

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 6th August, 2008

The House met at 2.30 p.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

PETITION

DEFERMENT OF COMMITTEE STAGE: TRUTH,
JUSTICE AND RECONCILIATION
COMMISSION BILL

Dr. Khalwale: Mr. Deputy Speaker, Sir, I have a humble request from the citizens of Kenya and members of the civil society and political parties who have appended 58 signatures petitioning that today's Order No.7(ii), the committee stage of the Truth, Justice and Reconciliation Commission Bill, 2008 be deferred because they have the following prayers:-

(a) The Truth, Justice and Reconciliation Commission Bill be thoroughly amended before its passage.

(b) There be substantive amendments especially on amnesty, reparation and gender concerns.

(c) There be more consultations with the civil societies, political parties and other stakeholders in public hearings before the Bill is passed.

(d) That the amendments proposed by the petitioners and attached hereto be given due consideration.

Mr. Deputy Speaker, Sir, I wish to table this petition and mention that in here, we have two broad groups; the Kenya National Commission on Human Rights, the Kenyan section of the International Commission of Jurists and the Kenya Women Caucus. Fifty eight signatures are appended and among them are the political parties in this country all of which are represented in this House and some which are not.

I am guided on this particular request by Standing Order No.163 and Standing Order No.164. I have been in compliance with Standing Order No.165 which requires that the petition should be in manuscript and not printed. On that note, I request that if you so allow, in keeping with Standing Order No.165 we go ahead and get it printed.

Thank you.

Mr. Deputy Speaker: Hon. Members, Parliament regulates its business through the Standing Orders. No congregation of Kenyan subjects who will bring in a Petition through a Member of Parliament or even the High Court of this country or the Court of Appeal can dictate or regulate Parliament on how it should conduct its business.

If you acquaint yourself with Section 56 of the Constitution of the country it states:-

"(1) Subject to this Constitution, the National Assembly may-

(a) make standing orders regulating the procedure of the Assembly (including in particular orders for the orderly conduct of proceedings);

(b) subject to standing orders made under paragraph

(a), establish committees in such manner and for such general or special purposes as it thinks fit, and regulate the procedure of any committee so established.

(2) Subject to this Constitution, the National Assembly may act notwithstanding a vacancy in its membership (including a vacancy not filled when the Assembly first meets after a general election), and the presence or participation of a person not entitled to be present at or to participate in the proceedings of the Assembly shall not invalidate those proceedings."

Hon. Members, in the circumstances the Order Paper is prepared, Parliament will transact its business in accordance with parliamentary procedure, the Standing Orders and the way the business of the House was arranged by the House Business Committee.

The Minister for Justice, National Cohesion and Constitutional Affairs (Ms. Karua): Mr. Deputy Speaker, Sir, I am very grateful for your guidance and I would like to seek further guidance. When a Member of Parliament is convinced, or lobbied from outside, whether by their constituents or the larger national constituency, it is incumbent upon that hon. Member to adopt those views as his or hers and then present them and move amendments.

Otherwise, amendments can never be moved by those we represent. We are here as national representatives of a constituency called Kenya and secondly of each person's constituency. Is it, therefore, in order for my colleague to propose to move amendments by way of petitions?

Secondly, it is obvious that some of the petitioners do not even care to read the Bills. The issue of blanket amnesty is not an issue that is in that Bill at all. Is it in order?

Dr. Khalwale: Mr. Deputy Speaker, Sir, I would like to respond to the Minister's comment about my being provoked by members of the civil society. With all due respect, the hon. Minister is a lawyer. I am not! So, she is far more adept at these matters. When I look at it as a layman who understands the English language, I am requesting the Chair to guide us further by reading the Constitution as you have done, but read it together with Standing Order Nos.163, 164 and 165 which are very explicit and confirm that the Minister is the one who is out of order.

Mr. Deputy Speaker: Hon. Members, if I may proceed and read the part on public petitions in our Standing Orders, Standing Order No.163 states as follows:-

"Every Member offering to present a petition to the House, not being a petition for a Private Bill, shall confine himself to a statement of the parties from whom it comes, the number of signatures attached to it, and material allegations contained in it, and to reading the prayer of such petition."

Standing Order No.164 states as follows:-

"Every such petition shall be brought to the Table of the House, by the direction of Mr. Speaker who shall not allow debate, or any Member to speak upon, or in relation to such petition; but it may be read by the Clerk if so required."

You realise that you have not conformed to Standing Order No.164. Petitions are varied. You have taken it beyond the purview, scope or mandate of petitions as intended in the Standing Orders.

The petition, the way you put it proceeds on, further in Section 165, and says:-

"Every Member presenting a petition shall take care that the same is in conformity with the usual practice of the House."

We all realise that this has been a sovereign country for a very long time. This is a bit tough essentially. A Member presenting a petition may, after notice is given, prove that it be printed. Hon. Member, you can bring in a petition on a variety of varied and diverse issues but not a petition to come and direct the business of the House and overrule the House Business Committee in its arrangement of the business of the House or the Speaker for that matter or the House.

If you also go to Standing Order No.33(1) it says:-

"The Government shall have the right to have Government business placed on the Order Paper in such sequence as the Government may determine."

So, hon. Member, in the circumstances, your Petition cannot be allowed and the Chair rules it out of order in the form it is.

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

Mr. Deputy Speaker: Dr. Khalwale, would you like to dwell on it any further? My suggestion is that you do not. What is your point of order?

Dr. Khalwale: Mr. Deputy Speaker, Sir, I want to thank you for that ruling. Considering that the Chair has read Standing Orders Nos.163 up to 165 and found that I have not breached any of them, I seek your indulgence that you rule under Standing Order No.1, so that the implication of this law is such that when a man or woman confesses that he killed your father and this father has got nine able sons who know that a man has confessed--- We have not consulted Kenyans enough so that they can accept that even after this man has accepted that he killed one's father, he would deserve amnesty. You would give amnesty under the law but, in practice, when this man who has actually confessed goes back to Ikolomani, he will be murdered by those sons.

Could the Chair please rule under Standing Order No.1 to capture the unique circumstances?

Mr. Deputy Speaker: Dr. Khalwale, with all due respect, you are totally out of order on this matter! Indeed, the matter is provided for in the Constitution and in the Standing Orders. You are also provided with the instrument to defeat this Bill should you so desire. Otherwise, as you have put it, the mood of the House is such that Members do not want any further continuation. It is for the House to determine what it wants to do with this Bill. It will go to the Committee Stage.

Next Order!

NOTICES OF MOTIONS

A BILL TO AMEND THE PENSIONS ACT

Mr. Olago: Mr. Deputy Speaker, Sir, I beg to give the following Notices of Motion.

THAT, noting that life expectancy in Kenya is getting lower while parenthood starts earlier; and further noting that many public officers in Government service and in the service of parastatals may wish to retire early before attaining the age of 55 years to commence the enjoyment of their pension benefits or utilize the same for the welfare and education of their offsprings; this House grants leave to introduce a Bill to amend Section 10A (1) of the Pensions Act, Cap.189, Laws of Kenya, to provide that payment of pension benefits shall be effected at time of retirement and that such time of retirement be agreed between the employee and the employer and to provide for matters incidental thereto and connected therewith.

A BILL TO AMEND THE COMMISSIONS OF INQUIRY ACT

THAT, noting that the Commissions of Inquiry Act, Cap 102, Laws of Kenya, provides for the appointment of Commissioners to inquire into and report on matters of a public nature referred to them and also provides for their powers,

privileges and duties, further noting that the said Act is totally silent on how further action and or implementation is to be undertaken on the recommendations presented by the said Commissioners; further noting that it is in the public interest that the said recommendations be made public and be debated in the National Assembly; this House grants leave to introduce a Bill to amend the Commissions of Inquiry Act, Cap.102 to provide for the tabling of the Commission's reports before the National Assembly for debate and to provide for matters incidental thereto and connected therewith.

QUESTIONS BY PRIVATE NOTICE

IMMINENT CLOSURE OF KISUMU INLAND CONTAINER DEPOT

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

(a) Could the Minister confirm that, resulting from the inability of the Rift Valley Railways to haul sufficient cargo to Kenya Ports Authority (KPA) and Inland Container Depot (ICD) at Kisumu and the strike by the workers of the Rift Valley Railways, Kenya Ports Authority now intends to close the Kisumu ICD and transfer its operations to Eldoret?

(b) Is the Minister aware that such transfer would paralyze the already fledgling operations of transport on Lake Victoria and which could have the adverse effects of staff redundancies in Kisumu?

(c) What steps is the Minister taking to avert such a move by the KPA?

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

(a) I confirm that the KPA has made no arrangements or plans to close the Kisumu Inland Container Depot and/or transfer its operations to Eldoret.

The movement of containerized cargo to Kisumu Inland Container Depot by rail was suspended by the Rift Valley Railways (RVR) following damage to the railway viaducts along the Nakuru-Kisumu line from 12th June, 2008. This effectively stopped all operations at the Kisumu ICD to date. However, the RVR has confirmed that arrangements for the repairs are being undertaken and movement of cargo by rail to Kisumu ICD from Mombasa will resume on 1st September, 2008.

(b) In view of the fact that there is no plan to move or close the Kisumu ICD and/or transfer its operations to Eldoret, there will be no adverse effects. The Government has not proposed any steps as there are no plans to move or close the Kisumu ICD.

Mr. Olago: Mr. Deputy Speaker, Sir, the Kisumu-Nakuru railway line has been damaged for nearly two months now. Information on the ground indicates that no effort is being made to repair the line. Considering the debate on the Floor of this House about the capacity of the RVR to carry out its mandate, could the Assistant Minister confirm that, indeed, repair works are being undertaken on the line? He should also confirm that, indeed, by 1st September, 2008, the repairs will have been completed and the operations at the Kisumu ICD will continue without affecting the economy of Kisumu.

Mr. Mwau: Mr. Deputy Speaker, Sir, I agree with the sentiments of the hon. Member. I can confirm that the concessionaire of the railway line, namely the RVR, has deficiencies. It has not operated in accordance with the concession documents. Therefore, the Ministry has directed the Kenya Railways Corporation (KRC) to issue notices, so that the RVR can comply with the

concession documents by operating the railway line the way it is supposed to be operating without the stoppage of cargo movement. That notice is effective in 30 days.

If the RVR does not remedy this deficiency, then further steps, which may include termination of the concession, will be taken.

Mr. K. Kilonzo: Mr. Deputy Speaker, Sir, it is, indeed, a very sad day for the Assistant Minister to tell us about this concessionaire. He has said that the Ministry has instructed the KRC to issue notices to the concessionaire. The Assistant Minister knows very well that since the RVR came into being, it has been using fuel from the KRC without paying for it. It has already written off two locomotives from the KRC. Could he confirm whether that is so?

Mr. Mwau: Mr. Deputy Speaker, Sir, it is correct that the RVR has used fuel belonging to the KRC. It is also correct that two locomotives have been written off. It is correct to say that the RVR has violated the concession. It is also correct that termination notices have been issued.

Mr. Imanyara: Mr. Deputy Speaker, Sir, just yesterday, the Prime Minister issued a Statement to support the Minister. In that Statement, he asked for two weeks because there were certain meetings that were taking place and certain decisions will be made that will have far-reaching implications on the concessionaire. Is the Assistant Minister satisfied that the RVR can undertake these repairs before 1st September, 2008, while knowing that the Prime Minister has assured this House that, by that time, the Government will have taken major decisions with regard to this concession?

Mr. Mwau: Mr. Deputy Speaker, Sir, it will be impossible for me to confirm that the concessionaire has the capacity to repair the line by 1st September, 2008. One of the issues in question is the RVR's inability to raise enough funds. I hope that, by that time, if they have funds, they will have repaired the railway line.

Mr. Namwamba: Mr. Deputy Speaker, Sir, first of all, please, indulge me to commend this Assistant Minister for being so forthright on this issue of great national importance. It is emerging that this concessionaire has actually been engaging in economic illegalities. We also tabled some evidence here yesterday on this matter.

It is emerging further that this concessionaire fraudulently entered into this concession. Would the Ministry be prepared to take legal action against this concessionaire at the end of these investigations? Further to that, could the Government take criminal action against Mr. Roy Puffet, purportedly a South African national, who has committed what amounts to a serious economic crime against the people of this nation? Would the Ministry be prepared to go that far?

Mr. Mwau: Mr. Deputy Speaker, Sir, I want to assure the hon. Member that the Ministry of Transport is not a toothless dog. We shall carry out forensic investigation into any violation of the concession. I can assure the hon. Member that if it is true that an offence has been committed, this Mr. Roy Puffet will be prosecuted.

Dr. Eseli: On a point of order, Mr. Deputy Speaker, Sir. Since this matter was discussed here and brought to light by the Prime Minister himself, that he is actually doing a thorough investigation and we expect results, is it in order for us to continue taking so much more time on the same issue that we discussed yesterday?

Mr. Mwau: Mr. Deputy Speaker, Sir, I am happy with the comments of the hon. Member. We can proceed.

MIGRATION OF KENYAN
PASTORALISTS TO UGANDA

(**Mr. Ethuro**) to ask the Minister of State for Provincial Administration and National Security:-

(a) Is the Minister aware that, as a result of the drought and biting famine, Kenyan pastoralists from Turkana North and Turkana Central districts have migrated to Uganda with their livestock, setting a stage for violent conflicts over pasture and water?

(b) What urgent measures is the Minister taking to ensure that Kenyan and Uganda pastoralists share the scarce natural resources in a peaceful environment?

(c) What permanent measures is the Minister putting in place to ensure that pastoralists across the external boundaries of Ethiopia, Sudan, Uganda and Kenya can exploit these common resources in a sustainable and secure manner?

Mr. Deputy Speaker: Hon. Ethuro, the Minister will not be available to answer your Question. Your Question will be put on the Order Paper at an appropriate moment. The Chair directs that your Question be put on the Order Paper tomorrow afternoon.

Mr. Ethuro: Mr. Deputy Speaker, Sir, that is okay with me.

(Question deferred)

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

Mr. Deputy Speaker: Order, hon. Olago!

FAMINE RELIEF FOOD FOR RESIDENTS OF
LOWER EASTERN PROVINCE

Mr. C. Kilonzo: Mr. Deputy Speaker, Sir, I beg to ask the Minister of State for Special Programmes the following Question by Private Notice.

(a) Is the Minister aware that there is serious famine in the lower Eastern Province?

(b) What action is the Minister taking to ensure that relief food is readily available to all affected persons?

Mr. Deputy Speaker: Hon. Minister of State for Special Programmes, make sure that this time, your answer is precise, to the point and very short. You have a tendency of having very long answers.

The Minister of State for Special Programmes (Dr. Shaban): Mr. Deputy Speaker, Sir, I was also coming to comment about how much time we spend on Questions. I think we are going beyond Question Time. We have to do something about it.

Mr. Deputy Speaker: Proceed! That is the business of the Chair! It is not your business!

The Minister of State for Special Programmes (Dr. Shaban): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am aware that parts of lower Eastern Province have been experiencing drought due to poor performance of the short rains from October to December, 2007, and the long rains from April to June this year. This has resulted in food shortages in this area which, like other arid and semi-arid areas of the country, is prone to famine particularly when the rains do not perform well. Therefore, the Government has always intervened to cushion the people from the adverse effects of drought.

(b) My Ministry is taking action to ensure that relief food is readily available to all affected people. It is given to the needy people through two channels, that is, the World Food Programme (WFP) and the Emergency Operation Programme (EMOP).

There is also direct allocation to the districts by my Ministry. Under the EMO Programme, districts are given food on a monthly basis where it is distributed through the WFP system. Here, a lead agency is appointed to handle the distribution. Such lead agencies include organisations like

World Vision, Oxfam, Action Aid, Kenya Red Cross and other reputable organisations that have the experience and capacity to carry out massive distribution of food.

Mr. Deputy Speaker, Sir, in the case of Mwingi and Kyuso, the lead agency is actually Action Aid. In Kitui and Mutomo, the lead agency is the Diocese of Kitui. The relief food given directly by my Ministry, however, is targeted at populations that are not covered by the EMOP and is given as and when requested by the district.

Mr. C. Kilonzo: Mr. Deputy Speaker, Sir, I do not know what interest the Minister has so as to refer to Mwingi and Kyuso. I come from Yatta, myself, and she should have mentioned the lead agency there. Nevertheless, there is serious famine in some parts of this country, particularly the lower parts of Eastern Province and Pokot District. When I visited my DC, he had been given a dozen bags of maize and about 150 bags of beans against a population of about 50,000 which is already starving. I want to know whether this time round, the Ministry is going to give out enough food to those who are starving.

Dr. Shaban: Mr. Deputy Speaker, Sir, first of all, why I referred, in my answer, to those areas is because the famine affects the larger Kitui area. So, I had to refer to them. The Questioner asked about the lower Eastern, but it is not Yatta alone which makes up the lower Eastern Province.

Whereas we do appreciate that there are problems in this area, from January, 2008 to June, 2008, we have distributed 18,200 bags of maize, 3,300 bags of beans and 300 bags of rice in the lower Eastern Province. We have also distributed 1,650 kilogrammes of vegetable oil. I do appreciate that Kenyans are hungry. The problem is not only in the hon. Member's place. It is all over. I believe that what we are giving is not enough and that is why we are combining the general distribution and the EMOP. We have to share out what we have. We will be releasing food every month or after every six weeks, if it is possible.

Dr. Munyaka: Mr. Deputy Speaker, Sir, in view of the fact that school-going children are the most affected whenever there is famine, could the Minister consider re-introducing the School Feeding Programme (SFP), so that the children can stay in school?

Dr. Shaban: Mr. Deputy Speaker, Sir, we usually have a SFP where we do it together with the WFP. Now, because of the amount of money involved and the increase in prices of food, the number of children going to school has gone down. It is not easy for us to cover every place. However, we are asking the DCs, with whom we work, to allocate schools some food through the DSG. For the time being, we have to make do with what we have as we try to increase our stock.

Mr. C. Kilonzo: Mr. Deputy Speaker, Sir, so far, so good.

(Mr. K. Kilonzo stood up in his place)

Mr. Deputy Speaker: You are out of order, Mr. K. Kilonzo!

ORAL ANSWERS TO QUESTIONS

Question No.255

REGULATION OF INSTITUTIONS OFFERING PHARMACY COURSES

Dr. Monda asked the Minister for Higher Education, Science and Technology:-

(a) if he is aware that many institutions in the country are offering certificate

and diploma courses in pharmacy without being approved by the relevant regulatory body, the Pharmacy and Poisons Board;

(b) what he is doing to ensure that these institutions operate in compliance with the necessary regulations; and,

(c) what other steps he is taking to ensure that those who have already trained from these institutions are enrolled by the Pharmacy and Poisons Board.

The Assistant Minister for Higher Education, Science and Technology (Mr. Kamama):

Mr. Deputy Speaker, Sir, I beg to reply.

(a) From registration records kept in my office, I am aware of the 17 registered institutions that have been approved to offer diploma in pharmaceutical technology. There is no certificate course in pharmacy. That is our regulation and the stand of the Ministry. There are few training institutions, mostly private, which have been following the old curriculum because they are working on modalities to meet the requirements for the new curriculum in terms of equipment, staffing and physical facilities.

(b) We are taking the following steps to ensure compliance with the necessary regulations: One, all institutions which have shown interest in pharmacy training have been inspected and advised on what they need to put in place to qualify for the teaching of the new curriculum.

Two, the Kenya National Examinations Council (KNEC) has already been instructed to stop enrolling any further candidates for the old curriculum after the November/December, 2008 examination series.

I will not read the whole list, but I will just mention the last one, which is that the existing registration guidelines are being reviewed with a view to developing strengthened regulatory mechanisms.

(c) Regarding recognition of graduates of diploma in pharmacy, trainees who meet the requirements of the new syllabus are not expected to face any difficulties in enrolment for professional practice by the Pharmacy and Poisons Board. However, those who enrol for training in non-approved institutions will be advised by the Pharmacy and Poisons Board on the way forward.

Dr. Monda: Mr. Deputy Speaker, Sir, I want to congratulate the Assistant Minister for the answer he has given. However, he has stated clearly that there are two curricula that are going on at the same time in training students in our colleges. He has even mentioned that they are mostly private institutions. That means that there are some that are Government institutions. The two curricula that are running are the old one and the new one. They have been allowed by the same Ministry. We are subjecting our citizens to both trainings. One is accepted by the Pharmacy and Poisons Board while the other one is not. Who is going to employ the ones who are taking up the old curriculum which is not accepted by the Pharmacy and Poisons Board?

Mr. Kamama: Mr. Deputy Speaker, Sir, we have taken note of the kind of frustrations those graduates are facing and we are taking the necessary action.

Dr. Khalwale: Mr. Deputy Speaker, Sir, this is a very practical Question because, in both the Pharmaceutical and the Clinical Departments, we have these kinds of graduates. On the clinical side, they are called Nurse Aids. On the other side, they are called Pharmaceutical Assistants. So, my question to the Minister is this: These graduands are actually trained, and they work under doctors and nurses. Why has the Ministry taken 45 years to see the need to establish a directorate to be responsible for quality assurance and determination of accreditation?

Mr. Kamama: Mr. Deputy Speaker, Sir, I want to confirm to the House that, that anomaly has been noted, and that action is being taken.

Mr. Deputy Speaker: Last question, Dr. Monda!

Dr. Monda: Mr. Deputy Speaker, Sir, my Question is very specific. There are students who have already graduated, but who are suffering out there because they cannot get jobs. What is

in place to save these graduates out there, who cannot be enrolled, so that they can also get jobs to sustain themselves? This is a specific question.

Mr. Kamama: Mr. Deputy Speaker, Sir, let me ask the hon. Member to repeat the question. I had some interruption, and I did not get the question.

Mr. Deputy Speaker: Order, Mr. Assistant Minister! You have to be attentive to questions being put to you. You cannot engage in side talks when an hon. Member is asking you a question. Dr. Monda has asked you: How are those ones who have graduated on what you are calling "old system" going to be absorbed?

Mr. Kamama: Mr. Deputy Speaker, Sir, we have a directorate, which is handling the kind of problem that has been raised by Dr. Monda. We have the Technology Innovation Vocational and Entrepreneurial Training (TIVET) authority, which is handling such matters. So, the issue is being handled appropriately.

Thank you, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Next Question, Ms. S. Abdalla!

Question No.182

REGISTRATION/LICENSING OF FISHING
TRAWLERS IN INDIAN OCEAN

Ms. S. Abdalla asked the Minister for Fisheries Development:-

- (a) whether he could give the numbers, names and registered owners of licensed fishing trawlers operating on Kenyan territorial waters in the Indian Ocean;
- (b) whether he could state how much he charges for the licences and indicate how much he has collected as such fees in the last five years; and,
- (c) whether he could further indicate the net catch in weight by the trawlers in the last one year and clarify whether the trawlers pay any cess to the local authorities.
- (d) what measures the Government has put in place to control and monitor the activities of the trawlers to avoid wrong fishing practices and to produce local small scale fishermen.

The Minister for Fisheries Development (Mr. Otuoma): Mr. Deputy Speaker, Sir, I beg to reply.

(a) Currently, there is no licensed fishing vessel trawling in Kenyan territorial waters in the Indian Ocean. However, the hon. Member should note that, up to October, 2007, seven local vessels were licensed to undertake trawling in Kenyan territorial waters of the Indian Ocean. These were *Alfa Manyara*, *Alfa Serengeti* and *MV Amboseli*, which were owned by East African Sea Foods Limited, in Mombasa; *MV Venture II* and *MV Elena*, owned by M/s Batsa & Sons, in Mombasa; *MV Robato of Itika*, which is also in Mombasa. and *MV Vega*, owned by East African Red Pawns Limited.

For the benefit of the hon. Member, I wish to state that, currently, my Ministry is, jointly with the stakeholders, in the process of developing a Marine Resource Management Plan. It is expected that upon completion, the plan will ensure sustainable and equitable utilisation of marine resources, thereby reducing resource conflict use between the various categories of resource users.

In addition to the trawlers, in our territorial waters, we have foreign fishing vessels licensed to operate in Kenyan Exclusive Economic Zones (EEZs), which are in two categories, namely, the long liners and the passeinners. In 2007, 25 long liners and 50 passeinners were licensed to fish. I have attached an annex on those vessels.

- (b) I wish to state that the licence fees for the trawlers operating in Kenyan territorial waters

of the Indian Ocean are as follows:

Fishermen with mechanised vessels between ten and 15 metres in length pay an annual fee of Kshs1,500---

Mr. Deputy Speaker: Order, Mr. Minister! Could you table the tabulation part of the answer? I doubt whether the House has the time for the whole of this statement to be read. So, table it and then proceed to answer part "c" of the Question.

Mr. Otuoma: Mr. Deputy Speaker, Sir, I will table it, but first, I would like to inform the hon. Member that the licence fees collected in the last five years are, again, as tabulated herein, which I will table. For distant fishing fleets, which include the passeinners and the long liners operating in Kenya's 200 nautical mile of EEZ, the licence fees required are, again, as tabulated herein, which I will table. I will also table the schedule showing the revenue collected over the last five years.

(c) I have also tabulated the catch in weight for the trawlers in 2006 because, in 2007, we had not licensed any trawler. I will table that schedule. Further, I wish to indicate that there is no cess paid by the trawlers to local authorities. However, local communities benefit from being employed in the vessels and the processing plants. The net catch by the long liners and the passeinners is not known since the fish caught is not landed in the country.

(d) My Ministry is undertaking the following measures to control and monitor trawling activities, which aim at promoting responsible and sustainable utilization of fisheries resources:-

Law enforcement as stipulated in the Fisheries Act, Cap.378, Laws of Kenya, which in part states that there should be no trawling below the five nautical miles. That is why we stopped the other one.

Mr. Deputy Speaker: Table the list also!

Mr. Otuoma: Mr. Deputy Speaker, Sir, I will also table it!

The Ministry is currently in the process of installing a land-based Vessel Monitoring System (VMS) in Mombasa and at the Fisheries headquarters in Nairobi, to monitor the activities of the licensed vessels operating in our EEZs.

Mr. Deputy Speaker: Order! Order, Mr. Minister! Please, table the rest of your answer, because it is very long. There are other Questions to be answered.

Mr. Otuoma: Mr. Deputy Speaker, Sir, I will table all of them. I will finish by saying that the Ministry requires more funding for monetary, control and surveillance in the EEZs as well as for the development of a fisheries port and an auction centre.

Thank you, Mr. Deputy Speaker, Sir.

(Mr. Otuoma laid the document on the Table)

Mr. Deputy Speaker: Ms. S. Abdalla!

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

Mr. Deputy Speaker: What is it?

Mr. K. Kilonzo: Mr. Deputy Speaker, Sir, while answering the Question, the Minister told us about some money he requires for certain development and yet, he is part of the Government. Is he in order to tell us about some money he requires?

Mr. Deputy Speaker: Could you ask your supplementary question, Ms. S. Abdalla!

Ms. S. Abdalla: Mr. Deputy Speaker, Sir, as it is now, there are seven vessels fishing in the Ungwana Bay, from Kipini to Malindi. Four vessels are in shallow waters, while three vessels are in deep sea waters. Could the Minister tell us whether the Fisheries Act has been amended to allow trawling within the first five nautical-mile stretch of our Indian Ocean waters?

Mr. Otuoma: Mr. Deputy Speaker, Sir, as I stated in my reply, we have currently stopped all trawling activities within the first five nautical miles of our Indian Ocean territorial waters. So, if there is such a thing happening there, it is illegal. I also want to state that our continental shelf within Ungwana Bay extends for more than 20 nautical-miles inside. Some vessels get in there due to lack of monitoring, control and surveillance, but I will check to verify that allegation.

Mr. Joho: Mr. Deputy Speaker, Sir, the Minister has come out clearly to say that the Ministry has no means of checking illegal fishing in the Indian Ocean. So, for the interest of Kenyans, under what knowledge has he come to this House to say that there are no trawlers fishing out there at this time? We are, certainly, aware that they are illegal. Secondly, what measures does the Minister intend to put in place to stop this illegality?

(Applause)

Mr. Deputy Speaker: Mr. Minister, are you sure there are no illegal trawlers fishing in Kenyan waters?

Mr. Otuoma: Mr. Deputy Speaker, Sir, as far as I am aware, we withdrew all the licences for the trawlers in the year 2007. I am going to check out this with my officers, and I will be able to give the House an appropriate answer.

Thank you, Mr. Deputy Speaker, Sir.

Mr. C. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. I do not know whether you heard Ms. S. Abdalla say that, as I speak now, there are four trawlers fishing within the first five nautical miles of our Indian Ocean waters in Ungwana Bay. Withdrawing the licence is not good enough! You are not even patrolling our sea area. What is the Government seriously doing to ensure that the local fishermen, whose livelihoods are grossly affected, are properly protected by the elected Government?

Mr. Otuoma: Mr. Deputy Speaker, Sir, in the documents that I tabled, there is information that, last year, the Government bought eight patrol boats, and three of them are in Lamu. I have promised the House that I will go and check. As far as we are concerned, there should be no trawling in our territorial waters.

Mr. Affey: Mr. Deputy Speaker, Sir, this Question touches on the welfare of Kenyans, particularly the ones in Lamu. It is very clear that fishing is being done by foreign companies. What measures has the Government put in place to empower the local fishing community in Lamu and the Coast Province in general?

Mr. Otuoma: Mr. Deputy Speaker, Sir, as I stated earlier, my Ministry is in the process of developing a marine resource plan and part of the issues that are being raised to improve the welfare of the local fishing community and, more so, within the continental shelf of Kenya, are going to come out very clearly once we launch that thing before the end of September.

Dr. Khalwale: Mr. Deputy Speaker, Sir, I know this Minister very well. He comes from my community! My community keeps goats, cows and does some fishing. The Minister is confusing that with what is obtaining among the Bajuni communities. Those people do not keep livestock. Their livelihood depends only on fishing.

Could you, please, stop doubting the hon. Member and accept that what she is saying is true and tomorrow morning, suspend all your business and go to Lamu and establish the truth? We want to protect indigenous Kenyan interests.

Mr. Otuoma: Mr. Deputy Speaker, Sir, as I said, I also come from a fishing community. I am very much concerned about the welfare of fishermen. So, what is happening out there, as the hon. Member asked--- I am going to check on it and I hope that by tomorrow, I will be able to

know the true situation on the ground.

Mr. Kambi: Mr. Deputy Speaker, Sir, I want the Minister to tell this House whether he is aware that most of the fishermen, particularly in Kisumu, are just poor little boys who cannot even afford a loaf of bread! That is because they are being exploited by the middlemen. What steps is his Ministry taking to check on that?

Mr. Otuoma: Mr. Deputy Speaker, Sir, I think that is a different Question. As I said, I have the welfare of fishermen at heart. In the Ministry, we are in the process of coming up with a proper fisheries management plan and I expect that, when I table some of the documents here in Parliament, my colleagues will come out strongly to support them.

(Mr. Joho stood up in his place)

Mr. Deputy Speaker: Order, Mr. Joho! You have already got an opportunity to ask a question!

Mr. Wambugu: Mr. Deputy Speaker, Sir, reading from what the Minister has said about the patrols in the Indian Ocean, it looks like there is a big problem---

(Mr. Otuoma consulted fellow Ministers)

Mr. Deputy Speaker: Order! Mr. Minister, could you, please, listen to the Member? When you consult with your colleagues in the Cabinet, you end up not being able to answer the question! Proceed, Mr. Wambugu!

Mr. Wambugu: Mr. Deputy Speaker, Sir, there is a big problem with the civilians around that area. Most of the countries that have had the same problem have resorted to intensifying security through area surveillance. Is the Minister, in any way, trying to provide area surveillance around the Indian Ocean to curb illegal fishing?

Mr. Otuoma: Mr. Deputy Speaker, Sir, we are currently holding discussions with the Ministry of State for Defence to come up with a Memorandum of Understanding (MoU) that will help us collaborate with the Kenya Navy to come up with something close to the Coast Guards to be able to monitor, control and survey our territorial waters.

Ms. S. Abdalla: Mr. Deputy Speaker, Sir, is it in order for the Minister to say that he has the fishermen's interests at heart when the local fishermen are suffering due to the damage caused by the trawlers?

Mr. Deputy Speaker, Sir, I have evidence and photographs which show that the environment is being destroyed because they come and interfere with the beaches and the environment. The trawlers catch turtles where the local fishermen are told not to fish. They are given the restrictions on the size of the nets.

Mr. Deputy Speaker, Sir, I wonder why the Government is arresting local fisherman for using a certain net while the foreigners are free to use the same net.

Mr. Otuoma: Mr. Deputy Speaker, it is due to that concern that the Government banned trawling within five nautical miles. If there is some illegality happening there, I am going to pick up the issue with my counterpart in the Ministry of State for Provincial Administration and Internal Security to ensure that the law is enforced.

Mr. Deputy Speaker: Next Question by Eng. Gumbo! Eng. Gumbo is not in.

Ms. S. Abdalla: On a point of order, Mr. Deputy Speaker, Sir. The Minister did not give us the registered owners of the trawlers.

Mr. Deputy Speaker: The Minister said that he is going to make an exhaustive investigation.

Ms. S. Abdalla: When?

Mr. Deputy Speaker: Mr. Minister, could you give an undertaking on the dates when you will come back to the House and assure Kenyans that there is no illegal fishing going on there?

Mr. Otuoma: Mr. Deputy Speaker, Sir, I want to make an undertaking that, immediately I get that information, I will bring it to the House in the next sitting next week.

Mr. Deputy Speaker: That is a fair undertaking. The Question by Eng. Gumbo is dropped!

Question No.057

EXPLOITATION OF COAL
DEPOSITS IN KENYA

(Question dropped)

Question No.225

HIPPO MENACE IN NYAKACH

Mr. Ochieng asked the Minister for Forestry and Wildlife:-

(a) whether he is aware of the existence of a human-wildlife conflict in the villages around Lake Victoria in Nyakach Constituency, caused by Hippopotamus from the lake, which has led to the destruction of property and crops; and,

(b) what action he is taking to compensate the affected families and safeguard human life and property in the affected areas.

The Assistant Minister for Forestry and Wildlife (Mr. Nanok): Mr. Deputy Speaker, Sir, I beg to reply.

(a) Yes, I am aware of the existence of a human-wildlife conflict in the villages around Lake Victoria in Nyakach Constituency.

(b) My Ministry is taking necessary steps in regard to cases of human-wildlife conflict in areas around Lake Victoria.

First, my Ministry has established a Kenya Wildlife Service station at Homa Bay, headed a warden and wildlife rangers for animal control.

Secondly, we have also launched education and awareness programmes through KWS to create awareness and education on animal behaviour and safety measures against wildlife. Those activities are carried out by the warden in Homa Bay.

Thirdly, my Ministry, through KWS, has formed a community conflict resolution committee in every district and whose members include chiefs, local leaders and the communities around the lake.

Fourthly, it is worth noting that, under the current Wildlife Conservation and Management (Amendment) Act, 1989, there is no provision for compensation for crops and property damaged on destroyed by wildlife. A comprehensive review of the Act has, however, been undertaken with a view to making provision for compensation for crops and property damaged or destroyed by wildlife. That legislation, together with the draft wildlife policy, is pending for discussion and subsequent approval by this Parliament.

Mr. Ochieng: Mr. Deputy Speaker, Sir, the answer seems to be lacking a bit in terms of what I had asked, because as far as I am concerned, these animals are really marauding in the villages especially in an area called Nyakwere and Sango. They have been destroying crops and the last time that wildlife people were there was in 1998. So, I wonder whether this base which was set

up in Homa Bay is really going to help curb this problem. Could the Assistant Minister promise that he is going to set up another base at Nyakwere to tame this menace?

Mr. Nanok: Mr. Deputy Speaker, Sir, I thank the hon. Member for bringing up this issue. I remember we discussed this matter severally a few weeks ago and, indeed, if the Homa Bay station has not taken action, I think it is my responsibility to make sure that they do so.

However, let me point out that the hippo menace in many parts of the country has increased and this hippo/human conflict is more prone in areas of Lamu, Homa Bay and Hola. In these areas and particularly the areas which the hon. Member has mentioned, people have settled along the river line and along the shores of Lake Victoria planting crops. Hippos usually come out of the water at night and early in the morning to destroy crops. The problem is that, people have attracted hippos through settlement and planting of crops along the river line and lake shores. So, I do acknowledge that this is a problem and we will make sure that the office at Homa Bay does its job.

Mr. Mututho: Mr. Deputy Speaker, Sir, I think it has become a habit now of wildlife being a menace all over the country. There is no single place where the KWS is containing these animals in Naivasha and all over the country. Either they are overstocked or the KWS lacks the methods to eliminate them.

Could the Assistant Minister inform this House what measures his Ministry has, either by de-stocking, killing them or using whatever means to reduce them so that we do not have them destroying crops?

Mr. Nanok: Mr. Deputy Speaker, Sir, indeed, I have singled out that the problem of hippos has increased in quite a number of areas. As I mentioned that--

Mr. Deputy Speaker: Order, hon. Nanok! I do recognise the fact that you are a very tall man but do not get too close to the microphone because you then become very inaudible. You can still stay far and be heard very well. I do not think hon. Members are hearing you that well when you get too close to the microphone.

Proceed!

Mr. Nanok: Thank you, Mr. Deputy Speaker, Sir. We need another microphone for tall men like me.

(Laughter)

Mr. Deputy Speaker, Sir, indeed, as the hon. Member has mentioned, we acknowledge that the problem has increased. There is no doubt about that but we in the Ministry are taking certain actions that include, creating awareness among Kenyans particularly in areas where the menace has been reported. It is

is important wherever we have this conflict, to report it to the nearest KWS office. If they do not do their job, then advise us at the Ministry headquarters and we can be able to make a follow up.

Mr. Imanyara: Mr. Deputy Speaker, Sir, given that this Ministry has been given the responsibility to protect the lives and property of Kenyans even in the absence of a law for compensation in the present legislative framework, could the Assistant Minister consider making some payment in the form of *ex gratia* payment to compensate these people who have suffered as a result of activities of these animals? Given that it is the failure of the Government to provide security that is causing the hippos to get out of the lake and kill human beings, could he consider giving compensation in order of *ex gratia* payment for these people who are affected?

Mr. Nanok: Mr. Deputy Speaker, Sir, I thank Mr. Imanyara for bringing that issue up. As the law stands now, compensation is only for loss of life and not for property.

As I have said, the new law which we will be presenting to this House will be able to cover issues of compensation of loss of property. I do hope that we will get total and maximum support

for that new Bill when it comes before the House because it comprehensively looks at the constraints in the current Wildlife Act.

Mr. Joho: Mr. Deputy Speaker, Sir, I do not think the Assistant Minister realises the magnitude of human/wildlife conflict. It is not only in Nyakach but the whole country. The fact of the matter is that wildlife has to be managed and it is the responsibility of the Ministry.

Mr. Deputy Speaker, Sir, if the Ministry cannot do so, could they allow *wananchi* to handle the situation and not be charged because they are suffering since their crops are being destroyed and lives are being lost?

Mr. Nanok: Mr. Deputy Speaker, Sir, indeed that was a very general question but I have been focusing on the specific question that I was being asked by Mr. Ochieng. There are various interventions which the Government has put in place in the absence of compensation for the loss of property and that includes awareness, encouraging rural communities to participate in the creation of community-based wildlife sanctuaries, capture and translocation of endangered species.

For the hippos, their translocation is a very complex matter. The KWS had an experience with the rhinos and elephants but we want to engage or carry out an exercise to try and see if we can be able to translocate the hippos so that we can be able to reduce this conflict. However, we acknowledge this is a complex matter and as we know, 70 per cent of wildlife live outside the protected area and human settlement has actually encroached onto the wildlife corridors and, therefore, the conflict is bound to happen.

However, I will encourage hon. Members that if these cases occur and since we have offices in almost every part of the country, let us have this information shared with these offices. If we do not act, please advise us and we will help you make them do their job.

Mr. Ochieng: Mr. Deputy Speaker, Sir, I want to believe what the Assistant Minister has promised. I hope that he is going to take some serious action to make sure that the animals are taken care off.

Mr. Deputy Speaker: That is okay.
Next Question by Mr. ole Lankas!

Question No.252

CONSTRUCTION OF NAROK SOUTH
DISTRICT HEADQUARTERS

Mr. Deputy Speaker: Mr. ole Lankas, the Minister is not available to answer your Question. The Question will appear on the Order Paper tomorrow in the afternoon.

(Question deferred)

Mr. Deputy Speaker: Next Question by Mr. Gabow!

Question No.286

DELAYED IMPLEMENTATION OF WATER
PROJECTS IN NORTHERN KENYA

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

(a) whether she is aware that National Water Conservation and Pipeline Corporation planned activities for the financial year 2006/2007, that is, borehole

drilling in Wajir, Samburu, Ijara, Moyale, Isiolo and Garissa districts are yet to begin;

(b) whether she is further aware that contracts to do the drilling work are done without supervision and that recommended depths are not reached thereby declaring high water potential areas dry; and,

(c) what urgent and specific measures she is taking to rectify the situation considering that over Kshs46 million for the financial year has not been used in areas where there is acute water shortage.

The Minister for Water and Irrigation (Mrs. Ngilu): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am aware that the National Water Conservation and Pipeline Corporation spent Kshs155,400,000 in the financial year 2006/2007 to drill and equip 43 boreholes and equip additional four boreholes in Samburu, Ijara, Moyale, Isiolo, Laikipia, Marsabit and Garissa districts. Drilling of boreholes was not done in Ijara District due to poor ground water potential in the area.

(b) My Ministry has undertaken reforms in the water sector. In line with those reforms, the work of drilling and equipping boreholes is mandated to the National Water Conservation and Pipeline Corporation (NWCPC). During the implementation of the drilling programme, the Water Services Board supervises the project, together with the NWCPC.

Mr. Deputy Speaker, Sir, before a borehole is drilled, hydrological surveys are done to ascertain the depth to which water is likely to be encountered.

However, in some instances, that depth may not be reached while drilling due to complicated rock formations, especially the basement rock. In such cases, alternative sites that have higher prospects are identified and new boreholes drilled.

(c) As earlier stated, Kshs155,400,000 was used in the Financial Year 2006/2007 to drill and equip boreholes in the mentioned districts. The balance was Kshs34,000,600 and not Kshs46 million as stated. That was used to offset emergency commitments incurred during the drought of Financial Year 2005/2006 for drilling of boreholes and water tankering in the same district.

Thank you, Mr. Deputy Speaker, Sir.

Mr. Gabow: Mr. Deputy Speaker, Sir, it is not true that Kshs155 million was used. That is because I can confirm with the data I have that over 43 boreholes, that were to be drilled by the NWCPC, have not been done. I can give an example in Wajir District, where the following boreholes have not been drilled:-

1. Delmanyale
2. Shimbir Bul
3. Tarbaj
4. Ingrir, which is in my constituency
5. Aden Awale
6. Barmish and
7. Dolkuta South

It is only in that district that Kshs2 million was assigned to NWCPC and the work has not began. So, could the Minister confirm that what she is telling this House is true?

Mrs. Ngilu: Mr. Deputy Speaker, Sir, I want to believe what the hon. Member is telling the House. But I must admit that I have personally not been there. However, I have information before me that shows that some of the sites that were supposed to be drilled were not drilled. I do not have information whether the sites that the hon. Member has mentioned are some of them. But those are some of the things that are making me do some work with NWCPC, for what they have not done.

Mr. Deputy Speaker, Sir, I want to share the information with the House this afternoon. I

would like to say that, in fact, if I had more time, I would have shared with you and told you that some of the things that made me make changes was something--- It was about the planned drilling and equipping of boreholes for those years. The number planned was 178 boreholes; the number of boreholes drilled was 162 but the number of boreholes equipped and operational is only 29. The number of boreholes which were drilled and capped - which means that water was sighted but it is not being used - is 133. I just want to agree with the hon. Member that something is certainly wrong. I am going to see how I can rectify that situation.

(Applause)

Mr. Letimalo: Mr. Deputy Speaker, Sir, the areas that have been mentioned by the Minister are known for the scarcity of water. I would like to know from the Minister whether there are any boreholes that were drilled in Samburu, and the locations where they were drilled.

Mr. Deputy Speaker: Mr. Letimalo, you have to be fair. Oh! Order! Proceed, hon. Minister! Samburu is one of the districts! It is there! It is in the Question.

Mrs. Ngilu: Mr. Deputy Speaker, Sir, I appreciate that and, certainly, Samburu is one of the districts where drilling of those boreholes was done. I have the numbers here, but not the exact positions.

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

Mr. Deputy Speaker: Are you sure you are on a point of order and not a supplementary question?

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

Mr. Deputy Speaker: Proceed, hon. Keynan! What is your point of order?

Mr. Keynan: Mr. Deputy Speaker, Sir, in the light of the admission by the honourable gracious lady that she is not sure of what she is telling the House, will it not be in order to defer this Question so that she familiarises herself with the facts and bring a convincing answer to the Floor of the House?

(Applause)

Mr. Deputy Speaker: The Minister has actually empathised with the situation. She has said that she is in a delicate situation because of problems that were there in the department.

So, Mr. Deputy Speaker, Sir, if it is the honourable Minister's preparedness that she should go and do a further homework and come back to the House, I think that will be more appropriate than the situation that we are in now.

Mrs. Ngilu: Mr. Deputy Speaker, Sir, I do not plan to go and do more homework. What I plan to do is to go and see for myself! I think we are going on recess tomorrow. So, I need to visit those places. If you could show me, I believe that seeing is believing. That will help me to understand the gravity of the problem.

Mr. Abdirahman: Mr. Deputy Speaker, Sir, a number of sites that my colleague on the other side has mentioned are in my own constituency and they were not drilled. Having looked at the response from the Minister, I have even seen where she said that each of the boreholes was allocated Kshs4 million and it is lying unused. I wonder how money, after a financial year, is lying idle. If it is available, she should give us!

Mr. Deputy Speaker, Sir, my main question is: The NWCPC has not been able to effectively do that because they did not have the capacity. They may have had the drilling rigs, but they did not have the capacity. Could the Minister consider to really tender some of those boreholes to people who have the capacity in order for the Ministry to be efficient enough? There are a

number of drillers all over and we know them. Could she, really, consider that in future?

Mrs. Ngilu: Mr. Deputy Speaker, Sir, yes, I agree that the NWCPC does not have the full capacity to do all the works that it is required to do. Therefore, we do out-source and use other organizations that can do the work. Therefore, we are going to do that.

Mr. Affey: Mr. Deputy Speaker, Sir, first of all, I want to thank the Minister for promising the House that she will take the necessary action required.

But, Mr. Deputy Speaker, Sir, there is the existence of the Northern Water Board and, if you look at the Constitution as it is now, all those areas come under the Northern Water Board. Could the Minister consider to allow the Northern Water Board to do the drilling and equipping of boreholes, instead of relying on organisations which are in Nairobi, and which have no idea of what is happening in northern Kenya?

Mrs. Ngilu: Mr. Deputy Speaker, Sir, the hon. Member will remember that, that is done according to the Water Act, 2002, that we passed in this House. It stipulated that the NWCPC is going to be the implementing arm of the water boards, including any works that will be done by the Ministry. So, unless we change that, the water boards need to use and will continue to use the NWCPC.

Mr. Deputy Speaker: Last question, hon. Gabow!

Mr. Letimalo: On a point of order, Mr. Deputy Speaker, Sir. My question has not been answered. I wanted to know whether there are any boreholes that were drilled in Samburu and their locations.

Mr. Deputy Speaker: Why do you not take both questions together, Mr. Minister?

Mr. Gabow, could you ask your supplementary also?

Mr. Gabow: Thank you, Mr. Deputy Speaker, Sir. It is good that the Minister has acknowledged that the National Water Conservation and Pipeline Corporation has no capacity to deliver. At the moment, we are aware in a place called El Had, there is a rig that has been standing there for the last eight months. It has had no fuel or allowances advanced to do the job. At the moment the type of rigs the Ministry is using are outdated. Could she give us some modern rigs that can do the work very fast because that way, this money will not "rot" in her docket?

Mr. Deputy Speaker: Hon. Minister you can answer both questions for Messrs. Letimalo and Gabow.

Mrs. Ngilu: Mr. Deputy Speaker, Sir, it is true that I said I do not know the exact point. This is what I am going to check and actually find out whether that is where we were supposed to do the drilling of water. About the National Water Conservation and Pipeline Corporation not having the capacity, as I have said that is the implementing arm of all the Water Service Boards. They can also out-source whereby they can tender and get somebody to do the work for them. They do not have to do everything for themselves. About the old rigs, yes, we have some old equipment and new equipment.

Mr. Deputy Speaker, Sir, certainly, the equipment that can be used will be used. On the one rig that has been standing in one place for a long time, I will have to find out why and what has happened.

Thank you.

POINT OF ORDER

(Mr. Mwau stood up in his place)

Mr. Deputy Speaker: Order, Mr. Mwau! Mr. Were, you were supposed to seek a Ministerial Statement.

Proceed, Mr. Were!

ROLE OF TARDA IN SUGAR PRODUCTION

Mr. Were: Mr. Deputy Speaker, Sir, I sought a Ministerial Statement on 2nd July, 2008 and the Minister for Regional Development Authorities is there.

Mr. Deputy Speaker: The hon. Minister for Regional Development Authorities is ready with the Ministerial Statement. Do I understand that, Mr. Minister.

*(The Minister for Regional Development
Authorities (Mr. Gumo) walked
to the Dispatch Box)*

You do not have to come to the Dispatch Box!

The Minister for Regional Development Authorities (Mr. Gumo): Mr. Deputy Speaker, Sir, I have it ready.

Mr. Deputy Speaker: You will have to read yours after hon. Mwau reads his.

Hon. Mwau, continue with your Ministerial Statement and you will be followed by Mr. Gumo.

MINISTERIAL STATEMENTS

RECRUITMENT OF FOREIGN PERSONNEL BY KENYA AIRWAYS

The Assistant Minister for Transport (Mr. Mwau): Thank you, Mr. Deputy Speaker, Sir. I wish to make the following Statement regarding recruitment of foreign personnel by the Kenya Airways as requested by the Member for Gwassi, hon. John Mbadi.

Mr. Deputy Speaker, Sir, I wish to state that Kenya Airways is not recruiting 600 air hostesses from West African Region. Kenya Airways is currently employing 863, both male and female cabin crews. It is not possible for the airline to employ an additional 600, which is a 70 per cent growth, over a short period of time as the business cannot support this manpower growth. Kenya Airways, however, is in the process of recruiting 20 West Africans in the next few weeks. This recruitment is not due to lack of this type of personnel in the country but rather it is based on a business strategy centred development in 2003 when the airline decided to focus on opening up Africa to the world and bringing the world to Africa. This growth has seen the airline open up a lot of new destinations in West Africa and in the Far East during the period. The growth has seen the Kenya Airways increasing its destination from 24 in 2003 to 42 in 2007. Francophone routes increased from five to 15 within the same period. Passengers number increased from 1.8 million in 2003 to 2.7 million in 2007. On average, 70 per cent of these passengers are connecting passengers from outside Kenya and are key pillars to the continued success of Kenya Airways business.

Mr. Deputy Speaker, Sir, this growth has introduced a diversity of passenger profile in the airline's network. In order to maintain competitive and relevance to its passengers, the Airline has had to concentrate to review all aspects of its operations. Thus, the Airline has sought to develop product that fits it perfectly with their passenger needs regardless of where they come from. For instance, they have introduced local dishes in menu for West Africa route and Far East in order to meet the client needs of passengers from these regions. Their in flight magazine, the

Msafiri, now includes a French section that address the reading needs of its French speaking travellers.

All these initiatives are aimed at solidifying the Airline as a carrier that caters for varied international taste. It is for this reason that Kenya Airways has decided to also recruit a few nationals from West Africa and the Far East to help the Airline in making sure that the product it develops is in line with the different new cultures that opening up in this market is exposing the Airline to.

Mr. Deputy Speaker, Sir, out of the current compliment of 863 cabin crews of Kenya Airways, the company has recruited 46 Thai Nationals. They are in the process of recruiting 20 West Africans in the next few weeks. The Airline has no intention of recruiting more than this number for the next two years. It is worth noting that there are also 42 Kenyan nationals posted by Kenya Airways to work outside in other destinations. Kenya Airways also continues to lose crew that it has trained to the Middle East Carriers.

Mr. Deputy Speaker, Sir, finally, I would like to confirm to this House that the Kenya Airways recognises the need to continue opening up employment opportunities for Kenyans. But this can only be sustained by growing the business. Kenya Airways currently, has a total of 4,217 employees up from 2,918 in March 2005. Depending on how the business performs, the Airline predicts a growth of future 200 jobs in the next 12 to 24 months which will spread over a number of specialised areas in the company. It is, therefore, essential that the Airline adopts strategies that allow it to grow the business in a consistent manner within a very competitive environment and the need of taking into consideration the cultural backgrounds.

Thank you, Mr. Deputy Speaker, Sir.

Mr. Mututho: I am a regular traveller with Kenya Airways. Last week, I sat next to somebody who is a regular traveller and he told me that seven flights were delayed and two were cancelled. I witness a similar turn around.

Mr. Deputy Speaker, Sir, is the Assistant Minister in order to give such a rosy answer when we know there is something awfully wrong with the Kenya Airways? The last flight to Kisumu was delayed for 15 hours---

Mr. Deputy Speaker: Order, Mr. Mututho! The issue is Kenya Airways employing foreigners. It has nothing to do with performance. The clarifications you seek must be relevant!

Mr. Wamalwa: Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Mr. Wamalwa, I think that has got the kind of clarification.

Mr. Assistant Minister, would you like to lay your Statement on the Table?

*(Mr. Mwau laid the document
on the Table)*

Mr. Deputy Speaker: Mr. Gumo, please, proceed!

ROLE OF TARDA IN SUGAR PRODUCTION

The Minister for Regional Development Authorities (Mr. Gumo): Mr. Deputy Speaker, Sir, I wish to issue a Ministerial Statement requested by hon. Were, the Member for Matungu.

First, the Tana Delta Sugar Project is an initiative of the Tana and Athi River Development Authority (TARDA), a body corporate created by an Act of Parliament in 1974. The Authority is responsible to the Government for planning, co-ordinating and monitoring development projects within the Tana and Athi River Basin. The sugar project corresponds to the central features of the

TARDA's mandate which is to spearhead projects aimed at alleviating poverty in its area of jurisdiction.

Six investors have shown interest in sugar production at the Tana Delta since the year 2004. These are Riegos Agrícolas Espanoles, S.A (RAESA) of Spain, West Kenya Company, MAT International Limited, PGBI Company from South Africa, Kenana Sugar Company from Sudan and Mumias Sugar Company Limited.

Mr. Deputy Speaker, Sir, the Ministries previous brief to the Cabinet on Tana Delta Sugar Project was in November 2004. During that presentation, the Cabinet approval was given for the commencement of a detailed feasibility study of the sugar project by RAESA. But no sooner had the preparation started than the implementation encountered setbacks due to lack of a willing quantity for the Kshs24 billion required for the feasibility study project implementation and commissioning. Thereafter, the Ministry and TARDA board approved that alternative means of---

Mr. Imanyara: On a point of order, Mr. Deputy Speaker, Sir. Given that this Statement is very long and that, obviously, the Minister is likely to take at least another 15 minutes, would I be in order to ask that he tables the Statement, because the hon. Member who sought it has a copy, so that we can make some headway?

Mr. Deputy Speaker: Hon. Minister, proceed and table the document. We do not have all the time. We have to start the business of the House. You know that the real business of the House is Government Bills. In any case, since the hon. Member has a copy of that Statement, he can interrogate or seek clarifications.

The Minister for Regional Development Authorities (Mr. Gumo): Mr. Deputy Speaker, Sir, I thought that other hon. Members wanted to hear, but I am ready to table it.

(Mr. Gumo laid the document on the Table)

Mr. Deputy Speaker: Hon. Were, do you want to seek any clarifications, because you are supposed to be acquainted now with the contents of that Statement?

Mr. Were: Mr. Deputy Speaker, Sir, I have looked at the Statement that has been presented by the Minister and he has not actually covered what I wanted to find out.

But all the same, my interest in this Statement emanates from the fact that Mumias Sugar Company Limited is the company that is interested in investing in the Tana Delta Sugar project. Mumias Sugar Company is within my constituency. It serves my constituency and 11 other constituencies around it, covering a population of nearly 2,000,000 people. We have been told that the community around the Tana Delta is opposed to the building of this factory in the Tana Delta. In view of this, there has been a lot of demonstrations in that area.

In the Minister's own assessment when he visited this area, and in the assessment of the Government, is it safe for Mumias Sugar Company to go and invest in that area, when the pastoralists who are affected by the building of this factory are opposed to it, because they do not have a place to graze their animals?

Secondly---

Mr. Deputy Speaker: Order, hon. Were! You need clarifications based on the content of the Statement. Do not turn this into a debate!

Mr. Were: Mr. Deputy Speaker, Sir, it is on the content.

I had requested to find out what the National Environment Management Authority (NEMA) report said. The Minister has only indicated that the report was positive. Could he table it, so that we know what its contents are?

The Minister for Regional Development Authorities (Mr. Gumo): Mr. Deputy Speaker, Sir, not everybody from that area is opposed to the project. In fact, it is only a small number of

people who are opposed to it. The area, if the hon. Member is aware, is massive. The area that the Mumias Sugar Company and TARDA are going to occupy is less than 20 per cent.

Mr. Deputy Speaker, Sir, as you are also aware, in most cases in this country, whenever a project comes up, there will always be opposition. Even when Mumias Sugar Company was being built in the hon. Member's area, there was opposition. But, today, they are very happy. So, this is common.

Also, Mr. Deputy Speaker, Sir, the NEMA did a feasibility study. I do not have the report right now, but I can table it maybe later.

Mr. Deputy Speaker: When are you going to table that report?

The Minister for Regional Development Authorities (Mr. Gumo): Mr. Deputy Speaker, Sir, since we are going on recess tomorrow, maybe when we come back.

Mr. Deputy Speaker: Order, hon. Minister! You cannot have a presumption on when the House is going on recess. It is the House to determine that! So, when are going to table the report?

The Minister for Regional Development Authorities (Mr. Gumo): Mr. Deputy Speaker, Sir, maybe, tomorrow.

Mr. Deputy Speaker: Okay! You will have to table that report tomorrow.

Hon. Yakub, you wanted to seek a Ministerial Statement! That is the last one before we go onto the actual business.

POINT OF ORDER

STATUS OF SAUDI ARABIA GRANT TO PWANI UNIVERSITY

Mr. Yakub: Mr. Deputy Speaker, Sir, I wish to seek a Ministerial Statement from the Minister for Higher Education, Science and Technology regarding the development assistance for the education sector, granted to the Government of Kenya by the Kingdom of Saudi Arabia to the tune of Kshs750 million in 2007.

In the Statement, I wish to seek clarification on the following issues: First, whether the said amount of money has been received by the Government of Kenya and has been lying at the Treasury since February, 2008. Secondly, why the said amount has not been appropriated for the use of the proposed Pwani University which is in dire need of among other things, a library and hostel accommodation for students, which are yet to be completed.

Thirdly, when will the said amount be appropriated for the use by Pwani University to assist in the construction of the facilities enumerated above?

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

Mr. Deputy Speaker: Order, hon. Were! The matter has been disposed of. The hon. Minister has answered your question and he will table the report tomorrow. In any case, it has been overtaken. I hope that you are not taking us back to that same matter.

Mr. Were: Mr. Deputy Speaker, Sir, when a Statement is read, it is the duty of the House to interrogate. I was the only one who interrogated and there are other hon. Members who were interested---

Mr. Deputy Speaker: Order! Order, hon. Member! You do not expect this House to seek hon. Members to read ten pages or so, there is other important business of the House to be transacted. You can go through that Ministerial Statement because you are the one who demanded for it and seek clarification. There are ways that you can do it. Use other channels that are open to you! So, you are out of order!

COMMUNICATION FROM THE CHAIR

DEFERMENT OF COMMITTEE STAGE:

THE NATIONAL ETHNIC AND RACE RELATIONS COMMISSION BILL AND THE TRUTH, JUSTICE
AND RECONCILIATION COMMISSION BILL

Mr. Deputy Speaker: Order, hon. Members! the House will not be able to transact the business of the Committee of the whole House today because the amendments were brought to my office 15 minutes before I came to the Chamber.

Also, equally, the amendments proposed by the relevant Committee have not been thoroughly internalised by the Legal Department of the House. Under the circumstances, we are going to the next Order.

Next Order!

BILL*Second Reading*

THE CONSTITUTION OF KENYA REVIEW BILL

*(The Minister for Justice, National
Cohesion and Constitutional
Affairs on 5.8.2008)**(Resumption of Debate interrupted
on 5.8.2008)*

The Minister for Justice, National Cohesion and Constitutional Affairs (Ms. Karua): Mr. Deputy Speaker, Sir, I notice there is a typographical error on the Order Paper which lists the Bill as No.12. I wish to say it for purposes of record that the Bill I am moving is Bill No.14.

Mr. Deputy Speaker, Sir, I was enumerating part 3 Clause 21; what the Committee of experts shall do. I had indicated that they will identify the issues already agreed upon in the existing draft, that is the Wako Draft and the Bomas Draft. It also identifies issues which are contentious or not agreed upon. It indicates how it will solicit and receive from the public written memoranda and presentation on how to resolve these issues.

Mr. Deputy Speaker, Sir, it also indicates how it will undertake thematic consultations with caucasus, interest groups and other experts. This is important because the civil societies and others are asking: "Where do we come in, in this review?". This is the window of opportunity that will bring all persons interested in the issues being discussed to give views on how to resolve the contentious issues and how to complete the review process.

*[Mr. Deputy Speaker left the Chair]**[The Temporary Deputy Speaker
(Prof. Kamar) took the Chair]*

Madam Temporary Deputy Speaker, the Committee shall also carry out studies, researches and evaluation concerning the Constitution and other constitutions and constitutional systems.

Madam Temporary Deputy Speaker, if I may pose here, it is widely recognised that the people of Kenya having given their views on the issues they would like included in the Constitution, the disagreement that arose during the last process makes us require as a nation, expert advice on how to resolve those issues.

We can then make up our mind on which mode we want to follow. That is why the first organ of review is the Committee of Experts. I would like to persuade Members that this is the right way to go and also to keep reminding, that this is a negotiated document by the Serena Team and it is one of the promises of the National Accord. It is actually the reason for the Grand Coalition Government to be able to have a threshold where we can give Kenya a re-birth by reviewing the Constitution and also renewing our institutions.

The Committee shall also make recommendations after all that to the Parliamentary Select Committee on how to resolve the contentious issues in the context of the greater good of the people of Kenya. They would just make recommendations. The decision on how to resolve will be on the select committee which consists of the elected representatives of the people. They will also prepare a harmonised draft Constitution for presentation to the National Assembly and facilitate civic education in order to stimulate public discussion and awareness on the Constitutional issues. It means that the public can also have a chance to comment and influence the process.

Madam Temporary Deputy Speaker, they will also liaise with the Electoral Commission of Kenya (ECK) on holding of a referendum on the draft Constitution. This Committee of Experts, who will they be? We are saying that the Committee will consist of three experts who are nominated by the eminent persons in the Serena process and four local experts nominated by the nominating panel. This procedure is laid out in the First Schedule of the Act.

The procedure for nominating the members of the Committee of Experts by the Parliamentary Select Committee is as follows: They will first advertise in the newspapers in three dailies so that Kenyans who feel they qualify can apply to be selected. A timeline of 21 days is given following the advertisement where the Committee then will get the assistance of a reputable human resources firm to help them process these applications and to eventually select the four most qualified persons. Therefore, this is a competitive and transparent process. The Committee of Experts will not be representing any segment in society but will be to advise us, as a nation, on the way forward.

Madam Temporary Deputy Speaker, the other organ of review as in Clause 4 is the Parliamentary Select Committee. We have had discussions that the provision is not made of how this Parliamentary Select Committee will come into being. These are issues that we can look into at the Committee Stage. The other organ is the National Assembly and finally, the referendum where the people of Kenya will give their view on the Constitution. We will actually enact the Constitution by endorsing it. It is expected that we will go to the referendum on a consensus document.

Madam Temporary Deputy Speaker, having had a rough time with the disagreement that attended the last referendum, we would like to find a broad consensus upon which we go to the referendum and enact a new Constitution which we can all believe in and which we shall be ready to implement as a nation.

Madam Temporary Deputy Speaker, the rest of the provisions are the standard provisions. There are provisions for the referendum in part (v). You will remember during the last process there was criticism that there was no law guiding Kenyans on how to go to a referendum. We now have part (iv) starting with Clause 32 where the referendum is provided for. The ECK shall, within seven days of the publication of the draft Constitution, by the Attorney-General under Section 30 frame and publish the question to be determined by the referendum. So it is up to the ECK. The question will be framed in a manner so as to require "yes" or "no" as the answer. Voting in the

referendum will be just like in the General Election by secret ballot and the referendum will be organised and conducted by ECK.

All the other issues that need to be provided for in the referendum including the fact that the register of voters that will be used is the one which is used in the General Election are to be found in part (iv) which runs from Clause 32 to Clause 38.

Madam Temporary Deputy Speaker, a time is also provided for any petition to the court challenging the result of the referendum. Therefore, before the new Constitution is enacted, there will be a short period where any aggrieved person can ventilate in the court. The time limit when the court must give the decision is given so that we do not delay the enactment of the new Constitution through challenges in court. The petition has to be made within 14 days and the court also has to give a decision within a short period.

Madam Temporary Deputy Speaker, the expenses of the review process will be out of the Consolidated Fund, but the Committee can also accept grants, gifts and donations. The hiring of staff will be by the Committee and through a transparent process. The Committee, like all other bodies of this nature, will be empowered to make regulations on how to carry out their duties.

I would urge hon. Members to support the Constitution of Kenya Review Bill and to also appreciate all the reforms that hon. Members and citizens of this country need. All the institutional reforms can only be predicated upon a new Constitution. You cannot reform the Executive, the Judiciary and key Government institutions, including Parliament without going through Constitutional review.

With those many remarks, I would urge hon. Members to support this process and to enrich it during this debate so that as we go to the Committee Stage, we go with harmonised ideas that can lead to the completion of this review process that has dogged this country for more than two decades.

I beg to move and Mr. Orengo will second.

The Minister for Lands (Mr. Orengo): Madam Temporary Deputy Speaker, I beg to second this important Bill. You will realise that four decades after attaining our Independence the Constitution that we have in this country has the thumbprints of Lancaster. The Constitution of Kenya, as it exists today, is the result of an agreement made at Lancaster in 1962 which was also subsequent to the many Lancaster Conferences that took place before Independence. It, therefore, still has the thumbprints of the imperial power. It is a tragedy on our part that 40 years after Independence, we have not been able to have a home grown Constitution which has been debated upon and processed through the participation of Kenyans.

South Africa, which had a very traumatic experience in its struggle against racism, within two or three years, after putting in place a transitional Government, was able to have one of the best Constitutions in the continent at the moment. India, which is a large country with many people, religions and fundamentalists sects, was able to have a Constitution within two years of its Independence - in fact, in hardly a year, they had come up with a home grown Constitution. It is, therefore, a tragedy on our part that after so long, we have not been able to put the business of Constitution-making behind us and have a basic law of the land that is acceptable to the populace and which will guide our daily work and experiences. It will also ensure that the people truly govern themselves.

I am saying this because of the type of Constitutions we have had. We have had Members of Parliament detained, removed from this House by force for speaking their mind or demanding that Kenya be a better country in terms of the basic law of the land. Despite this common experience, we have not managed to have a democratic Constitution that would truly reflect the motto that we have at the door of this Chamber, "For the Welfare of Society and the Just Government of Men." So, I plead with hon. Members that as we go through this process, this Tenth

Parliament will go down in history as the Parliament that guided the process of Constitution-making to its conclusion. This is because attempts have been made in the past, but unsuccessfully.

However, as we know, Parliament is an important organ in terms of changing the basic laws of the land. At every point when we have tried to amend or change the Constitution, Parliament has been involved and previous Parliaments have not succeeded. Therefore, I would recommend to hon. Members that this business be over and done with, although not in a hurry, but to ensure that we have a truly, democratic and republican Constitution.

Madam Temporary Deputy Speaker, out of the experiences that we had after the elections, we should, in fact, be more persistent in our effort to guide this country through this Constitution-making process. It is as a result of those conflicts that it became clear that some of the weaknesses that we have in our system of governance go to the very root of the basic law of the land.

This Bill is generally a document which was discussed at some length after the attainment of the National Accord which is now part of the law of the land. The spirit of the National Accord is covered in Section 15(a) of the Constitution. It is a bipartisan Bill and it should be looked at from that kind of perspective. That, however, is not to say that this Parliament still has a right to debate, make amendments and improve any area that we think we need changes. My learned friend, Ms. Martha Karua, has indicated as much.

For my part, I must say that I have really enjoyed the spirit of this House. This House has demonstrated that it is prepared in terms of debate and the decisions it has made so far to create a new democratic spirit in this country and to ensure that organs of Government are accountable to Parliament as the supreme law-making body in the country. Parliament itself is accountable to the people of Kenya because all of us got a mandate to sit here and at the end of the day, we are required to account for our actions and decisions to the people of Kenya.

Madam Temporary Deputy Speaker, the current Constitution was a hotchpotch document that was agreed in Lancaster. The basic system of governance was not really agreed upon, that is, whether we wanted a parliamentary system or a presidential system. But still, whether it was the parliamentary system or the presidential system, I think one of the issues that has to be dealt with in the Constitution-making process is the power of the Executive. The Executive must not only be accountable, but also govern in accordance with the desires and needs of the people. There should be no imperial Executive authority that cannot be questioned.

You will remember that very soon after South Africa became independent, there were summonses which were sent out to President Mandela to appear in court. I remember at that time there were certain individuals in some of the cases that had been filed in the courts here who actually drew out witnesses summons for the former President to appear in court as a witness. Our courts here would not hear of it because in so far as they were concerned, the President was above the law and could not be required to appear before court.

Madam Temporary Deputy Speaker, the thought was completely unimaginable even according to our Judiciary, and yet Mr. Mandela was able to appear in court, in obedience to a court order, to give evidence in a judicial process. Again, one of the decisions that came out from that Southern African case, which I tried to use in one of the cases I dealt with in court, concerns the immunity of the President. The position of our courts at that time, which have not, really been changed, was that the immunity of the President is completely absolute. So, the President can actually commit an offence and get away with it, or the case should wait until his tenure of office is over.

The decision that I was trying to present to the court at that time, in a case in which I was instructed by Ms. Martha Karua, on behalf of the League of Women Voters, was that since when a President takes oath of office he vows to rule in accordance with the Constitution, and abide by the Constitution, he cannot waive the Constitution and claim immunity, if it can be demonstrated that

some law had been offended or breached or violated. The position was that any authority that enjoyed immunity had to prove that it had obeyed the law of the land before it can enjoy that immunity.

Madam Temporary Deputy Speaker, the way we crafted our own Constitution, as it exists today, and we must look at it thoroughly, we should never have an absolute centre of power at all in any democracy. Each one of us should be accountable to one's actions. I am saying all this because the driving force towards constitutional change in Kenya was, really the need to change the imperial power of the Executive.

We now have the time to deal with it. Before we can get there, we have to set the road map. That road map is contained in this Bill, which provides for participation in many ways. The Committee of Experts has to give a window to receive views from the people, and also not to disregard the work that has been done, so far, in terms of the many drafts and memoranda that have been processed through several initiatives. Of course, the two most important draft Constitutions are the Bomas and Wako Drafts.

Madam Temporary Deputy Speaker, the Committee of Experts, really, is a forum to deal with the contentious issues. It must be said that in both the Wako and Bomas Draft Constitutions, during that process, there was unanimity in terms of many areas, except in so far as the Executive and devolution was concerned. So, a window has been opened to deal with those issues through the Committee of Experts.

I also support the views of Ms. Karua in terms of the fact that we should offer some window to civil society and religious communities. They have been part of this process over the years. In fact, in the past, when the Government was totally opposed to the review of the Constitution, or even allow for minimum amendments to the Constitution. It was the civil society and the religious community which kept this debate going.

Madam Temporary Deputy Speaker, it is important, therefore, to give them a window of opportunity to participate by being able to present their views, not only to the Committee of Experts, but also to the Parliament Select Committee, which is an important organ of the review process.

The final document will be subjected to a national referendum to take cognisance of the fact that the Constitution-making process, as originally envisioned, determines that it must be people-driven. The people must have the last word in constitution making. So, at the end of the day, Kenyans will be able to vote and ratify the final document, which will have gone through the Committee of Experts, the Parliamentary Select Committee and, of course, the National Assembly.

Madam Temporary Deputy Speaker, there have been some suggestions on which I am not averse to although this would be to anticipate debate on a Bill which is not before the House. It would be important to make sure that the Committee of Experts is more representative. Personally, I am not averse to that view, because that would tend to accommodate many of the players, and many of the sectors, which were involved in the Constitution-making process.

At this age and time, if we were to go through another Bomas process, or through another large body or committee or plenary, however it may be constituted, we would just be creating room for debate on issues which have been covered before, at both Bomas and through the debate that followed the publication of the Wako Draft Constitution. Some of those views have been well ventilated in the past.

Madam Temporary Deputy Speaker, therefore, other than the question of expanding the Committee of Experts, once the Parliamentary Select Committee has a report which is brought before this House and the same is debated and agreed upon with or without amendments, that document should go to the people for final ratification.

In my view, as I said earlier, we have been on this matter for way too long. In many ways,

many areas in Government are not functioning very effectively, because of the constitutional impasse we are in at the moment. As you know, under the interim arrangement that we have, under the National Accord, we still cannot locate the various centres of power, because some of them are well expressed in the Constitution, but some exist by tradition or by practice. It is important that all Executive authority, wherever located, be supported by the Constitution.

In the past, we have had certain centres of power that were not in the Constitution. Those are some of the ways in which this country has been driven to crisis. That is because there are people out there who are in a position to make decisions and yet, they do not have legal or constitutional foundation for making those decisions. That will be a matter which will be dealt with firmly by the new Constitution. In the old days, for example, the Office of the Attorney-General, at some point in history, was a repository of the Executive authority which went beyond the powers of that office, and many people suffered during those days because of the men--- Luckily, that shows why we should be gender sensitive. No lady has ever occupied that office. There were some occupants of that office who put us through things that we do not want to remember. The same can be said with the Office of the Head of the Civil Service and Secretary to the Cabinet. Those are offices that exist outside the Constitution and yet, they have a lot of authority and power. We must begin to understand that every centre of power that controls our lives must be located somewhere in the basic law of the land. I am not talking about the present occupant of the Head of the Civil Service and Secretary to the Cabinet but, over the years, the people who have occupied that office have acted as if they are second in command and, sometimes, exercised powers that went beyond what was contemplated in so far as the basic law of the land was concerned.

Therefore, Madam Temporary Deputy Speaker, for once, I would appreciate that, at the end of the day, if for no other reason, I would say that I am a proud hon. Member of the Tenth Parliament, a Parliament that made it possible for us to have a new Constitution. I am saying so because the spirit of this Parliament is very different. In my first days in this Parliament, sitting where Mr. Namwamba is, was treason. There were people who were meant for that seat. We now think that it is an Opposition seat. But there was a time when it was meant for very important people in this Republic. Even to sit in the seat behind was also not imaginable. We were confined to the Benches beyond where Ms. Shabesh is sitting. A lot has changed but, unless we agree on a new constitutional dispensation, it is easy for us to go back to those bad old days.

Madam Temporary Deputy Speaker, the Committee of Experts should not really be seen as our foreign masters or foreign countries trying to drive the process. It must be understood that in order to get us where we are, the role of the international community was critical. It was believed that this process should be driven fast and that if there are any moments or periods when there would be disagreement on matters which were being politicised rather than dealing with the political theory proposed in the new Constitution or the system of Government proposed in the new Constitution, then we would be able to resolve that matter faster with the assistance of the experts. Their role is not to tell us what the new Constitution is going to be like, but this is one of the by-products of post-election crisis. Through the participation of international experts, we were able to, not only amend our Constitution to create the position of the Prime Minister and, therefore, create the Coalition Government, but also to have the enabling legislation that put in place the Coalition Government.

Indeed, there was a time in this House where a similar Bill was brought for the creation of the position of the Prime Minister. But it was not even read for the First Time. I think there was not so much discussion on the jurisprudence of the political theories behind the Office the Prime Minister, as opposed to the Office of the President at that time. People were out to create sinecures rather than deal with the constitutional issue that revolved around making a decision as to whether Kenya wanted to be a Westminster model kind of Government or a Presidential system. That

debate did not instruct the Bill at that time. We wanted to have a temporary solution to the problem. There were so many problems in this country. Even now, the constitutional basis of the Coalition Government is transitional. But the debate as to whether or not we want a Presidential or a Parliamentary system has not been fully addressed or concluded. This Bill is giving us that road map, the opportunity and the arena for such an informed debate to take place.

Madam Temporary Deputy Speaker, there is also the question of the organs of review. It is important that the Kenyan people, at the end of the day, have the final thumb-print on the new Constitution, so that it is not a product like the Lancaster one where a few people went to Lancaster and came with the document which had its first legislative authority and instrumentality by being passed by the House of Commons as an ordinance, but in which Kenyans did not participate fully. The fact that there is no organ such as was there during the Bomas of Kenya process, it does not mean that, within the review process, the opportunity for people who have views to present is not there. Through the Committee of Experts, the Parliamentary Select Committee and through the Members of this House, those views can still be carried on board and be part of the final enactment by this honourable House.

With those few remarks, I beg to second this Bill.

(Question proposed)

The Minister of State for Public Service (Mr. Otieno): Madam Temporary Deputy Speaker, I would like to support this Bill. You realise that we have been on this issue for 17 years. In those 17 years, we have not made enough progress. We proceed as if we are about to agree and things breakdown at the last minute.

Madam Temporary Deputy Speaker, really, a lot of work has been done. I have been part of this process since 1991 and I can say that all the contentious issues are now known. The stakeholders who are holding divergent views in respect of those contentious issues are also known. So, if there is somebody to be consulted on any contentious issues, we know who that person or that group of persons are.

Madam Temporary Deputy Speaker, in the circumstances, the current road-map is sufficient, in my opinion, because really the process we now require is a consensus building process in the sense that we want to "marry" the divergent views on the different issues on this Constitution. We should sit down between ourselves and try to convince one another as much as possible and with the mediation of the Committee of Experts and be able to agree that this would be an adequate provision for inclusion in our Constitution.

Madam Temporary Deputy Speaker, the critical organ in this, of course, would be the Committee of Experts and then the Select Committee of Parliament and finally the National Assembly itself, which as the Bill is drafted, no serious conditions, benchmarks or difficult hurdles have been placed. We will go by the rules of the National Assembly and the rules of the Select Committee to consider any of those issues and in a flexible manner, willing buyer-willing seller, the interest of the country as a whole being taken into account. I believe this road-map is sufficient to get us where we are going.

Where the problem would arise is if there is lack of commitment. But any lack of commitment at this stage, would be holding the country under the circumstances we found ourselves in December after the elections. People will still be scrambling for one slot because it is a single executive authority in the Republic. All of us serve at the pleasure of one man. So, it is a matter of life and death for someone to occupy that particular seat. If any interests are frustrated, you can see the spontaneous action of the Kenyans. I believe this is the time we should all put our heads together as the National Assembly and Kenyans and arrive at the Constitution that should

address all the issues that are important for the future of this country.

Madam Temporary Deputy Speaker, there is the issue of constituent assembly which keeps coming back and forth when we try to make this Constitution. The constituent Assembly is being understood as a group and assembly of elected persons specifically for the purpose of delivering the Constitution. In those circumstances, whatever Constitution the constituent assembly agrees to is then adopted. The road-map provides that the adoption will be by a referendum and the National Assembly is really competent to represent all the views in the Republic. So, I do not find myself in need for any constituent assembly or for any debating forum again. It is no longer a matter of debating issues but it is a matter of negotiating the particular issues that we need to include in this Constitution.

Madam Temporary Deputy Speaker, the next contentious issue has been the devolution. Now, we are practising part of that. We have a shared Executive to an extent. So, I think one step and experience has been achieved since the last deadlock in November last year. So, it should not be difficult now to resolve the issue of the executive structure. It should also not be difficult to chart out what degree of devolution and resource allocation is necessary in this country so that we can guarantee ourselves harmony and peaceful relationship of the different communities and regions and the peace and stability that we need to seriously embark on the development of this country.

Madam Temporary Deputy Speaker, land issues were similarly difficult but a lot has been achieved towards the development of the land policy and it should not be difficult to isolate aspects of it that will go into the Constitution. So, I feel that the road-map prescribed in this particular Bill is sufficient for us to be able to get a Constitution for Kenyans. All parties promised a Constitution. All the candidates literally had views of the Constitution. So, if anything, all the Members that have been elected into this House were virtually given a mandate by Kenyans that "go to the Tenth Parliament but, please, make sure we get a Constitution." So, if anything, we came here with the mandate to do one thing; make a Constitution and then the rest of the reforms that will go with it. I feel it is urgent.

I support the Bill.

The Assistant Minister for Housing (Bishop Wanjiru): Thank you, Madam Temporary Deputy Speaker. I stand to support the Constitution of Kenya Review Bill. It is a good Bill and very well drafted. However, I would like to suggest two or three amendments. I am only hoping that we still have room left especially in the Committee of Experts. Whereas we have three foreigners and four Kenyans we should have room to accommodate four more Kenyans, to have a regional representation within the eight provinces so that we have every province represented within the committee. So, we will have eight Kenyans and three foreigners. This is a suggestion which is probably worth thinking through.

Madam Temporary Deputy Speaker, I am also thinking that we might have to look at some point at the total overhaul of the Electoral Commission of Kenya (ECK) before we get to the referendum level. I personally believe that many Members would agree with that. We would not be looking at a good job to be done if we have to work with the same ECK that we worked with during the last elections. So, we need to think through and consider the ECK overhaul and that would be very important.

Dr. Eseli: On a point of order, Madam Temporary Deputy Speaker. I rise on a point of order in that the hon. Member contributing to the Bill right now suggests that we should have a total overhaul of the ECK without suggesting a total overhaul of this House because we are all here because the ECK declared us the winners of our various seats. So, if we want to overhaul the ECK, then we should also overhaul this House.

The Temporary Deputy Speaker (Prof. Kamar): Dr. Eseli, the hon. Member on the Floor

has not said we overhaul them because of the Membership in the House.

Proceed, Bishop!

The Assistant Minister for Housing (Bishop Wanjiru); Thank you, Madam Temporary Deputy Speaker. I would also like to say that I agree with most of the hon. Members that have contributed, that we do not need a constituent assembly. All the suggestions on the Constitution have already been done. Probably, all that we need is to refine it. However, I would ask the honourable Minister to look into the former contentious issues between the Bomas Draft and the Kilifi Draft or Wako Draft and see whether we can start at that point by sorting out the contentious issues because as long as they are not sorted out, we will still end up where we were last year.

With those few suggestions, I beg to support.

Mr. Wamalwa: Madam Temporary Deputy Speaker, I also rise to support the Constitution of Kenya Review Bill, 2008. As other Members have suggested, the Bill is well drafted and I think it is a good road map that should take us to the end of a journey that we started and have been travelling for over two decades. The issue that will probably need to be considered, and I think this is a matter that has been of concern to several people, is the issue of the Committee of Experts because this is going to be the engine of the whole process. It will be leading the whole process and co-ordinating.

Madam Temporary Deputy Speaker, as hon. Orengo said earlier, the Lancaster Constitution was made by Kenyans before Independence under the supervision of our colonial masters. Indeed, it was a Constitution that was midwived by our colonial masters in Lancaster. For many years, it has been looked at as foreign in a way - it was not completely Kenyan. It was not completely made by Kenyans for Kenyans and it has always had that imprint of the colonialists. That raises the issue of the sovereignty of this country, which lies in the people of Kenya.

Madam Temporary Deputy Speaker, 45 years after Independence, it is not only the Constitution that still has some imprints of the colonial masters. We do have a lot of land in this country that still has title deeds in the name of King George. You will find a title in the name of McKnight, the Royal Knight of the Old Gutter. That is 45 years after Independence and we are still saying that we are holding land at the pleasure of King George and that we are his subjects! We need to do something!

Madam Temporary Deputy Speaker, Kenyans have always desired to get a new Constitution, and it is that constitutional moment that we are enjoying again. Five years ago, when we formed the National Rainbow Coalition (NARC), it was a constitutional moment when all Kenyans came together and formed a rainbow coalition, and promised to deliver a new Constitution to Kenyans within 100 days. But that did not happen. We failed to deliver the Constitution within 100 days. We could not do it within 1,000 days of the NARC Administration. But I think it is by fate rather than by design that we find ourselves, again, in the same Government from different parties in a Grand Coalition.

Madam Temporary Deputy Speaker, the goodwill that is there now must be tapped to ensure that the journey that we have walked, which is about 80 per cent - we have 20 per cent of the journey left - this document that has been prepared as a road map, is a vehicle that can take us through the remaining 20 per cent of our journey. All we need to do is to support it. But we should ensure that when it comes to the experts, they should have the confidence of all Kenyans! Ideally, it should be Kenyans themselves making that Constitution. But it is not practical! It is not possible for 38 or 37 million Kenyans to gather together and make a Constitution.

Madam Temporary Deputy Speaker, we have gone through the Bomas process. We have had many initiatives, including the Kiplagat Committee of Eminent Persons. We had the Multi-Sectoral Review Forum under the leadership of hon. Dalmas Otieno. Therefore, we have covered a lot of ground. But the remaining bit---

Under Section 6, we find that the Committee of Experts shall comprise of seven people. Of those seven, three shall be non-citizens, who shall be nominated by the Panel of Eminent African Personalities and four shall be citizens of Kenya nominated by the Parliamentary Select Committee. It is only that aspect of the Bill that needed more attention and I think it has been addressed or it is still being addressed in different quarters. It should be Kenyans making that Constitution through those experts. Kenyans cannot nominate, but they can do so through their elected representatives, who are hon. Members.

Madam Temporary Deputy Speaker, we urge that, that Committee of Experts should be nominated by Parliament and appointed by the President. That is the only aspect that I feel very strongly that something should be done to capture the issue of sovereignty and ensure that, that Committee of Experts has the confidence of all Kenyans.

Madam Temporary Deputy Speaker, the remaining part of the journey is really a choice that Kenyans will have to make between the Presidential and the Parliamentary system of Government. Once that is done, Kenyans should be able, through a Referendum, choose the kind of Constitution and the kind of system of governance that they want for this country.

Madam Temporary Deputy Speaker, it is important that, because we have undertaken to give Kenyans a new Constitution--- We have severally promised that, that will be done within one year and already, half the year is gone. It is important that, with the support of hon. Members today, if this Bill goes through, we should be able to start the journey and set the feet of this nation towards getting a new Constitution within 100 days.

With those few remarks, Madam Temporary Deputy Speaker, I beg to support.

The Minister for Development of Northern Kenya and other Arid Lands (Mr. I.E. Mohamed): Thank you, Madam Temporary Deputy Speaker. I wish to support the Bill. I would like to urge the House that, having seen what happened to us early this year, this is probably the most critical thing among the few important things that we need to do in this country. We cannot continue to have a Constitution that confers an imperial presidency or puts power in the hands of one person or a few people. We cannot continue to have a Constitution that allows such inequality that, at some point, it will catch up with us and finish us as a country. We cannot continue to have a Constitution that divides this country and makes every individual to desire to become the President, in order for their community to "eat" or to prosper.

Madam Temporary Deputy Speaker, it is time that we looked at our survival as a nation and really make sure that we have a Constitution that takes care of all of us. We should have a governance structure that is properly defined and that can be respected by all so that, we can become a prosperous nation and a just and equal society whether by region, gender or any other form. But we should really look through to make sure that we have a Constitution that will take us to our Vision 2030. I do not believe that the current Constitution will make our Vision 2030 happen. This Bill provides that roadmap. We can have arguments about how it could be done, and Kenyans are good at that. But for once, let us stick to that roadmap and ensure that Parliament provides leadership to ensure that Kenya gets a new Constitution within the time that was agreed between the two Principals, when they signed that Accord.

Thank you, Madam Temporary Deputy Speaker. I beg to support.

(Applause)

Mr. Namwamba: Thank you, Madam Temporary Deputy Speaker. I rise to support this Bill. As I do so, first of all, let me say that, as we start this journey, we should remain alive to a number of realities. One of those realities is the history behind that process. The Tenth Parliament, and those of us who are privileged to be part of this process right now, should see ourselves merely

as the latest instalments in a long process that has taken decades to get us here.

Indeed, Madam Temporary Deputy Speaker, it was inspiring to watch the Minister for Justice, National Cohesion and Constitutional Affairs and the Minister for Lands - my learned seniors - move and second this Bill, respectively. That is because the two of them, indeed, are living warriors that have been faithful during this long journey. I have said so because, for me, one of the things we shall achieve by enacting a new Constitution during the life of this House will be like erecting a monument to the gallant sons and daughters of this country that have shed their sweat, their blood and some have even lost their lives in pursuit of a just society, today and tomorrow.

So, let us pause and learn from the efforts of those who have been there ahead of some of us, and also learn from the mistakes that have consistently prevented us from achieving this important goal. We could easily have had a new Constitution in the year 2005 but because we allowed so many issues that were not central to this agenda to take hostage of this process, we could not move. But today we are presented with a grand opportunity because we are living a truly constitutional moment.

Constitutions by their very nature are made in terms of crisis, in terms of controversy; whether you are looking at the United States of America Constitution, the Philadelphia Convention of 1776, whether you are looking at the French Constitution in the aftermath of the French Revolution; they are all products of controversy and crisis. The crisis that almost brought this nation to its knees should, therefore, serve as a motivation for us to finally crack this complex issue.

Madam Temporary Deputy Speaker, the first Republic that we seek to replace through a new Constitutional dispensation, basically, was a successor to the Governor and all the deformities of the colonial states.

Therefore, as we pursue the remaking of our nation, I have looked at the objectives and guiding principles of this Bill and I see a very clear intention to lead us to the birth of our second Republic that will be anchored on democratic constitutionalism as our central unifying public philosophy.

We have an opportunity through a new constitutional dispensation to instal the rule of law in the place of the rule of man that we have witnessed over the last 40 odd years of Independence. Writing in his masterpiece, *The Commonwealth of Oceania*, Harrington says: "Gives us good names and they will make us better people. It is a fallacy. But give us good laws and they will make us better men". It is a maxim that must guide every legislator like those of us here.

Therefore, Madam Temporary Deputy Speaker, I support this road map. But I also support it with caution and with the benefit of hindsight. Opinion has been expressed on the need to have organs that are representative.

I hold a slightly different view. That there is such a diversity of interests in this country that you cannot have any organ of review that will pass the test of absolute representation. So, what we should be focusing on, and that is why I am persuaded to support a lean team of seven experts, we should be persuaded more by the imperative to get the job done and not merely to get everybody represented. That is a matter we cannot achieve. America did not achieve it at the Philadelphia Convention and we will not achieve it here. Let us get a team that does not necessarily because if we say we must have a Committee that represents ethnicity for instance, then you must a team of 42 basic ethnic cities.

If you say you want to have a team that represents religious interest, then you must have a team that represents all religious interests including *Dini ya Msambwa*. So, our focus really should not be on representation of all these multiplicity of interests.

Madam Temporary Deputy Speaker, we should be more concerned with having a team that can deliver. Therefore, the only concern which I know within the relevant House Committee and

with the hon. Minister, these concerns which should be ironed out as we travel this path are issues like phrasing out the manner in which we will put in place the Parliamentary Select Committee, how it is going to operate and such issues, which for me are not really a hinderance to us proceeding with debate on this Bill and its enactment.

Madam Temporary Deputy Speaker, I want to conclude by telling this House that when Nelson Mandela walked off Roben Island, he rallied the people of South Africa by telling them: "That sometimes it falls on a generation to be great" He told the people of South Africa: You can be that generation. The generation that heals the wounds of division and wrangles among various races and ethnic cities. I want to challenge the 10th Parliament that we have the opportunity to be that House that finally cracks the puzzle and hands the people of this country a new Constitutional dispensation.

With those few remarks, I beg to support.

The Minister for Higher Education, Science and Technology (Dr. Kosgei): Thank you, Madam Temporary Deputy Speaker. I rise to support this Bill. Indeed, as it has been said, the Tenth Parliament has a very good chance to leave a lasting legacy for our country. We must spearhead the new Constitutional dispensation for our country. Forty-Five years after Independence, it is not good enough for us to continue to live by a Constitution which was written in a hurry to simply get us Independence from the colonial masters. Kenya has grown greatly both in population and activities. Definitely, when that Constitution was written, it served the purpose at the time. But right now, there are so many aspects of our life that need to be regulated by a new Constitution. We have to demystify whatever it is we are doing with the Constitution so that it serves the people of Kenya correctly. For example, if we look at the land issues, every day, we hear of a new policy. If we have to come out with our Constitution, which I have no doubt we will, then these matters will be regulated within the Constitution. Any discussion that takes place then will be underpinned in our Constitution.

By saying that we should have everybody; every community; every sect represented in this review, we will actually end up postponing, prolonging and procrastinating over a lot of things. We should choose people and we, as hon. Members represent the people of Kenya collectively. So, my view is that we should move ahead with speed and use this opportunity; the goodwill that has been born out of a difficult situation earlier this year. We should move together with purpose and get a new Constitution for our people. As I started, this is our moment to leave a legacy of the Tenth Parliament.

Thank you, Madam Temporary Deputy Speaker.

Mr. Chanzu: Thank you, Madam Temporary Deputy Speaker, for giving me the opportunity to support this Constitution of Kenya Review Bill.

As has been said by the previous speakers, I think a new Constitution in this country is long overdue and Kenyans have been eager. For those who saw what happened in 2002, just prior to the elections when a promise was made that a new Constitution would be in place in 100 days, the pattern of voting was in that direction. When that did not happen, it caused a lot of problems. There was a lot of pressure. Even by the time we were having the Referendum, the pressure was already mounting.

It is very important that we forget the issue of individuals and personalities. This is what has been happening. I think those who are charged with the responsibility from the top look at themselves first before they look at the interest of Kenyans. If all of us, as leaders, were to look after the interest of Kenyans, then I think that we need a new Constitution in place.

Ethnicity is something that we cannot get out of in this country; from the colonial times when the *mzungu* used the divide and rule method of administering this country and then at Independence. Over time, we have come to realise that we come from different communities. It

will be very difficult if we follow the same trend; that we look at ourselves as from various ethnic groups. Kenyans will have trust if we have a new Constitution in place. There must be adequate devolution, so that every Kenyan feels that he or she participates in what goes on from down to the top.

We talked about contentious issues. Like it has been said, I think that there are very few issues that have been left. If you look at the issue of the Executive devolution, it does not need the entire country to be involved. I support the way the organs of running this process have been constituted in the Bill. I also support the view that we have few experts. You cannot have everybody going to the kitchen and then you get the food. There must be those who can prepare the food and then put it on the table.

In 1991, the Government in place by then, said that there was going to be a new Constitution. After the elections of 1992 we had clashes. The same was repeated in 2002 and 2007 with very grievous outcome. It will be dangerous because Kenyans now know what to do in case something like that happens again. They will now be prepared. Last time I think they were not prepared for it. We do not want to get to that stage.

So, I support the idea that we have a new Constitution. The period that was pledged again this time was a year. We are more than half way through. I urge this House and Government to support the idea that we have a new Constitution the soonest possible.

Madam Temporary Deputy Speaker, with those few remarks, I beg to support.

Mr. Thuo: Thank you, Madam Temporary Deputy Speaker, for giving me this opportunity to support this Bill. I would like to thank the Minister for bringing it to the House.

I am a bit concerned - and I hope that it is not for lack of support - by the lack of enthusiasm in the House today. It is almost a symptom of why we have been unable in the past to produce a new Constitution.

Mr. Chanzu: On a point of order, Madam Temporary Deputy Speaker. The issue that the Chief Whip is raising is very important. But actually, we have been thinking that he should take---

The Temporary Deputy Speaker (Prof. Kamar): What is your point of order?

Mr. Chanzu: Madam Temporary Deputy Speaker, is he in order to raise that issue when he is supposed to be the one whipping Members to be in this House?

Mr. Thuo: Madam Temporary Deputy Speaker, I will proceed as if I was not interrupted.

Over the last more than one decade, Kenyans have been promised a new Constitution. I wish to agree with hon. Namwamba and others who have spoken, and say that maybe this is our unique opportunity, as a Parliament, to deliver what has proved extremely difficult for this country. We have just gone through a very traumatic experience in the months of December, January, February and March. It would be a shame if we failed to deliver on our promise of a new Constitution, particularly given those who have lost lives and others who have been displaced. This is because the future of Kenya is definitely dependent on the writing and presentation to the people of Kenya of a new Constitution. Even our ideals of a developed or middle-income economy by the year 2030, I submit, cannot be achieved without laying the foundation and basis on the back of a new Constitution.

Madam Temporary Deputy Speaker, I am very pleased with what has been presented. But I must say that it is clear that we shall not achieve our stated objectives of delivering this Constitution within 12 months. Even looking at what is before us with this new Bill and the steps necessary in order for us to get a new Constitution, it is clear that we will have to work very hard and burn the midnight oil. We will also need to have a lot of goodwill and consensus building in order to achieve what it is that we seek to achieve.

Madam Temporary Deputy Speaker, I am not a lawyer, but I have gone through this Bill and I have a couple of issues that I would like the Minister to probably address. If I seem to have

misunderstood the issues, then I will be quite happy to be suitably informed.

On Part IV on the Report of the Committee of Experts thereon, under Clause 29(5), it says: "Where the National Assembly submits the draft Constitution to the Committee of Experts for consideration and redrafting under Section 4B, the Committee of Experts shall within seven days of the receipt of the Constitution consider the proposed amendments and submit the draft Constitution to the National Assembly."

Under Clause 29(6) it goes on to say:

"The National Assembly shall approve the draft Constitution and shall within 14 days--"

It seems to me under this Clause that the Committee of Experts is really being placed above the National Assembly in terms of its ability to make decisions and amendments. This is because where the National Assembly may and chooses to make amendments, the Committee may only consider and not necessarily amend it. But once it presents the draft to the House, the House shall approve. It presupposes - and I assume that I am right on this - that the National Assembly at that point is duty-bound to actually pass it as it is. So, there I am a bit uncomfortable.

The other area is Part VIII, Clause 55(1), which says:

"If the final result of the referendum is that the people of Kenya have ratified the draft Constitution; the Committee of Experts shall stand dissolved forty-five days after the day the President proclaims the new Constitution to be law and this Act shall thereupon lapse."

I do not see anywhere where the President is mandated to do so, within a few days or a certain timeline. If the President chooses not to proclaim the new Constitution to be law in the next couple of years, then the Committee of experts remains in place and continues to draw money from public funds, while awaiting the proclamation of the President. I would have thought that we would put a timeline to this to ensure that we do not keep in abeyance a committee that continues to draw from public funds.

Madam Temporary Deputy Speaker, with those few remarks, I beg to support.

The Assistant Minister for Education (Prof. Olweny): Thank you Madam Temporary Deputy Speaker--

The Minister for Lands (Mr. Orengo): He has just come in!

The Assistant Minister for Education (Prof. Olweny): Madam Temporary Deputy Speaker, could you protect me from Mr. Orengo? He is saying that I have just come while I was here when he was seconding the Motion.

Thank you for giving me the opportunity to support this Bill. I congratulate the Minister because if you look at the Bill, a lot has been taken care of. This gives us another opportunity. An opportunity which has been squandered by previous Parliaments, particularly the last Parliament, which had all the opportunity to give Kenyans a new Constitution that Kenyans had longed for, for several years. We know we had a good Constitution at Independence. Kenya's Constitution, at Independence, was one of the best. It took care of the interests of many people and many communities in this country. Unfortunately with time, because of selfish interests of many leaders and various groups in this country, that Constitution has been badly mutilated. It was changed over time. Several amendments have been made.

If one would ask the founding fathers of this country to rise from their graves and look at the Constitution we have today, some of them will not believe it. Although I know some of them who were party to these amendments would still be happy. That is what has caused us problems.

Madam Temporary Deputy Speaker, we have made efforts to review our Constitution comprehensively. In the last Parliament, we had this big crowd at the Bomas of Kenya. We were there to do the job we were supposed to in regard to amending our Constitution. The crowd gave its

proposals. A good number of us were members of that crowd. Several drafts were made after the Bomas conference. We had the Bomas Draft, the draft from Naivasha, another one from Kilifi and another from Wako. All those were amendments of the so called Bomas Draft which we have today. The drafts are also with us in this country. Some of them are very good, in fact, most of them.

If you look at what we have in those drafts, they take the interests of Kenyans into account. They were proposed by Kenyans. The information in them was proposed by experts, most of whom were Kenyans. They were proposed by the *Wanjikus* whom we wanted. However, I remember hon. Moi telling Kenyans that the *Wanjiku* way was not the best. But if you look at those drafts, we have actually gone back the Moi way. I would say that the *Wanjiku* approach was not the best. However, *Wanjiku* gave us the Bomas Draft which we are going to benefit from.

Madam Temporary Deputy Speaker, the failure of the previous Parliaments to give Kenyans a new Constitution, according to me, is responsible for what we saw early this year after elections. Had we given Kenyans a Constitution--- Had Kenyans given themselves a Constitution they wanted, I do not think we could have had what we had this year. I do not think we could have lost lives. I do not think property could have been destroyed if they had used the opportunity well. But we have it again today, thank God.

In the drafts that we already have there are things which could not allow them to be turned into a Constitution. These are the so-called "contentious issues". As hon. Members have said, we know all those contentious issues. These are issues relating to land and devolution of power which has been achieved today to some extent. That was one of the major issues that we have achieved today. I do not see some people losing out seriously because we have the position of the Prime Minister in this country. What do I lose if a Kenyan has a wife and that wife is given Kenyan citizenship? What does a Kenyan lose if a Kenyan is married to an American and the American is given citizenship? What do we lose? It is done in other countries. Some of these were issues that made the Bomas efforts fail. I feel that there are things that should not make Kenyans kill one another. If they are the issues which were contentious and made the Bomas Draft, the Kilifi Draft, the Wako Draft and the Naivasha Draft fail, is it really justified that we kill one another?

Madam Temporary Deputy Speaker, if you look at the Bill, I am happy that the Minister and experts in the Ministry pointed out that the Committee of Experts will address the contentious issues that we have in the drafts that have already been made in this country. That will be one of the shortest ways of solving the problems that have prevented Kenyans from getting a Constitution that they have always longed for. We know the contentious issues but, unfortunately, Kenyans are very good at changing goal posts. They are very good at changing positions. You may come up with some solutions to some of the problems then you find a group of people calling themselves the civil society or a religious group that says, "No, we want this". This time I think we better call a spade a spade. Instead of changing goal posts, confusing Kenyans, saying we want *Wanjiku* in this, saying no *Wanjiku* cannot do it---

Madam Temporary Deputy Speaker, if you look at the qualifications that have been proposed for these people, I am happy with them. It is a very good proposal because it will beat the crowd. It still represents the kind of crowd that we had in Bomas of Kenya. However, it beats these people who always come up with all kinds of arguments, for example: "We also want to be represented because our religion is not there. My community is not there and my clan is not taken care of." My view is that we would rather have experts doing this job rather than a crowd. We know that a crowd is so difficult to handle. As politicians, we know that dealing with a crowd that is in front of you is difficult. We had that experience in Bomas of Kenya. So, Clause 8 serves us well with regard to appointing the group to help in handling this issue of coming up with a comprehensive review and a draft that will serve our interests.

That will also help us in saving costs. The Bomas of Kenya approach was the most expensive approach the country could have wanted to write a Constitution. It was very expensive. We had the conference for a whole year. The amount of money that this country spend on that, followed by money that was spend during the referendum was not fair to the taxpayers of this country. We spend all that money, but ended up with no Constitution. We then led Kenyans to the crisis that we had early this year. The small group will handle this thing professionally and then bring it back to this House. It will be the cheapest and most efficient approach according to me. It will shorten the period. After all, we have been told that in a year, this can be done.

Madam Temporary Speaker, the way this Bill is drafted and the way the process here has been indicated, I am sure it can take a year or less. It will shorten the period and save on the money and unnecessary arguments that come with a crowd. Kenyans are always good in making all kinds of arguments. If you give bring them together and give them the opportunity, instead of helping you out, they just drag you down.

Madam Temporary Deputy Speaker, the most important thing is Clause 14. This Committee must be independent as indicated there. If other people are going to impress them, then we shall still end up with problems.

The Assistant Minister for Higher Education, Science and Technology (Mr. Kamama): On a point of order, Madam Temporary Deputy Speaker. Since we have debated this matter comprehensively, would I be in order to ask the Mover to reply?

The Assistant Minister for Education (Prof. Olweny): Madam Temporary Deputy Speaker, I have not finished making my contribution. I actually have ten minutes as far as I know.

The Temporary Deputy Speaker (Prof. Kamar): You can finish as I consult on his point of order. I think he also has a right to be heard. I see that there are two hon. Members who feel they must contribute. We do not want to breach their rights on that. Please, go ahead.

The Assistant Minister for Education (Prof. Olweny): Madam Temporary Deputy Speaker, if you look at Clause 24 of the Bill, it gives Kenyans an opportunity to give their views. Anybody who wants to give his or her views will do so before the Committee of experts. It could be through radio, television and so on. It can be done live. Kenyans can make telephone calls and give their comments and proposals. With regard to the referendum that we had, Kenyans were not educated well. There was no civic education that was done adequately because we did not have enough time. We shall have it again done as has been proposed under Clause 25.

Let me end by saying that for the Tenth Parliament, this is an opportunity for us to make history for this country. It is an opportunity for the honourable ladies and gentlemen of this House to make Kenyans have the Constitution that they have been looking for and longed for, for all these years. We shall make Kenya a different country. Thank you.

Mrs. Noor: Thank you, Madam Temporary Deputy Speaker. The pain of Constitution-making is very fresh in our minds. This time round, we must give Kenyans the Constitution they deserve. The Tenth Parliament has an opportunity as every other speaker has said. It has the responsibility of taking the lead role in the Constitution-making process. Kenyans have a big dream and a vision. It is only wise for us to make that dream come true so that they can realise what they have been looking for, for all those years.

The pain of Constitution-making is something that we have all gone through. Kenyans have lost relatives and property. They have lost dearly in the Constitution-making process. Kenyans invested heavily in the Bomas of Kenya Draft Constitution. So, I am proposing that the forum for giving views must be limited. Since we have all the information that is required from every Kenyan--- Every Kenyan, in one way or the other, has contributed to the process. They have given their views, ideas and suggestions with regard to how they want to be governed in this country. They have proposed the justice system that they require.

Madam Temporary Deputy Speaker, the Parliamentary Select Committee should be gender balanced. We must be very sensitive so as to involve every person in the process, particularly when we are selecting the Committee in this House. We must be very sensitive. The formation of Committees in this House has been very blind to gender issues. This time round, since Constitution-making process is such a good thing and it demands a lot, every interest of the two genders must be taken into consideration.

Madam Temporary Deputy Speaker, the Committee of Experts must also be gender balanced and show the face of Kenya. I am proposing eight Kenyan citizens to form the Committee of Experts. Why have I come up with that proposal?

As alluded to, we have had a very expensive process. The Bomas process was very expensive. Now that we want to accommodate the regional interests of this country, the membership of the Committee of Experts must have regional balance. So, we must have eight people in the Committee.

In the process of filling vacancies of the Committee of Experts, the President must appoint people as per the ranking given to him by Parliament. Clause 39(3) says:

"The petitioner shall within seven days after the petition is made deposit two million shillings with the court as security against costs."

That is too expensive for a common Kenyan who has a stake in the constitution-making process, to afford.

Madam Temporary Deputy Speaker, since every Kenyan has a stake in the constitution-making process, providing for such a huge amount of money as a condition for filing a petition, is very inhibitive for Kenyan communities to participate in the process, which they have been looking forward to for a long time. I, therefore, propose that this figure be reduced to about Kshs500,000.

In the First Schedule, part (4), says:

"The Parliamentary Select Committee shall rank and provide comments regarding each nominee to the National Assembly."

How many people shall this Committee present to Parliament? That aspect is not clear. We must be clear and agree on the number. So, we should be very clear as to how many people the Select Committee should present to the House.

Madam Temporary Deputy Speaker, as I earlier said, I propose that the Select Committee should nominate 14 people for presentation to the House. Parliament should forward eight names to the President. Thereafter, the President should gazette those names. Kenyans need workable social justice systems and structures put in place.

I would like to conclude by saying that the governance structure that Kenyans need is one which will appreciate and give services and justice to Kenyans.

With those remarks, I beg to support.

Mr. Affey: Thank you very much, Madam Temporary Deputy Speaker, for giving me this opportunity to also support this very important Bill. The matter of constitutional review is not new in this country. It is something which we should have disposed of a long time ago. In fact, I thought we had a unique opportunity immediately after the crisis that we had in this country, particularly when we had the Serena team in place.

I must, however, confess that they did an excellent job. Constitution making always becomes easier in times of crisis than in times of stability and good times. Therefore, I am of the view that this should have been done yesterday. I also got worried that the Minister and the Government might have forgotten that this was a very important process, especially given that it has taken us a few more months before this Bill came to the House.

Madam Temporary Deputy Speaker, I have only a few comments to make about the organs of the review process, one of which is on the proposed Committee of Experts. I am a bit pained to

accept that the proposed experts can include foreigners. I would like the Minister and the Government to review this particular aspect of the composition of the proposed Committee of experts. Even though the Minister has said that this is a negotiated Bill, if foreigners are needed, we can have them as consultants to work with the Committee.

Having foreigners to participate in the deliberations of a matter that is purely Kenyan is going too far to compromise our own sovereignty. So, this is a Kenyan process. It has got nothing to do with foreigners. Let foreigners advise us, but let us, as much as possible, have Kenyan professors, Kenyan lawyers and Members of Parliament as well as the Kenyan people, drive the process. It should have nothing to do with any foreign persons managing this process. Therefore, on this particular organ, which is the experts who are supposed to harmonise all these documents, I would plead with the Minister to make it wholly Kenyan.

Madam Temporary Deputy Speaker, even though we have no problem with four Kenyan experts sitting on the proposed Committee, the Minister should consider raising this number to eight. I say so, because constitution-making process is about perception. The perception that the experts involved are Kenyans, and that they represent the face of Kenya. It is so important for Kenyans to eventually digest and accept the contents of the final document.

So, I suggest that we increase the number of experts to be appointed to the Committee, and even make clear the constitution of the Committee's membership in terms of gender balance, because the Bill is not even clear about the issue of gender representation. We are very keen on that aspect. It is also about the perception; that, this is a Kenyan process in which the Kenyan people are involved.

Madam Temporary Deputy Speaker, I am told that members of the Committee of Experts will be nominated by the Parliamentary Select Committee, and the other three will be nominated by the eminent persons. That is where we have a problem. Even the nomination process by the Parliamentary Select Committee is not very clear. The Minister alluded to this. So, I hope that the relevant Departmental Committee will look at this provision in detail, so that we know the way forward.

During the Eighth Parliament, I was a Member of the Committee. At that time, it was very clear how the membership was selected. In this case, the Minister should, perhaps, during the Committee Stage, consider carrying amendments to see how the Parliamentary Select Committee itself is constituted. If there is a perception that the Parliamentary Select Committee membership is twisted in favour of one political party or the other, we might go back again to the drawing board. So, it must be clear how this Committee will be constituted and who its membership will be.

Madam Temporary Deputy Speaker, another bit I have a problem with is the referendum. The Minister said that we expect to have consensus. The question is: If there is consensus, why would we require a referendum? We will only require a referendum in the event that there will be no consensus, to allow Kenyans to decide. Therefore, I would like the Minister to ensure that the final document will have the acceptability of all the provinces in this country, so that we do not have a province feeling left out of this particular process.

That is why even in the event that we go to a referendum, we should have at least 50 per cent of Kenyans voting, so as to ensure that this document is wholly accepted. We should also provide for a caveat, just like we have done for the Presidential elections, where we have provided that the President-elect should, at least, win 25 per cent of the total vote in five provinces in addition to emerging the overall winner. In this case, we should provide for the eight provinces. It should be mandatory that the entire membership of this country accepts the final document.

Madam Temporary Deputy Speaker, finally, it is a question of goodwill. We can do so much but it will depend on the goodwill of this Government. So, it is important that there is goodwill within the Grand Coalition Government for this document to go through. The way I see it

now, we need to work towards creating that goodwill. The Minister and the rest of us must work on that aspect, so that in the general elections, we do not go through the kind of difficulties we went through early this year.

Madam Temporary Deputy Speaker, finally, I would like to talk about the review of constituency boundaries. There is a campaign that is going on in the country whereby, in highly populated areas, people want to increase their numbers in the House, which should be so. But as we say one-man-one-vote, we in the northern Kenya, perhaps, we should say: One-vote-one-acre. It could be compensated with a piece of land that we represent. We have no problem to increase the number, but it should depend on the size of the land. That way, we shall all gain.

With those few remarks, I support the Bill.

Mrs. Shebesh: Madam Temporary Deputy Speaker, I will be very brief because I stand to support, and many of the comments that I would have made have already been made by my colleagues. I would like to raise the issue of political goodwill that my colleague has just spoken about. This House has no excuse to delay this process. We have no excuse because we are in a Grand Coalition Government. It would be very unfortunate if political intrigues would come into the path of the constitution making process.

I would like this House to be put on notice that Kenyans are not going to allow us, this time round, to play politics with the issue of constitution making. We know that, already, issues of succession and the debate on 2012 elections have begun. We must be cognisant of the fact that 2012 elections will not be based so much on political parties, but on whether this Tenth Parliament would have delivered a new Constitution. The Members of Parliament who are sincere to their people in the promises that they made--

We made a promise that this Tenth Parliament would deliver a new Constitution. I would like us to take the issue of the constitution seriously, and remove personalities from this issue. Let us look at this issue of a Constitution as a collective responsibility of the Tenth Parliament and not about individuals or any interest. I really call upon the civil society, who want to be part of this constitution making process, to take a different role this time of keeping this Parliament in check. They should be filling these public galleries every time we are discussing the Constitution making, to look at who would be playing politics with this issue. It is no longer an issue of politics but an issue of transforming this nation.

With those few remarks, I support.

Dr. Eseli: Madam Temporary Deputy Speaker, thank you for giving me a chance to contribute to this very important Motion. I would like to congratulate the National Dialogue and Reconciliation Committee for a job well-done, because I believe this is a product of that Committee. This process is long overdue. The previous speakers have said that a new constitution is a promise all parties made, large or small. I am sure it was not an election tool. I am sure that we were all committed to that fact.

However, we must realise that a constitution on its own is not a panacea to all our problems in this country. It is rather the laws, the Acts of Parliament and the institutions that will emanate from that Constitution that will make a difference in our country and, probably, make our lives better and end the long suffering of our people. However, given that there have been other things being put in place, where we are trying to get the Truth, Justice and Reconciliation Commission which will serve as a catharsis to our people before we actually enact a new Constitution, let us be aware that the forces that have been against a new Constitution in this country are still alive and lurking in the wings. They can pounce at any time unless we, as Parliament, take it seriously and deliver this Constitution. The forces that are lurking in the wings are coming in on a term called experience. That is on page 1169, Section 5A.

Madam Temporary Deputy Speaker, Section 5(a) states:-

"The bodies which will be appointing the people in this Committee should take cognisance of experience and academic qualifications of the applicants."

That is where the forces that are arraigned against us will find a way in because they will present you with their experience in past constitution making processes. They will present you with experience on what they botched before and what they actually managed to make us lose before. That is where they will come with their experience. We need to be very careful about that.

Madam Temporary Deputy Speaker, while I agree that we have tried to do something about that by saying that those who were Commissioners of the Constitution of Kenya Review Commission (CKRC) established under the expired Act might not be eligible to be appointed as the committee of experts, then we should have added that past Members of Parliament especially in the last ten years should also not be members. Some of them were forces arraigned against us in the Constitution. So, we need to be very careful about that.

Then we have got various other people who we need to be very careful about. I know the civil society has done a great job for this country right from the fight for multiparty politics. Here, I wish to commend the likes of the gracious lady, Ms. Karua, the Minister for Justice, National Cohesion and Constitutional Affairs and Mr. Orengo, the Minister for Lands who actually made the civil society vibrant in this country in pursuit of a new Constitution. We need to be very careful since some people have hidden under the umbrella of the civil society but their intents and purposes are not exactly for the good of this country.

Madam Temporary Deputy Speaker, so, while I agree that we should be very careful, we should not lose sight of what we want to do. To me, there are very few things here that we need to worry about because when we talk about regional balance and religious considerations, I think let us leave some of those things. Regional balance is going to be impossible with four people being selected by the Parliamentary Select Committee. Okay, there is a worry that we might lose our sovereignty when we put in three people appointed by foreigners but we hope the Panel of Eminent African Leaders hopefully will select Kenyans to join our experts.

However, I think we should leave these idea of regional balance and religious considerations because we do not have the time nor do we have the space. If we have too many of them again, we might recreate the Bomas fiasco. If we create the Bomas fiasco, then we will be headed to a similar debacle that we had in the referendum of 2005. I think I would like to commend the reconciliation team and tell them to maintain focus. I urge the House to pass this Bill and as we go to Committee Stage, we can just fine tune it a bit but otherwise, it is good to go.

I beg to support.

Mr. Abdirahman: Madam Temporary Deputy Speaker, thank you very much, for giving me an opportunity to contribute to this Bill. From the outset, I want to say that I support the Bill. It is long overdue. The issue of Constitution making is in the mind of every Kenyan and we really want to see it done today and as early as possible.

However, when I reflect on what has happened in the past, it has not been a good road. We very well know that when the NARC Government came to power in 2003, it actually promised to do it in 100 days but that was never achieved. It was never achieved, not because probably there was no political good will from the Head of State, but the number of players who would actually have participated to effectively give Kenyans a good Constitution failed to do so. We actually spent a lot of time talking and putting in a lot of unnecessary hurdles for Kenyans. This time round, it is important as the leadership of this country and as representatives of the people, we help facilitate this Constitution making process. What had actually made us come to this stage is not the ordinary Kenyans but the political leadership. This time round they must show the way so that we can have a Constitution that is going to guarantee all aspects for the good life of Kenyans.

Madam Temporary Deputy Speaker, what we also witnessed during the last referendum in

this country was not very good. It has polarised Kenyans. Its effect can still be felt today and I think that is what has divided Kenyans all along and I still attribute that to the political leadership. I keep on saying that all the time. Some of the hurdles we went through were actually because of the inability to build consensus amongst the political leadership. Consensus is not about giving one individual his way. It is about compromise. It is about negotiations. It is about being able to bring peoples' divergent views to a level where we are able to achieve our desired goals. This time round, we need to guard that.

Madam Temporary Deputy Speaker, we had a number of contentious issues and I am sure we will quickly go through those hurdles, if we are able to compare notes at any given time.

Finally, Madam Temporary Deputy Speaker, because a number of people had contributed to this and others may still want to do so, the thing that we will really want people to check on is the stakeholders' participation. I agree that the civil society is one big stakeholder. But they should not also forget that they represent people, just as the political leadership represents people. There is no way the civil society alone will help Kenya to achieve a good and a desired Constitution. I will pray that we get a Constitution for this country as quickly as possible.

Thank you very much, Madam Temporary Deputy Speaker.

(Applause)

Mr. Kioni: Thank you, Madam Temporary Deputy Speaker, for giving me this opportunity. May I also join other hon. Members in saying a big thank you to the team that sat at the Serena Hotel, and the thoughts that came from the Team of Eminent African Personalities that helped us get through this process.

Madam Temporary Deputy Speaker, very quickly, again, the issue of Constitution making, to us, is not new. We have talked about this issue over and over again. But as many hon. Members have suggested, it is incumbent upon Members of Parliament, because they are the political leaders in this country to, actually, wholly own this process and carry on with it honestly. Otherwise, we will find ourselves in difficulties like it has happened in the past. It may be easier this time round because of the arrangement that we are currently in. But it is also crucial to note that virtually all the parties that were on the campaign trail promised to deliver a new Constitution to this country. The Tenth Parliament must seize this opportunity quickly because there is some urgency.

Madam Temporary Deputy Speaker, I may not have a lot of time to say many of the things that I wanted to say but, a quick one is on Section 6 Paragraph 4(a), which has been mentioned here. It talks about having three individuals appointed by the Panel of Eminent African Personalities. I have difficulties with that requirement because the Constitution is meant for us and we should own it. We do not need foreigners to come and tell us how to live together. Again, we cannot continue giving legitimacy to that group forever. We need to have an end to it and be able to govern ourselves. We invited them because of a disorder and I think we have some order now. We can be able to move on without them.

Part "b" of that section talks about four Kenyan citizens being nominated by the Parliamentary Select Committee. When you go on to the following page - page 1169 - part "c" says:-

"with respect to persons nominated under subsection 4(b), Kenya's national character and diversity will be taken into account".

Given our current way of thinking, I do not know how four individuals will be taken to represent the character and diversity of Kenyans because we have reached a point where we think that unless one from my own tribe is on that Board, then Kenya is not represented on it. That is something that is going to be very difficult to convince Kenyans. Perhaps, we need to think about it before we

think that people will just take it if their own people are not included in that Committee.

Madam Temporary Deputy Speaker, over the page at---

Mrs. Odhiambo-Mabona: On a point of order, Madam Temporary Deputy Speaker. I am wondering whether I will be out of order to request you to ask the Mover to reply, given that we are all in agreement so far?

(Applause)

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

The Minister for Justice, National Cohesion and Constitutional Affairs (Ms. Karua):

Thank you, Madam Temporary Deputy Speaker. May I begin by profusely thanking the hon. Members for their valuable contributions and for the support they have given to this negotiated Bill.

I am actually touched and I know Kenyans are going to have a renewal in their faith in Parliament being able to give them a new Constitution. When we passed the National Accord and Reconciliation Act and the Constitutional amendment thereof, we all committed ourselves and became party to the agreements signed by our principals. The real promise to Kenyans was to deliver a new Constitution and institution to them. We are on the journey to that. I would like to say that the valuable contributions given on the Bill will be taken into account during the Committee Stage so that we can strengthen this Bill. I want to plead with the hon. Members for their understanding.

Regarding the Committee of Experts, the reason we put in foreigners, is not that Kenya is short of experts. In fact, we supply most of Africa and both Europe and America with Kenyan experts. But because we have come from a past of such intense disagreements even when we disagreed over the Referendum, it was never on real issues. It was our political differences. It, therefore, does not hurt, that was the thinking of the team, to have a few friends sitting with us so that we moderate the advice that is going to be given by the Committee.

I want to allay the fears of the hon. Members. The Committee is not going to be the decision-makers. It is the people's representatives who will make decisions on what to accept as the Draft Constitution. I want to agree with those who have said that we should forget regionalism and satisfying ethnic blocs. Even if we tried, we will end up maybe with a Committee of a 100. The Committee of experts will not represent any sector. They will merely be advisors and the decision will belong to the people's representatives and to the people of Kenya through their participation, which is in-built in this process. We will take into account all the issues that the hon. Members have raised at the Committee Stage. We hope to move through this process through a broad consensus.

For those who asked: "What will happen if there is no consensus?" If there is no consensus on any issue, we are hoping that we will not have such a situation--- It is possible to isolate an issue and give it a timeline in the new document when it can be revisited. But the agreement is there; that we should only subject the people to a Referendum on things upon which there has been broad consensus to avoid dividing Kenyans and to avoid having a confusion that does not have the acceptability of Kenyans.

Finally, Madam Temporary Deputy Speaker, on the issue of the Select Committee, yes, I do agree with Members that we need a specific provision setting up the Committee. It is not necessary to wait for a Motion to be moved on the Select Committee. We will build that mechanism and we can replicate by taking the clause in the defunct Act that set up the Select Committee. Let us have

no fears. Committees of Parliament do take into account always the party strength and we all agree that we should also take into account other considerations, including gender. On the deposit of Kshs2 million for those who challenge the Referendum, when you are challenging the Referendum, you are challenging a collective decision of Kenyans. So, if the threshold appears a little higher, it is because the challenge is to a decision made by the rest of Kenyans.

Madam Temporary Deputy Speaker, it is envisaged that an individual would not do that on their own without consulting with, at least, a few others. Therefore, I am also pleading that we see that amount of Kshs2 million not as high in view of the magnitude of the matter. But we are open to enriching the discussion with the Members and also the Committee before we bring in the amendments.

Madam Temporary Deputy Speaker, I once again, want to thank the Members. I am happy that we are keeping hope alive for the majority of Kenyans who want to see a total transformation.

With those few remarks, I beg to move.

(Question put and agreed to)

*(The Bill was read a Second Time
and Committed to a Committee
of the whole House tomorrow)*

The Temporary Deputy Speaker (Prof. Kamar): Next Order!

The Minister for Justice, National Cohesion and Constitutional Affairs (Ms. Karua): Madam Temporary Deputy Speaker, may I plead indulgence of the House that the Ministers who are supposed to be moving the other items on the Order Paper are not here. They expected that the Bill we have just concluded, together with the Committee of the Whole House which aborted, would take us through the remaining minutes. May I plead that it comes tomorrow.

The Temporary Deputy Speaker (Prof. Kamar): Hon. Minister, when you said "Ministers" did you mean both of them, including the Minister of Livestock Development?

The Minister for Justice, National Cohesion and Constitutional Affairs (Ms. Karua): Yes, Madam Temporary Deputy Speaker. Both are not here, but I do believe that they were misled by the number of items on the Order Paper. I seek indulgence.

ADJOURNMENT

The Temporary Deputy Speaker (Prof. Kamar): Hon. Members, that being the case, that concludes the business of the day. The House is, therefore, adjourned until tomorrow, Thursday, 7th August, 2008, at 2.30 p.m.

The House rose at 6.25 p.m.