr. Ndwiga): Mr. Deputy Speaker, Sir, all of us know that, for a long time, we have not had a Ministry of Livestock and Fisheries Development. We now have that Ministry, and the Minister is very busy on the ground.

I am sure that the hon. Member is aware that the Minister is really doing a good job in livestock areas.

Mr. Deputy Speaker: Mr. Minister, I hope that you will take note of the hon. Member's sentiments in that respect.

WITHDRAWAL OF MNAZI VENDORS' LICENCES

Mr. Kombe: On a point of order, Mr. Deputy Speaker, Sir. On 11th June, 2003 and 17th July, 2003, I sought a Ministerial Statement from the Minister for Trade and Industry on the withdrawal of licences for *mnazi* vendors. I wanted him to clarify the circumstances under which the licences were withdrawn for *mnazi* vendors. What additional ingredients did God add to the *mnazi* wine to make the Government declare it illegal?

Mr. Deputy Speaker: Order! Order! Mr. Kombe, you have a tendency of going on and on as if it is a question. You have made your point. Now let the Chair do the rest.

Mr. Kombe: Thank you, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Is the Minister for Trade and Industry here?

The Minister for Co-operative Development (Mr. Ndwiga): Mr. Deputy Speaker, Sir, I undertake to convey the information to the Minister.

Mr. Deputy Speaker: Very well.

CLASHES BETWEEN THARAKA AND IGEMBE COMMUNITIES

Mr. Muriungi: On a point of order, Mr. Deputy Speaker, Sir. A fortnight ago, I sought a Ministerial Statement from the Minister of State, Office of the President, on the insecurity problems between Tharaka and Igembe. I am still waiting for the Ministerial Statement. I can see that the Assistant Minister is sitting on the Back Benches.

Mr. Deputy Speaker: Mr. Tarus, once again, a Ministerial Statement on the security situation in Tharaka and Igembe is being sought. Could you come forward and state the position?

The Assistant Minister, Office of the President (Mr. Tarus): Mr. Deputy Speaker, Sir, I have not come with the Ministerial Statement. May I come with both Ministerial Statements tomorrow?

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

COMMUNICATION FROM THE CHAIR REGISTER OF REQUESTED

MINISTERIAL STATEMENT

Mr. Deputy Speaker: Before you raise your point of order, Mr. Rotino, I have an observation to make.

Hon. Members, I think we must have a better way of managing the Ministerial Statements sought. It seems as if when hon. Members request for Ministerial Statements, the matter ends here. Therefore, the Clerk of the National Assembly will be maintaining some sort of a register of requests for Ministerial Statements, so that we can keep track of these requests, because they seem to be many, and they are not being attended to.

I believe, that is the issue Mr. Rotino wanted to raise. The matter is now settled. We will keep a register of the Ministerial Statements sought so that, on any given day, we know which Minister will issue Ministerial Statements and which one will not. That ends the matter there.

MINISTERIAL STATEMENT

RETRENCHMENT OF CIVIL SERVANTS

The Minister for Finance (Mr. Mwiraria): Mr. Deputy Speaker, Sir, two weeks ago, Mr. J.M. Mutiso requested a Ministerial Statement on retrenchees who had been promised Kshs240,000 as their golden handshake but who have not been paid. I regret that I have taken a bit of time, because the exercise was being carried out by the Directorate of Personnel Management (DPM), and I had to collect information from them.

Mr. Deputy Speaker, Sir, I wish to start by saying that the number of civil servants retrenched is 20,705 and not 26,000, as stated by Mr. J.M. Mutiso. Out of the 20,705 civil servants who were retrenched, 19,818 have already been paid their retrenchment benefits. The remaining 887 civil servants have not been paid their benefits because they have not completed and returned to their parent Ministries or Departments, Form CSR/SRP/3. These are the forms which enable the parent Ministries to calculate the retrenchment benefits of the officers concerned.

It is important for me to inform the hon. Member that Ministries and Departments have, from time to time, been appealing to retrenched staff who have not returned their forms, to do so. Those who respond to the appeal and return their forms to the Ministries or Departments duly completed, receive their retrenchment benefits without delay.

The member may be informed that once the Ministries or Departments receive the forms from the remaining officers, they will be paid their benefits immediately. I have been assured that there is money for that purpose. Let me clarify that the retrenchment package adopted by the Government at that time was economically and financially viable. The Government also ensured that the retirees were compensated in line with the provisions of the Civil Service Rules and Regulations, which are derived from various sources such as the Constitution of Kenya, Acts of Parliament, the Public Service Commission Act, the NSSF Act, the Employment Act and the Pensions Act together with the Code of Regulation. The various Civil Service Rules and Regulations and relevant Acts were observed in designing the retrenchment package as shown below:-

Non-pensionable employees were given a "golden handshake" of Kshs40,000. They were also paid a severance pay of two and a half months basic salary for every year of completed service. They were paid two months basic salary in lieu of notice and, finally, compassionate gratuity for staff employed prior to 1st April, 1966 for males and 1st January, 1977 for females, was also made.

Pensionable employees were given a "golden handshake" of Kshs40,000, two months basic salary in lieu of notice, the normal pension and additional pension.

The final point that I want to clarify is that the approved "golden handshake" was Kshs40,000 and not Kshs240,000 as stated. The figure of Kshs240,000 represents the average package for retrenching all the officers. It was used to calculate the Government's commitment in retrenching the officers.

To summarise, some officers got less than Kshs240,000 in total. Others got more depending on their ranks and salaries. Therefore, the "golden handshake" was Kshs40,000 and the rest were the items that I have enumerated above.

Mr. Deputy Speaker: Any clarifications, Mr. J. M. Mutiso?

Mr. J. M. Mutiso: Thank you, Mr. Deputy Speaker, Sir. First of all, I would like to thank the Minister for giving the Ministerial Statement. I would like to seek several clarifications. He has just mentioned that about 19,800 people were fully paid. We know that, that programme was sponsored by the World Bank and the International Monetary Fund (IMF). The Kshs240,000 was guaranteed as the amount payable to the retrenched. Why was that amount varied? It was the option that was offered to the retrenched! The Minister has given many technicalities. Could he clarify them to this House?

The Minister for Finance (Mr. Mwiraria): Mr. Deputy Speaker, Sir, I have said that the figure of Kshs240,000 was used as the average package for every retrenchee. That made it possible for the Government to estimate how much money was required to retrench those who were retrenched. It is for that reason that I said the "golden handshake" was Kshs40,000. Other terms and conditions depended on whether one was pensionable or non-pensionable. It also depended on years of service and other things. I am willing to lay this Statement on the Table so that hon. Members who want to study it can do so.

Mr. Nyachae: Mr. Deputy Speaker, Sir, what the Minister has stated is full of technicalities and, definitely, many retrenchees do not have that information. Could the Minister help the retrenchees by issuing a gazette notice indicating exactly what he has told us here, so that they can know what category they fall under? That is the only way they would know their entitlement.

Earlier on, there was a generalised statement of Kshs240,000 and everybody thought he or she was entitled to that amount. Now, the Minister is telling us that there are various categories of retrenchees.

Could he issue a gazette notice detailing that? It does not cost the Government anything. It would help the retrenchees and all of us to understand different entitlements for different categories.

The Minister for Finance (Mr. Mwiraria): Mr. Deputy Speaker, Sir, that is a very excellent suggestion. I will make sure that, even if it means buying space in the newspapers, I do so in order to assist the retrenchees.

(Applause)

Mr. Deputy Speaker: I do not think we should take more time on this issue. Should we, Mr. Khamisi?

Mr. Khamisi: Mr. Deputy Speaker, Sir, while it is within the right of the Government to retrench its staff, I am wondering whether it was necessary for the Government to have a proviso within the retrenchment package that those people cannot be employed in the Government again. Why was it necessary to make them suffer even after being retrenched from the Government?

Mr. Deputy Speaker, Sir, could the Minister explain why those people cannot be employed in the Government or any other parastatal body? They should be given priority.

The Minister for Finance (Mr. Mwiraria): Mr. Deputy Speaker, Sir, that is asking me to read the mind of the KANU Government which was in power then, and I cannot do that!

(Laughter)

Mr. Deputy Speaker: Now, I will give one final chance to Mr. Serut. Proceed, Mr. Serut!

Mr. Serut: Mr. Deputy Speaker, Sir, given that those who were retrenched were retrenched

against their will, and some among the 887 appealed against the retrenchment, what is the Government doing about their appeals?

The Minister for Finance (Mr. Mwiraria): Mr. Deputy Speaker, Sir, to be honest, that is a different question. I do not know whether any of them appealed. But I assumed that, since they did not fill the forms to be paid, they could not have appealed.

Mr. Deputy Speaker: Next Order!

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[Mr. Deputy Speaker left the Chair]

IN THE COMMITTEE

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

THE RETIREMENT BENEFITS (AMENDMENT) BILL

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Members! We are now in the Committee of the Whole House to pass the Retirement Benefits (Amendment) Bill.

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

(Title agreed to)

(Clause 1 agreed to)

The Minister for Finance (Mr. Mwiraria): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of The Retirements (Amendment) Bill and its approval thereof without amendment.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[Mr. Deputy Speaker in the Chair]

REPORT AND THIRD READING

THE RETIREMENT BENEFITS (AMENDMENT) BILL

Mr. Ethuro: Mr. Deputy Speaker, Sir, I beg to report that a Committee of the whole House has considered The Retirement Benefits (Amendment) Bill and approved the same without

amendment.

The Minister for Finance (Mr. Mwiraria): Mr. Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

The Assistant Minister for Finance (Mr. Katuku): seconded.

(Question proposed)

(Question put and agreed to)

The Minister for Finance (Mr. Mwiraria): Mr. Deputy Speaker, Sir, I beg to move that The Retirement Benefits (Amendment) Bill be now read the Third Time.

The Assistant Minister for Finance (Mr. Katuku) seconded.

(Question proposed)

Mr. Muite: Mr. Deputy Speaker, Sir, now that this Bill is being read the Third Time, I would like to suggest to the Minister that, perhaps, time has come when the Minister can investigate the desirability of rationalising retirement benefits across the board. You will be aware that, for example, Members of Parliament are not included in this Bill.

Mr. Deputy Speaker, Sir, if we can have one criteria and law that applies to everybody uniformly, I think it will be a very good rationalisation and I would like to suggest to the Minister that support be given to that.

Thank you.

(Question put and agreed to)

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

MOTION

EXTENSION OF CKRC MANDATE

THAT, pursuant to the provisions of Section 26(5) of the Constitution of Kenya Review Commission Act, Cap 3A of the Laws of Kenya, this House resolves that the period and mandate of the Constitution of Kenya Review Commission be extended to 30th June, 2004.

(Mr. Muite on 30.10.2003)

*(Resumption of Debate interrupted
on 30.10.2003)*

Mr. Deputy Speaker: Who was on the Floor? It was Mr. Kipchumba! Mr. Kipchumba, you still have five minutes. Do you want to continue?

Mr. Kipchumba: No, Mr. Deputy Speaker, Sir. I am not ready.

The Assistant Minister, Office of the President (Prof. Kibwana): Thank you, Mr. Deputy Speaker, Sir. Hon. Kipchumba was supposed to apologise to me for something that he did to me. I think this is a very important Motion because one thing that many actors in constitution-making do

not seem to remember is that since the formal review of constitution making process started in 1997, it is now six years later. We have been trying to make a Constitution for six years and we have been involved in a lot of push-and-pull activities.

Mr. Deputy Speaker, Sir, I remember that, originally, it was KANU versus the Opposition and civil society and more recently, two factions within the ruling party, delegates at Bomas of Kenya and KANU have also been involved in a push-and-pull situation in the constitution-making process.

Mr. Deputy Speaker, Sir, when I personally started work on the Constitution at the University of Nairobi and also through Non-Governmental Organisations (NGOs), I did not have grey hair and that was 15 years ago. So many years later, my head is all but white. The simple point that I am trying to express is that we are taking too long in making the Constitution. Although the constitution-making process is a very political affair, our process has been over-politicised and I was very happy to note that when debate on the Motion was introduced here last week, both sides began to appreciate that we have been over-politicising the constitution-making process because we have made the constitution-making process a way of doing politics by other means. However, I think now everybody in our country does realise that we must have a new Constitution. So, there is consensus that we need a new Constitution and a foundation for building a modern, working, prosperous nation as *Mzee wa Kazi*, or President Mwai Kibaki, calls our nation.

So, I do believe that every Kenyan, including political groups, requires a new Constitution. The question is: Where is the problem if all of us want a new Constitution? This is the question everybody keeps on asking. We all need a new Constitution, but the problem is that each one of us wants a different kind of a Constitution. I think that is where the problem lies. Therefore, to resolve the impasse in the constitution-making process, we must return to consensus building. We must stop grandstanding and accusations galore. There are all manner of accusations flying about. For example, there is talk that So-and-so does not want a new Constitution since his party is in power, or So-and-so wants a Constitution based on the Memorandum of Understanding so that the Constitution can grant them power, or So-and-so wants a Constitution that will exclude them from corruption, ethnic clashes and political assassinations accusations.

We must, as a people and as a nation, now, practise give and take, live and let live so that we can conclude this business of constitution-making unless we want, in the end, to destroy the gains we have achieved in our 40 years of Independence and especially the recent years and months. I am very encouraged after listening to hon. Members of NARC, KANU, Ford (P) and the entire House. Indeed, I discerned that a new spirit is emerging. I discerned that people are getting tired of endless conflicts of grandstanding, chest-thumping and so on and so forth.

We are realising that a constitution is a cease-fire document. It is a political settlement in which you do not get all that you want; rather you get what you must live with so that you can live with other people. I am very encouraged that Parliament wants to arrive at a consensus so that it can help the Bomas Constitutional Review Conference to complete its work quickly and we begin reconstructing our country in earnest. Therefore, I think we must create a democratic and pragmatic forum through which Parliament can build a consensus on the difficult and controversial issues of constitution-making. I earnestly believe that we must now stop playing hide-and-seek game.

Mr. Deputy Speaker, Sir, I think that all of us have agreed that, on the whole, the draft Constitution arrived at through collecting views from representative of Kenyans, about 30,000 individuals and groups out of a population of about 30 million, is very strong. In actual fact, one frustrating situation at Bomas and in the debate on the Constitution is that we do not acknowledge that, by and large, the bulk of that draft Constitution is very positive. We seem to focus on those few aspects that are problematic. I want to record that there are fantastic provisions in that draft. For example, the Bill of Rights is one of the most eloquent, detailed and protective Bills of Rights that there are in the African continent. Also, I think provisions relating to protection of women, children, persons with disabilities, labour issues and so on, are very strong.

I was very surprised to listen to hon. Gumo who, unaware of the very robust protection that women have under our legal edifice and particularly the draft Constitution, was able to say that women can be beaten at will and even be abused. He claimed that FIDA, a very important organisation in terms of protecting women and, therefore, protecting men, is destroying homes! The draft Constitution, which I, hon. Gumo and others are going to live with, really protects women and actually it is not FIDA that is destroying homes, but it is those men who are still living in the last century.

This draft Constitution has other important provisions, particularly national goals---

Dr. Godana: On a point of order, Mr. Deputy Speaker, Sir. We are supposed to be debating the Motion on the extension of the life of the Constitution of Kenya Review Commission, but not the draft Constitution! Prof. Kibwana might make reference to the draft Constitution, but let him not discuss it!

(Applause)

Mr. Deputy Speaker: Indeed, that is a valid point of order. Prof. Kibwana, look at the Motion by hon. Muite and confine your debate to the Motion.

The Assistant Minister, Office of the President (Prof. Kibwana): Mr. Deputy Speaker, Sir, what I am about to demonstrate is that, given the things we must still do before we arrive at the new Constitution, a particular amount of time is required. I was merely highlighting a few positive aspects of that draft Constitution and I was just about to stop doing that. I am very much guided by hon. Dr. Godana and the Deputy Speaker's ruling. I will not demonstrate further.

The current draft is a very able document and even though I had a small misunderstanding with Prof. Yash Pal Ghai, I really must congratulate him and the Commission for having delivered a very able draft. Before we say by what time we should expect to conclude the constitution-making process, it is important for us to focus on the critical areas that we need to build consensus on. If we do not have a mechanism for building consensus, we could give ourselves more time and then it might not be possible to move forward. I seek the indulgence of this august House to suggest a few of the areas that we must develop consensus on and develop that consensus in advance of resumption of the Conference at Bomas of Kenya so that we do not give our country a time period within which we will have this Constitution knowing very well that it is not possible to do so. As we prepare to resume the Conference at Bomas of Kenya and as we give a deadline as to when the Commission should conclude its work, let us be sensitive to the consensus that we must build.

There is the question of dual-citizenship. There are people who argue that people with two citizenships; a Kenyan citizenship and another country's citizenship may---

Mr. Deputy Speaker: Prof. Kibwana, you are drifting again to the substance of the draft Constitution. Please, let us talk about why there should be justification or none to extend the life of the Commission.

The Assistant Minister, Office of the President (Prof. Kibwana): Mr. Deputy Speaker, Sir, I think one basic reason why it is necessary that we give the Constitution of Kenya Review Commission up to 30th June, 2004 is that there are certain aspects which are very critical and we must build consensus on. Some of those aspects relate to the Executive; the question of devolution of power, Kadhi's Court and so on.

Mr. Deputy Speaker, Sir, it is necessary that we give ourselves adequate time; up to 30th June, 2004. But before we decide on that, we must create a forum through which those issues will be resolved. I am very encouraged because we have already begun to make decisions via the Parliamentary Select Committee, the House Business Committee and also the Commission itself. I believe that, before the re-opening of the Bomas Conference, we will be able to create the necessary consensus. We will give adequate leadership to our country. We do not hope to give another deadline which will not be met, and continue frustrating our people because the making of this

Constitution is taking a very long time. Therefore, it is necessary for this House to think very carefully as we extend the life of the Constitution of Kenya Review Commission (CKRC). We know that we have to create a mechanism; a forum through which we will begin to create the necessary consensus so that we do not continue with our wrangling at Bomas. I am happy that, last week, all the hon. Members who spoke in the House agreed that what we should look for now is a political settlement. Therefore, before we seek for the resumption of the Bomas talks, it is necessary to know that we have the mechanism and the will to create the necessary consensus, so that we can conclude this matter of Constitution making.

Mr. Deputy Speaker, Sir, before we finalise on this particular date of when the CKRC should wind up, it is also necessary to know how long it will take for it to conclude its work once we re-open the Bomas talks. I think this is necessary because there is still committee work which has to be concluded. After committee work is concluded, there is also the drafting of what would have been agreed on, after the various committees come up with their proposals. There is also the question of those who are drafting the Constitution at Bomas; there are legal draftpersons and experts within Bomas who have been appointed to do that work. Adequate time must be given to these persons so that they can refine and eventually conclude the draft, which will be taken to the Attorney-General's office as well as to this august House. We, therefore, need to be clear on the deadline for concluding the Bomas Conference. I am persuaded to say that, when we go back to Bomas, we need to do all that is necessary, so that the work of the delegates is concluded. Then, we can continue with the remaining necessary steps.

Mr. Deputy Speaker, Sir, we really need to tidy and de-politicise this process as much as we can. We really need, as leaders on both sides of this Parliament, to be very careful. We need to work responsibly as we think of the date of resumption of the Bomas Conference and also the time-frame within which it will conclude its work. I think that mood is already there. If we put these factors in mind, delegates will not be torn asunder by competing political forces and as a result we will de-politicise the Bomas talks. We need to make the Bomas Conference, a people-driven constitution-making process, as opposed to one faction or one party trying to drive---

Dr. Godana: On a point of order, Mr. Deputy Speaker, Sir. My learned colleague, brother and friend; we were classmates and flew on the same plane to Great Britain, and occupied the same--

Mr. Deputy Speaker: What is your point of order, Dr. Godana?

Dr. Godana: Mr. Deputy Speaker, Sir, do you not think it is time you applied the powers you have under Standing Order No.87 on relevance? Really, the Professor is treating us to irrelevancies!

Mr. Deputy Speaker: Continue, Prof. Kibwana!

The Assistant Minister, Office of the President (Prof. Kibwana): Mr. Deputy Speaker, Sir, I think this point of order is irrelevant. If hon. Dr. Godana was here last week, this is how the debate was being conducted. We really want to be thorough and develop consensus so that Bomas now becomes a place where we are able to debate without over-politicising that side. If we do not do that, this time-frame we are seeking will be meaningless. That is the spirit in which this point is being made.

Mr. Deputy Speaker, Sir, I think that it is also necessary, as we debate the question of extending the life of the Commission to 30th June, 2004, to have in mind the point that a referendum will be necessary or could become necessary. If this is so, then it means that the time-frame of constitution-making could be extended. If my colleagues on the Opposition side have read the Constitution of Kenya Review Commission Act, they would know that there is the provision for an issue-based referendum. I am really surprised that some of my colleagues do not seem to have read the Act, which says that where enough consensus is not built, a referendum will be necessary on issues. I am even thinking that we need to make a decision on a referendum on the entire draft. I have problems with having a referendum on specific issues. If, for example, we have a referendum

on Kadhi's Courts, we could get a majority of people; who are not Muslims, voting merely to defeat the position of a minority. That is why I am thinking that it might actually be necessary to create a situation whereby we have a referendum on the whole Constitution, and not on specific issues so that, in the process, we can protect people who could be jeopardized.

(The Vice-President and Minister for Home Affairs was applauded as he entered the Chamber)

Mr. Deputy Speaker, since I was not looking behind, I thought that the hon. Members were applauding me!

Mr. Deputy Speaker: That was not for you! They were applauding the Vice-President!

The Assistant Minister, Office of the President (Prof. Kibwana): Mr. Deputy Speaker, Sir, I have realised so, but I could also be a John the Baptist, who is preparing the way for the Vice-President and Minister for Home Affairs!

The issue of a referendum is an important one, whether it is based on the present law or there is an amendment, so that there is a referendum for the entire Constitution. It is necessary for us to appreciate that someone else and not Parliament, has to approve the new Constitution; whether the people of Kenya or this Parliament becomes a constituent assembly. Parliament alone cannot say the final word on the new Constitution. This is a matter that, therefore, will determine whether the 30th June, 2004 deadline is important. Therefore, I support this Motion to extend the life and the mandate of the Constitution of Kenya Review Commission (CKRC) up to 30th June, 2004.

I need to emphasise that, as many hon. Members have said, this should be the last extension because Kenyans are tired. I have stated that I have been in this for 15 years and we need to conclude the process, so that a part of my life is also concluded, and I can perhaps go to a third career of politics. It is very important for us, from both sides of the House, to do what is necessary, so that we do not come back here to ask for another extension. As all of us know, we require to conclude the constitution-making process, so that we can now focus on reconstructing our country. There are those who want to extend the constitution-making process for a long time, so that the Government can be accused of merely using its time for the Constitution making to the exclusion of using its time for improving the lives of Kenyans.

Mr. Temporary Deputy Speaker, Sir, to conclude, I have noticed that all hon. Members are against wasting time and grandstanding. We want now to come together as Parliament and give the way forward to our people, so that this matter is concluded. This is very positive. Even if there are aspects which are very controversial and might make us not meet the 30th June, 2004 deadline, with regard to issues like having to build consensus on how we deal with the past, I would be prepared as a Kenyan to address any issue that will delay the constitution-making process. If we do not do that, and put our heads into the sand, then we will not make the political settlement that we are looking for. So, let us be very honest and stop saying that the other person is stopping the constitution-making process. All of us want different things within the Constitution and we must give and take and do whatever it takes to build consensus. Dr. Godana who was my classmate is cheering loudly!

Finally, it is time the Select Committee, the House Business Committee, the Constitution of Kenya Review Commission, the legal draftpersons and experts and even the Steering Committee at Ufungamano, in a very realistic and pragmatic manner, focused on what is contentious, so that we can, even in advance of Bomas III, have the Commission giving us another draft on the basis of what was discussed at Bomas I and II, so that we really conclude the constitution-making process. I am happy that Dr. Godana and Mr. M. Kilonzo, who is vying for the KANU Chairmanship, agree with me as learned lawyers that we should conclude the constitution-making process. I can see Mr. Kenyatta looking at me because he is the current Leader of the Official Opposition.

Thank you.

Mr. Kenyatta: Thank you, Mr. Temporary Deputy Speaker, Sir. I rise to support this Motion. I support the Motion because as you all know, this process has taken far too long.

[Mr. Deputy Speaker left the Chair]

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

The constitutional review process was at the centre of issues during the last general elections. All the parties that participated in the last general elections pledged to give Kenyans a new Constitution within the shortest possible time. It is now close to a year ago, and we have yet to see the light at the end of the tunnel. I believe that this is a matter of national importance; not just to ourselves debating this extension here in Parliament, but to the nation as a whole; to ensure that we bring this matter to a speedy conclusion for the benefit of all Kenyans. The process, so far, has cost the Kenyan taxpayer billions of shillings that could have possibly been better utilised in providing Kenyans with the much needed services in terms of infrastructure and other development projects. I am not trying to say that we have squandered this money by putting it into the constitutional review process, but I am saying that the process has gone on for far too long.

As I rise to support the Motion to extend the life and the mandate of the CKRC, I must bring it to light that we must ensure that this is the last extension. We do not wish to see ourselves back here again before the end of June, 2004, with a request for another extension. We have been asking ourselves, especially as hon. Members of the Opposition, what happened to the pledge by the National Rainbow Coalition (NARC) of giving us a new Constitution within 100 days. We have heard from Prof. Kibwana that there is need for consensus-building and yet, the noise that we hear does not emanate from our side of the House, but rather from the Government's side of the House.

Mr. Temporary Deputy Speaker, Sir, it was made very clear by Kenyans that they were desirers of a people-driven Constitution. We in KANU were accused of being against a people-driven Constitution. We have never, ever been against a people-driven Constitution. In fact, we pledge and are fully behind ensuring that the Wanjiku-led process that began at Bomas is seen through to its logical conclusion. We need to ask ourselves as Kenyan leaders whether we are giving Kenyans the kind of direction that we need to give them.

We are not asking for a new Constitution because of any particular individual, or ethnic group. The people of Kenya are asking for a new Constitution as a way of rectifying what they thought might have been wrong with our past Constitution; as a way of putting in place institutions that were more responsive to the needs of Kenyans as opposed to the needs of individuals. That spirit should emanate from this House. That should be the spirit that we, as political leaders, should spread throughout this country and see an end to the so-called "jockeying" that Prof. Kibwana referred to; jockeying, which we believe is not in the interest of the people of Kenya; jockeying which was not there when hon. Members who now question the process were advocating for a people-driven process.

Mr. Temporary Deputy Speaker, Sir, as Members of both the Select Committee on the Constitution as well as the House Business Committee, we did meet with members of the Constitution of Kenya Review Commission (CKRC). When we discussed and agreed to this extension of CKRC life, to June next year, we were given very clear indications that, that will be adequate time to see this process through. This will be adequate time if there is commitment from the Government and from every single hon. Member. This will be adequate time if we can actually realize that we are drafting a national document and not a document for individuals or certain sections of our community. I do not believe we need any more time. In fact, I would even go further and say that the main debate as to whether we should go back for Bomas III talks on 17th

November, 2003, as we had actually previously agreed, was the fact that the Government had pressing Bills that it needed to pass in this House. These Bills are important for the economic recovery that the Government is pursuing. I do support that the Government needs to be given time. However, I do also propose that, when this House goes on recess, we should also agree that the constitutional reform process is equally important. We should actually agree that when we resume for the Bomas III talks we do not break up again, for whatever reason, until that process is concluded. The only reason we shall be back in this House is to debate the draft Bill that will have been presented at the conclusion of Bomas III talks. We are not keen for a Bomas IV, Bomas V or even Bomas VI, and I do not believe Kenyans are. There are more pressing issues which we need to deal with once we have put the Constitution behind us.

Mr. Temporary Deputy Speaker, Sir, we support this extension and we would wish to see the same commitment coming from the Government Benches. We need to see a new Constitution in place by the time the term of the CKRC comes to an end in June, 2004. We are committed to that process. We are open to dialogue and negotiations. We are open to seeing a political settlement found, but we are not interested in seeing a never ending process at the expense of the Kenyan taxpayers and for the benefit of those who now seem to wish to retain the status quo because they are now in power.

Mr. Temporary Deputy Speaker, Sir, I conclude by saying that, once again, I do believe, based on the discussions we had with the CKRC, that time will be adequate. I do believe that if we do give this process the necessary goodwill and support, we will conclude it. I do request, from a bi-partisan point of view, that we do agree that we shall not be back to this House once we adjourn until we have concluded that process and we give Kenyans that Constitution they have been waiting for all these years.

Mr. Temporary Deputy Speaker, Sir, I conclude by supporting this Motion and by requesting hon. Members to begin looking at Constitution-making as a national agenda, and not a partisan agenda.

Mr. Kajwang: Mr. Temporary Deputy Speaker, Sir, we have come back to this House to ask for an extension of the life of the CKRC which we thought would not have been necessary. However, it has been necessitated by certain things that happened during the time when we were holding the Bomas II talks, which, unfortunately, extended the time beyond what we thought earlier. We are asking for an extension of the life of CKRC up to June, 2004, so that we sit and hold talks at Bomas of Kenya. There is nothing to sit and discuss at the Bomas III for six months. We know that we had broken into committees. We know Prof. Kibwana, who spoke before me, was a Chairman of the Judiciary Committee which submitted a report that was almost complete. Several other committees had also done a good job. If we follow the procedures of meetings, especially, procedures of Committees in this House, we do not even need more than a week; sitting there seriously to go through the draft Constitution and agree to amend it accordingly. However, because Kenyans love talking and they want to talk for three months, we have considered that we can go back for Bomas III and talk for three months. Somehow, we have also agreed that, after the end of those three months, we will come back for the business of this House as the CKRC writes the final draft and bring it to the House for debate and approval.

Mr. Temporary Deputy Speaker, Sir, when we hear people talk of controversial issues, sometimes we get surprised at what is so controversial because the CKRC sought these views from Kenyans who spoke very clearly as to what they want. So, I do not know what has, all of a sudden, become controversial. The people of Kenya spoke through a draft. They have spoken through a Commission of experts, which we, as a House, appointed to steer this big job. I do not see any competing political interests, or any jostling. I do not see any need for political settlements. If there was any jostling, or political settlements to be made, Kenyans have made it already. Our job is to just look at the draft Constitution. If there is a coma to be removed, we remove it. If there is word which we think was not quite well done, we look for a better word. If there is a sentence that we

think needs to be shifted, we do that by way of an amendment.

But, broadly speaking, the Constitution which Kenyans want is in a draft form and it is before the CKRC and the delegates representing Kenyans at Bomas of Kenya. So when I hear people say that the Constitution should be given to experts because Bomas talks are made of Wanjiku, sometimes, I ask them: Is the CRCK itself made of non-experts? I thought Prof. Ghai is one of the experts of law and of great competence in this country. We have also, in the Act, given the CKRC power to hire experts, if they think that there is something they need to do which they cannot do. So when I hear some members of church organizations saying that we now need experts and suggesting that Prof. Ghai is not an expert, or that he cannot hire experts to do the job, I get surprised as to what is the agenda of some of these ladies and gentlemen.

Mr. Temporary Deputy Speaker, Sir, it is easy for someone to talk of a referendum and scare us that we are going to take a year at Bomas of Kenya. We are not scared because we foresaw that a referendum was possibility. Not as a necessity or compulsory, but we saw that it was a possible. We then passed that, in case there is a need for a referendum, or a question which needs to be taken to a referendum, then, we do so but only when we have persuaded the delegates at Bomas of Kenya by a vote of two-thirds and tell them that there is a question that needs to be taken for a referendum.

When we were re-doing the Act that is now helping us at Bomas of Kenya, I think we looked at the question of a referendum. One of the members of the Committee raised it although she has now changed her mind about it. She said that we cannot go into a referendum on every issue. We should make going into a referendum as difficult as possible, so that people go to a referendum on very serious issues which we cannot agree upon. That is why we put the figure of two-thirds, to require a referendum.

Now, every Tom, Dick and Harry talks of a referendum at funeral meetings, weddings, Harambees and wherever else people meet. We must subject the whole Constitution to a referendum. Even a professor of law talks of going into a referendum when he has not even read the Act that gave Bomas of Kenya Committee the mandate to sit. That Act talks of a referendum. It says that the only condition that we can go into a referendum is when---

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

Mr. Kajwang: You are not the only professor of law!

(Laughter)

The Assistant Minister, Office of the President (Prof. Kibwana): Is it in order for the hon. Member to mislead this House that within the Constitution of Kenya Review Act, there is no question of referendum on issues?

The Temporary Deputy Speaker (Mr. Ethuro): Referendums! That is what the Member said.

Mr. Kajwang: Mr. Temporary Deputy Speaker, Sir, thank you for helping me. Prof. Kibwana used to be my teacher but I do not know what happened to him since he became an Assistant Minister!

(Laughter)

What is the problem? I do not see the problem because we have rules managing Committees. We have rules on arguments, proposing amendments, amending an amendment, and there is time allocated for each point. Why should we not move the way we do it with Bills?

We deal with Bills here which are sometimes bigger documents than that Constitution. We go article by article, propose amendments, and proceed with them in minutes. That is the procedure which should be adopted at Bomas of Kenya, and we will be there for less than two weeks with the

job having been done thoroughly. There must be efficient management of time. We must convene because we are the ones who created the Act that created the Commission. The Commission is doing a job on our behalf. We must tell the Commission that we need an efficient management of time and that we cannot turn the technical committee into platforms and plenaries for debate and feuds.

I have participated in the talks, and I turned into a theorist in my own Committee on the issue of the Executive Prime Minister, because that was the trend which had been brought in by people who wanted to frustrate the efforts that other delegates were putting in. But, if we followed the rules, we would not need two weeks at Bomas of Kenya. We do not like sitting there. We want to sit here and do the work which we were elected to do.

Mr. Temporary Deputy Speaker, Sir, I do not need to talk more than that. However, I need to tell Members of this House that Kenyans are watching us. Of course, I know that we want to go to Bomas of Kenya to shoot down Bomas. We know that Bomas of Kenya has become an animal which we did not intend it to become. Now, we do not know how to deal with it, yet, we are the ones who created it. It has become a monster for some of us and we want it to die though we do not know how to kill it. You hope that by coming to this House, you may kill the Bomas conference. I am warning you that you will kill the Bomas conference at the risk of losing the confidence of Kenyans. It is a serious matter Prof. Kibwana! Do not think of killing the Bomas conference!

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Kajwang! Address the Chair!

Mr. Kajwang: Thank you, Mr. Temporary Deputy Speaker, Sir.

It was not about the money we spent in Bomas of Kenya. The money we spent in Bomas of Kenya is Kenyans' money and it will go to Kenyans' pockets. Nobody has kept it abroad and Kenyans are happy. That is the reason why we ever went to Bomas of Kenya in the first place; that is, to write a new constitutional dispensation. We thought that the current Constitution has destroyed our country and we went to Bomas to have a new Kenya. We will not allow anybody, whether he is a professor or a farmer, to interfere with the constitutional review process. We want to be there and do our job quickly.

Thank you, Mr. Temporary Deputy Speaker, Sir.

(Applause)

Dr. Godana: Thank you very much, Mr. Temporary Deputy Speaker, Sir, for giving me the opportunity to make a brief contribution to this very straightforward Motion before the House.

Mr. Temporary Deputy Speaker, Sir, I stand to support the Motion, but I must confess that I say this with a very heavy heart. I take cognisance of the fact that I have three hats relevant to this matter before the House. One, I am a Member of the Parliamentary Committee on Constitutional Review. Two, I am a Member of the House Business Committee. Three and perhaps most important, I am one of the Vice-Chairmen of the Constitutional Review Conference.

Mr. Temporary Deputy Speaker, Sir, when the Conference adjourned, it passed a resolution in accordance with its rules of procedure by nominating a date for re-convening; 17th November, 2003. That date had been arrived at after wide consultations between all the stakeholders, interest groups and members of committees and particular grouping blocks which make up the Conference. The reasoning then was that the Government had a busy and urgent legislative programme which had to be completed before we resume the Conference. There was general consensus that, notwithstanding the bi-partisan political system that we are in, genuinely, there were important legislative pieces which, for the better interest of the country, had to be completed. That is why we arrived at that consensus.

I am bound by the decisions of the majority of an organisation in which I work. Unfortunately, I was not present during the critical meeting of the House Business Committee which, in principle, consented to changing that date; from 17th November to early January. But I

was there when the joint meeting of the Parliamentary Select Committee and the Commissioners agreed on the new date of January. Whatever arguments we may have had individually, we are all bound collectively by the decision which that organ arrived at. On that basis I support it.

Mr. Temporary Deputy Speaker, Sir, I find it a little sad and indeed, every Kenyan and particularly hon. Members should really feel sad that, nearly one year after the general elections within which the ruling party; NARC, made a solemn promise to Kenyans that it will ensure the constitutional review process was completed within 100 days, we are still talking of extending the process for another six months beyond the end of this year.

Be that as it may, as the speakers who have spoken before me, particularly Mr. Kajwang have put it very eloquently that it is important for us not to underestimate the expectations of Kenyans. Some of us had serious reservations about the particular method of constitutional review two years ago. I do not for once blink an eye when I say I had good reasons for it. Once we decide, through a democratic process, to adopt a particular procedure, then if we are people of integrity, we must stick to that decision. It is really unacceptable that those who were in the forefront fighting for a new Constitution by Wanjiku are now opposing it. They have advanced several reasons why they think we cannot adopt the draft Constitution the way it is. I say this with a lot of emotion. I think it is time we put this constitution-making process behind us for good. We are beginning to have doubts and there are good grounds for doubting the sincerity of some of our own Members. When I say "some of our Members" I mean some senior Members of Government, because on this matter we are all partners.

I say this because we have seen, not only the back-peddalling, but have also heard some irresponsible utterances by senior Members of the Government including those who said: "We did not mean it after all. When we were pushing for a new Constitution, we just wanted to play politics. Now that we are there, we are not committed to it."

An hon. Member: Michuki!

Dr. Godana: Mr. Temporary Deputy Speaker, Sir, the consolation that I find is that Kenyans, irrespective of the regions they come from, even from the areas that are supposed to be staunchly NARC, are beginning to speak up very eloquently. I would also like to take this opportunity to appeal to my colleague, Mr. Paul Muite, the Chairman of the Parliamentary Select Committee on Constitutional Review, and who is also a Member of the Opposition that I am not aware that SAFINA is party to the coalition of NARC because when we elected him and I say proudly---

(Applause)

Mr. Muite: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for Dr. Godana, who actually has a doctorate in law, to start casting aspersions on SAFINA when he ought to be aware that for a long time the then ruling party, KANU, was in co-operation with the then---

An hon. Member: SAFINA!

(Laughter)

Mr. Muite: With the then National Democratic Party (NDP). Is he right to start questioning SAFINA's co-operation with the ruling party? SAFINA has got every right to get into a marriage with the ruling party, NARC.

Dr. Godana: Mr. Temporary Deputy Speaker, Sir, I wish Mr. Muite had listened to me through. I was about to say that we elected him in that Committee over the candidature of a Minister in the Government. Those of us in KANU supported him on the understanding that he, being an Opposition Backbencher, would be the better watchdog of the people's interests. That is why we voted for him. We suspect he wants to betray that trust. I would rather he sat on our side.

We would not mind if he joined NARC. If there is a co-operation or a marriage, we would not oppose it. In that case, then we should be informed that there is a divorce here so that we can have a new person on the Committee.

With those few remarks, I beg to support.

Mr. Wamwere: Bw. Naibu Spika wa Muda, ninasimama kuunga mkono Hoja ya kuongezea Tume ya CKRC muda wa kuandika Katiba mpya. Katika kufanya hivyo, ningetaka kugusia kasoro kadhaa ambazo zimo katika utayarishaji wa Katiba na ambazo zinahitaji kutazamwa ili tuwe na Katiba ambayo Wakenya wanataka. Sikuwemo Bungeni mwaka uliopita lakini ninajua kwamba tunataka Katiba ambayo itakuwa msingi wa utawala wa sheria. Lakini Katiba itakapokuwa msingi wa utawala wa sheria, ni lazima ikitwe katika Katiba ilioko. Ukisoma Sehemu ya 47 ya Katiba tuliyonayo, ni wazi kwamba Katiba inaruhusu sheria ya kurekebisha Katiba, lakini haitoi ruhusa kwa mtu yeyote kuibadilisha na nyingine. Kama tungekuwa tunaandika Katiba tungekuwa tunalazimika kubadilisha hii Sehemu ya 47, ili yale marekebisho yaturuhusu kuandika Katiba mpya. Kubadilisha Katiba tuliyonayo na Katiba nyingine mpya kabisa. Lakini, kanuni hii haijatimizwa na kanuni ya Bunge hili.

Bw. Naibu Spika wa Muda, ni maoni yangu kwamba tunaweza kupata Katiba ambayo uhalali wake unashukiwa kwa sababu tumekosea kutimiza hatua hii muhimu sana ya kikatiba. Kwa nini Bunge hili linaogopa kubadilisha Katiba kama inavyohitajika ili kongamano liwe na uwezo kamili wa kuandikia nchi hii Katiba mpya?

Mr. Cheboi: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. Member on the Floor to sneak in and start discussing a Motion which he has already brought before this House? He is eating into the time of the House.

Mr. Wamwere: Bw. Naibu Spika wa Muda, siongei juu ya Hoja ambayo ninatarajia kuleta Bungeni.

The Temporary Deputy Speaker (Mr. Ethuro): Order! Order! The rules of the House do not allow you to anticipate a Motion before the House.

Mr. Wamwere: Bw. Naibu Spika wa Muda, sikuwa nikijadili Hoja ambayo ninanua kuleta katika Bunge hili, nilikuwa ninaonyesha ni kwa nini tunahitaji kongamano kuongezewa muda. Tukungoja--

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Wamwere! Do not argue with the Chair. You have already put a Notice of the Motion, and so it is before the House, and you have actually made references to particular sections of the Constitution to be amended, which is part of the Motion.

So, just proceed!

Mr. Wamwere: Bw. Naibu Spika wa Muda, pamoja na kurekebisha Katiba ili Katiba mpya ikitwe katika kanuni za sheria za nchi hii, pia ninaunga mkono Hoja hii ya kuongeza muda wa shughuli za urekebishaji wa Katiba. Ningetaka kongamano linaloandika Katiba mpya lihakikishe kwamba, majadiliano na uandikaji wa Katiba umekitwa katika kanuni za kidemokrasia.

Bw. Naibu Spika wa Muda, ni maoni yangu ya kwamba kanuni za demokrasia hazifuatwi katika uandikaji wa Katiba mpya. Ningetaka kusema ya kwamba, mojawapo wa kanuni za demokrasia ambazo hazijatiliwa maanani hadi wakati huu ni jambo la uwakilishi sawa. Ninaamini ya kwamba, kama Katiba mpya itaandikwa pasipo uwakilishi sawa, kitakachotokea ni "mwana haramu".

Dr. Godana: Jambo la nidhamu Bw. Naibu Spika wa Muda. Kulingana na Kifungu 87 cha sheria za Bunge, mazungumzo ya mhe. Wamwere hayazingatii Hoja ambayo tunajadili. Kwa Kingereza, he is irrelevant. Inafaa azungumze juu ya Hoja tunayojadili.

Mr. Wamwere: Bw. Naibu Spika wa Muda, ninatoa sababu za kuhitaji muda zaidi katika kuandika Katiba mpya. Ninasema ya kwamba, ni muhimu sana kwa kongamano na Wabunge kuona umuhimu wa kuzingatia kanuni za demokrasia wakati wa kuandika Katiba mpya. Ninasema ya

kwamba, mojawapo wa kanuni ambazo hazijazingatiwa kwa wakati huu ni uwakilishi sawa. Ninaposema hivyo, sioni ni kwa njia gani ninavunja kanuni za maongezi haya.

The Temporary Deputy Speaker (Mr. Ethuro): You are in order, Mr. Wamwere!

Proceed!

Mr. Wamwere: Bw. Naibu Spika wa Muda, ninaelewa kwamba kuna watu ambao huingiwa na wasiwasi wakisikia mambo ya uwakilishi sawa yakitajwa. Lakini uwakilishi sawa lazima uwemo katika Katiba mpya, na mwishowe katika Bunge hili.

Kanuni nyingine ambayo ningetaka izingatiwe baada ya kuongezea kongamano muda, ni ukosefu wa muda wa kuongea katika kongamano. Wajumbe wote walioko katika kongamano la Bomas, wako pale kuandika Katiba mpya. Sijasikia pahali pengine popote duniani ambapo Wajumbe wa kuandika Katiba mpya wanapatiwa dakika tano kuongea. Dakika tano hazitoshi kamwe kupewa waandishi wa Katiba mpya. Tunapofanya hivyo, ni dhahiri kwamba lengo la kongamano ni kupiga muhuri Mswada wa Katiba mpya lakini siyo kuleta maoni mapya. Kwa hivyo, ningetaka kupendekeza kwamba, baada ya kuongezewa muda, kongamano likirudi, Wajumbe wapewe muda zaidi kwa sababu, dakika tano, kamwe hazitoshi.

Jambo lingine linalonitatiza na ni lazima tulitatie ni ubishi uliopo sasa juu ya ni nani aliye na uwezo juu ya Kongamano la Kitaifa Kuhusu Katiba; na ikiwa Bunge hili lina uwezo juu ya sheria za kongamano au halina. Kuna watu ambao wanaamini kwamba kongamano ni bunge kivyake, na lina uwezo wa kujiundia sheria na kijifanyia kila kitu. Kama hiyo ndiyo hali, kwamba kongamano lina uwezo wa kujifanyia kila kitu, kujiundia amri zake na kuamua ni lini litafunga na ni lini litakutana tena, basi sielewi kwa nini tumekusanyika hapa kuzungumzia juu ya Hoja hii. Ikiwa kongamano hilo lina uwezo wa kujiandikia taratibu zake na pia kuamua ni lini litakutana, basi Hoja hii haina haja. Nitapendekeza ili ieleweke wazi na wale wanaodai ya kwamba hakuna chombo kingine ambacho kina uwezo juu ya Kongamano la Kitaifa Kuhusu Katiba ya kwamba, kama ingekuwa hivyo, basi Hoja hii haingekuwa na haja. Kuletwa kwa Hoja hii ni dhihirisho kwamba Bunge hili lina uwezo juu ya Kongamano la Kitaifa Kuhusu Katiba.

Natumaini kwamba watu watachukua muda huu, haswa Wabunge, kuona kama ninavyoona ya kwamba, Menyekiti wa Kongamano la Kitaifa Kuhusu Katiba hastahili kusifiwa kwa kazi ambayo amefanya mpaka sasa. Maoni yangu ni kwamba anastahili kubadilishwa na mwingine. Nasema hivyo kwa sababu sitosheki na usimamizi wake. Nina sababu ambazo zinanifanya nisisosheke. Moja wapo ni hiyo ya kuamini ya kwamba Kongamano la Kitaifa Kuhusu Katiba lina uwezo wake na haliwezi kuambiwa chochote aidha na Bunge hili wala Serikali. Pia nina tatizo na usimamizi wa Mwenyekiti aliopo kwa sababu, mara nyingi naona kongamano likiharakishwa limalize kazi yake. Sababu ya kutakiwa kumaliza kazi ya kongamano ni kwa sababu Mwenyekiti ana kazi nyingine ya kufanya huko Afghanistan.

Bw. Naibu Spika wa Muda, najua kuna wale ambao wangetaka nithibitisha hayo. Mimi niliongea na Mwenyekiti na akaniambia ya kwamba akitoka hapa, ataelekea Afghanistan. Ni imani yangu ya kwamba kwa sababu ya hayo, ndiyo wengi wanasema: "Harakisheni! Harakisheni!" Mwenyekiti ana pahali pengine pa kwenda kuandika katiba mpya. Hatutaki Katiba itakayotoka Ukumbi wa Bomas iwe kama ile walioandikiwa Wafiji chini ya usimamizi wa Prof. Ghai.

Katika nchi ya Fiji, baada ya kuandikiwa katiba chini ya uenyekiti wa Prof. Ghai, mpaka sasa, mizozo ya kisiasa haijaisha. Wafiji-wenyeji na Wafiji-wahindi wanapigana mpaka sasa kwa sababu ya vile Katiba yao ilivyotokea. Na sisi, kwa kumwaalika Prof. Ghai awe mwenyekiti wa Tume ya Katiba ya nchi ya Kenya, ni lazima ajue kwamba tunaelewa aliharibu kazi kwingineko! Asije hapa kufanya au kurudia makosa aliyoyafanya huko Fiji.

Mr. M.Y. Haji: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. Member to discuss somebody who cannot defend himself in this House?

Mr. Wamwere: Bw. Naibu Spika wa Muda, siongei juu ya Prof. Ghai kama mtu binafsi bali ninaongea juu yake kama mwenyekiti wa Tume ya Kurekebisha Katiba nchini. Wabunge wengine wamemsifu na wengine wamemkosoa. Ninadhani kuna uhuru wa kumkosoa Prof. Ghai

mradi Mbunge hamshambulii kama mtu binafsi.

The Temporary Deputy Speaker (Mr. Ethuro): But Mr. Wamwere, you have discussed what Prof. Ghai has done in other countries. So, you are really discussing him and I think you are out of order!

(Applause)

(Mr. Y. Haji smiled)

Mr. Wamwere: Bw. Naibu Spika wa Muda, ninamwona Mbunge ambaye alisimama kwa jambo la nidhamu akitabasamu. Ni heri afahamu kwamba huenda akawa mtu wa kwanza kutumbukia katika kisima tunachochimbiwa.

Ms. Abdalla: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for Mr. Wamwere to threaten Mr. Haji with the consequences of the new Constitution?

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Wamwere! Keep out all these things from this House.

Proceed, Mr. Wamwere!

Mr. Wamwere: Bw. Naibu Spika wa Muda, mimi simtishi Mbunge yeyote. Nimetumia methali ya Kiswahili isemayo "mchimba kisima huingia mwenyewe". Sioni kama Bw. Haji amechimba kisima, lakini ninamwonya asiingia katika kisima kilichochimbwa na mtu mwingine.

Dr. Godana: Jambo la nidhamu, Bw. Naibu Spika wa Muda. Bw. Wamwere amesema kwamba yeye hatishi watu, lakini mavazi yake yanatisha!

Mr. Wamwere: Bw. Naibu Spika wa Muda, nilidhani kwamba Waislamu wangekua wa kwanza kunishangilia kwa kuvaa kama wao.

The Minister for Gender, Sports, Culture and Social Services (Mr. Balala): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for Mr. Wamwere to refer to his dressing as an Islamic dressing?

The Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Members! Could we allow Mr. Wamwere to proceed? He has not said that his dressing resembles that of Muslims, but he said that he wished hon. Members---

Hon. Members: No! No!

The Temporary Deputy Speaker (Mr. Ethuro): Proceed, Mr. Wamwere!

Mr. Wamwere: Bw. Naibu Spika wa Muda, jambo lingine ambalo ningependa kuomba Bunge na wajumbe wa kongamano wafanye ni kufikiria juu ya swala la kura ya maoni, baada ya Hoja hii kupitishwa na Bunge hili. Ninafahamu kwamba kura ya maoni inapingwa na watu wengine. Ningependa ieleweke kwamba wananchi hawawezi kumiliki Katiba mpya kama hawapewi nafasi ya kuipigia kura. Tumeambiwa kwamba jambo hili litapoteza wakati, au limo katika sheria ambayo inaturuhusu kurekebisha Katiba na si kuiandika upya.

Bw. Naibu Spika wa Muda, ningependa kusema kwamba kama kura ya maoni imepigwa kwa swala fulani, sioni ni kwa nini tusikubali watu wapige kura ya maoni kwa Katiba yetu.

Juzi, katika nchi ya Rwanda, tuliona kwamba baada ya kumaliza kuiandika Katiba yao, wananchi waliipigia kura ya maoni na ikaungwa mkono na walio wengi. Ningependa jambo hili lifanyike hapa kwa sababu ni baada ya kura ya maoni kupigwa ndipo wananchi wataweza kupiga kifua na kusema kwamba Katiba hii ni yao.

Mr. Kipchumba: On a point of order, Mr. Temporary Deputy Speaker, Sir. In view of the fact that hon. Members have discussed this Motion for a long time, and it appears as if we are repeating ourselves, would I be in order to request the Chair to call upon the Mover to reply?

(Applause)

The Temporary Deputy Speaker (Mr. Ethuro): Mr. Kipchumba, you are completely out of order. This Motion requires a resolution of the House. Therefore, we have to allow as many people as possible to contribute to this Motion.

Mr. Wamwere: Bw. Naibu Spika wa Muda, umefanya vizuri sana kutuokoa kutoka kwa udikteta ambao haja yake ni kutunyamazisha. Ninatumaini kwamba Katiba mpya haitaruhusu jambo la nidhamu kama hilo katika Bunge hili.

Pingamizi juu ya kura ya maoni na kusema kwamba wananchi wameamua na watatoa maoni yao---

The Minister for Trade and Industry (Dr. Kituyi): Jambo la nidhamu, Bw. Naibu Spika wa Muda. Kulingana na sheria za Hoja, Mbunge ambaye amechangia Hoja anaruhusiwa kuuliza "ikatwe"? Je, Bw. Kipchumba anaruhusiwa kuwasilisha jambo hilo la nidhamu?

The Temporary Deputy Speaker (Mr. Ethuro): Wacha tujadiliane halafu nitakupatia jawabu!

Endelea, Bw. Wamwere.

Mr. Wamwere: Bw. Naibu Spika wa Muda, kama nilivyosema---

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Wamwere! Dr. Kituyi ameuliza swali kuhusu Bw. Kipchumba. Kama Mbunge huyu ameongea, haruhusiwi kusimama kwa jambo la nidhamu na kusema kwamba Hoja hii ikatizwe

Endelea, Bw. Wamwere!

Mr. Wamwere: Bw. Naibu Spika wa Muda, sielewi ubishi katika kongamano unatoka wapi na hali watu wengine wanasema kwamba mambo yote yalikubaliwa na wananchi. Kumekuwa na ubishi sana juu ya maswala mengi na hii inadhihirisha wazi kwamba hatujakubaliana na mambo yote ambayo tunataka yawemo katika Katiba.

Mr. Cheboi: On a point of order, Mr. Temporary Deputy Speaker, Sir. You can see very clearly that the hon. Member is reading from a book which is totally against our Standing Orders. He is reading a speech and that is why he is taking too long to finish his contribution.

The Temporary Deputy Speaker (Ethuro): I have not seen him read from a written speech!

Mr. Wamwere: Bw. Naibu Spika wa Muda, ninaruhusiwa kutazama karatasi ili nijikumbushe yale mambo ambayo ninataka kuongea juu yake. Ninafahamu kwamba ninasumbuliwa tu.

Jambo lingine ambalo tunastahili kulifikiria sana ni tatizo la ukabila. Ninaamini kwamba hatutaweza kuiandikia nchi hii Katiba ya kusawazisha Wakenya wote kama tutaandika katiba ya makabila yetu, na kuzuia makabila mengine kutawala. Tukiwa pale, ni lazima tufikirie na tujihesabu kama Wakenya. Kama hatutaondoa ukabila kutoka Bomas, hatuwezi kutoka huko na Katiba ambayo itafaa nchi hii.

Mr. Sasura: On a point of order, Mr. Temporary Deputy Speaker, Sir. You would think we are at the Bomas of Kenya because of the way the hon. Member is contributing to this Motion. He is repeating himself.

Mr. Temporary Deputy Speaker, Sir, could I be in order to request the Chair to call upon the Mover to reply because this Motion has been exhaustively debated? We are just repeating ourselves.

Hon. Members: The Government has many Bills to bring before the House!

Mr. Wamwere: Bw. Naibu Spika wa Muda, sijui ni kwa nini Waheshimiwa Wabunge wanajaribu sana kunikatiza.

(Loud consultations)

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Wamwere! Order, hon. Members! Now, we have a request from an hon. Member. I would want to ask the Mover to reply.

(Question, that the Mover be now called upon to reply, put and agreed to)

Mr. Muite: Mr. Temporary Deputy Speaker, Sir, I would like to take this opportunity to thank all hon. Members from both sides of the House for the constructive contributions they made in support of this Motion. You will recollect that all hon. Members who have contributed have done so in support of the Motion. The record will show that not a single hon. Member has opposed the Motion to extend the mandate of the Constitution of Kenya Review Commission (CKRC) to 30th June, 2004.

I, therefore, wish to record my appreciation, as the Mover, for the bi-partisan support the Motion has received. I also wish to express the hope that the same consensus which has been developed by hon. Members in support of this Motion will be extended when we go back to Bomas of Kenya on 12th January, 2004. This time round, this House will be able to provide some leadership to ensure that we give Kenyans a new Constitution before 30th March, 2004.

Mr. Temporary Deputy Speaker, Sir, it is important for this House, the Constitution of Kenya Review Conference (CKRC) and the Government of the day to pull in the same direction towards giving the country a new Constitution. All are important institutions in their own respective rights. This House is important because the Conference is not sovereign. That is why it is this House that has the legal powers to extend the mandate of the CKRC and, therefore, the mandate of the Conference. The Conference itself does not have the mandate to extend its life.

Mr. Temporary Deputy Speaker, Sir, I wish to express regret that some delegates, instead of respecting the decision of the House Business Committee, the Parliamentary Select Committee and the CKRC, have chosen to go to court. Obviously, the rules of this House forbid discussion of the merits of the case and I do not wish to do so other than to comment and say that reciprocity should have been shown. This House has acted in a bi-partisan manner by very willingly extending the mandate of the CKRC so that we can go back to Bomas and conclude rewriting our Constitution by the end of March. I would have expected that the decision of the three Committees would be respected without being questioned in court. I hope that those proceedings will not in any way delay the re-convening of the Conference on 12th January, 2004.

With those few remarks, I beg to move.

(Applause)

(Question put and agreed to)

BILL

Second Reading

THE PERSONS WITH DISABILITIES BILL

The Minister for Gender, Sports, Culture and Social Services (Mr. Balala): Mr. Temporary Deputy Speaker, Sir, I beg to move that The Persons with Disabilities Bill be now read a Second Time.

Mr. Temporary Deputy Speaker, Sir, persons with disabilities in Kenya represent a critical segment. They are a marginalised population and face problems as a result of their disability.

Surveys indicate that Kenya has a population of over 3 million disabled persons as projected by the World Health Organisation (WHO). Most have no access to education, health, employment or rehabilitation. The majority experience hardships as a result of inbuilt social, cultural and economic prejudices, stigmatization and more often, abuse and violence. In order to address the issues of the disabled persons and mainstream them into the national development agenda, the society needs education to accept that disability is one of the several natural and inevitable happenings in a community, hence it is critical to have a legislative instrument to help combat discrimination against persons with disabilities. Such legislation will guarantee basic civic rights, help eliminate discrimination, provide a mechanism for monitoring the integration of persons with disabilities and send a positive message to the society that discrimination is unacceptable and illegal. Such legislation will enable the persons with disabilities to assert their position in society, give them a means of influencing their situation and also enable them to take part in the development of society in this country.

Mr. Temporary Deputy Speaker, Sir, following the identification of this critical need, a move to establish the National Council for Persons with Disabilities (NCPD) was mooted. The envisaged council shall be a corporate body consisting of not more than 27 members, out of whom, at least 20 members shall be persons with disabilities. There also shall be a director who will be employed by the council under the terms and conditions set by the council. The functions of the council shall be to formulate and develop measures and policies to achieve equal opportunities, co-operate with the Government during national census, advise the Minister on the provisions of any international treaty, recommend measures to prevent discrimination, put into operation schemes and projects for self employment, encourage and secure establishment of vocational rehabilitation centres, and coordinate services provided in Kenya for the welfare and rehabilitation of persons with disabilities. The council shall also be responsible for registering persons with disabilities, institutions, associations and organisations, places at which services for rehabilitation are provided and persons with disabilities whose condition requires constant medical attention for the purpose of availing subsidised medical services. Further, the council will provide as far as possible, assertive devices, appliances and other equipment to persons with disabilities, access to available information and technical assistance to institutions.

In doing so, the council shall consult with the Government in formulating training curriculum, make provision for assistance to the disabled students, assess and report to the Minister on the welfare and rehabilitation programmes, consult with the Government on the provision of suitable and affordable houses, generally carry out measures for public information on the rights of the disabled and perform such other functions related to the welfare of the disabled persons. On the above provision, the Council shall have the power to conduct inquiries into any matter relating to the welfare and rehabilitation of persons with disabilities, constitute various committees and delegate authority to the committees so constituted.

Mr. Temporary Deputy Speaker, Sir, the Council shall derive its financial resources from funds voted by Parliament as well as funds that it may receive as a result of public and private appeal from local and international donors, all of which it shall ensure that they are properly accounted for.

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

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

In order to realise and uphold the rights of persons with disabilities, the Government shall take steps to maximise utility of available resources to achieve full realisation of their rights. No person shall

deny a person with disability access to suitable employment opportunities. The Council shall try to secure reservation of, at least, 5 per cent of employment positions in the public and private sectors. No employer shall discriminate against a person with disability in advertisement and recruitment in employment, creation, classification or abolition of posts, determination of terms and conditions of work, choice of persons for posts, provision of facilities and any other matter related to employment.

As an incentive to employers, any private employer who engages a person with disabilities with the required skills or qualifications either as a regular employee, apprentice or learner shall be entitled to apply for a deduction from his taxable income equivalent to 25 per cent of the total amount paid as salary and wages to such an employee. However, this will only apply provided that proof of such employee, certified by the Ministry responsible for labour, and that such employee is accreted with the Council as his or her disabilities. In addition, private employers who make their work places disabled-friendly shall be entitled to apply for tax relief of up to 50 per cent of the cost incurred in improvement and modification.

In order to uphold the civic rights of persons with disabilities, it will be an offence to fail to make adjustment for public amenities to allow accessibility of disabled persons. This will amount to discrimination against such persons and will be subject to prosecution.

Mr. Temporary Deputy Speaker, Sir, all persons with disabilities shall be entitled to use Government sports and recreational facilities free-of-charge. On civic rights, all persons with disabilities shall be entitled, at their request, to be assisted by persons of their choice in voting in Presidential, Parliamentary and Civic Elections. Polling stations shall be accessible to such persons with the necessary assistive devices. The authority to register all organisations or all persons with disabilities shall be vested with the Council.

The National Development Fund for Persons with Disabilities (NDFPD) is to sustain the Programme for Persons with Disabilities (PPD). A permanent fund shall be established to be known as the National Development Fund for Persons with Disabilities (NDFPD). Sources of funding will comprise of income generated by investments made by the Trustees and any other donations which the Council may receive for the purpose of the Fund. A Board of Trustees comprising of the Chairman, the Director and members representing various interest group organisations will manage the Fund.

Mr. Temporary Deputy Speaker, Sir, in order to provide relief and incentive to persons with disabilities who are in receipt of an income, provision shall be made to apply to the Minister for Finance for exemption from Income Tax and any other such levies. The tax relief, which may be applied for, will be on materials, articles and equipment, including motor vehicles, that are designed for use by persons with disabilities. All donations to institutions and organisations meant to assist the disabled people shall be exempt from chargeable duties. The Minister responsible for finance shall endeavour to provide incentives to local manufacturers of technical aids and appliances to be used by persons with disabilities, including but not limited to labour expenses, tax and duty exemptions on imported equipment, tax credit on domestic capital equipment, simplified Customs procedures, unrestricted use of confined equipment, equipment of foreign nationals, tax exemption on raw materials, but also access to bonded manufacturing system.

On legal systems, the Attorney-General, in consultation with the Council and the Law Society of Kenya (LSK), may consider providing free legal services to persons with disabilities in respect to matters affecting violation of their rights, cases involving capital punishment, and other cases as may be prescribed in the regulations to be made by the Attorney-General. The Chief Justice shall make rules, providing for provision of free sign language interpretation, brail services and any other service that may be required.

Mr. Temporary Deputy Speaker, Sir, on communication matters, the Media, particularly television, shall provide sign language in newscasts and programmes. Telephone services shall also be made user-friendly for disabled persons and exemptions for postal charges provided for devices

and literature sent from outside Kenya. The exemption shall only be recommended by the Council and the Minister responsible for finance, as the case may be.

All Government Ministries shall, under the provisions of this Act, establish and maintain an inspectorate unit to ensure implementation and compliance with the provisions of the Act.

Finally, offenses and penalties, under the Act, concealment of persons with disabilities, negligence by medical personnel that may result to disability shall be liable to legal action.

Mr. Temporary Deputy Speaker, Sir, this Bill has been the focal point for the Government, persons with disabilities and various stakeholders, for over a decade. The passage of this Bill into an Act will influence members of the society to change their attitudes towards the recognition of the rights of persons with disabilities, thereby guaranteeing their full integration into the society. This will be consistent with the United Nations and the African Union Declaration on mainstream issues concerning persons with disabilities, which Kenya has ratified.

With those remarks, I beg to move and call upon Prof. Kibwana to second the Bill.

The Assistant Minister, Office of the President (Prof. Kibwana): Mr. Temporary Deputy Speaker, Sir, I beg to second this very important Bill.

Mr. Temporary Deputy Speaker, Sir, this is probably one of the most important Bills brought to this House by this Government in the life of the current Parliament. The area of persons with disabilities has been very much neglected. When I look at this Bill, I realise that it is, really, a very robust "Bill of Rights" for persons with disabilities. It aims at restoring their citizenship and their humanity as well as dealing with issues of discrimination, equal opportunity and neglect. Therefore, the Minister for Gender, Sports, Culture and Social Services, has really done this country proud by moving to secure persons with disabilities in the manner he has proposed to do.

I believe that this Bill is extremely comprehensive on disability in the continent. I have had an occasion to research into this area, and I can confidently say that this is one of the most comprehensive Bills on disability on the African framework. For me, it provides a framework for the acceptance of people with disabilities into the Kenyan society. I believe that this will go down in history as one of the Bills which tried to modernise our country by making provisions for people with disabilities.

Mr. Temporary Deputy Speaker, Sir, in this country, we have been trying to develop a framework for affirmative action.

I think we have done that reasonably well for women. This is another step to do so for persons with disability. When we deal with the youth and minority groups, I think our country will be set to secure various critical sectors. One other important aspect of this Bill is that, it tries to remove the stigma of disability. Indeed, there are even proposed penal provisions that people cannot hide, chain or do anything negative to the disabled persons. It is very important to drive the point home that persons with disability are very normal and able. Many of them actually achieve much more than the so-called able persons! They are merely differently abled. I have had occasion to work with persons with disability who were extremely able than people who perceive themselves to be very able.

Maybe, one aspect that this Bill should also consider is to deal with the question of using languages which are insensitive to persons with disability. There is a language which can be used, without meaning to offend, but which does not support people with disability.

Mr. Temporary Deputy Speaker, Sir, the National Council, which is to administer this law, is represented, at least, by 20 disabled people. It is also represented by others who are not disabled. It is important that, that council has a majority of persons with disability because they understand the issues and are able to deal with them properly. But, maybe, it will be examined to make sure that the number is not so large that it becomes ineffective.

The composition is such that it is not clear whether various disabilities are fully represented in the council. It simply says people with disabilities without making provisions to ensure that various types of disabilities are represented. Indeed, I believe that there should be a schedule which

indicates the types of disabilities that exist in this country, so that in terms of assisting and representation, each category is considered.

Mr. Temporary Deputy Speaker, Sir, there is a chairman and a vice-chairman of the National Council on Disability. I think we are developing a language of chairperson or chair and vice-chair in other Bills that we are considering in this august House. This Bill could also be changed, so that the language is gender-neutral.

There is also another tradition that we are evolving, where the chair is selected or appointed by an authority, the vice-chair is appointed by the body itself. I think the chair and vice-chair should not be appointed by the Minister. The vice-chair should be appointed by the council itself.

The functions of the council as stated in Clause 7 are extremely comprehensive. I think that is one of the most important aspects of this Bill. It tries to ensure that almost all imaginable things that could be done to mainstream persons with disability are catered for. One of the critical aspects of this Bill is Clause 7 which provides for persons with disability in a very broad, comprehensive and total sense.

Mr. Temporary Deputy Speaker, Sir, again, I think that Part III in terms of the Bill of Rights for persons with disabilities is a very ambitious part of this Bill where matters of employment, education, health, accessibility, mobility and their admittance to public buildings, public service vehicles and so on are very well provided for. I think that when this Bill becomes law and if the functions in Clause 7 and the Bill of Rights in Part III are also adhered to, we are going to have a new regime for persons with disabilities and we are really going to recognise them in a very special and empathetic way. I am sure there will be some problems particularly in public service vehicles when their owners are told to fit seat belts and speed governors on them because the hon. Minister for Transport and Communications has already had problems in trying to address that particular issue but we do know that often it is very difficult for persons with disabilities to access public service vehicles.

Mr. Temporary Deputy Speaker, Sir, I am also very happy that there will be an attempt to have a census of the skills of people with disabilities so that it is easy to help them to get into productive work. I think that at the moment, the persons with disabilities in this country are between 10 and 15 per cent and there will be an attempt under this Bill when it is passed to actually conduct a census of their skills and be able to assist in terms of placing them in productive employment.

Mr. Temporary Deputy Speaker, Sir, one of the clauses which is going to be critical and which is also going to raise some problems in terms of implementation is Clause 24 - Adjustment Orders - because this Bill says that public buildings which cannot be easily accessed by disabled persons will be adjusted so that it is easy for persons with disabilities to access these buildings and, this of course, involves a lot of expenditure on the part of the private investors. By the end of the day, it will not be easy to prevent people from accessing them, whether they are persons with disabilities or persons without disabilities.

Mr. Temporary Deputy Speaker, Sir, Clause 27 says:-

"There will be no adjustment orders against Government institutions before the Minister is able to provide for that."

However, I think that section should be adjusted so that both the private and the public sectors are able to very quickly ensure that persons with disabilities can access all manner of buildings.

Mr. Temporary Deputy Speaker, Sir, as the hon. Minister has stated in moving this important Bill, there are also civic rights provided for people with disabilities and one of them is in terms of voting. There will be assistance voting by allowing whisper voting whereby if persons with disabilities cannot vote secretly, they can choose somebody of their liking to assist them. To some extent, this is happening under the new electoral regulations, but this particular Bill reinforces that position and also ensures that polling stations are accessible to persons with disabilities. In other jurisdictions, persons with disabilities, expectant mothers and very old people are some of the first

people to be allowed to vote so that they can go home early and leave the others to vote.

Mr. Temporary Deputy Speaker, Sir, I think Clause 31 is very important in terms of allowing for registration of all organisations of or for persons with disabilities because previously, it was not always easy to register organisations whether belonging to persons with disabilities or people without disabilities. I think this clause almost suggests that there should be automatic registration of organisations of and for persons with disabilities. It is not clear, however, if you have an organisation which partly deals with issues of disabilities and partly with other issues, you will still get automatic registration under this particular Bill. That may be a matter to be clarified.

Further, it is necessary to also make provisions so that if you have an organisation of or for persons with disabilities which comes up for registration, but you suspect that there is some illegality about it, whether you should still have to register it automatically or not because we were told this afternoon that there was actually an organisation of persons with disabilities which was trying to collect money from people illegally. So, maybe we need to be careful there so that there is a way of scrutinising organisations of or for persons with disabilities which are pursuing unlawful purposes so that they do not get automatic registration. I think that actually there should be regulations under this Bill which provide for the manner in which those organisations should be registered. Having said that, it is really very commendable that the Minister is proposing that there should not be too much time spent when we are registering organisations of persons with disabilities.

Mr. Temporary Deputy Speaker, Sir, a very important part of this Bill is the National Development Fund for persons with disabilities because this Bill is very ambitious. It really provides for many things that need to be done for our compatriots who are disabled and, therefore, a lot of money will be needed for this programme and that is why there is a Fund. Apart from the monies that the Government is able to provide, there will be funds from other people. Of course, it is our hope that this money will be spent better than the current money in the fund for the disabled which was collected through *Harambee* and some of it through other means because disabled persons have always found it very difficult to access that particular Fund to their advantage.

Mr. Temporary Deputy Speaker, Sir, I think also the way in which the Fund is applied, it really provides for a welfare system for persons with disabilities because you have aged persons who are disabled getting money from this Fund. You have for example, single parents who have children with disabilities and cannot work and so on and so forth. So, this is very humanistic in terms of making sure that persons with disabilities who cannot engage in gainful employment are provided for in a regular way so that their lives are made easier.

Mr. Temporary Deputy Speaker, Sir, the Minister was able to explain to us how this Bill seeks to provide for tax exemption for income of persons with disabilities. When you make donations to things connected with the issues of disability, there is tax deduction for you and so on, and this is obviously very positive. People who want to make donations will know that they will get tax exemption and this might convince more Kenyans to come forward and be involved in charity. We have many rich people in this country who have not learned the culture of charity and it is time that our people became kinder and involved themselves in charity especially those who have money, particularly on the other side of the House.

Mr. Temporary Deputy Speaker, Sir, Clause 37 has something very positive about free legal services for persons with disabilities so that they are able to pursue their claims when, for example, there is discrimination and when there are no equal opportunities for them.

The Attorney-General will need to create a proper framework so that persons with disabilities can access free legal services because normally they are unable to afford legal fees which are quite exorbitant.

Mr. Temporary Deputy Speaker, Sir, the Clause 37(3) states as follows:

The accused persons who are denied bail shall be entitled to be held in custody in facilities modified in accordance with the regulations made by the Minister.

I propose that it reads thus: The accused person with disability. This is because when any persons who are disabled are confined for suspicion of committing a crime, then the facilities in which they are held should be modified. This essentially means that police stations, prisons and other facilities must also be modified to make sure that they can accommodate people with disabilities suspected of having committed crime.

The Minister was able to talk about the mandatory requirements of sign language, sub-titles, special telephone services and exemption from postal charges for persons with disability. This is a standard requirement in all countries that take care of their disabled in a serious way. Again, Clause 42, states as follows:

Each Government Ministry must have a unit to ensure implementation of the issues of disability.

This is quite a comprehensive and cross-cutting way of treating the problem of disability. Indeed, there will be a council inspector who will ensure that we treat and implement this law with the seriousness that it deserves. We should not simply pass it to assuage the fears and expectations of the disabled persons and their supporters. I think Clause 43 will have a problem. It states as follows:

The Minister will make regulations prohibiting any ethnic, communal, cultural, or religious custom or practise to the extent that it is discriminatory against persons with disability.

Strictly speaking, this is a penal function through which you actually penalise anybody who might use ethnicity, communal, cultural, or religious customs and practises to discriminate against the disabled, for example, by denying them access to education, confining them in the house and so on. It is essential that this Clause 43(d) be lifted and taken to Clause 26 or whatever Clause that is concerned with criminal functions.

Mr. Temporary Deputy Speaker, Sir, I really second and support this very important Bill. It is my hope that this House will unanimously and speedily pass this Bill so that we can uplift ourselves in terms of the way we have been treating disabled persons previously.

With those remarks, I beg to second.

(Question proposed)

Ms. Abdalla: Mr. Temporary Deputy Speaker, Sir, I stand to support the Persons with Disabilities Bill. This Bill intends to equalise opportunities for persons with disabilities and it will, therefore, provide a legal framework to ensure that disabled persons in this country are not discriminated against and that their affairs are well managed.

A society is judged by how well it treats its disadvantaged persons. The benefits and incentives provided by this Bill, such as increased access to education, a set quota for employment opportunities and, duty and tax exemption for gadgets that aid mobility, vision and hearing, will go a long way to improve the quality of life of the disabled persons in this country. The great benefits of this Bill have been well elucidated by the Minister and the Secunder of this Bill.

Mr. Temporary Deputy Speaker, Sir, I just want to make sure that this Bill is implementable.

I wish to record that my opposition is to clauses in this Bill, and not to its principles; a position that is supported by my Party, KANU. My opposition is directed to areas that need improvement, so that we can truly give the disabled persons improved living standards.

Before I proceed to contribute to this Bill, I wish to note my disappointment with the lack of a departmental committee to review affirmative action-related Bills from the Ministry of Gender, Sports, Culture and Social Services. It should be noted that the Bill on the establishment of the National Commission on Gender and Development was never reviewed by a departmental committee and the same applies to the Persons With Disabilities Bill. This is a reflection that the Government in this House does not take seriously affirmative action-related Bills. It is in this regard that I would like to let the person responsible for ensuring that departmental committees review

these Bills know that the disabled persons who have undergone historical injustices are voters in this country. They are important components of this nation and because of that, they need to be taken seriously.

Mr. Temporary Deputy Speaker, Sir, I have serious reservations with the definitions used in this Bill. Other countries that have tried to use the same definitions in ensuring that disabled persons are not discriminated against on grounds of disability, have not been very successful. This Bill intends to achieve equalization of opportunities, which means that non-discrimination law must be applied in all spheres. Non-discrimination law, by character, requires that you fight historical injustices and those kind of problems. In theory, this is very positive for the disabled persons. But this has not been successful even in countries which are more developed and more endowed with resources than our nation. So, I wish to deal with four main problems that I see in the definition of "disability" in this Bill.

Mr. Temporary Deputy Speaker, Sir, "disability" in this Bill is defined as "a physical, sensory, mental or other impairment, which has a substantially long-term adverse effect on the persons ability to carry out the usual day-to-day activities". The first problem with this definition is that it is a medical definition. Disability is more than a medical definition. Disability has social, economical and environmental factors that contribute to increasing the problems that a disabled person goes through. The second problem with this definition is that it places the problem of disability on the individual who is disabled. It defines disability as a personal attribute. Again, a one-legged person in a nomadic community has more problems than, for example, a one-legged person in a sedentary community. So, without us taking into consideration the societal problems that this person will be facing, this definition is going to be limited.

Mr. Temporary Deputy Speaker, Sir, it is in this regard that I would be proposing an amendment to the definition of disability, so that it reflects the societal responsibilities associated with disability. Examples of such definitions can be found, of course, in the internet by the Union of the Physically Impaired Against Segregation, which was later adopted by the Disabled Persons International; as well as the definition of the European Day, adapted in 1994. The third problem with that definition is that it imposes a burden on a person who is allegedly discriminated against on grounds of disability to, first of all, prove that they are disabled or have an impairment, before they are recognized as a member of a protected class. Take mental disability, for example. It is next to impossible for mentally disturbed people to accept that they, in the first case, are having a problem. In this case, they would need to have a third party to defend their case in terms of proving this disability.

Mr. Temporary Deputy Speaker, Sir, the fourth and final problem with the definition of disability in this Bill is that it does not take into account past and future disabilities. For example, if you are a person who had been diagnosed as having multiple sclerosis, but you are now fine and can walk and act normally, in a few years you will be disabled. If your employer finds out that you have multiple sclerosis although it does not show on your face, he can retrench you, but you cannot prove that he has discriminated against you because you will be disabled in future. The same case goes for schizophrenic patients. If you are schizophrenic and you have been discriminated against in the past, when you get well and you bring back the story, not much will be done to help you.

Mr. Temporary Deputy Speaker, Sir, the other thing is that the Bill has a problem with the definition of the word "discrimination". It describes discrimination to mean to accord different treatment to different persons mainly as a result of "their disabilities". The words to note there are "their disabilities". The drafters of this Bill could have possibly been thinking about comparing a disabled person with an able-bodied person. The phrase their disabilities implies that you will be looking at whether people with a disability will be discriminated against. The term "disability" in the description of the word discrimination is, therefore, not neutral. We need to adopt a more neutral word such that when you are comparing between men and women, you use the word sex which is more neutral than using the phrase discrimination against men. I want to recommend that the

definition of the word discrimination uses the word capabilities instead of disabilities, so that you are able to compare between able bodied and disabled persons.

Part II of the Bill calls for the establishment of the National Council for Persons with Disabilities. Notwithstanding the NARC Government's fascination with Councils and Commissions, I wish to note that this is one Council whose mandate is very clear and extremely justifiable. I will strongly support it. I, however, have a problem with the proposed 27 members of this body. This would be a very large body, which may result into a case of too many cooks spoiling the broth. It is understandable that NARC is a coalition and would like to adopt the Jeffersonian Myth of small town democracies where everybody needs to be on the decision making table, so that their issues can be addressed. I would like to advise that the problems of a coalition should not be shifted to drafting a Bill that is to serve many generations to come. There is a provision in Clause 7(2)(b) of co-opting four extra members if they are required. I will be proposing a reduction of this number at the Committee Stage.

Secondly, I have a problem with the blanket listing of members from different Ministries to support this Council, such as members from the Ministry of Gender, Sports, Culture and Social Services, the Ministry of Local Government and the Ministry of Education, Science and Technology. This general listing has a problem. In Kenya, it is very common that if you do not bring somebody with sufficient clout to a Council or a body, there will not be much decision making or support provided by that person's presence. It is in this regard that I will be proposing an amendment, so that the persons so posted from the different Ministries should, at minimum, hold the position of a Deputy Under-Secretary.

Mr. Temporary Deputy Speaker, Sir, Part III of this Bill is on the rights and privileges of persons with disabilities. Clause 13 calls for the reservation of 5 per cent of jobs to persons with disabilities. As a person from the civil society sector, which is used to measurable indicators, I am impressed by this figure. It would be easy for the National Council for Persons with Disabilities to check the NARC Government's 500,000 jobs to ensure that 25,000 of them go to disabled persons. This is very commendable. Perhaps, as an affirmative action measure, we need to be a bit more realistic and firm in terms of expecting the private sector to provide the 5 per cent of the 500,000 jobs that we have listed in the Bill. I, therefore, suggest that the 5 per cent of the 500,000 jobs be restricted to Government jobs because it would be unfair to impose such a requirement on a private investor.

I am equally happy that the Bill acknowledges the fact that differentiation is not discrimination. This can be seen in Clause 15(2)(b) that indemnifies an employer for not having discriminated against a disabled person, if the condition that is said to have been used as a discrimination aspect is a relevant requirement for that position. For example, this will protect an employer who wants a tax driver from being taken to court simply because he failed to employ a blind person. This is a very important acknowledgement that differentiation is not discrimination. That is not applicable in education matters. Clause 18, for example, prohibits any learning institution from denying admission to persons with disabilities. It should be known that higher education requires some range of learning ability. To avoid unnecessary litigation against institutions of higher learning, that they did not admit a person with a disability, we need to propose an indemnifying clause, so that the institutions are not unnecessarily punished.

Clause 16 provides incentives to employers to employ disabled persons through exemption from paying Income Tax and being given funds to modify their facilities for the disabled persons. This is applaudable. However, I would like to recommend that these incentives be provided to proprietors of public buildings and public service vehicles, who have been given a period to adjust their buildings and vehicles. I would like to propose another incentive to those two components under Clauses 22 and 23, so that owners of public buildings will be encouraged to adjust their buildings within the stipulated period.

Clause 19 is very dear to me because it provides an integrated system for special and non-

formal education for persons with all forms of disabilities. In this country, when you lump things together, you forget that even within disabilities, there is diversity. For example, all blind people in this country cannot be lumped together. If you are blind in North Horr, you will suffer different consequences from a blind person in Karachuonyo or Nairobi, because things are different. So, when we call for informal and formal education in this Clause, we must differentiate between the different needs of the disabled persons, including their geographical location and the intra-disability issues.

Mr. Temporary Deputy Speaker, Sir, in the past, investing in the education of disabled children has been seen as an investment with very low returns. Many parents are unwilling to invest in the education of their disabled children because they do not expect them to have high paying jobs. They think that this is a low return investment. So, the Ministry of Education, Science and Technology must take into consideration the extra needs and resources required to educate a disabled child.

The free primary education programme provided since January is definitely God-sent for the disabled child. It should, however, be noted that the special needs of the disabled children were not taken into consideration. In fact, a lot of incitement has been brought forth as to why extra money is required for the nomadic child because of the requirement of boarding facilities.

If that is in itself a problem, how do you imagine the nomadic disabled child is surviving? How many schools are there catering for disabled children in the whole of the 80 per cent of this country that is described as the Arid and Semi Arid Lands (ASAL)? Just as when we use the metaphoric term "Wanjiku" to describe the person making our Constitution, let this Wanjiku not be a literal Wanjiku. Also, let these disabled persons not be lumped up together and be left to suffer.

Mr. Temporary Deputy Speaker, Sir, finally, Clause 27 of this Bill which Prof. Kibwana talked about provides for adjustment orders against Government institutions. There seems to be double standards in the application of these adjustment orders. Should the Minister under Clause 27 not provide consent for the adjustment orders, this Bill is silent on what will happen. Therefore, I would like the Council to be appealing to the Minister if he does not respond in time.

Mr. Temporary Deputy Speaker Sir, Part IV of this Bill talks about Civic Rights. Although I think it is a wonderful idea for us to make sure that the disabled person is given a right to vote and is facilitated to vote, I have a serious problem with this provision in that, it over emphasises the disabled person as a voting machine. It does not cater for the possibility of the disabled persons being represented by one of their own. I know the term, "one of their own" has taken a serious tribal dimension in this country. However, in this case, I really wish to note that we should make provisions to ensure that this House is a representative of the Kenyan society. In addition to considering the disabled person as a voting machine, we should also consider their representation in this House.

Mr. Temporary Deputy Speaker, Sir, Part V of this Bill calls for the establishment of the National Development Fund for Persons with Disabilities (NDFPD). Like the National Council for the Disabled (NCD), I strongly support the establishment of the NDFPD. It is self-justifying. However, I have problems again with the stated sources of the funds for the NDFPD. First, this Bill calls for the introduction of a disability levy to generate funds from the corporate sector. However, given the state of our economy, and the supposedly serious efforts put by the NARC Government to woo investors into our country, the imposition of this tax would be a disincentive to that effort.

Mr. Temporary Deputy Speaker, Sir, I was curious that the Ministry for Gender, Sports, Culture and Social Services did not mention the bottomless pit that is the Consolidated Fund as a source of their funding. In fact, this Ministry is very progressive in not mentioning the Consolidated Fund. I was curious in that when I came here in January, I was told that the NARC Government inherited empty coffers. However, for the last 11 months, every single Bill that comes to this House is requesting for funds to be charged to the Consolidated Fund. This bottomless pit does not seem to be accessible to the Ministry of Gender, Sports, Culture and Social Services which is commendable

but, in the long-run, we cannot impose taxes on the private sector just because we are shying away from billing the Consolidated Fund.

I am further curious that the presentation by the Minister was silent on the existence of the current Disability Fund, which, to me, is a very healthy fund. It owns two buildings in this city. I would like the Minister while responding to let us know how he will lift the existing fund---

The Temporary Deputy Speaker (Mr. Khamasi): Ms. Abdalla, the Minister is not here!

Ms. Abdalla: Mr. Temporary Deputy Speaker, Sir, the Assistant Minister is here, so I assume she is taking note of what I am saying. Therefore, I hope that when the Minister is responding, he will provide a clarification of how that very healthy fund will be incorporated into the new fund.

Mr. Temporary Deputy Speaker, Sir, lastly, this Bill does more than just elevate the disabled person to provide him with equal opportunities. It goes further to give them advantages, especially in terms of tax exemption---

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Khamasi): Order! Hon. Members, it is now time for the interruption of business. The House is, therefore, adjourned until 5th November, 2003, at 9.00 a.m. The House rose at 6.30 p.m.