

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 15th August, 2007

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

PAPER LAID

The following Paper was laid on the Table:-

Report of the Departmental Committee on Energy, Communications and Public Works on the Freedom of Information Bill, 2007.

(By Mr. Moi)

ORAL ANSWERS TO QUESTIONS

Question No.132

NUMBER OF NURSES RECRUITED
BY GOVERNMENT SINCE 2006

Mr. C. Kilonzo asked the Minister for Health:-

- (a) how many nurses have been recruited by the Government since 2006;
- (b) whether she could table the number of nurses posted per district and constituency to date;
- (c) whether she is aware that many dispensaries built through the Constituencies Development Fund (CDF) are not operational due to lack of medical staff; and,
- (d) whether she is further aware that many operational dispensaries do not have laboratory technicians.

The Assistant Minister for Health (Dr. Machage): Mr. Speaker, Sir, getting the list of nurses who have been recruited by the Government per constituency is a tall order. I beg for the indulgence of the House that I get more time to look for more information.

Mr. Speaker: Mr. Assistant Minister, is the Question coming for the first time?

Mr. Bifwoli: On a point of order, Mr. Speaker, Sir. Is it in order for the Assistant Minister to tell us that getting the list is a tall order, when they are the same people who said recently that they are idle?

(Laughter)

The Assistant Minister for Health (Dr. Machage): Mr. Speaker, Sir, all Kenyans will testify the Dr. Machage is one of the busiest Assistant Ministers in this country. Maybe the others are idle, but I am never idle.

Mr. Speaker: What is your reaction, Mr. C. Kilonzo?

Mr. C. Kilonzo: Mr. Speaker, Sir, I think the Assistant Minister is not being frank with the House. They are the people who posted the 3,077 nurses who were recruited. So, obviously, there is a list of those nurses. The Assistant Minister is playing games so that when the House goes on recess, at least, he will have more time to hide himself.

Mr. Speaker, Sir, I, therefore, request that the Question be deferred until tomorrow, but not later than that.

Mr. Speaker: Order! Hon. Members, we must be practical. If he has not got the list in the last few weeks or even months, how can he get it overnight? Please, let us be reasonable! Could we defer this Question until either next week, if the House will be sitting, or upon the return of the House from recess?

Mr. C. Kilonzo: Very well, Mr. Speaker, Sir.

Mr. Speaker: Thank you! I am sorry about that.

(Question deferred)

Next Question by the Member of Parliament for Kisumu Town West Constituency!

Question No.427

REHABILITATION OF JOMO KENYATTA
SPORTS GROUND BY SIDA

Rev. Nyagudi asked the Minister for Local Government:-

(a) whether he is aware that the Swedish Government, through SIDA, spent millions of shillings to rehabilitate Jomo Kenyatta Sports Ground in Kisumu Town;

(b) whether he is further aware that the project was to be handed over to the public but is now being run as a private property; and,

(c) whether he could table audited reports on accounts of the project since it was completed.

Mr. Speaker: I just received a note that the Minister for Local Government is out of--

(Mr. Muchiri stood up in his place)

Are you ready to answer the Question, Mr. Muchiri?

The Assistant Minister for Local Government (Mr. Muchiri): Mr. Speaker, Sir, I wanted to ask for more time to get sufficient information for this Question. The answer that I have is inadequate.

Mr. Speaker: What is your reaction, Rev. Nyagudi?

Rev. Nyagudi: Mr. Speaker, Sir, I now really believe that these people are idle!

(Laughter)

Mr. Speaker: What have you said, Rev. Nyagudi?

Rev. Nyagudi: Mr. Speaker, Sir, I was just supporting what hon. Bifwoli said. I think I

have no option but to oblige to give him more time.

Capt. Nakitare: On a point of order, Mr. Speaker, Sir. You were trying to tell us what you had been communicated to by the Minister, but the Assistant Minister stood up to ask for more time to answer the Question. Could I ask for your indulgence to tell us about your communication with the Minister?

Mr. Speaker: Any communication between the Chair and either the Minister or yourself is privileged! You will not get it out of me!

(Laughter)

Mr. Rotino: On a point of order, Mr. Speaker, Sir. If you look at the Order Paper, these Questions are numbered. They were not filed yesterday but, at least, one or two months ago. When the Assistant Minister requests to be given more time to answer the Question, it means that he did not do any homework.

Mr. Speaker: That may very well be the case, but what can I do about it?

Mr. Assistant Minister, when will you be ready to do your job?

The Assistant Minister for Local Government (Mr. Muchiri): Mr. Speaker, Sir, I can answer the Question next week. I have the answer here, but the issue is that we need more time because it is not sufficient. We have requested for more information from Kisumu.

Mr. Speaker: If the House will be sitting next week, the Question will come. If it will not, it will come upon the return of the House from the recess.

(Question deferred)

Question No.413

MEASURES TO PROMOTE SCIENCE
AND TECHNOLOGY IN KENYA

Prof. Oniang'o asked the Minister for Science and Technology:-

(a) why the Government has failed to seriously take cognisance of science and technology and its role in national development;

(b) whether the Minister could inform the House how much money has been given to the National Academy of Sciences and Technology in terms of budgetary allocation over the last five years; and,

(c) what other measures the Government has taken in order to promote the improvement of science and technology in Kenya.

The Assistant Minister for Science and Technology (Mr. Yattani): Mr. Speaker, Sir, I beg to reply.

(a) The Government takes serious cognizance of the role that science and technology plays in national development. It is for this reason that in 2005, the Government established a fully-fledged Ministry of Science and Technology. Indeed, in Vision 2030, this new Ministry has been given enormous responsibilities geared towards making Kenya a globally competitive and prosperous country with a high quality of life.

Even before the formation of this new Ministry of Science and Technology, the Government, through an Act of Parliament Cap.250 of 1977, established the National Council for Science and Technology, which has been spearheading all scientific and technological matters in the country. There is also in place, in the Ministry, a fully-fledged Directorate of Research Development and Directorate of Technical Training, which together play a pivotal role in the

promotion of Science and Technology.

(b) The Government considers the National Academy of Sciences as an independent and credible professional institution that operates as a Non-Government Organization (NGO). However, in recognition of the role it plays in national affairs, the Government, through the National Council for Science and Technology, has, over the years, offered some budgetary financial assistance to the Academy with the hope that it eventually will fully fund its own operations. The Academy is also housed by the Ministry.

In the last five years, the Government granted the Academy the following amounts: 2003/2004 Financial Year, Kshs4,361,840; 2004/2005 Financial Year, Kshs4,361,840; 2005/2006 Financial Year, Kshs8,238,024, 2006/2007 Financial Year, Kshs8,238,024 and 2007/2008 Financial Year, Kshs4,500,000. That totals to Kshs29,699,728.

(c) The Government has taken the following measures to promote science and technology in the country:-

1. The Government has in the current Budget for 2007/2008 Financial Year created the Research, Innovations and Technology Endowment Fund with an initial commitment of Kshs200 million. This is a radical departure from the past where a meagre Kshs32 million was being allocated for this important function. It is, indeed, our remarkable appreciation for the central role that science and technology plays in our economy. We expect the private sector and our development partners to also contribute to this Fund.

2. The Government, in its National Skills Strategy, plans to reactivate the Technical, Industrial, Vocational and Entrepreneurship Training (TIVET) Programme in various sectors of the economy. In the process, a TIVET authority will be created to take charge of this important function. In addition, national polytechnics will be upgraded to offer degrees, while technical training institutions will not only be upgraded but will also be expected to serve as centres of excellence.

3. The Ministry has developed its Strategic Plan 2007 to 2012, which clearly sets out the road map that the country must take in all matters concerning science and technology.

4. The Ministry is finalizing the Science, Technology and Innovations Policy which lays a strong foundation for the achievement of the Vision 2030 and the attainment of the Millennium Development Goals (MDGs).

5. The National Council for Science and Technology---

(Loud consultations)

Mr. Speaker: Order, hon. Members! Mr. Assistant Minister, you are giving a policy statement, when you should be answering a Question! Could you answer the Question?

The Assistant Minister for Science and Technology (Mr. Yattani): Mr. Speaker, Sir, I was asked to give the measures that the Ministry is taking. Basically, those are the measures we are taking.

Prof. Oniang'o: Mr. Speaker, Sir, you can see that this was extracted mainly from the policy statement. Many countries are devoting a lot of resources to science and technology development, right from the primary school level. The National Academy of Science and Technology is virtually the advisory body on science and technology in any country. We have seen that the amounts of money given to it have been reducing over the years until it is at its lowest in the current Budget. Could the Assistant Minister tell us whether truly they realise what the role of the NAST is in national development?

Mr. Yattani: Mr. Speaker, Sir, the Ministry realises this attainment, and that is why we have allocated Kshs200 million towards this end, in addition to other allocations.

Mr. Karaba: Mr. Speaker, Sir, the problem we have in Kenya, particularly with our

country is braindrain--- After the scientists are trained they take off to other countries and capitals in Western Europe and America. What measures is the Ministry taking to ensure that as soon as our scientists are trained, and they have spent a lot of money from our taxpayers, are retained in the country, without them necessarily moving out because of poor pay?

Mr. Yattani: Mr. Speaker, Sir, we realise that the Ministry is new. It is about one-year-and-a-half-old, and we are very busy laying the necessary foundation. That is why we are deeply entrenched in the development of the relevant policies, so that other matters that will come later on will be addressed effectively.

Mr. Billow: Mr. Speaker, Sir, you heard the Assistant Minister make a reference to Vision 2030. That document, or the so-called Vision 2030, is yet to be presented to this House and no hon. Member has ever seen what exactly the Government vision is for the 30 years. The Assistant Minister needs to tell this House, in this Vision 2030 that he has referred to, how much, in terms of resource allocation, the Government plans to invest so that they can realise their vision, which I believe is about industrialisation. How much do they want to invest in the long-term, up to 2030, so that they can realise their vision?

Mr. Yattani: Mr. Speaker, Sir, you realise that Vision 2030 is a multisectoral kind of document, in which the Ministry of Science and Technology has a component. I do not have the exact figure, or the kind of investment the Government is intending to make.

Mr. Bifwoli: Mr. Speaker, Sir, my question to the Assistant Minister is: How much money have they set aside for research?

Mr. Yattani: Mr. Speaker, Sir, we have financial components in quite a number of areas. We have Kshs200 million for research and Kshs4.5 million for the Science Council.

Prof. Oniang'o: Mr. Speaker, Sir, the Assistant Minister mentioned that they are hoping that the NAST will actually stand on its own without Government funding. Could he tell us whether that is the right thing to do if truly they value science and technology for national development?

Mr. Yattani: Mr. Speaker, Sir, as a Ministry, we value the input of not only the Government alone, but also that of the private sector and other non-Governmental Organisations (NGOs). That is why we have set aside a fund of Kshs200 million.

(Hon. Members hissed as Mr. Michuki walked into the Chamber)

Mr. Speaker: Order, hon. Members! I expect hon. Members to maintain dignity and decorum in the House.

(Mr. Mwanicha stood up in his place)

What is it?

Mr. Mwanicha: On a point of order, Mr. Speaker, Sir. The Assistant Minister is referring to a national body in charge of research in this country as an NGO. Is it not embarrassing for the Assistant Minister to make that kind of statement? Is he in order?

Mr. Yattani: Mr. Speaker, Sir, I did not refer to the National Council for Science and Technology as an NGO. What I said is that we have set aside an amount of money, and we are also appealing to NGOs and the private sector so that it becomes a collaborative effort.

Question No.339

ELEVATION OF KISII CAMPUS TO

FULL UNIVERSITY STATUS

Mr. Omingo asked the Minister for Education what the current position is with regard to elevating Kisii Campus into a fully-fledged university.

The Assistant Minister for Education (Dr. Mwiria): Mr. Speaker, Sir, I beg to reply.

The Ministry of Education has no immediate plans to make Kisii Campus a fully-fledged university. However, Kisii Campus has been upgraded to a constituent college of Egerton University. It will be considered for upgrading to a university when it acquires the necessary infrastructure. So, there will be no problem with upgrading it, but not immediately, as long as we have the right infrastructure.

Mr. Omingo: Mr. Speaker, Sir, the Assistant Minister has read a different answer from what I have, because in my answer he says that the Ministry "has no plan". But in his answer he says "no immediate plans", which means plans are in the future.

Mr. Speaker, Sir, when His Excellency the President visited the larger Kisii sometime---

Mr. Speaker: Order, Mr. Omingo! You know that you are out of order! Do you not?

Mr. Omingo: No! Why?

Mr. Speaker: Order! Those who do not know up to now why a Backbencher should not use the name of the President as an authority for what they state, I think they require a little tutorial from the hon. Member next to them.

Mr. Omingo: Mr. Speaker, Sir, the Government, through its Chief Executive, made a declaration when that visit was made in the larger Kisii. The Government was actually planning to elevate this institution to a fully-fledged university. What has actually changed from that time to today?

*(Mrs. Tett, Ms. Mbarire and Mrs. Chelaite
stood up in their places)*

Mr. Mwanicha: Too much movement!

Mr. Speaker: Order, hon. Members! Hon. Members, you know the rules! The Standing Orders stipulate that when an hon. Member is in the House, that hon. Member must remain seated unless they are transiting! "Transiting" means being mobile!

Proceed, Mr. Omingo!

Dr. Mwiria: Mr. Speaker, Sir, yes, there was a decision made in the Cabinet to upgrade this institution to a constituent college of the Egerton University. This is always a first step. I would also like to tell the hon. Member that, as a matter of fact, the President cannot declare an institution a university. However, according to the Act of 1997, the President may, after consultation with the Council, by an order published in the Gazette, establish a college as a constituent college of a university, declare an institution of learning, or of higher learning, or any other training establishment to be a constituent college of a university. Beyond that, it has to be an Act of Parliament that would make an institution a university.

Mr. Muriithi: Mr. Speaker, Sir, two weeks ago we had a Question relating to university colleges, and those that are mushrooming in this country, where parents are losing money, and their children wasting four years, before the Assistant Minister realises that an institution is an illegal university. What we are asking here is the upgrading of what is already legal. He should tell us now when is he going to upgrade all constituent colleges in the country to allow our children to study locally rather than go overseas.

Dr. Mwiria: Mr. Speaker, Sir, we have already explained that up to eight colleges are being upgraded to constituent colleges. They will admit our children. You do not have to be a fully-fledged university to begin to admit students. You can be a constituent college and that is

happening. However, we will go to the next step of upgrading more of these institutions to university status. As of now, we are still accommodating more students.

Mr. Mwanicha: Mr. Speaker, Sir, I wish to thank the Assistant Minister for that upgrading to a constituent college. However, he states that it will be elevated to a fully-fledged university when it acquires the necessary infrastructure.

Could he tell the House what "necessary infrastructure" means, and how much money has been set aside for this university college?

Dr. Mwiria: Mr. Speaker, Sir, the infrastructure that we require for an institution like one that includes among other things, good roads. Already, the road to the institution is not motorable. It is a very difficult place to get to.

Secondly, in terms of land, they have only 40 acres of land. The community is not willing to release it to the institution, so that it could have a title deed. So, there is already a problem, even to get that land allocated to the institution. There are other physical facilities. Water is also a problem to the extent that it is being rationed.

Mr. Speaker, Sir, in view of that, it is impossible for the university to accommodate more than the 400 students that are already accommodated. Some of the possibilities would be to acquire Gusii Training Institute (GTI), the Kenya Agricultural Research Institute (KARI), the Ministry of Roads and Public Works Training Institute, private land and institutions that can be taken over with the consent of the public. But, more importantly, we need to ensure that we have adequate land and infrastructure.

[Mr. Speaker left the Chair]

*[The Temporary Deputy Speaker
(Mr. M'Mukindia) took the Chair]*

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

The Temporary Deputy Speaker (Mr. M'Mukindia): What is your point of order?

Mr. Manoti: Mr. Temporary Deputy Speaker, Sir, my point of order is this: Mr. Mwanicha asked the Assistant Minister to state how much money has been set aside for that university. He has not told us. Am I in order to ask him to tell us?

Dr. Mwiria: Mr. Temporary Deputy Speaker, Sir, the hon. Member did not hear what Mr. Mwanicha asked. He asked: What infrastructure is required? He asked me to define the infrastructure and not the amount of money that is required.

Mr. Mwanicha: On a point of order, Mr. Temporary Deputy Speaker, Sir. I asked for the amount of money!

Dr. Mwiria: Mr. Temporary Deputy Speaker, Sir, the amount of money set aside for that institution, given that it is only a constituent college, is only part of the budget for Egerton University. There is no money for that institution on its own. But Egerton University has money to run programmes within itself, and where it has constituent colleges. It is the budget of the university that we are looking at.

Mr. Karaba: Mr. Temporary Deputy Speaker, Sir, what will happen to some of the colleges that have been very useful to our education system, but have been taken up by universities?

Is the Ministry ready to contract or even upgrade others to take the place of those ones! Kenya Science Teachers College (KSTC), for example, is almost being upgraded to the level of a university. What will happen to the status of that college?

*[The Temporary Deputy Speaker
(Mr. M'Mukindia) left the Chair]*

[Mr. Speaker resumed the Chair]

Dr. Mwiria: Mr. Speaker, Sir, I agree with the hon. Member. As we produce high-level manpower at the degree level, we need to take care of the technicians who have the kind of education that is useful to support our doctors, engineers and so on. Our policy now is to insist that institutions that have been upgraded continue to offer certificate and diploma courses, in addition to the degree courses. The point is well taken. I want to assure the hon. Member that, among other things, we support the strengthening of middle-level colleges as opposed to their being abolished or taken over altogether.

Mr. Mwandawiro: Bw. Spika, karibu miji yote mikubwa ya Kenya ina chuo kikuu ndani yake ama karibu sana. Je, mji wa Mombasa umekosa kitu gani mpaka sasa hakuna chuo kikuu? Ni mpango gani ambao umefanywa kuanzisha chuo kikuu Mombasa mara moja?

Dr. Mwiria: Mr. Speaker, Sir, Mombasa has benefited from the two constituent colleges that have been upgraded. So, it is not true to say that Mombasa has nothing. The people of Mombasa are very loyal to this Government. So, this Government would have no reason not to have an institution---

Mr. Mwandawiro: Jambo la nidhamu, Bw. Spika. Nimeuliza kuhusu chuo kikuu, na siyo sehemu ya chuo kikuu!

Dr. Mwiria: Mr. Speaker, Sir, the law applies to Mombasa like it applies to Kisii. We said that for Kisii, they have to start as a constituent college. I do not know why Mombasa would like to hop, step and jump and start with a university before they have a constituent college!

Mr. Speaker: Last question, Mr. Omingo!

Mr. Omingo: Mr. Speaker, Sir, the Assistant Minister, who is a scholar---

(Loud consultations)

Mr. Speaker: Order, hon. Members! Order! Hon. Members, we cannot continue this way! We are not communicating! Those who want to consult, please, by all means, do it quietly!

Proceed, Mr. Omingo!

Mr. Omingo: Mr. Speaker, Sir, the Assistant Minister is a scholar. The question that he answered earlier was almost flat like nothing is happening. But now, he is saying that there are no immediate plans, but plans for the future! Of course, he knows that to move on, there must be some machinery to move that programme forward, including establishing a committee that is going to move that programme forward. When is he going to constitute that committee to bring a Bill to this House, so that the people of Kisii do not suffer travelling that long distance to the college headquarters, which are not within the campus?

Dr. Mwiria: Mr. Speaker, Sir, first, I would like to remind the hon. Member that to become a constituent college, it is not a college for the Kisiis. A college is not being set up so that Kisiis do not travel long distances to a university. It is a national institution.

Secondly, Egerton University must have already set up a committee to ensure that, that institution becomes a university whenever the infrastructure is available.

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

Mr. Speaker: What is it?

Mr. Salat: Mr. Speaker, Sir, when the Assistant Minister was replying to the question by Mr. Mwandawiro, he said that the people of Mombasa are loyal to the Government. Do we have to be loyal to have universities in Kenya?

(Applause)

Mr. Speaker: Order! Just before Dr. Mwiria replies, I would like to take the question further: Which Kenyans are disloyal to Kenya?

(Applause)

Dr. Mwiria: Mr. Speaker, Sir, I think you need to ask why is it that I responded that way. It is because the hon. Member asked: What have the people of Mombasa done to this Government? I was merely saying that there is nothing that they have done to deserve nothing better than what they have got!

Mr. Speaker: Thank you! Next Question by Eng. Okundi!

Question No.442

COMPENSATION OF VICTIMS
OF POWER SURGES BY KPLC

Eng. Okundi asked the Minister for Energy:-

(a) whether he is aware that on the night of 27th November, 2006, a major fire outbreak occasioned by electric surge following a power blackout occurred on Plot No.1432/42 in Homa Bay Municipality causing extensive damage to property;

(b) whether he is further aware that the victims have not been compensated despite their application to Kenya Power and Lighting Company Limited on 19th February, 2007; and,

(c) what action he has taken to ensure that the victims are compensated and to deal with frequent power surges and blackouts in Homa Bay Town and its environs.

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

(a) Yes, I am aware that on 27th November, 2006, a report was received by the Kenya Power and Lighting Company, Emergency Services, on the incident that had occurred on Plot No.1432/42 in Homa Bay causing extensive damage to property. The Emergency Services promptly responded by visiting the site and disconnecting the supply cables for safety purposes. However, the damage caused by the fire was very extensive and, therefore, it was not possible to conclusively determine the cause immediately.

(b) Yes, I am further aware that the victims have not been compensated despite their application to the Kenya Power and Lighting Company on 19th February, 2007, on the same. However, I would like to point out that due to the nature of the incident, the case is being investigated by the Legal Department of the company and their insurers in order to establish the cause. I am, therefore, unable to promise any compensation at this juncture as investigations are still in progress. Any claims for compensation, therefore, will be dependent on the outcome of the said investigations.

(c) The reliability of supply has significantly been affected by the ongoing rapid expansion of the distribution network under the Rural Electrification Programme (REP). Currently, the entire area is being served by an over-stretched 33-KV network covering more than 800 kilometres, which has resulted in poor quality of supply. In order to improve the quality of supply to Homa Bay and its environs, a number of reinforcement schemes are currently in various stages of implementation. Those measures include the construction of a 132-KV transmission line from

Chemosit to Kisii Town and associated transformer capacity scheduled for commissioning by September, 2008.

Mr. Speaker, Sir, it is my hope that completion and commissioning of the new 33-KV high voltage line, by September 2007, currently under construction, will go a long way in somewhat to improve the reliability for electricity supply in this area, until the Chemosit to Kisii Town line is completed.

The Minister for Trade and Industry (Dr. Kituyi): On a point of order, Mr. Speaker, Sir. Pardon my ignorance that is coming out of the wrong sciences. The hon. Engineer is asking a question about an electricity surge occasioned by power black-outs. I know about power black-outs occasioned by power surges. How can a black-out occasion a surge?

(Laughter)

Mr. Speaker: I am also, in fact, in the dark.

Order, hon. Members! Order! Order! Nevertheless, Mr. Minister, there seems to be an understanding, or, at least, some communication, between Eng. Okundi and Mr. Kiunjuri. How they communicate in that regard, is beyond my comprehension!

Do you have any further questions?

Eng. Okundi: Thank you, Mr. Speaker, Sir. With regard to the interjection by the hon. Minister of Trade and Industry, I will tell him about the whole idea of electricity black-outs. There are things which he may not understand because he comes from another trade.

First, I would like to thank the Assistant Minister for a very comprehensive answer, but I want to know when investigations will be completed so that compensation can go to the people in our poor rural towns.

Secondly, the Assistant Minister has said that the commissioning of a transformer for Chemosit to Kisii line will be done in September, 2008. He is also saying that the same thing will take place in 2007. So, which is which? I would prefer if it would be done in 2007, and done strategically.

Mr. Kiunjuri: Mr. Speaker, Sir, we have to wait until the investigations are completed. I do not know when the investigations will be completed. Secondly, I talked about 33-KV lines and 132-KV lines. The 132-KV line is the one that is already under construction.

Mr. Bahari: Thank you, Mr. Speaker, Sir. This incident happened in 27th November, 2006. This is August, 2007. Could the Assistant Minister tell us what the missing link is? What does he need to do to ensure that these families are compensated because these investigations have taken inordinately too long?

Mr. Kiunjuri: Mr. Speaker, Sir, the investigations are being carried out by the Kenya Power and Lighting Company (KPLC) and the insurers. Therefore, there is no way we can speed up the process on the side of the insurers.

Mr. Maore: Mr. Speaker, Sir, could the Assistant Minister give a preliminary indication as to the direction of the investigations? In most cases, the KPLC's nature of investigations leads to how it can dodge compensations.

Is the Assistant Minister satisfied that they should be allowed to carry out investigations on their own, or if they should involve the police?

Mr. Kiunjuri: Mr. Speaker, Sir, as you heard, the hon. Member already has a formed opinion that KPLC will not compensate the victims. I would like to say that investigations are under way. I am sorry for the delays but we will ensure that we speed up the investigations.

Mr. M'Mukindia: Mr. Speaker, Sir, the KPLC is a party to a contract between itself and its consumers. In all cases, where there have been surges, short-circuiting, black-outs and damages of refrigerators and cookers, among other things, at no time has the KPLC compensated the

consumers. Could the Assistant Minister tell this House and Kenyans what exactly is the policy? Why does the KPLC ignore its contractual obligation for not supplying power required at whatever voltage, outage or wattage to ensure that equipment of any nature, whether at home or in the factories is not damaged? How soon can consumers be compensated?

Mr. Kiunjuri: Mr. Speaker, Sir, where there is a contract, there must be laws which govern it. The issue is very clear. There is a law that must be followed to make sure that the KPLC compensates if one is able to prove that they were liable.

Eng. Okundi: Mr. Speaker, Sir, this is a very serious matter, indeed. A whole building was burnt down with properties belonging to five shops. The owners took this very seriously. I would like to appeal to the Assistant Minister to speed up the outcome of this. I know very well that if he leaves the issue the way he answered it, we may not get anywhere for sometime to come.

Mr. Kiunjuri: Mr. Speaker, Sir, the appeal is highly considered.

Question No.447

REHABILITATION OF QUARRIES AFTER
EXCAVATION FOR MURRAM

Mr. Mwanicha asked the Minister for Environment and Natural Resources:-

(a) whether he is aware that excavation for murrum during road construction works in many parts of the country has resulted into ponds of stagnant water where mosquitoes breed leading to cases of malaria;

(b) whether he is further aware that several people have drowned in such ponds; and,

(c) what plans he has to ensure that quarries are rehabilitated after excavation has been concluded to address the above problems.

Mr. Speaker: Where is the Minister for Environment and Natural Resources? Sorry, this Question has been re-directed to the Ministry of Roads and Public Works. That was done on 1st August, and today is 15th August. I do not know if the Ministry is ready. Could I give them a chance and see if they will reply to it next week? We will come back to that Question next week.

(Question deferred)

Mr. Mwanicha: On a point of order, Mr. Speaker, Sir. While I agree that the Minister for Roads and Public Works can answer this Question with respect to the excavations for murrum that will be done in the future, those that have been done in the past are already an environmental disaster. They are pools of water with mosquitoes. Those are environmental hazards. Maybe the Minister for Finance could answer this Question.

Mr. Speaker: Order! Order, hon. Members! We cannot continue that way. Hon. Members should listen to the proceedings of the House. As I said in the past, the Chair should not be called upon all the time to shout for order. It is a strenuous job and you know very well that you have not insured the Chair's voice. So, please, respect the Chair's voice as well. I appreciate the issues raised by hon. Mwanicha, that there are some aspects that deal with construction of roads, matters of environment and health. I presume that the relevant Ministry, the Ministry of Roads and Public Works, when coming to answer this Question will consult the other related Ministries in order to give a proper reply. I do not know what the Minister for Roads and Public Works has to say about that.

The Minister for Roads and Public Works (Mr. Nyachae): Mr. Speaker, Sir, I think the Question is very valid but we have to accept that all along, contracts with contractors on road construction have been that when they get a quarry, at the end of the construction, they should

cover it so that there is no problem of water stagnating in the quarry. Now, there were many omissions over many years and we have several dams of that kind. So, the issue is not only for the Ministry of Environment and Natural Resources, it is also our issue in the Ministry.

We are now going to ensure that, in the new contracts, final payments will not be done before the quarries are covered by the contractor. It is upon us and the Ministry of Environment and Natural Resources, which has given us an opinion, to raise funds to cover the areas which are having a lot of water. In some places like Kikuyu area, there is a dam there which was an excavation area and now it is so huge that even people are dying there. So, we are taking the necessary action and I would plead with the House that since we are aware that we have a historical problem, we must be given time to handle it.

Mr. Speaker: Order, hon. Members! I want to congratulate the Minister for, in effect, answering this Question before it has reached him. Do I take it that you are now answering it so that I allow supplementary questions?

Mr. Maore: On a point of order, Mr. Speaker, Sir. I think the problem we are facing here is not comprehending the contents of the Question as a House. The issue of environmental management where it is done in the United States of America (USA) or in the coal mines, they have the issue of mine-stripping. It is an environmental problem and not a public works problem.

When they do have the impact assessments for those quarries, they should allow for their covering up after they have been used and not for the Ministry of Roads and Public Works.

Mr. Speaker: When a Question is directed to a Ministry and the Ministry is scared of it and then it goes to another Ministry which is brave enough to answer it, the Chair is prepared to have the Question answered.

The Minister for Roads and Public Works (Mr. Nyachae): Mr. Speaker, Sir, Mr. Maore is a Member of a Committee which deals with roads. So, he understands what I am talking about. He must also appreciate that we are talking about a historical problem. This is not a recent matter.

Today, any contract that is advertised, the consultant, our own engineers and the environmental advisors are consulted and we agree on how to advertise. There is no dam or excavation which can be done in an area that the environmental authority has not approved. So, the problem is being prevented but we must remember that the old one, which is now a menace, must be dealt with separately.

Mr. Speaker: Mr. Mwanicha, I take it that, that Question has been answered.

Mr. Mwanicha: Mr. Speaker, Sir, I just want to congratulate the Minister on the way he has handled the Question, although it was impromptu. I must say that I am satisfied and if you wish to give hon. Members an opportunity for supplementary questions, I have no objection.

Mr. Bifwoli: Mr. Speaker, Sir, now that the Minister he has admitted that they have dug holes all over the country and people and animals are falling in and dying, does he have plans to compensate those who have died or made lame by the mushrooming holes?

The Minister for Roads and Public Works (Mr. Nyachae): Mr. Speaker, Sir, I will not indulge in the issue of compensation because this is a contractor's fault. It is difficult to trace those contractors. Some of them have gone out of the country. Some were actually expatriate contractors. So, it is not possible to trace them. If anybody wants to go to court and seek compensation, litigation can go on, but for me, as a Minister, I cannot guarantee the issue of compensation.

Mr. Speaker: Hon. Members, that is the end of Question Time!

POINT OF ORDER

INTIMIDATION OF HON. MEMBERS
BY ACTIVISTS ON WOMEN'S ISSUES

The Assistant Minister for Water and Irrigation (Mr. Wanjala): On a point of order, Mr. Speaker, Sir. I have just come in and at the gate there are several ladies who are really intimidating Members of Parliament when they are coming in the House.

Usually when men are attacked in public by women they tend to shy off. We are trying to shy off but we are being provoked beyond control. If you enter they call you all sorts of names, telling you how to vote. The Chair should address that issue. That is why most hon. Members have not come in because the gate is even blocked!

Mr. Speaker: I presume you are talking about strangers. No stranger is allowed to prevent a Member of Parliament from accessing the House. That is in accordance with the Powers and Privileges Act and it is a criminal offence to do so.

It is also a criminal offence under the same Act to intimidate a Member of Parliament either to vote or to abstain from voting or to vote one way or the other. The Chair will ensure that, that does not happen.

Lobbying to Members of Parliament is legitimate but it must be done in a civil and honourable way. That is how it should be. I hope that the ruling from here is communicated to those strangers and that they do obey my instructions. If they do not, I am afraid, I will have to do the needful and I hope I do not have to do it.

The Assistant Minister for Housing (Mrs. Tett): On a point of order, Mr. Speaker, Sir. I have just passed through that gate and the women are very peaceful---

(Loud consultations)

Mr. Speaker: Order! Order, hon. Members! Will you sit down? I am the Speaker and I have given her my authority to speak and I will ensure that she does so. Will you proceed to speak?

The Assistant Minister for Housing (Mrs. Tett): On a point of order, Mr. Speaker, Sir. It is not women who intimidate people, but it is men who do so. You have just seen how they have intimidated women here!

Hon. Members: No! On a point of order, Mr. Speaker, Sir!

Mr. Speaker: Order, all of you! Order, hon. Members! I said she would speak and she will speak! Any hon. Member rising on his feet, particularly a male Member, before she has completed, will be dealt with by the Chair!

Proceed!

(Laughter)

The Assistant Minister for Housing (Mrs. Tett): Thank you, Mr. Speaker, Sir, for protecting me. As I was saying before I was rudely interrupted, women out there, are there for a purpose. They are very peaceful. They know that this Bill is coming today and they are crying to their male counterparts to support it. What is the problem with that? What is the problem with us crying? There is no problem. They are not intimidating us.

Mr. Speaker: Order! We might be getting into what is on the Order Paper immediately after this and I think the hon. Members will do that. I appreciate her facts and I will take her sentiments to be right. If they are crying, they must cry in such a way that they do not disrupt the business of the House.

(Laughter)

MINISTERIAL STATEMENT

MURDER OF KENYAN FAMILY IN THE USA

The Assistant Minister for Foreign Affairs (Mr. Wetangula): Thank you, Mr. Speaker, Sir. Yesterday, the hon. Kabogo, MP for Juja, asked my Ministry to issue a Ministerial Statement regarding the murder of three Kenyans in the United States of America (USA).

Mr. Speaker, Sir, on 30th July, 2007, three Kenyan nationals namely, Mrs. Jane Kuria and her two daughters, Isabel and Annabel, were brutally murdered by unknown assailants in Atlanta, Georgia. Two other Kenyans; P.K. Thande and Jeremy Thuita survived the attack and were hospitalised in critical condition. Mr. Jeremy Thuita has since been released from hospital and Mr. Thande just left the Intensive Care Unit (ICU) and is still in hospital.

Mr. Speaker, Sir, on learning of the attack, my Ministry instructed our Ambassador in Washington to go to Atlanta and find out what had happened. On arrival, the Ambassador consoled the family of the deceased. He met the law enforcement authorities of Atlanta and held discussion with the Commissioner of Dodd County where the murders took place. He also met the lead investigators of the case for an update on investigations. He also visited the surviving victims of the attack and met Kenyans numbering up to 300 who live in Atlanta on the issue.

Mr. Speaker, Sir, I want to commend the Kenyan community in Atlanta that immediately after the attack, together with the Ambassador who visited them, were able to come together and raise US\$65,000 that has been used to transport the bodies back to Kenya. The embassy is pursuing the matter with the relevant county and the US authorities. The surviving victims of the attack have been given police protection as they try to recover from the brutal attack. The bodies of the lady and her two daughters have been brought to Kenya for burial.

Mr. Speaker, Sir, we are engaged with the US Government to ensure that proper and thorough investigations are carried out. If the perpetrators are caught, they will be brought to book. If we get any further information, we will be able to communicate to the hon. Member who asked for the statement and to the family. On behalf of the Ministry and the Government, we want to send our condolences to the family of the three ladies.

Thank you, Mr. Speaker, Sir.

Mr. Gitau: Mr. Speaker, Sir, I would like to thank the Assistant Minister because if you can remember, he said yesterday that he would issue this Ministerial Statement next week. I thank him for finding time to issue it today.

However, from 30th July to today, it is 16 days. We know that the Federal Bureau of Investigations (FBI), especially when they are looking for Kenyan terrorists, it takes them three to four days to find out where these suspects are. Why is it taking so long for the American Government, which is a superpower of this world, to unravel these murders?

(Applause)

Mr. Speaker, Sir, I did indicate that the Ministry should actually give notice to foreigners, especially Kenyans in America that they are not safe there at all. Could he undertake to tell the House and Kenyans in general what exactly happened to the family of the late Kuria?

Mr. Ahenda: Mr. Speaker, Sir, could the Assistant Minister inform this House whether there is any foreign policy regarding Kenyans in the diaspora to register at the embassy stating whatever they are doing in those countries like business, studying and so on and so forth? The ambassador and embassy staff should be aware of what they are involved in.

Ms. Ndung'u: Mr. Speaker, Sir, it appears that there are very many Kenyan criminals in the USA.

Hon. Members: What?

Ms. Ndung'u: Mr. Speaker, Sir, according to reports in the newspapers, there are Kenyans who have been arrested and charged with crimes in USA. We also have now Kenyans who are

victims of crime and the number is increasing. There are Kenyans in prisons. Is the Assistant Minister able to liaise with a specific officer in our Embassy in Washington DC who deals with the safety of Kenyans and also be able to track the Kenyans who are in jail?

Mr. Ndolo: Mr. Speaker, Sir, the Assistant Minister has informed this House that Kenyans in Atlanta raised more than US\$65,000. However, we have many Kenyans who have stayed there for many years whose families lack money for them to be brought back home once they die there. Could he inform the House what the Government is doing to make sure that such a thing does not happen again for such Kenyans? Just a few weeks ago, an athlete who had been there for more than 15 years died and his body could not be brought back for burial due to lack of money. What is the Government doing to ensure that such things do not happen again?

The Assistant Minister for Foreign Affairs (Mr. Wetangula): Mr. Speaker, Sir, with regard to what hon. Gitau asked, 15 days is not too long for investigations of such a homicide. As I said, investigations are ongoing. Our embassy is involved and we will be updated as the investigations go on.

Regarding the registration of Kenyans outside the country, you will bear me witness that we have said here many times before that Kenyans are advised when they go out of the country, to record with my Ministry which has a desk, if they wish. When they go to countries where we have missions, the first point of call, should be the Kenyan Mission to know that they are in that country. I also understand that in a country as vast as the United States of America (USA), where we have one Mission in Washington DC, one Mission in New York and a Consulate in Elee, it may be difficult for Kenyans to traverse to those areas to register, but all our Missions are also on the website. Kenyans, who wish to register, can still do so.

Mr. Nderitu: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order in trying to term the USA worse than the Third World countries, when the internet is available, but Kenyans cannot register wherever they are?

Mr. Speaker: Order! That is your opinion! You are entitled to that opinion. The Assistant Minister is, certainly, entitled to his opinion.

Proceed, Mr. Wetangula!

The Assistant Minister for Foreign Affairs (Mr. Wetangula): Mr. Speaker, Sir, I was not even giving an opinion. I was factual.

As to what Ms. Ndung'u said, again, in a foreign jurisdiction, it is difficult for our Mission, or Government, to guarantee the security and safety of people who live there. The best we can do is to liaise with the countries where we have good relations, so that the safety of our people is guaranteed, as we also guarantee the security of other nationals who live here.

Mr. Speaker, Sir, on what Mr. Ndolo asked, whenever Kenyans die outside the country, it is normally up to their families to arrange to bring the bodies back home for disposal. In the case of Mrs. Kuria, it is the Kenyans in Atlanta who raised the US\$65,000. The Government was not involved in the fundraising. Where there are cases of total distress, and our Ministry is notified, then we find ways and means of assisting. This can only be on a case-to-case basis. It cannot be a Government policy to transport bodies from outside the country back home.

Mr. Speaker: Hon. Members, that brings us to the end of matters other than business.

COMMUNICATION FROM THE CHAIR

VOTING ON CONSTITUTIONAL BILL
REQUIRES SPECIFIC NUMBER
OF MEMBERS TO BE PRESENT

Mr. Speaker: Hon. Members, before we go to the next business, I would just like to give

guidance on what is the requirement on a Bill to amend the Constitution. You will find the provisions of Section 47 of the Constitution useful in order for this honourable House to understand what is required of us.

To amend the Constitution of Kenya, according to Section 47, the House requires, on the Second Reading and the Third Reading, 65 per cent of the Members to be present before I call for a Division. Sixty-five per cent of the Membership of this House is 144.3 Members. I am aware that we do not have a decimal Member and, therefore, this being a constitutional issue, instead of going to the next whole number - in ordinary circumstances, in this case, I would go to 144 Members - I will go one notch higher, to 145 Members. That is the requisite number required to be present at the time of putting the Question on the Second Reading and the Third Reading.

Hon. Members, if that number is not present during the Second Reading, then, under Standing Order No.165, I will decline to put the Question and the matter will lapse. However, if we have 145 Members present, and upon a Division we do not acquire the requisite majority of 145 Members, and at the same time, if 35 per cent of the Membership of this House, which is 77 Members, vote "No", the Question will be deemed to have been negated. That means it fails. However, if less than 35 per cent of the Membership of this House vote "No" but we do not, again, acquire the "Yes" vote of 145 Members, I am allowed by the Constitution and the Standing Orders to call for another vote within seven days.

So, you must understand the following: First, 65 per cent is the magical figure. You must attain the number of 145 Members for me to be able to put the Question. If you attain that figure and 77 Members vote "No", and the ones who vote "Yes" are not 145 Members, then the Question will be negated. However, if less than 77 Members vote "No", and you do not attain the 145 Members, I will direct that another vote be taken on a subsequent date, but there must be the requisite quorum on the Second Reading and Third Reading of 145 Members, excluding the *ex-officio* Members present and sitting in this Chamber. Do you understand?

Hon. Members: Yes!

Mr. Speaker: Very good!

Mr. Angwenyi: On a point of order, Mr. Speaker, Sir. Did you say "present and sitting" or 145 Members of the entire House?

Mr. Speaker: Order! I have, in fact, made the work easy for you. I have done the calculations. I have told you that you are 222 Members of this House, excluding the *ex-officio* Members. Sixty-five per cent of 222 Members is 144.3 Members. I have upgraded the decimal three to the next whole number [**Mr. Speaker**] to be 145 Members. I hope everybody now understands.

The Assistant Minister for Education (Dr. Mwiria): On a point of order, Mr. Speaker, Sir. You round the decimal three to the nearest whole number. In this case, the nearest whole number is not 145 Members but 144 Members.

Mr. Speaker: Order! Order! Dr. Mwiria, I did say that this is a constitutional matter. Constitutional matters are weighty. In constitutional matters, you go up, and not down!

(Laughter)

Next Order!

PROCEDURAL MOTION

EXTENSION OF HOUSE SITTINGS

The Vice-President and Minister for Home Affairs (Mr. Awori): Mr. Speaker, Sir, I beg

to move the following Procedural Motion:-

THAT, notwithstanding the provisions of Standing Order No. 17(2), this House orders that the sitting hours of the House on Wednesday 15th August, 2007 (afternoon sitting) and Thursday 16th August, 2007 be extended until the Business in the Order Paper for both days is concluded.

Mr. Speaker: What happens if we do not?

The Vice-President and Minister for Home Affairs (Mr. Awori): Mr. Speaker, Sir, we will just have to continue until we conclude.

Mr. Speaker, Sir, the matters on the Order Paper are, as you said, very weighty. We will need two stages. The first stage is the Second Reading of the Bill. If it is properly concluded, then we will go to the Committee of the whole House. The intention is to have this Bill concluded today.

(Loud consultations)

Mr. Speaker: Order, Members! Order! Order! The Vice-President and Minister for Home Affairs is moving, in fact, what is a Procedural Motion; but one with ramifications to the Business of the House. I think it is right and proper that every Member listens to what he says! So, please, consult quietly.

Proceed, your Excellency!

The Vice-President and Minister for Home Affairs (Mr. Awori): Thank you, Mr. Speaker, Sir. As I was saying, this is a Procedural Motion. We intend, if all goes well, to go through two stages. The first being the Second Reading where we expect a lot of contributions from hon. Members.

Mr. Speaker, Sir, if we go through the Second Stage, we will go to the Third Reading, which is the Committee of the whole House. We are anxious that we do complete the matters today.

Mr. Speaker, Sir, if everything goes according to plan, tomorrow, we will be putting matters which are very weighty on the Order Paper. Rather than my standing here again tomorrow on Motion No. 7, I am seeking the indulgence of the House that I see the extension for both today and tomorrow.

With those few remarks, I beg to move.

Mr. Speaker: Anybody Seconding.

The Minister of State for Administration and National Security (Mr. Michuki): Seconded.

(Question proposed)

Mr. Speaker: I must warn the House that, as you make this decision, today continues until midnight. So, you will not go one minute past midnight, even if you have not concluded your Business. So, you must understand that way. Shall I then put the Question now?

Hon. Members: Yes!

(Question put and negatived)

(Loud consultations)

Mr. Speaker: Next Order! Order, Members! There will be order in the House. You know that, if you do not keep order, I will begin expelling you one by one, and you will not vote on this issue. So, please, keep order. Otherwise, you would see the outside of this House!

Proceed! Next Order!

BILLS

First Reading

THE PREVENTION OF ORGANIZED CRIME BILL

*(Order for First Reading read - Read the
First Time and ordered to be
referred to the relevant
Departmental Committee)*

Second Reading

THE CONSTITUTION OF KENYA (AMENDMENT) BILL

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Speaker, Sir, I beg to move that the Constitution of Kenya (Amendment) Bill be now read a Second Time.

Mr. Speaker, Sir, this Bill seeks to amend Sections 33 and 42 of the Constitution. Section 42 Sub-section 4 of the Constitution states that:-

"At intervals of not less than eight and not more than ten years, and whenever directed by an Act of Parliament, the Electoral Commission shall review the number, the boundaries and the names of the constituencies into which Kenya is divided, and may, by order, alter the number, the boundaries or the names, subject to and in accordance with this section, to the extent that it considers desirable in the light of the review".

Mr. Speaker, Sir, constituencies were last reviewed in 1996, when the Electoral Commission added 22 new constituencies. The Constitutional amendment extending or increasing the number of constituencies had been passed way back in 1991. The current Section 42 of the Constitution, Sub-section 2, the upper limit of constituencies is 210. We all know that this House has 210 elected Members. The Electoral Commission, from 2003, 2004 and finishing in 2005, did do its work of looking at the needs of the country in view of the increase in population and other factors and, eventually, did recommend the creation of additional 42 constituencies. The Electoral Commission would not be able to do that unless and until this Parliament amends Section 42 of the Constitution to increase the number of constituencies to enable the review of the constituencies.

The reason why the constituencies need to be reviewed--- I have already stated the increase in the population, the requirement by the Constitution itself and the fact that, our population quotient is the highest in the region, if you compare it to the other two East African countries, where they have lesser population of 25 million and 35 million, respectively, compared to Kenya. They have over 300 Members of Parliament to that population.

Mr. Speaker, Sir, we also know that new districts have been created, which will, as of necessity, affect constituency boundaries and, therefore, necessitating the review of constituencies. By virtue of this constitutional provision, it is not the work of this Parliament to determine, at any one given time, how many constituencies Kenya needs. It is the Electoral Commission of Kenya (ECK) which is solely mandated to review and recommend the number of constituencies. The work of this House is merely to set the lower and the upper limits of the constituencies. That is what we are seeking to do. The task of bringing the proposals to the House falls on the Government

of the day. We are, therefore, fulfilling our mandate by tabling this Bill before the House, which seeks to increase the number of constituencies from the current upper limit of 210 by 40 to 250, thereby setting the lower limit at 210 and the upper limit to 250 constituencies. That will then enable the ECK, according to its own Report, to go ahead and determine how many constituencies we should have before the next General Election.

Mr. Speaker, Sir, I am not able to table the Report of the ECK because by nature, as forwarded to the Government, it is secret. However, I am aware that on 18th November, 2004, the ECK wrote to all registered political parties on this issue. In their Report, a copy of which I will table in this House because it is taken, by virtue of the fact that all of us belong to political parties, that we received this information, the ECK recommended 42 seats. The ECK went back into history that in 1996, 22 new constituencies had been created. According to the ECK, the number of constituencies now needed to increase by 42 to make 250 constituencies.

Mr. Speaker, Sir, it is true that subsequent to this, the ECK made further suggestions for another 17 additional constituencies to be considered. However, I want to emphasise that the actual recommendation was only 42 constituencies. That is the Report that was shared by all political parties, and I wish to table a copy of it.

*(Ms. Karua laid the Report
on the Table)*

Mr. Speaker: Madam Minister, I would like to get the mathematics right. Is 210 plus 42 not 252?

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Speaker, Sir, we had not come to 252 constituencies. The Bill proposes 40 constituencies. So, we are talking of 250 constituencies. To clarify what you have raised, the Government engaged the ECK, and the ECK indicated that it would be satisfied with 40 additional seats. Those are the seats proposed by this legislation.

Mr. Speaker, Sir, as hon. Members are aware, Kenya is a signatory to many international human rights instruments, which recognise, among other things, the human rights of women and their right to participation in Parliament.

Additionally, the opening clause of our Constitution, Section 1(a) clearly states that the Republic of Kenya shall be a multi-party democratic state. Democracy means inclusivity and participation. In line with the policies of the Government, which have been adopted and accepted by this House, the Government has been practising affirmative action to various groups, among them, women. Even the intake in our public universities, there is affirmative action for the girl-child where admission is lowered by one point. For children coming from Arid and Semi-Arid Lands (ASALs), for admission in secondary schools, again, the points are lowered. This is not to suggest that either the girl-child, or children from the marginalised areas are not endowed in a way that they can attain the higher grade. It is just a recognition that they do not have equal access and equal facilities in terms of education.

Mr. Speaker, Sir, in terms of budgetary allocation, our ASAL areas have been given affirmative action by this Government over the last three years to enable them to catch up with the other parts of the country in terms of development. Our bursary funds and the Constituencies Development Fund (CDF) is also allocated on the basis of affirmative action. It is in line with this policy and in recognition of the Government's commitment that it will enable women to increase their representation in Parliament, and this, I am aware is, indeed, in all the constitutions of all the political parties represented in this House.

This Bill seeks to repeal Section 33 of the Constitution, which, as currently constituted, provides for 12 nominated Members of Parliament and to replace it with a new section for specially

elected Members of Parliament. The new proposed Section 33 provides that:

"Subject to this Section, there shall be 50 specially elected Members of National Assembly, who shall be women elected in accordance with this Section."

This is a clause introducing 50 exclusive specially elected seats for women. How shall these women be elected?

Mr. Speaker, Sir, it is clearly indicated that: One, the women so specially elected must be qualified to be nominated for a Parliamentary election. In other words, their qualifications will be equal to those of Members of Parliament who run for elections in the manner that we do. These Members of Parliament will be elected by way of a party list, which is a method recognised in some parts of Africa, like South Africa and in the developed countries, like the Scandinavian countries, the Netherlands and even Germany, by way of proportional representation. It is akin to the current manner in which we nominate the 12 Members of Parliament where the number of votes garnered by each political party becomes the determinant of how the 12 nominated Members of Parliament are apportioned. The only difference is that in this case, each political party participating in elections will give a party list containing 50 names of women and when the elections are over, the ECK will, again, in accordance with the strength of the Parliamentary parties represented in Parliament, apportion to the parties the 50 women and the ECK will be required to go through the list. If, for example, party "X" qualifies for ten Members of Parliament, they will take numbers one to ten. If the next party qualifies for five Members of Parliament, they will take five Members of Parliament. In this case, instead of party leaders giving their nominated Members of Parliament and determining who they are after the election, the parties are forced to bear their intentions to the electorate before the election commences.

The proposed Clause 3 indicates that for purposes of this question, each political party participating in a General Election shall on or before the date of nomination of candidates for the election submit a list of 50 women candidates to the ECK. So, it means that you have to show your list before you nominate. Another criteria is indicated in subclause 4(a) which says the parties will rank the candidates in order of priority. Subclause 4(b) say that it will take into account special interests, including the youth, persons with disabilities and geographical distribution.

Mr. Speaker, Sir, it will be the duty of the Electoral Commission of Kenya (ECK) in the proposed Subclause 5, to ensure that each party complies with this criteria. It means that you cannot take 50 women from your village and lift them into the party list nor can you take them from one province or age group. Women are diverse. Therefore, we have to look for diversity both in terms of character and geographical distribution.

Mr. Speaker, Sir, currently, the 12 nominated Members have since Independence, been picked after general elections. In most cases, without much internal consultation within the parties.

Mr. Speaker, Sir, this new method addresses the threshold and the participatory process in that any party that picks a list that is not credible endangers itself on being rejected during the elections by both voters and its supporters, including its candidates for parliamentary seats. It is, therefore, my humble submission that this method is superior to the current method.

Mr. Speaker, Sir, issues have come up as to why other groups have not been provided for. These two clauses are about elections only. They are not about minimum or maximum reforms. They have a deadline in the sense that the ECK needs to know how it would proceed to elections. It needs to know whether the status quo remains or they proceed to the general elections by creating new constituencies. I am urging hon. Members to support this proposal and to note that in a survey done by the Inter Parliamentary Union (IPU) on the representation of women, Kenya ranks number 42 out of 43 countries in Africa and 107 in the world. Our neighbour Tanzania is leading; it is number 18 with 30.4 per cent of their parliamentarians being women. Uganda comes next with 27.6 per cent. With the recent admission of Rwanda, it is now the leading country in the world with 48.8 per cent of its members of parliament being women.

Mr. Speaker, Sir, this is the time that people must stop paying lip-service to affirmative action, especially with regard to women. People must stand up and be counted. Although most people find it politically-correct to claim that they support affirmative action, anybody who supports affirmative action with "a but" is not sincere. This is a day where those who can stand and be counted with the women of this country will form more than half the population. Anybody who believes in democracy must truly see the need and urgency for the 50 specially elected seats for women. If you look at the total number of parliamentarians proposed by this Bill; 250 plus 50 equals 300. Out of 300, 50 seats is a mere 16.7 per cent.

Mr. Speaker, Sir, other women like myself and other colleagues will come through competitive elections with the rest of Kenyans. That should raise the threshold of the number of women more towards the required one-third. Presently, we stand at 7.1 per cent. It has also been claimed that the proposed Clause 33---

(Loud consultations)

Mr. Speaker: Order, hon. Members! Hon. Members must listen! What are you going to vote on if you do not hear what the Minister is saying?

Hon. Members: We know! We know!

Mr. Speaker: Order, hon. Members! I am afraid, you will have to listen! That is an order, it is not a request!

Madam Minister, please, proceed!

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Speaker, Sir, there are some fears that have been expressed that because the proposed 50 specially elected seats or Clause 33 is exclusively targeting women, it is discriminatory. I want to stand here and say that, that is not the case. Our Constitution clearly states that we are a democratic Republic, a clause that seeks to enhance participation of a large group of the population by a mere threshold of 16.7 per cent cannot be seen to be discriminatory. Studies done all over the world have shown that to increase the number of women in Parliaments, the threshold and move towards gender equality, affirmative action has to be applied.

In interpretation of the Constitution and any other international human right instruments and laws to which Kenya subscribes, leans on the broader side of the interpretation which gives effects to greater rights.

Mr. Speaker, Sir, the other name for affirmative action which have all embraced or said to embrace is actually positive discrimination. It is a discrimination that seeks to bring closer to par the marginalised category.

Mr. Speaker, Sir, we have also had concerns that other marginalised groups should have been considered in this clause. In the world, there are only two genders; the male and female. Whether it is the workers, people with disabilities or special interest groups, they belong to either male or female gender. The proposed Clause 33, clearly says that in compiling the party list, each political party will consider special interests; the young and people with disabilities.

Mr. Speaker, Sir, it is true that all those categories by virtue of this clause will be represented by women. It is now accepted by the General Provisions and Interpretations Act, Cap.2 that the word "man" includes "woman". For this window of opportunity, the 16.7 per cent, the women will carry the interest of whatever groups they belong to. Let for this the "woman" also mean "man".

Mr. Speaker, Sir, it is important that this country recognises the need for affirmative action by passing this legislation. Hon. Members of Parliament will not be doing the womenfolk a favour. They will be doing our country a favour. Inclusion of the participation of women will not only hasten our pace development, but also will unleash the untapped potential of a very large section of

the population. True democrats, true believers in human rights and those who respect their party manifesto and constitutions should rise up and be counted. They should support this Motion. This Motion is for our daughters, sisters and mothers.

Finally, Mr. Speaker, Sir, those who are wondering how the women will be picked and whether they will be rural or urban, just like the men, we live both in rural and urban areas. I represent a rural constituency. So, no hon. Member can claim that they know more about rural women than hon. Members who represent the rural constituencies. Even those who represent town constituencies have their rural homes. So, we all know that we represent both rural and urban. But we also live in the urban area because our Parliament is in the Capital City of Nairobi. So, by description, all hon. Members seated here today are urbanites. They are not rural.

Mr. Speaker, Sir, why do we bring these thresholds when it comes to women? We now start changing goal posts and talking about urban/rural and talking about concerns of how those women shall be picked. I want to answer simply and say that they will be picked the same way you have picked the 12 nominated hon. Members. But this time round, there will be transparency because they will be picked before the elections. The electorate will be able to see how serious each political party is.

Mr. Speaker, Sir, once again, I want to urge the House to take a bi-partisan approach and support this legislation that will not only help to foster development, enhance our democracy and respect for human rights, including the rights of women, but will also make our country more democratic by allowing a greater participation by our womenfolk. I may not go to the historical reasons why women participation in the normal elective politics is difficult.

Mr. Speaker, Sir, may I end by reminding this House that it passed the Affirmative Action Motion on two occasions. It even passed the Gender Commission Motion and I know that some hon. Members who brought those Motions are in this House. We urge each one of them to support this Bill and give a window of opportunity to women participation in this House, and also allow the increase in the number of constituencies.

With those few remarks, I beg to move.

(Applause)

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, I beg to second this very important Bill, which is constitutional.

Mr. Speaker, Sir, this Bill is important. It is in the enactment of this Bill that this august House will be discharging its constitutional responsibility. The rest is only to discharge. As has been stated under Section 42(4), the Electoral Commission of Kenya (ECK) has to review the number of constituencies, boundaries and so on, every eight to ten years. That has to be done and it is due. As hon. Members know, the ECK has done just that.

Mr. Speaker, Sir, fortunately, Mr. Speaker, Sir, in the letter that was addressed to all hon. Members by the ECK on 30th July, 2007, the ECK was very, very clear about the increase in the number of constituencies. It told hon. Members that ECK, on its part, had exhaustively studied the statistics relating to parliamentary representation in the country and combined that with views from fellow Kenyans. It had concluded that parliamentary representation in certain constituencies was unequitable and deserved not only urgent attention - and here I emphasize - but immediate action in order to correct the inequalities. So, here, the ECK, after discharging its constitutional responsibility conferred on it under Section 44, has reviewed the number and boundaries of constituencies and is telling this House that urgent and immediate action is required in order to take deep-effect that review.

Therefore, having reached the maximum of 210 constituencies, this Bill is to give effect to the review that has been undertaken by ECK and, therefore, we will be failing in our constitutional responsibilities if we do not enact this Bill to give effect to the review

that has been undertaken by ECK. The ECK is saying that, that is immediate and urgent.

Mr. Speaker, Sir, it is immediate and urgent because, as the ECK, itself, has stated, this Bill should have been passed in November, 2006. They, then, said that it must be passed by the deadline of July 31st, 2007. Therefore, even more forcefully, it is necessary that this Bill should be passed now in the discharge of the constitutional mandate that this House has under our Constitution.

Mr. Marende: On a point of order, Mr. Speaker, Sir. Is the Attorney-General in order to mislead this House that the Bill that he is now seconding is giving effect to the recommendations of ECK, when there is nowhere in that Report by ECK that the Commission recommends the creation of 50 constituencies specially for women? Is he in order?

(Applause)

Mr. Speaker: Order! Order! Order! As I understand, there are two major intended amendments to be introduced to the Constitution. The first is to enlarge the constituencies, and the second is on the affirmative action. So, on the first wing, he is absolutely right!

Proceed!

The Attorney-General (Mr. Wako): Thank you, Mr. Speaker, Sir. Read the Constitution carefully.

Mr. Speaker, Sir, let me just repeat that the increase in the number of constituencies is long overdue and very, very urgent. In fact, it is extremely urgent in view of the fact that, our five-year period is about to end.

Mr. Speaker, Sir, coming now to the issue of the affirmative action--

Mr. Raila: On a point of order, Mr. Speaker, Sir. Is the Attorney-General in order to mislead the House that this Bill is actually based on the recommendations of ECK, when the ECK has recommended the increase of constituencies by 43. This Bill is talking about 40 constituencies? Is he in order?

(Applause)

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, this Bill is to give space to implement those recommendations.

Mr. Speaker, Sir, the issue of affirmative action has been debated in this country for a very long time. This august House may recall that under the Constitutional Review, the Constitution of Kenya Review Commission recommended affirmative action. Likewise, the Bomas Draft and Wako Draft recommended affirmative action.

Mr. Angwenyi: On a point of order, Mr. Speaker, Sir. Is the Attorney-General in order to quote the Bomas of Kenya Draft which was rejected by Kenyans?

(Applause)

The Attorney-General (Mr. Wako): Regarding the rejection of the Wako Draft, I would like to remind the House that when the multi-sectoral forum that was set up by this House was recommending the way forward, its co-chair, when he was saying what had been agreed on those issues, he said:

"The provisions of the Wako Draft will form the basis of the way forward."

Mr. Speaker, Sir, the affirmative action has been debated for a long time in this House. Kenya, as we all know, has done very well economically in producing the manpower for the region and issues of democracy in the region. In fact, we like to pride ourselves as one of the leading

countries in Africa today when it comes to economic and social development. Indeed, other countries look up to Kenya when it comes to those issues.

Now, one matter that we have not done very well is gender representation in this august House. At the international level, the average percentage of women representation in national assemblies is 17 per cent. In Kenya, currently, the average representation is only 7.3 per cent, which means that we are well-below the average. We like to pride ourselves that we are the big power in this region. I believe the Mover of the Bill has quoted the percentages of women representation in the various countries in the region; whether it is in Kenya, Uganda, Tanzania, Rwanda and Burundi. I can easily include Somalia, Ethiopia, Eritrea, the Democratic Republic of Congo---

An hon. Member: Sudan!

The Attorney-General (Mr. Wako): Yes, I think also Sudan. In fact, in Sudan, representation of women is 14.7 per cent, which is double the representation that we have in this House. All these countries have a higher representation in their national assemblies---

(Loud consultations)

Mr. Sungu: On a point of order, Mr. Speaker, Sir. I can hardly hear the Attorney-General because there is a lot of loud consultations, particularly on the Front Bench on the Government side.

(Mr. Wanjala stood up in his place)

Mr. Speaker: What is your problem, Mr. Wanjala?

The Assistant Minister for Water and Irrigation (Mr. Wanjala): Mr. Speaker, Sir, is the Attorney-General in order to mislead the House by citing Somalia, which does not even have a Government? Is he also in order to mislead this House by talking about countries that have just come out of war, where all men have been killed and it is only the women who are remaining?

(Laughter)

Mr. Speaker: Order! Order, hon. Members! I want this debate to flow, but I also want the Attorney-General to give fair facts. When you give figures of various parliaments, then, you must also say the composition of women in those parliaments; whether nominated, elected or both. Then, you will be fair to the House, because you will be giving facts!

The Attorney-General (Mr. Wako): In fact, Mr. Speaker, Sir, I was going to come to that. It is just that he was thinking too fast ahead of me. I am developing my point and coming to that very point, to show that a constitutional amendment is required to give effect to this affirmative action.

Let us start, for example, with Tanzania, our neighbouring country. In Tanzania, a constitutional amendment was passed in 2000 to give effect to the Beijing Platform for Action. It required a constitutional amendment, which reserved seats for women, so that currently out of the 319 hon. Members in Tanzania, 97 seats are enjoyed by women, 80 of which are reserved seats and 17 are elected, just like any other hon. Member. However, the most important thing here is that it required a constitutional amendment.

One common denominator in most of these countries, which have achieved higher than Kenya in all indicators, except for the economy, is a constitutional provision, a provision in the Constitution giving effect to affirmative action. Even Burundi now, in the Lower House, has already achieved more than 30.5 per cent, and 34.7 per cent in the Upper House, women

representation. They have even gone a step higher, and now have, in the Lower House, a Speaker, who is a lady. The common denominator, in order to give effect to this, has been a constitutional amendment. Let me state this: The constitutional amendment that we are proposing today is not unconstitutional.

Capt. Nakitare: On a point of order, Mr. Speaker, Sir. Is the Attorney-General in order to tell this House what he has been thinking about. Do we have the time? Is the timing right to create constituencies and bring the constitutional amendment at this moment? Why now and not before?

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, I think I have made the point, that ideally this should have come more than a year ago, but we are now in this situation and that is why it is extremely urgent that the amendment be passed.

Hon. Members: No!

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, the constitutional amendment that has been brought to this House is in itself constitutional. I know that some hon. Members have referred to Section 82 of the Constitution, which states that subject to Subsections (4), (5) and (6), no law shall be made to make any provision that is discriminatory. Therefore, they have used that particular Section to say that this amendment, in so far as it focuses on women, is discriminatory against men.

Hon. Members: It is!

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, they say that this amendment, in so far as it deletes the existing Section 33, which provides for nominated hon. Members, is discriminatory against men. However, I want to say that this Section 82 cannot, by any stretch of the imagination, be taken as an argument to say that this constitutional provision, that we are bringing in, is unconstitutional. It is like saying that one section of the Constitution can be used to declare another section of the Constitution unconstitutional. If this amendment is passed, it will be part of the Constitution and, therefore, will itself be constitutional.

What has been provided for here, particularly for women, is not a nomination. I think part of the argument, and what is at the back of everybody's mind, is that somehow these 50 women will come in under nomination. It will not, by any stretch of imagination, be a nomination! It will be through a process that, in fact, had also been recommended, to some extent, by the Constitution of Kenya Review Commission (CKRC). It is a process that provides the basis of election in other developed countries, the proportional representation election. So, they will come in, not through nomination, but through an election. If the provisions of the proposed constitutional amendment are adhered to, then the ultimate number of 50 will be representative of Kenya as a whole, because one of the principles that must be followed under the proposed provisions is what we call "geographical distribution". Although there will be party lists, which will follow this principle, at the end of the day, when you are now thinking about the 50, the Electoral Commission of Kenya (ECK) will have to ensure that those who will be ultimately recommended to be elected through that system, represent the entire geography of Kenya.

So, Mr. Speaker, Sir, on the count of increasing the number of constituencies, this Bill is long overdue. On the count of having affirmative action, which is really the only way, as I have shown, in which all these other countries have achieved this objective, a constitutional amendment is required. This Bill is a double---

The Assistant Minister for Water and Irrigation (Mr. Wanjala): On a point of order, Mr. Speaker, Sir. Is the Attorney-General in order to mislead this House that he believes in affirmative action, when he has not brought an amendment to the Constitution to provide that the Attorney-General shall also be a woman?

(Laughter)

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, if you examine the constitutional provision regarding the Office of the Attorney-General of the Republic of Kenya, it was deliberately made gender-blind. It does not state that the Attorney-General should be a man. So, anybody can be appointed to be the Attorney-General of Kenya. There is nothing in the Constitution to stop the President from appointing a lady the Attorney-General of Kenya. Constitutional offices are gender-blind.

Secondly, as the Minister stated, "man" includes woman.

Mr. Speaker: Order, Mr. Attorney-General! Hon. Members will not go to semantics any more. The Chair will refuse any further digressions to semantics. Mr. Attorney-General, that is semantics! Ignore it!

Proceed!

The Attorney-General (Mr. Wako): Thank you, Mr. Speaker, Sir. I take your advice. Actually, I should have ignored him a long time ago, but we come from the same district. So, I am sure that, somehow, I can answer him back.

Mr. Speaker, Sir, in conclusion, I would like to urge this House to rise up to its constitutional responsibility and vote for this important Bill, affirmatively.

With those remarks, I beg to second.

(Question proposed)

Mr. Speaker: Any hon. Member interested in contributing to the Bill?

Hon. Members: Muite! Muite!

Mr. Speaker: Yes, Mr. Muite!

Mr. Muite: Mr. Speaker, Sir, I thank you for giving me this opportunity. On the Monday before we opened the current Parliament, His Excellency the President unlocked dialogue on constitutional reforms in this country. He requested the Vice-President and Minister for Home Affairs to actually chair that dialogue. I want to be fair to hon. Members on that side of the House. We met at County Hall and eventually agreed, after discussions and dialogue, that this side of the House should be represented by 14 hon. Members and that side by 13 hon. Members. The dialogue and discussions went on very smoothly. We made a lot of progress at County Hall.

Mr. Speaker, Sir, if you look at the history of this country, every time we have amended the Constitution, it has been preceded by consensus-building, following some dialogue. That is because you need two-thirds support. We negotiated.

Mr. Speaker, Sir, I want to pay tribute to the former President. When you look at the score card of the former President on constitutional reforms, in 1992 - never mind that it was under pressure - he repealed Section 2A, a very significant constitutional development. He introduced the two-term limit for the President. That is another momentous development in constitution-making. He introduced 25 per cent in five provinces because the President must enjoy the support of a majority of the Kenyan people.

In 1997, he abolished detention without trial. He repealed sedition laws. He made it possible for even public meetings and processions to be held after notification to the police. Never mind that, sometimes, the police do not understand that law!

(Laughter)

He relaxed the appointment to the Electoral Commission of Kenya (ECK) and permitted other parties to nominate. All those are significant constitutional developments. All were preceded by dialogue leading to consensus.

(Applause)

In County Hall, we had even agreed on a Bill to release this House from the Executive grip. That is in terms of this House controlling its own calendar. That Bill is ready. We have made tremendous progress.

The issue of the constituencies was one of the issues being discussed with a view to reaching consensus. Even affirmative action is one of the issues that we were dialoguing on. The Minister for Justice and Constitutional Affairs walked out on that Committee, which was being presided over by the Vice-President and Minister for Home Affairs, and co-chaired by the Leader of the Official Opposition!

Hon. Members: Shame! Shame!

Mr. Muite: Mr. Speaker, Sir, she was never to come back! Even when we talk, those of us on this side of the House - even in the Government of National Unity (GNU) - do not have a consensus on the Bill that is before the House!

(Applause)

Mr. Speaker, Sir, if one wants to succeed on a Constitution of Kenya (Amendment) Bill, you go out of your way to dialogue and get consensus. Otherwise, even those of us who support affirmative action, believe that there is no seriousness in this Bill being brought here.

(Applause)

People want to play public relations with the women of Kenya, in order to vote for them!

Hon. Members: Tell them!

Mr. Muite: Mr. Speaker, Sir, let the dialogue on comprehensive and minimum reforms be reviewed, so that these issues could be discussed there. In the absence of that, I stand in this House to oppose this Bill very strongly! It was never intended to succeed. The design was to make it fail in order for somebody to look good in the eyes of women of this country, and for this Parliament to look bad.

I ask hon. Members to stand up and refuse to be blackmailed or used as rubber stamps!

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

(Applause)

[Mr. Speaker left the Chair]

[Mr. Deputy Speaker took the Chair]

Mr. Sirma: On a point of order, Mr. Deputy Speaker, Sir. Since there is unanimity on this Bill, could the Mover be now called upon to reply?

(Applause)

Mr. Deputy Speaker: Order, hon. Members! The Chair is not convinced that enough debate has taken place. Therefore, I will proceed to allow a few more hon. Members to contribute.

The Minister for Finance (Mr. Kimunya): Mr. Deputy Speaker, Sir, I stand to support this Motion guided by the wording at the main entrance of this House. We are, indeed, here for the Welfare of Society and the Just Government of Men. As hon. Members who are predominantly

men, we need to ask ourselves: Are we being fair to the rest of the society? Are we being fair to the 52 per cent of women in this country? Are we being fair to the several numbers out there, who are represented by one hon. Member, when they should be represented by more than two or three hon. Members? Are we being fair to the society?

Mr. Deputy Speaker, Sir, as we look at the nation, we must ask ourselves as the Ninth Parliament: "Could we, for once, do something for this society?" We have been accused that we gather together to do what is good for ourselves. Could we now start looking at that the society is waiting for us to do this time round, and we do not have that time to save that society?

Mr. Deputy Speaker, Sir, the Bill is about two issues - broadening the representation and ensuring that people are represented as equitably as possible. It may not be achievable now, but there are still so many parameters that need to be addressed. There are on-going talks to do with the wider constitutional reforms. I believe those will continue. But for how long can we continue---

(Loud consultations)

(Mr. Wanjala stood up in his place)

Mr. Deputy Speaker: Order, hon. Members! Mr. Wanjala, will you take your seat? It is against the Standing Orders for hon. Members to be standing when a contribution is going on!

Continue, Mr. Minister!

The Minister for Finance (Mr. Kimunya): Mr. Deputy Speaker, Sir, we are all aware that there are constitutional review talks going on. Consensus takes time. But time is of the essence. I believe we all appreciate that, if we are to have elections within a Constitution, we need to give proper instructions to the ECK in terms of---

Mr. K. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Minister to mislead this House that there are constitutional review talks going on while we know, for a fact, that the Government has killed that constitutional review?

The Minister for Finance (Mr. Kimunya): Mr. Deputy Speaker, Sir, as far as I am aware, the Committee headed by the Vice-President and Minister for Home Affairs is still in session! It has never been disbanded. We are aware that consultations are still ongoing. However, those consultations must have their own time.

Mr. Kenyatta: Mr. Deputy Speaker, Sir, the Minister said that consultations are still ongoing. Where are these consultations taking place and with whom because for the last month plus, the Vice-President and Minister for Home Affairs is yet to convene that meeting? We have not been informed of any meeting in the last six weeks. So, there are no consultations taking place. If there are; could he, please, tell us where and when they are taking place?

(Applause)

(Ms. Mbarire stood up in her place)

Mr. Deputy Speaker: Order, Ms. Mbarire! You have to allow the Minister to respond to that.

The Minister for Finance (Mr. Kimunya): Mr. Deputy Speaker, Sir, I believe I have said very clearly, that as far as I am aware, the Committee has not yet been disbanded. As long as the Committee is still alive, we are very anxious to receive its report. I am surprised that the Co-Chair is not aware of the consultations. The point I am making, and I do not want to get derailed, is that even as the consultations take place---

The Assistant Minister for Transport (Ms. Mbarire): On a point of order, Mr. Deputy

Speaker, Sir. I think all of us---

Mr. Deputy Speaker: Is that a point of order?

The Assistant Minister for Transport (Ms. Mbarire): Yes, it is a point of order. With your indulgence, it is too obvious that the mood of the House is very hostile towards this Bill. Is it in order for me to request the hon. Minister, who moved this Bill, to withdraw it---?

hon. Members: No! No!

(Loud consultations)

[Mr. Deputy Speaker left the Chair]

[Mr. Speaker resumed the Chair]

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

The Assistant Minister for Transport (Ms. Mbarire): Mr. Speaker, Sir, I am asking if it is in order for me to request the Minister to withdraw this Bill, in view of the mood of the House, to allow---

hon. Members: No! No!

The Assistant Minister for Transport (Ms. Mbarire): Mr. Speaker, Sir, can I finish?

Mr. Speaker: Order! Order! Order, hon. Members! When the hon. Member completes making her point of order, it is my responsibility to respond, and not you. So, do not do what you are not paid to do!

Proceed!

(Laughter)

The Assistant Minister for Transport (Ms. Mbarire): Mr. Speaker, Sir, as the women Members of this Parliament, we do not want this Bill to fail. Hon. Muite noted with concern that there has not been proper dialogue on this Bill. I, therefore, request the Minister to withdraw the Bill, so as to allow proper negotiations for the same, so that an agreed position may be brought to this House next week. Is it in order?

Hon. Members: No! No!

(Loud consultations)

Mr. Speaker: Order! Order! Order, hon. Members! The question before the House was proposed by the Chair. Therefore, any action to withdraw it must follow the requisite Standing Order.

An hon. Member: It is too late!

Mr. Speaker: Order! There is nothing that is too late. Everything is always possible if there is good faith and goodwill. I plead with the House to have good faith and goodwill. So, please, if anybody wants to take any action, he or she must be armed very well with the Standing Orders. I think the stage at which the Minister could at will withdraw the Bill has passed.

(Applause)

Unless she moves a Motion to adjourn this sitting, and in the meantime, she has to take any other necessary action. But that is entirely upon the Minister and not myself.

Will you proceed?

The Minister for Finance (Mr. Kimunya): Mr. Speaker, Sir, I believe that this Bill was published and hon. Members had enough time to consult their constituencies because we represent constituents. The cry out there is that some people feel that they are under represented and they want more constituencies. The cry out there is that women feel marginalised and they do not have a level playing field through which to compete and be brought into mainstream decision-making processes. Mr. Speaker, Sir, the Kibaki Government has been about mainstreaming the issues of women and bringing them into decision-making, not just in the periphery, but in the centre. This is what we have been preaching and I believe that this Parliament has been standing for that. We need to start walking the talk. The first step of walking that talk is ensuring that we can bring the 50 women into this House.

Mr. Speaker: Order! Order, Mr. Minister!

Mr. Angwenyi: On a point of order, Mr. Speaker, Sir. You can see the environment in the House. People have understood the Bill. Would I be in order to ask the Mover to reply?

(Applause)

Mr. Speaker: Order! If that be the will of the House, I will put the Question.

Hon. Members: Yes!

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

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Speaker, Sir, there has been little or no debate on this Bill. But on the few things that have been said, I reply thus:

Mr. Speaker, Sir, it is an exaggeration and not a correct position to claim that every time there have been constitutional amendments in this country, they have been preceded by negotiations. This only occurred in 1997 when we called for an IPPG, of which the hon. Member for Kabete was not member. That is the only time we negotiated on two clauses; Section 82 to remove discrimination on the basis of sex and Section 33 to ensure gender parity in the nomination of the 12 Members. This is the clause that has brought the many Nominated Members of Parliament, including the hon. Member who is asking me to withdraw this Bill. The time has come for this Bill. Let those who can stand up for women be counted, but the Government will not withdraw the Bill before this House. The Constitution has been amended to increase constituencies on three occasions: First, in 1966 when the Senate was abolished and constituencies increased and in 1987. On both occasions, it is the Electoral Commission of Kenya (ECK) that consulted Kenyans, and the Government of the day tabled the recommendations. The review of constituencies has never occurred in this country following negotiations by Members of Parliament. Let it be on record that this is not the way it is done and hon. Members should not mislead the country. The last time the constituencies were increased was in 1991 and there were no negotiations. Again, the Electoral Commission of Kenya (ECK) made recommendations and the Government of the day tabled the recommendations. So, the matter is properly before the House. Those supposedly calling for dialogue are hiding behind excuses. The real reason is opposition to the 50 seats for women. Let the truth be told.

Mr. Deputy Speaker, Sir, regarding the Constitutional Review---

Mr. Raila: On a point of order, Mr. Speaker, Sir. The Minister is making a very serious and unfounded allegation. All of us here support Affirmative Action and the 50 seats, but we are opposed to the manner in which she is introducing the Bill. Is she in order to say that we are opposing Affirmative Action?

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Speaker, Sir, that is a point of argument which I need not to respond to. Since independence, the review of constituencies has never been preceded by consultations in the House.

Just like Section 42 of the Constitution mandates, it is the ECK that consults the people of Kenya and the Government of the day tables the recommendations. We have done what is required and those who pretend to support Affirmative Action---

Prof. Anyang'-Nyong'o: On a point of order, Mr. Speaker, Sir. Is the Minister in order to mislead the House that the review of constituencies has never been preceded by consultation in the House, when we know that when the Senate was dissolved in the 1960s, before constituencies were introduced for the Senators to become parliamentarians, there was negotiation?

Mr. Speaker: Order! I think we must let the Minister respond.

The Minister for Justice and Constitutional Affairs (Ms. Karua): If the hon. Member has such details, let him rise and contribute and not put words in my mouth.

I am saying that since Independence, the constituencies review has never been preceded by talks in the House but always by consultations with the people of Kenya by the ECK. That is my knowledge through my research from extracts of the HANSARD since Independence. The only time that this House has enacted constitutional review with consultations which had nothing to do with constituencies, was in 1997 when we included the Clause for gender parity as a result of which, we have eight nominated women Members of Parliament.

Mr. Speaker, Sir, on the issue of minimum reforms, review of constituencies is not an issue of minimum reforms, it is a duty of the Government of the day. It is a constitutional obligation on the ECK to report to the Government of the day, then the Government tables a Bill. It is becoming increasingly fashionable for certain Members of Committees of this House, to try and assume the role of the Executive. Presenting a Bill after the recommendation of the ECK is the work of the Government of the day and we are here discharging our obligation. If hon. Members find that they do not want Affirmative Action, let them not find excuses.

Mr. Speaker, Sir, regarding the constitutional review talks, the Government has its representatives and I as a person do not have to be there, if I do not wish to be. The rest of the team is there and nothing stops them from meeting even now. This Bill does not stop the constitutional review talks nor does it preclude the minimum reforms talks. However, it would be outside the ambit of the constitutional review talks to talk about constituencies because that is the work solely vested in the ECK. Time for excuses is gone, let---

Mr. Raila: On a point of order, Mr. Speaker, Sir. The hon. Minister was a Member of the Select Committee on Constitutional Review. She walked out of it and she told the chairman of the ECK that she does not recognise that Committee. Is she in order to mislead the House that the Committee is still meeting and functioning when the Vice-President himself has refused to call a meeting?

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Speaker, Sir, the hon. Member who has acquired distinction for peddling rumours now says that I told the ECK something. He is reporting a conversation---

(Loud consultations)

Mr. Speaker: Order! What is it Dr. Khalwale?

The Assistant Minister for East African Community (Dr. Khalwale): On a point of order, Mr. Speaker, Sir. I am rising on a point of order to find out whether the hon. Minister is in order to use unparliamentary language.

May I also report to the House that today, when we were in a meeting of the Government of National Unity (GNU), we tried to reach consensus and the Minister walked out on us in her

arrogance. Is she in order?

Mr. Speaker: What word caused all that uproar? Can you proceed? I did not hear what she said.

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Speaker, Sir, those are untruths by the hon. Member for Saboti which I will not respond to.

Mr. Speaker: He is the hon. Member for Ikolomani!

The Minister for Justice and Constitutional Affairs (Ms. Karua): I am sorry, hon. Member for Saboti.

(Loud consultations)

Mr. Speaker: Please, let her finish!

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Speaker, Sir, if a person is reporting a conversation, that is definitely a rumour.

Mr. Bifwoli: On a point of order, Mr. Speaker, Sir. The hon. Member for Saboti is not even around. The hon. Member who has just talked is Dr. Khalwale, the hon. Member for Ikolomani but the Minister is calling him the hon. Member for Saboti. Is she in order to call Dr. Khalwale the hon. Member for Saboti?

Mr. Speaker: Will you sit down? I have already informed her.

The Minister for Justice and Constitutional Affairs (Ms. Karua): I had already been guided by the Speaker but nevertheless, thank you to the hon. Member trying to correct me.

Mr. Osundwa: On a point of order, Mr. Speaker, Sir. If you heard the Minister, she said that Mr. Raila has acquired--- Or he is a rumour monger. That is unbecoming of a Member of Parliament to call another a rumour monger. Could she apologise to Mr. Raila?

Mr. Speaker: Madam Minister, did you use that expression?

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Speaker, Sir, I did say that he has acquired distinction of peddling rumours and I will substantiate. In the statement he made---

(Loud consultations)

Mr. Speaker: Order! Order, hon. Members! I think the hon. Minister has been here for 15 years, and she has heard me state from this Chair that rumours will not make entry into this House and no hon. Member will use rumours as a basis for argument. Consequently, my ruling is that rumour mongering or calling an hon. Member a rumour monger is totally out of order. The Minister must withdraw!

Hon. Members: And apologise!

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Speaker, Sir, I withdraw but I seek your guidance. The hon. Member for Lang'ata had said that I told the chairman of the ECK--- He is reporting a conversation that I do not know. Is that not a rumour? Where is the proof?

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

Mr. Speaker: You will now sit down now! Sit down and relax! Mr. Minister, what were you saying?

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Speaker, Sir, I was just seeking your guidance. The hon. Member for Lang'ata was supposedly reporting what he claims I told the chairman of ECK, which is hearsay. Is that not a rumour? What is it in English?

Mr. Speaker: It is called untruth!

Madam Minister you could do the following, if you really want to follow on the hon. Member for Lang'ata, you could use the provisions of the Standing Order No.78 to require him to substantiate the fact that you had a meeting in which you said things that were reported to the chairman of the ECK. Then it would be upon him to ensure and satisfy us that, indeed, that happened.

The Minister for Justice and Constitutional Affairs (Ms. Karua): Mr. Speaker, Sir, since he has not produced any "Githongo-like" tapes and it is clearly hearsay, I will leave it to the House and to the general public to interpret the character of such words.

Mr. Speaker, Sir, I, therefore, continue in support of this Motion. I want to thank the Attorney-General who ably seconded this Motion; my colleague, the Minister for Finance, who very ably contributed. Sometimes it requires standing up to be counted. It is not always that what is popular is what is right and just. This Motion was approved by the Government. It is my duty as the Minister for Justice and Constitutional Affairs to bring it before the House and I strongly support.

I beg to move.

Mr. Speaker: Very well! Thank you very much. Order, hon. Members! I think hon. Members will recollect what I said about the procedure early in the afternoon. The debate on the Second Reading is now concluded. However, I cannot put the Question because I am barred from doing so by Section 47 of the Constitution and Standing Order No.61 until there is a requisite quorum demanded by Section 47 as well as Standing Order No.61. The requisite quorum for me to put the Question is 65 per cent of all the Members of this House, excluding the *ex-officio* Members, totalling, as I said earlier, to 144.3 rounded up to 145. I will ask the Clerks-at-the-Table to call for the Division Bell to be rung and after five minutes, to count the Members present here and let me know whether the requisite number has been attained. Ring the Division Bell.

(The Division Bell was rung)

Mr. Speaker: Order, hon. Members! Will you take your seats! Even those standing should take their seats! Did I understand that, indeed, there was a scuffle in the House? Hon. Mwau and hon. Ndung'u, let me get your word on this?

Ms. Ndung'u: Mr. Speaker, Sir, the hon. Member and myself were having arguably an exciting discussion, but not a scuffle. I think we are women of repute and we do not scuffle.

(Applause)

Mr. Speaker: What about you, hon. Ms. Mwau? What is the position?

The Assistant Minister for Labour and Human Resource Development (Ms. Mwau): Mr. Speaker, there was not anything in particular. We were just having a discussion.

(Laughter)

Mr. Speaker: Order, hon. Members! I will take the statement by the two hon. Members as being correct. But in doing so, I will put a rider that hon. Ndung'u will remain seated there and hon. Ms. Mwau will remain seated there. For the duration of this debate, the two of them will not be allowed to speak to one another.

(Laughter)

Order, hon. Members! I think the time is up! I want the Clerks to do the counting. I do not

think I want to close the doors. I think I will close them so that you do not go out. All right. That is normally what happens. So, will you close the door for me to ensure that there is, indeed, the requisite number and Mr. Clerk do the counting? Order, hon. Members! To facilitate the Clerks to take a count, Members must now remain seated until the counting is over. No Member is allowed to stand or move. Please, sit where you are.

(The Clerk-at-the Table counted the hon. Members seated in the Chamber and reported the tally to Mr. Speaker)

Mr. Speaker: Order! Order, hon. Members! According to the Clerk-at-the Table, there are only 95 hon. Members present. The requisite quorum is 145 hon. Members. Therefore, you do not have the quorum for the Second Reading of this Bill. Standing Order No.61 reads as follows:-

"61. In every instance where the Constitution lays down that a fixed majority is necessary to decide any Question-

(a) the House shall not proceed to a Division on that Question unless and until a number of Members equivalent to such fixed majority is present at the time for directing the Division;"

Hon. Members, there is no such quorum now. I, therefore, decline to put the Question, or to direct a Division. Consequently, the Bill will be deemed to have lapsed.

(Bill lapsed due to lack of requisite Quorum)

(Applause)

The Minister for Justice and Constitutional Affairs (Ms. Karua): On a point of order, Mr. Speaker, Sir. I noted earlier, and I have actually looked at the Section which says that the Speaker may direct the further division within seven days. Why not give the Bill that opportunity? Why talk of lapsing now when there is a window of opportunity?

Mr. Speaker: Madam Minister, in fact, I only read out Paragraph (a) of Standing Order No.61, which is the one relevant to this situation. Paragraph (b) reads as follows:-

"(b) if the Division on that Question results in a majority of Ayes, but less than such fixed majority and the Noes have not numbered 35 per cent of all the Members of the House or more, Mr. Speaker may direct one further Division on the same Question to be held within seven days from the date of that first Division, but if he does not so direct any further Division, or if on such further Division the fixed majority is not obtained, he shall declare that the Motion is negatived".

We have not even gone to that stage. So, it is, in fact, negatived from the very beginning. Withdraw the Bar!

(The Bar was withdrawn)

Hon. Members, at the request of the Minister, and justifiably so - she has been very vigorously moving the last Bill - the Statute Law (Miscellaneous Amendments) Bill (Bill No.20) is deferred to tomorrow. So, we shall proceed to Order No.12.

Second Reading

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

(Bill deferred)

Next Order!

The Assistant Minister for Energy (Mr. Kiunjuri): On a point of order, Mr. Speaker, Sir.

Mr. Speaker: What is it?

The Assistant Minister for Energy (Mr. Kiunjuri): Mr. Speaker, Sir, since we have moved to the next Order, is it in order now for Ms. Mwau and Ms. Ndung'u to exchange views?

(Laughter)

Mr. Speaker: Order! Order!

Second Reading

THE KENYA COMMUNICATIONS BILL

(Loud consultations)

Mr. Speaker: Order! Order, hon. Members! Those hon. Members who are withdrawing from the Chamber, please, do so quietly. We have called for Order No.12.

Minister for Information and Communications, could you proceed?

An hon. Member: He is absent!

Mr. Speaker: Order! Order, hon. Members! There is no Minister to move the Bill. What would you like me to do with it? Do you want me to drop it to the Floor?

An hon. Member: The Minister is not here!

Mr. Speaker: So, what do you want me to do with it? Do I drop it?

The Vice-President and Minister for Home Affairs (Mr. Awori): Mr. Speaker, Sir, may I ask for your indulgence to defer this Bill until I consult the Minister for Information and Communications?

Mr. Speaker: All right, the Bill is deferred generally; not to any specific date!

(Bill deferred)

ADJOURNMENT

Mr. Speaker: Hon. Members, there being no further business on the Order Paper, the House is adjourned until tomorrow, Thursday, 16th August, 2007, at 2.30 p.m.

The House rose at 5.30 p.m.