

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 24th March, 2010

The House met at 9.00 a.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

ORAL ANSWERS TO QUESTIONS

Mr. Chachu: Mr. Deputy Speaker, Sir, although I have not received a copy of the written answer, I beg to ask Question No.027 on the Order Paper.

Question No.027

LACK OF GOVERNMENT/PRIVATE HOSPITAL IN MARSABIT NORTH DISTRICT

Mr. Chachu asked the Minister for Medical Services:-

(a) whether he is aware that there is no hospital (Government or private) in Marsabit North District; and,

(b) when the Government will build a hospital to serve the people of Marsabit North.

Mr. Deputy Speaker: Do you wish to proceed with the Question or you wish to have a written answer before you can proceed?

Is the Minister for Medical Services here?

Let us move on to the next Question by Mr. Anyanga!

Question No.039

BOOSTING OF POWER CAPACITY IN MACALDER TOWN

Mr. Anyanga asked the Minister for Energy what plans the Ministry has put in place to boost the power capacity to cater for the growing population both at Macalder Town and the surrounding area, in view of the creation of the new Nyatike District.

The Assistant Minister for Energy (Eng. M.M. Mohamud): Mr. Deputy Speaker, Sir, I beg to reply.

Macalder Town is already electrified. In order to boost the power capacity of the growing population in this town and the surrounding areas, the Kenya Power and Lighting Company is

extending a 132KV transmission line from Chemosit to Kisii. The company is also establishing a 132KV substation at Kegati.

Additionally, there are plans to extend another 132KV line from Kisii to Awendo. This will have a 23MV station at Awendo. A major challenge, however, is that the KPLC has not received funds for the establishment of distribution line extension from Macalder and its environs.

Mr. Anyanga: Mr. Deputy Speaker, Sir, the answer given by the Assistant Minister is misleading. Nyatike District Headquarters, Macalder, receives electricity from Gogo Falls which is situated within Nyatike District. What measures has the Ministry put in place to boost the power generated by the Gogo Falls to cater for the entire population?

Eng. M.M. Mohamud: Mr. Deputy Speaker, Sir, I have mentioned that the town already has electricity. We want to boost the power by constructing a 132KV line from Chemosit to Kisii. We will not boost power in Macalder Town without doing this.

Mr. Pesa: Mr. Deputy Speaker, Sir, the answer given by the Assistant Minister is more or less the same as an answer that had been given in this House last year. I would like to tell the Assistant Minister that at the moment, most of the small industries in Migori are suffering as a result of power failure or interruptions. Could he give us the timeframe within which this project will be implemented so that we can wait, bearing in mind that the problem will be solved? Otherwise, I take this just as an answer given by the Minister---

Mr. Deputy Speaker: That is fair enough! You have asked your question.

Eng. M.M. Mohamud: Mr. Deputy Speaker, Sir, I have said in my answer that funds are a major challenge to us. However, the plans are there and we will prioritise the boosting of the power line from Kisii to Awendo.

Mr. Deputy Speaker: Ask the last question, Mr. Anyanga. We have substantive business in the House that is more important than any other business. So, ask the last question!

Mr. Anyanga: Mr. Deputy Speaker, Sir, could the Assistant Minister confirm to this House when the funds will be available to enable the KPLC to boost the power capacity for Nyatike District?

Eng. M.M. Mohamud: Mr. Deputy Speaker, Sir, I undertake to prioritise this project.

Mr. Deputy Speaker: Let us move on to the next Question by Mr. Letimalo!

Question No.077

REASONS FOR RAISING LAND
ADJUDICATION FEE

Mr. Letimalo asked the Minister for lands:-

(a) what informed his decision to raise adjudication fee from Kshs250 to Kshs500 per hectare vide the Legal Notice No.9 of the Kenya Gazette Supplement No.2 dated 22nd January, 2010;

(b) how many registered group ranches in Samburu North, East and Central are with uncollected title deeds due to high cost; and,

(c) whether he could consider rescinding the decision and reverting to the old charges.

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

(a) The decision to raise adjudication fee from Kshs250 to Kshs500 per hectare vide Legal Notice No.9 of the Kenya Gazette Supplement No.2 dated 22nd January, 2010 was informed by:-

- (i) The last increase that was made 16 years ago in 1994;
- (ii) the increase in the cost of survey equipment and materials;
- (iii) the cost of digitizing records and maps; and,
- (iv) the increase in travelling costs for officers carrying out demarcation and survey works.

(b) There are 28 registered group ranches in Samburu North, East and Central with uncollected title deeds. Non-collection of title deeds is not due to the increase in adjudication fees.

(c) I cannot rescind the decision to raise the adjudication fee due to the considerations in part (a) above.

Mr. Letimalo: Mr. Deputy Speaker, Sir, I know that some time in the year 2005, the Government promised the people of Kenya that for those who own ranches, the Government would waive adjudication fee. What happened that the Government has not fulfilled this promise?

Mr. Rai: Mr. Deputy Speaker, Sir, that was a temporary arrangement and as of now, that does not exist. Collection of these fees is a matter handled by the Deputy Prime Minister and Minister for Finance. If the hon. Member wants an exemption he can write to the Deputy Prime Minister and Minister for Finance and he will be considered.

Mr. C. Kilonzo: Mr. Deputy Speaker, Sir, I come from an area which is more or less a settlement scheme. The cost and process of getting a title deed is out of reach for the poor and common man. Title deeds have become a preserve for the rich. Could the Government consider, as a matter of affirmative action to the poor, meeting all the costs involved in the processing of these title deeds and issue them out if, indeed, it is a Government for the people and not for the rich?

Mr. Rai: Mr. Deputy Speaker, Sir, this Government cannot operate without collecting revenue. If exemption has to be done, then consideration will only be given by the Deputy Prime Minister and Minister for Finance. I am not in a position to do that.

Mr. Deputy Speaker: Last question, Mr. Letimalo!

Mr. Letimalo: Mr. Deputy Speaker, Sir, if you look at the answer given in part (b) of this Question, you will find that the Assistant Minister has said that non-collection of title deeds is not due to the increase in adjudication fee. Why have the people not collected the title deeds if it is not because they are unable to raise the adjudication fees? Do you expect those people to collect those documents now that you have raised the adjudication fee?

Mr. Rai: Mr. Deputy Speaker Sir, demarcation and adjudication is actually done for free. Fees are only charged at the time of registration. If you consider the value of Kshs250 in 1994 and Kshs500 today, you may have to do some little bit of arithmetic. I would like to advise the hon. Member to write to the Minister for Finance and I am sure some consideration will be given.

Question No.082

REFUND OF SACCOS SHARE CONTRIBUTIONS
TO RETRENCHED TELKOM EMPLOYEES

Mr. Koech asked the Minister for Co-operative Development and Marketing:-

(a) what he is doing to ensure that the over 4,000 former employees of Telkom Kenya Limited, who were retrenched in February 2008, are refunded their share contributions to Teleposta and Mawasiliano SACCOs and when the payment will be made; and,

(b) what steps the Minister is taking to ensure that the two SACCOs do not collapse with the members' savings.

The Assistant Minister for Co-operative Development and Marketing (Mrs. Kilimo): Mr. Deputy Speaker, Sir, I beg to reply.

(a) About 3,981 Members of Teleposta and Mawasiliano SACCOs out of 14,000 were not refunded their co-operative share contributions when Telkom Kenya started retrenchment of its staff in 2006/2007.

However, considerable progress in refunding their former members their dues has been realised through the concerted efforts of ---

The Assistant Minister for Lands (Mr. Rai): On a point of order, Mr. Deputy Speaker, Sir. I want to seek your direction on the position from which the hon. Assistant Minister is addressing the House. I think the Front Bench is on the right part---

Mr. Deputy Speaker: Order, Assistant Minister! To begin with, you are part of the collective responsibility. It is for the Back Benchers to question that. In any case, a ruling was made in the year 2008; that given this massive size of the Government, Members of the Government can sit on the front benches of both sides.

Proceed, hon. Assistant Minister!

The Assistant Minister for Co-operative Development and Marketing (Mrs. Kilimo): Thank you, Mr. Deputy Speaker, for protecting me.

However, considerable progress in refunding the former members' their dues has been realised through the concerted efforts of our Ministry in consultation with the management committees of the two SACCOS. So far, Kshs525,447,952 has been refunded by Teleposta Sacco to over 9,469 of its former members. The balance of Kshs141,776,162 affecting some 2,044 members shall be retired gradually through disposal of society assets including the monthly remittances by members of Kshs5 million.

The Mawasiliano SACCO has not been able to fully meet its share refunds in part, due to inadequacy of working capital at its disposal. However, in an Annual General Delegates meeting held on 18th November, 2008, members mandated the society to dispose of some of its assets.

In the meantime, the first-come, first-served application is in use. Meanwhile the society has refunded over Kshs6,248,350 to all the members who left in 2006 and about 40 members who left in 2007, leaving a balance of Kshs40, 255,347. However, it has put in place measures to pay some Kshs200,000 as refunds from monthly remittances and increase the figure as and when cash flow improves.

(b) My Ministry is working closely with the management committees of the two SACCOs in managing the refunds. I am therefore satisfied with the current arrangement and would like to assure this House that the SACCOs will not collapse with the members' money.

Mr. Koech: Mr. Deputy Speaker, Sir, while I thank the Assistant Minister for the answer, SACCOs are very good in collecting money from the members. This is members' money. From the answer, she has indicated that Teleposta has been able to pay the members and

a balance of Kshs150 million is yet to be paid, three years down the line. The Mawasiliano SACCO is yet to pay over Kshs40 million to the members. Most of these members have been spending money on travel coming to follow up their dues in Nairobi and back to their destinations. This is their right and this is their money.

When will the members be paid their due balance? She should be very specific so that these people do not keep coming to Nairobi and going back to their homes without their dues.

Mrs. Kilimo: Mr. Deputy Speaker, Sir, one of the challenges that are faced by the SACCO is the fact that when the French company bought off Telkom Kenya, they did not include the SACCO loans that members owed. So the SACCO members who were still existing, as I had indicated earlier, what is left after the bank has taken its dues from their contributions of about Kshs5 million is paid to the members. As I said, they are also about to sell some of their assets. They have sold the Teleposta Towers. They have a plot in South B and they are still hoping to sell it and give the money to the SACCO members.

Maybe, what I can say is that those members need not come to Nairobi. In this age of improved information technology, they could just inquire from the staff of the SACCO the status of the payments.

Mr. Mbadi: Mr. Deputy Speaker, Sir, normally, contributions by Members towards SACCO is treated as members' contributions and not as share capital. This is because when members are leaving, this amount should be treated as credit. I want the Assistant Minister to clarify why these particular dues cannot be settled from current assets and why the SACCO has to sell its assets. I do not understand the reasons she is giving; that Teleposta Towers had to be sold or the buying group not including the SACCO loans in the deal, because the loans need to be paid by the members themselves.

How is it that these SACCOs could not pay the members from their current assets?

Mrs. Kilimo: The same hon. Member can also tell this House how the SACCOs can recover a loan from somebody who has been retrenched.

Mr. Deputy Speaker, Sir, Teleposta---

Mr. Mbadi: On a point of Order, Mr. Deputy Speaker, Sir. I think the Assistant Minister did not get me clearly.

Mr. Deputy Speaker: The Assistant Minister had not completed answering your Question!

Mr. Mbadi: Mr. Deputy Speaker, Sir, she is asking me to say how and I want to tell her how. This is because you recover from their contributions---

Mr. Deputy Speaker: Order! Hon. Assistant Minister and the hon. Member, address the House and the Chair, for that matter!

Proceed and give your answer!

Mrs. Kilimo: Mr. Deputy Speaker, Sir, I am referring to the scenario where people were retrenched from Teleposta and they had loans. When you are retrenched you still have loans you have not paid. Teleposta SACCO invested in a building, the Teleposta Towers, which they sold at Kshs1.2 billion to be able to pay off some of the members. They entered into this contract together to put up an asset. None of them anticipated that retrenchment was on the way. When they sold the building they were able to pay on a first-come-first served kind of scenario. Out of the 14,000 members of the Teleposta SACCO, about 9,000 have been paid. What is left is 3,981 members who have not been paid from the proceeds of the Teleposta Towers which was sold. The members who were not retrenched are still making contributions of only Kshs5 million to the SACCO and these members also still have loans. The members who were not retrenched are

still making contributions of only Kshs5 million per month to the SACCO. Those members still have loans. They take loans from the same Teleposta. What is left after their loans have been recovered is paid as dues to those who have been retrenched. I have said that Teleposta SACCOs still wants to sell more of its assets to pay its members. It has a plot in South B that it wants to sell and pay its members.

Mr. Koech: Mr. Deputy Speaker, Sir, members join SACCOs so that when they require some loans, they can acquire them within the shortest time possible. The Assistant Minister has assured this House that the SACCO will not collapse with members' money. As we speak now, there are certain SACCOs and, in particular, Nandi Teachers SACCO which cannot give loans to teachers on time. What is the Ministry doing to ensure that there is no mismanagement and that the SACCOs have sound management principles to ensure that members can access the loans every time they want?

Mrs. Kilimo: Mr. Deputy Speaker, Sir, Nandi Teachers SACCO, which I know the hon. Member was once a member before he joined PACOSO, is a case where members did not notice the activities of the management committee on time.

Mr. Mungatana: On a point of order, Mr. Deputy Speaker, Sir. I would like to seek your indulgence and direction under the general proviso of Standing Order No.1. We want to say, as this side of the House, that we sincerely protest the presence of---

(Applause)

Mr. Deputy Speaker: Order! The Chair has reflected on the same and is going to give a ruling. Proceed, Mrs. Kilimo and finish your answer!

(Several hon. Members stood up in their places)

Order, hon. Members! The Chair understands your sentiments. Indeed, the Chair has reflected on the same and he is going to give another ruling. So, proceed!

Mrs. Kilimo: Mr. Deputy Speaker, Sir, I beg to go to the other side of the House!

Mr. Deputy Speaker: Order! Answer the question!

Mrs. Kilimo: Mr. Deputy Speaker, Sir, lack of concentration on the part of members to follow the proceedings during the Annual General Meetings (AGMs) of many SACCOs--- People just go and sit down as the management committees read their proposals, wait for their dues and leave. So, slowly by slowly, we never manage to know, as a Ministry, what is happening in the co-operative societies that are operational in this country until they go down. But now, we have put in place SASRA, which is a parastatal that will be regulating the activities of SACCOs.

Mr. Deputy Speaker: Order! Before we proceed on the next Question, the Chair has reflected on the ruling that was given earlier. The ruling in early 2008 on the sitting arrangement for the Frontbenches was predicated upon a situation or scenario in which most or all Cabinet Ministers on the Government side were in the House. In the event, as it is today, in which case there is room on the other side, the Chair will not entertain anymore Members of the Government side answering Questions or addressing the House from the left hand side of the Chair.

(Applause)

So, in future, Mrs. Kilimo and other Ministers, the Chair will not accept unless it is a situation in which an assumption is made that the entire Government is here; which normally does not happen. Only then will the Chair allow Members of the Government who are on this side of the House, on immediate left side of the Chair, to address the House from the left side of the Speaker.

(Mr. Outa stood up in his place)

Is it on the same? The Chair has already made a ruling on that and so you cannot entertain it! Mr. Outa, the Chair has reflected on the same and the point that was raised by Mr. Duale and has given a ruling.

(Mr. Balala stood up in his place)

The Minister for Tourism (Mr. Balala): On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Is it on the ruling of the Chair?

The Minister for Tourism (Mr. Balala): No, Mr. Deputy Speaker, Sir. You have told us of the circumstances when the Government is here in full swing. Then, maybe, a Minister could be on the other side. But because of the challenge that we have, could you advise us when the new House will be ready with the new design that will address this challenge?

Mr. Deputy Speaker: The presumption is that, in one year's time, we shall be able to use the new facility.

Next Question, Mr. Gitau!

Question No.083

CIRCUMSTANCES SURROUNDING THE TRANSFER
OF MWEA DISTRICT OFFICER

Mr. Gitau asked the Minister of State for Provincial Administration and Internal Security:-

(a) to state the circumstances in which the Mwea District Officer (DO) was transferred to Sosiot in Kericho and transferred back to Mwea in less than a year; and,

(b) which other stations the DO has served since being employed and for what periods, respectively?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Lesrima): Mr. Deputy Speaker, Sir, I beg to reply.

(a) The DO1, Mwea, Mr. E.S. Mulepu, P/No.2003043390 was transferred to the Rift Valley Province on February 2009 to facilitate peace and reconciliation efforts in areas which had been affected by the post-election violence. While in the Rift Valley, the DO served in Kericho District, Belgut and Sosiot divisions in Bomet District where he also acted as the DO1. After normalcy returned to the region, the DO, among other Dos, was transferred back to Central Province.

(b) The other stations where the DO has served are as follows:- Kirinyaga DCs office for five months from 2003 to February 2004; Ndia Division for two years and five months; Mwea Division for one year and four months and he went to the Rift Valley for nine months. He was also at station No.6, Kivuini Division, Thika for one month; Mathioya Division for three months; Kirinyaga South District from April 2009 to date.

Mr. Gitau: Mr. Deputy Speaker, Sir, the answer given by the Assistant Minister is a bit misleading. From his answer, it looks like the DO was serving in two stations at the same time. In February 2009, the DO was supposed to have been serving at a station in the Rift Valley, and that is Sosiot. At the same time, he was serving in Mathioya. The reason why the DO was transferred to Rift Valley Province in February 2009 was to facilitate peace and reconciliation. That was long after the Accord was signed. Sosiot is not in Bomet; it is just about three kilometers from the Municipality of Kericho. I feel that this answer is---

Mr. Deputy Speaker: Order, Mr. Gitau! This is Question Time. Can you ask your question?

Mr. Gitau: Mr. Deputy Speaker, Sir, the whole answer is not correct! There is no way one person can be serving two stations at the same time; one in Sosiot and the other one in Mathioya in February 2009. Could the Assistant Minister confirm that?

Mr. Lesrima: Mr. Deputy Speaker, Sir, as I said earlier on, we posted some DOs to Rift Valley Province to facilitate reconciliation between communities. They are still in the payroll of their previous stations. They went back when the job was done.

Mr. Kiuna: Mr. Deputy Speaker, Sir, from the answer given by the Assistant Minister, it seems as if that particular officer has been stationed in one particular area for a period of five to seven years. Could the Assistant Minister tell us why comes a particular officer is stationed in one particular district for more than five years? Why has he been stationed in that district for that long period?

Mr. Lesrima: Mr. Deputy Speaker, Sir, Mr. Mulepu was posted to Ndia to address the security challenges, upsurge of robberies, illicit brews and he did a very good job. This officer has skills in negotiation and peace building. It is true that he has been there for a period of more than three years now. In the current reshuffle of District Officers, he has now been moved to Lari Division and I really do not know what the problem is.

Mr. Mbadi: On a point of order, Mr. Deputy Speaker, Sir. Given that this DO has special skills, would I be in order to ask the Ministry to make him a special DO so that he is not stationed in one place where he is always removed and returned back, inconveniencing the locals in that division?

Mr. Lesrima: Mr. Deputy Speaker, Sir, if I was the Minister in charge, I would make this man a District Commissioner.

Mr. Chanzu: On a point of order, Mr. Deputy Speaker, Sir. You have just heard what the Assistant Minister has said. According to the Standing Orders, he is a Minister. Is he in order to come here and say that he is not a Minister? Unless he wants to come on this side of the House.

Mr. Affey: On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister confirmed that he is not the Minister in charge of Provincial Administration and Internal Security. How comes therefore, he is coming to the House to answer a Question which is meant to be answered by the Minister in charge of Provincial Administration and Internal Security? If he is not the Minister in charge, what is he?

Mr. Deputy Speaker: Hon. Assistant Minister, the Chair might not have heard. Is it true that you said that you are not a Minister?

Mr. Lesrima: Mr. Deputy Speaker, Sir, these jobs are within the public service and it is another Ministry that does the interviews and promotes the officers.

Mr. Deputy Speaker: The promotion and recruitment of public officers is done by a statutory body called the Public Service Commission. So, the Assistant Minister is quite right to that extent.

Mr. Gitau: Mr. Deputy Speaker, Sir, I want to thank the Assistant Minister for having the officer transferred because he was actually---

Mr. Deputy Speaker: Order. Fair enough. You have thanked the Assistant Minister, so I presume that is it.

Next Question.

Question No.115

UPGRADING OF GRIFTU PASTORAL TRAINING COLLEGE

Mr. Keynan asked the Minister for Livestock Development when the Government will upgrade Griftu Pastoral Training College to a fully-fledged institution so that it can accommodate more students.

The Assistant Minister for Livestock Development (Mr. Duale): Mr. Deputy Speaker, Sir, I beg to reply.

My Ministry has developed a strategy in the current strategic plan, 2008/2012 to transform key livestock institutions into entities that will facilitate growth and sustainable livestock production.

One of these institutions is Griftu Pastoral Training College that will be upgraded into a certificate offering institution, specializing in range management and animal health in the financial year 2011/2012 at an estimated cost of Kshs140 million.

Mr. Deputy Speaker, Sir, the institute is expected to admit its first group of 40 students in July, 2011 and a fully fledged training institution curriculum will be put in place to adequately address the emerging challenges and demands in the pastoral areas.

In order to prepare the college for the enhanced mandate, the Government, in partnership with the African Development Bank (ADB), through the ASAL-based Livestock Rural Livelihood Support Project (ALPRO), has in the recent past embarked on the process of revitalizing the institution by undertaking major rehabilitation projects especially on the refurbishment and provision of laboratory equipment at a cost of Kshs10 million.

Mr. Keynan: Mr. Deputy Speaker, Sir, while I appreciate the answer given by the Assistant Minister, this institution was first opened in 1976 by the late hon. Jeremiah Nyagah, when he was the Minister for Development. Livestock farmers in North Eastern Province have been left at the mercy of nature. While we appreciate the strategic plan which is offered by the Ministry, this same strategic plan has been in place for the last 30 years and yet that institution with all the infrastructure has been idle simply because the Government lacks the goodwill to assist the livestock farmers in North Eastern Province. Last year, that college ought to have admitted students and now it is 2010. The college was started in 1976. Could he assure the House that this time, round he will adhere to this strategic plan which he has put in place?

Mr. Duale: Mr. Deputy Speaker, Sir, I am very specific on the current strategic plan 2008/2012 and our commitment to Griftu Pastoral Training Centre and all that entails in our strategic plan will be fulfilled. Griftu Pastoral Training College was built in 1971 for the purpose

of offering short training in customized pastoral courses in livestock husbandry. Up to date, 28,850 pastoralists have been trained in that. I want to assure this House that this time round, the Ministry of Livestock Development and the Government in general will make sure that the first batch of 40 students are admitted in July, 2011.

Mr. Gabbow: Mr. Deputy Speaker, Sir, it is common knowledge that the priority of the Kenyan Government in northern Kenya and pastoral areas is upside down. We are getting colleges in Limuru where tea is grown, training for livestock. We are getting other facilities which we do not need. Knowing that 90 per cent of the livestock comes from North Eastern Province, could the Assistant Minister tell us how many universities and colleges are in northern Kenya which actually train those people we need? We cannot be travelling for 1,000 kilometres to go for training. I have just heard the Assistant Minister say that it is offering certificate courses. We do not need certificate courses. We want Griftu Pastoral Training College to be upgraded to a university where our children can learn.

Mr. Duale: Mr. Deputy Speaker, Sir, I want to say here categorically that neither the Ministry of Livestock Development nor the Government policies are upside down. Our policies are very straight, clear and they are meant for the people of Kenya.

On the other issue of how many colleges we have, I think the Minister for Higher Education, Science and Technology can be more specific about what programmes he has. Under the Ministry of Livestock Development, the Griftu Pastoral Training Centre will be upgraded.

Mr. Keynan: Mr. Deputy Speaker, Sir, while I appreciate the answer given by my former campus mate and my good colleague, I want to insist that the policies of the Kenya Government as far as livestock farmers in northern Kenya are concerned have been upside down. We used to have Livestock Marketing Board division. It is a pity that all the holding grounds have been grabbed. We used to have the KMC which is struggling to stand firm, but still it lacks the necessary infrastructure. Even where the KMC factories are located today, the holding grounds belong to individuals. The Government has been reluctant to cancel the title deeds for those individuals who grabbed those pieces of land. Which policy, other than an upside down policy is the Assistant Minister trying to implement? The Ministry lacks the goodwill.

Mr. Duale: Mr. Deputy Speaker, Sir, I want to remind this House, and more specifically the Members of Parliament from the livestock producing areas, that it was only last year that we tabled in this House the National Livestock Policy which in essence will address all those imbalances that hon. Keynan is talking about. This same Coalition Government formed the Ministry of Development of Northern Kenya and other Arid Areas to coordinate and formulate policies that are more affirmative to the people of northern Kenya. I want to urge hon. Members to read the National Livestock Policy that we tabled here because it will address all the issues that he has raised.

Mr. Deputy Speaker: Order, hon. Members! We have serious substantive business of the House to transact!

Mr. Keynan: Mr. Deputy Speaker, Sir, different parts of the Republic of Kenya have benefited from nurtured Government institutions or inter-Governmental programmes. Why are the people of northern Kenya excluded from such benefits? When will we be eligible to benefit from such Government institutions?

Mr. Duale: Mr. Deputy Speaker, Sir, as a Member of Parliament from northern Kenya and the Assistant Minister, Ministry of Livestock Development, I want to assure this House and the nation that now, more than ever before, the Coalition Government is ready to address issues that have historically bedeviled the livestock sector and the pastoral communities.

Mr. Keynan: On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister is evading the question. He says he has the Strategic Plan of 2008/2012. Could he tell us the number of colleges that he intend to set up according to that Strategic Plan and where they will be located?

Mr. Duale: Mr. Deputy Speaker, Sir, in that Strategic Plan, we have a number of laboratory institutions that are under the Director of Veterinary Service. The question that hon. Keynan raised relates to the Griftu Pastoral Training Centre, which under the Strategic Plan, the first batch of students will be admitted in 2011.

Mr. Chachu: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to mislead this House that they will upgrade Griftu Pastoral Training Centre, when there are so many such centres in the country which have totally been idle? Actually, some of them are being used for security purposes in this country. Is he in order to mislead us?

Mr. Duale: Mr. Deputy Speaker, Sir, it is the Member who is misleading this House. Research stations fall under KARI and not under the Ministry of Livestock Development. What falls under the Ministry of Livestock Development is Griftu Pastoral Training Centre. We have put it in our Strategic Plan for the next financial year.

Question No.117

PROCUREMENT OF BOATS BY KENYA
REVENUE AUTHORITY

Mr. Yinda asked the Deputy Prime Minister and Minister for Finance:-

(a) whether he could provide the details of the procurement of four boats by the Kenya Revenue Authority in 2007, indicating when the contracts were signed and with which companies, when the boats were delivered, giving the reasons for the delay in deliveries and whether due diligence was carried out on the two companies contracted to supply the boats;

(b) what the physical conditions of the boats are and whether the boats are still performing satisfactorily; and,

(c) what he is doing to ensure that the boats, which are substandard and have design defects, are corrected at the cost of the vendors to make them seaworthy.

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Finance (Dr. Oburu): Mr. Deputy Speaker, Sir, I beg to reply.

(a) The details on the procurement of four boats by the KRA are provided in the attached annex, which I hereby table.

(Dr. Oburu laid the document on the Table)

(b) The three boats that have already been supplied are currently operational and are performing satisfactorily.

(c) In view of my answer in “a” and “b”, therefore, “c” does not arise.

Mr. Yinda: Mr. Deputy Speaker, Sir, I would like to thank the Assistant Minister for attempting to answer my Question. First, in part “b” of the Question, I had asked what the physical conditions of the boats are and whether they are still performing satisfactorily. He has

not provided those details. Also, I have just received the document this morning which is very bulky. Even after going through them, I am not satisfied with the answer because there are a lot of sections of my Question which have not been answered.

Mr. Deputy Speaker: Hon. Assistant Minister, part “b” of the Question asks: What are the physical conditions of the boats and whether the boats are still performing satisfactorily?

Dr. Oburu: Mr. Deputy Speaker, Sir, the details of the physical conditions of the boats are contained in this report.

Mr. Deputy Speaker: Order! You have to answer that question and tell the House what the physical conditions are.

Dr. Oburu: Mr. Deputy Speaker, Sir, the physical conditions of the boats is satisfactorily because the boats are running in the waters of the lake. This is proved by the inspection report of various authorized organizations.

Mr. C. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. Obviously, the Assistant Minister never read this report. Is he in order to mislead this House that these boats are operational while they are parked? The fact that they are parked is contained in the report. There are three certificates from the Kenya Maritime Authority. There is a certificate of worthiness for one of the boats, namely, KRA 002, which expired on 21st, January, 2010. If you look at the other certificate, you will find that it expired precisely on 4th November, 2008. The other certificate expired on 1st May, 2009. These are certificates of sea worthiness for these boats.

Without these certificates, these boats should not be operational. The reason why this Question is here is because these boats are not operational because their design and quality is wrong.

Mr. Deputy Speaker: Dr. Oburu, the document that you have made available in the House says: “From the Kenya Maritime Authority, this certificate is issued on 4th November, which is about sea worthiness of 2008 and will remain in force until 3rd May, 2009.” Do you have something that says something positive about the sea worthiness of these boats that is current?

Dr. Oburu: Mr. Deputy Speaker, Sir, I do not have any updated report on the sea worthiness of these boats. But I know that the boats are operational and I have personally used them in the waters of---

Mr. Mungatana: On a point of order, Mr. Deputy Speaker, Sir. With respect to the Assistant Minister, on page one of his answer, he has stated that lake patrol boat has cost Euros 759,730 and three boats at a total cost of Euros 3,055,340. Is he in order to tell us today that in fact, these boats are operational? They are supposed to be Customs boats to check whether people are actually following the Customs Procedure. We know that the two boats in Mombasa, which are supposed to patrol the sea are grounded and completely unoperational. Would he consider going to check the real facts on the ground? This is a lot of money from the taxpayers. We cannot have answers like this and he gets away with it. He should be ordered to go and get the facts as they are. This is a bad deal. It is smelling so bad that this Parliament’s air is spoilt right now.

Mr. Bahari: On a point of order, Mr. Deputy Speaker, Sir. Part “b” of the Question is very clear. It states: “What are the physical conditions of the boats and whether the boats are still performing satisfactorily? The Assistant Minister has admitted to this House that he does not have an updated certificate from the Kenya Maritime Authority to show that these boats are operational. Will I be in order to request you to direct him to go and bring a satisfactory answer to this House without wasting the time of this House?”

Mr. Mwangi: On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister has said that he has used one of the boats. Is he in order to say that? Could he give the House the number of the boat and the date he used it?

Mr. Deputy Speaker: Hon. Assistant Minister, I think you have a tall order in the House today. Under the circumstances, I think you will be saving yourself the possibility of committing perjury here on the Floor of the House. This is because if you give an answer that essentially is found to be misleading, then the consequences as per our Standing Orders can be very grave.

The Chair directs that you go back and summarize this Question and come back with an answer, exactly one week from today, that is, on Wednesday next week. Come back with an answer that essentially can stand the questions and scrutiny that the hon. Members have, because you do not even have the validity. Without the validity and sea-worthiness of the boats, you are treading on--- To go ahead and say that these boat is sea-worthy, I think your officers need to give you much more information than you have now. The Chair directs that this Question be on the Order Paper---

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

Mr. Deputy Speaker: Order! Order! The Chair has ruled on this issue and the matter rests!

The Chair directs that the Question appears on the Order Paper next week on Wednesday.

(Question deferred)

Dr. Khalwale: On a point of order, Mr. Deputy Speaker, Sir. I quite agree with you that the Assistant Minister should do as directed, but I want to request the Chair, if it can, please, also direct further that considering the fact that this particular tender involved Kshs400 million and that the company which was given the tender, that is,---

Mr. Deputy Speaker: Order! Order, Dr. Khalwale! What is your conclusion?

Dr. Khalwale: Mr. Deputy Speaker, Sir, allow me to conclude. The company which was given the tender, that is, Sinotech of Holland has no yard for construction of boats. It is actually a briefcase company. Could the Assistant Minister come and table here the tender documents so that we see how a briefcase company without any yard for construction was given such a big tender?

Mr. Deputy Speaker: Order! The Chair has already directed. The presumption is that the hon. Assistant Minister will take all the additional information that he has here now, to be able to answer this Question, because hon. Members will ask supplementary questions. That will be a lot of scrutiny for the Assistant Minister.

Next Question by hon. Kiuna!

Question No.122

TONNAGE OF DRIED PYRETHRUM FLOWERS BOUGHT
BY PYRETHRUM BOARD OF KENYA

Mr. Kiuna asked the Minister for Agriculture:-

(a) how much metric tonnage of dried pyrethrum flowers the Pyrethrum Board of Kenya was bought from farmers in the years 2006, 2007, 2008 and 2009;

(b) what the current purchase price offered to the farmers by the Board per-kilogramme of dried flowers delivered is; and,

(c) what the Ministry is doing towards raising their purchase price in order to phase out the middlemen, who are offering better prices and paying on the spot.

Mr. Deputy Speaker: The Minister for Agriculture is not here? Can a senior Minister here state why the Minister for Agriculture is not here today to answer the Question?

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Mr. Deputy Speaker, Sir, I will let the Minister for Agriculture know that this Question was on the Order Paper. The Question will be answered on Tuesday next week.

Mr. Deputy Speaker: Order! The Standing Orders are very clear on the same. The Standing Orders compel the Ministers to answer Questions and Members to ask Questions once they appear on the Order Paper. Under the circumstances, the Minister for Agriculture is not going to transact any business in this House before he gives a satisfactory answer as to why neither he nor his Assistant Minister are here today to answer this Question. This is in line with our own Standing Orders that have come into force.

(Question deferred)

The Assistant Minister for Co-operative Development and Marketing (Mrs. Kilimo): On a point of order, Mr. Deputy Speaker, Sir. While answering Question No.82, in my answer I talked of Teleposta. It is Posta Plaza and not Teleposta, although they are related. In a meeting of the members in February 2008, they resolved to dispose of Posta Plaza and not Teleposta, at a cost of Kshs1.2 billion to the Kenya Methodist University in order to pay retirement dues to their members. It is just a correction.

Mr. Deputy Speaker: Next Question, by hon. Chachu!

Question No.027

LACK OF GOVERNMENT/PRIVATE HOSPITAL
IN MARSABIT NORTH DISTRICT

Mr. Chachu asked the Minister for Medical Services:-

(a) if he is aware that there is no Government or private hospital in Marsabit North District; and,

(b) when the Government will build a hospital to serve the people of Marsabit North.

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am aware that there is no hospital in Marsabit North District

(b) The Ministry's target is to have at least, a sub-district hospital in every constituency. It costs about Kshs700 million to put up a standard hospital. During the Budget preparation process for 2009/2010 Financial Year, the Ministry requested Treasury for funds to construct 42 new hospitals, one of which was proposed for Marsabit North District, at Kalacha. Unfortunately, Treasury was unable to allocate the required funds. The Ministry will continue to seek funding from Treasury and development partners to support construction of a hospital for Marsabit North.

Mr. Chachu: Mr. Deputy Speaker, Sir, I thank the Minister, at least, for making the effort to identify the parts of this country which lack district hospitals. He mentioned that they intend to construct 42 sub-district hospitals countrywide, Marsabit North being one of them. North Horr is an exceptional circumstance. It is the largest constituency in this Republic and it is bigger than three provinces of Western, Nyanza and Central combined by a few kilometres. Unlike other regions of northern Kenya, we do not even have a single mission or private hospital, let alone a Government hospital. My people from Ileret have to travel for 550 kilometres to reach Marsabit Hospital. Every year, we have up to ten maternal deaths. Mothers and children are losing lives in North Horr and cholera is a common problem in that particular part of this country. Realizing that this is a very unique circumstance, could the Minister commit to look for funds, whether from development partners or the Treasury, to construct a hospital in Marsabit North as soon as possible?

Prof. Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, the hon. Member is right that North Horr Constituency is one of the biggest constituencies in this nation. It could be a province by itself and the Ministry is cognizant of that fact. I do empathize with the hon. Member for the underdevelopment of the area due to inadequate infrastructure and facilities that the Government should provide. We, indeed, in the Ministry are more than ready to support North Horr in ensuring that hospitals are established in that particular area. Let me assure the hon. Member that in conjunction with the Ministry of Development of Northern Kenya and Other Arid Lands, under my friend, hon. Elmi, we are working together to secure funds from a development partner. Plans are at an advanced level where we shall have funds specifically focused for the development of health facilities in northern Kenya. We hope that these funds will be factored in the coming year's Budget. All being well, I assure the hon. Member that the two sub-district hospitals focused for his constituency will be established. But this is contingent upon the fact that we get these funds which are both concessional loans and grants, specifically meant for development of health facilities in northern Kenya.

Mr. Bahari: Mr. Deputy Speaker, Sir, while appreciating the Minister's effort to prioritise construction of a hospital in North Horr, as the hon. Member from that area said, this is an area that needs serious attention. Given the incidents of maternal cases, could he ensure that there are ambulance services available to the people of North Horr since it does not cost Kshs700 million?

Prof Anyang' Nyong'o: Mr. Deputy Speaker, Sir, that question is very important.

We have been working on a national ambulance service. In the past, the problem that the Ministry has had was to have ambulances situated in this or that health centre or district. That system is very inefficient. In fact, yesterday, I launched a programme with the Kenya Red Cross which is called the Red Cross Emergency Medical Service. We are going to have a modern ambulance system, where people will be able to call to a particular number to get an ambulance. This ambulance will be stationed strategically at certain places where people can have access to them.

Nonetheless, given that the Northern part of Kenya has very vast districts, we will make an effort to ensure that these ambulances are placed strategically in health facilities, so that they can be used when needed. The issue of maternal health care falls under the Ministry of Public Health because a lot of maternal health care problems are dealt with at the dispensary and health centre level. Of course, there cannot be very clear demarcation. However, I would assure the Member that mobile clinics are being availed in northern Kenya with the help of Danish International Development Agency (DANIDA) to take care of maternal and child care.

Mr. Chachu: Mr. Deputy Speaker, Sir, I thank the Minister for the assurance. I hope that the people of North Horr will get a hospital in the near future. Realising that we do not have even a single doctor in the whole of that region, could he commit to post at least one doctor to one of our health centres, so that our people can be attended to?

Prof. Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, this is another monumental problem we have in our Ministry. We have shortage of doctors, although Kenya historically has trained a lot of medical personnel. I wish I could convince my friend, Prof. Ongeru here who is a medical personnel to double between being a Minister and a doctor at the same time. But, again, he will not have time. We are currently recruiting doctors and posting them at this point in time. I am in constant discussion with the Director of Medical Services who does this job. It is very difficult to share the few interns who have just graduated nationally. But I assure you that we are doing our best to make sure that every district has at least a doctor in charge of the District Hospital who can liaise with the clinical officers in the lower down facilities to provide good health services.

Let me assure hon. Members that senior clinical officers are actually very good. I have one in my constituency who heads a sub-district hospital. He does as good job as a doctor because of experience and commitment. So, where we do not have doctors to be in charge, we try and post experienced clinical officers who are responsible and who can hold vote for doctors, except for emergency cases which must be taken to referral facilities.

*(The Assistant Minister for Agriculture
(Mr. Mbiuki) entered the Chamber)*

Mr. Deputy Speaker: The Chair notes that the Assistant Minister for Agriculture has walked in. Mr. Mbiuki, do you have a satisfactory explanation as to why your Minister and two Assistant Ministers were not available this morning to answer the Question on the Order Paper.

The Assistant Minister for Agriculture (Mr. Mbiuki): Mr. Deputy Speaker, Sir, I would like to take this opportunity to really apologise for not coming to answer this Question.

Mr. Deputy Speaker, Sir, Question No.122 was supposed to be answered by hon. Ndambuki. But he is indisposed. So, I have just learnt that he is not in the House. That is why I have come and I am more than willing to proceed and answer it, but we are really very sorry.

Mr. Deputy Speaker: The Chair is inclined to exercise its authority under the Standing Orders and penalise you; sometimes, the Chair wonders whether you actually happen to have that kind of a penalty, so that you do not come and answer Questions here. It then becomes a punishment on the hon. Questioner also and the people of this country who deserve good answers from Ministers. It is a collective responsibility. It does not make any sense for a Minister to say that he expected another Minister to come and answer and he is not able to answer it. You have that as a collective responsibility as the Government.

In any case, in view of the fact that the hon. Member also deserves the right to interrogate the performance of your Ministry, the Chair directs that you be allowed to transact business and the Question appears on the Order Paper on Tuesday, next week.

(Question deferred)

Mr. Deputy Speaker: Order, hon. Prof. Ongeru and any other Member who wants to seek a Statement or deliver a Statement!

We are in a situation that is very unique. This Parliament is debating a Constitution for this country. Indeed, under the circumstances, Statements will be demanded and answered after we have completed the business of the draft Constitution unless it is absolutely very critical.

So, next Order!

PROCEDURAL MOTIONS

EXEMPTION OF BUSINESS FROM PROVISIONS OF S.O.38

Mr. Midiwo: Mr. Deputy Speaker, Sir, I beg to move:-

THAT, this House orders that the Business appearing in today's Order Paper be exempted from the provisions of Standing Order No.38(1), being a Wednesday Morning, a day allocated for Private Members' Motions.

The reason for this is that we are seeking to suspend Private Members Motions, so that we can continue with the debate on the Proposed Draft Constitution. I want to ask Members to allow us to proceed in that direction.

The Minister for Tourism (Mr. Balala): Mr. Deputy Speaker, Sir, I beg to second.

(Question proposed)

(Question put and agreed to)

EXTENSION OF SITTING TIME

Mr. Midiwo: Mr. Deputy Speaker, Sir, I beg to move:-

THAT, notwithstanding the provisions of Standing Order 20(2) this House resolves that the Sitting Time of the House on Wednesday 24th March, Thursday 25th March and Tuesday 30th March, 2010 be extended from 6.30 p.m. to 8.00 p.m.

Mr. Deputy Speaker, Sir, the reasons are the same. We want to give Members more time to deliberate on the Proposed Constitution.

The Minister for Tourism (Mr. Balala): Mr. Deputy Speaker, Sir, I second.

(Question proposed)

Mr. Mungatana: Mr. Deputy Speaker, Sir, this is a Procedural Motion and we support it, but with just one small sentence to the joint Chief Whips. We are adding the sitting hours of the House by 90 minutes. Effectively, if we go by the 20 minutes, we are adding four-and-a-half hon. Members to speak during those hours.

Mr. Deputy Speaker, Sir, it is going to be critical unless we have proper organization from the joint Chief Whips that those hours are properly occupied. That is because if it is not, we might also face some form of embarrassment. It is important for the Whips to go round and get all hon. Members who may wish to speak during those hours to be prepared and wait for their time, so that we do not face embarrassment.

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

(Question put and agreed to)

MOTION

APPROVAL OF DRAFT CONSTITUTION OF KENYA

THAT, pursuant to the provisions of Section 33(4) of the Constitution of Kenya Review Act, 2008; this House approves the Draft Constitution submitted by the Committee of Experts and laid on the Table of the House on Tuesday 2nd March 2010.

(Mr. Abdikadir on 23.3.2010)

(Resumption of Debate interrupted on 23.3. 2010)

Mr. Deputy Speaker: Dr. Machage was on the Floor!

An hon. Member: He is not there!

An hon. Member: He finished! He was on the Government side!

Mr. Deputy Speaker: Proceed, hon. Balala!

The Minister for Tourism (Mr. Balala): Mr. Deputy Speaker, Sir, I want to appreciate you for giving me this time to contribute to the constitutional debate. I rise to speak in this historic debate of replacing the current Constitution with a new one.

Mr. Deputy Speaker, Sir, if I can compare the current Constitution with what is being proposed, definitely, I would suggest that the proposed Constitution is much better than the current Constitution. We are the House now and it is an organ of review. I think I will take the opportunity also to propose some amendments. I will support the proposed Constitution with some amendments to make it even better. I believe that my contribution is to improve the new Constitution.

Mr. Deputy Speaker, Sir, we have all been crying about marginalization. We are talking about not being able to give services to our people. The purpose of this Constitution is to address marginalization and resource allocation to the grassroots. We have centralized the system and it has actually suffocated most of the areas where the bulk of the population of Kenya lives.

Mr. Deputy Speaker, Sir, it is important for us to have a philosophy of delivering the Government to the people and not people to the Government. It is important for us to look at that thing holistically, so that we empower our people both economically and politically.

Mr. Deputy Speaker, Sir, most of our population is in the rural areas. We have a lot of resources, both material and human. It is unfortunate that we have not utilized or tapped what the country has. We have centralized everything in Nairobi and we have forgotten the resources that are in the countryside.

Mr. Deputy Speaker, Sir, I want to talk about the form of Government that devolves to the people. In the 1960s, it was called *Majimboism*. I do not know what happened then because I was born, but *Majimboism* was so bad and demonized until today. When you mention the word *Majimboism*, people are scared. I think the fear of the unknown is much more than what happened in this form of devolution.

Mr. Deputy Speaker, Sir, I do not care what name we have to give it; *Majimboism*, *Ugatuji*, Delegation, Devolution – name it! The most important thing is to address the issue of the culture of impunity. The minute you remove empowerment from the people at the grassroots level, you have allowed the political elite at the centre to practice the culture of impunity. That is why in some areas, the elite at the centre overrun some of those areas. When we talk about land grabbing, look at the areas where land grabbing has taken place, both at the Coast and in the Rift Valley. Those are the victims of the centralization of the system.

Mr. Deputy Speaker, Sir, it is important for us to recognize and be sensitive to the wishes and desires of the people at the local level. We are not going to achieve much development if we ignore the people at the grassroots level.

Mr. Deputy Speaker, Sir, it is important for us to start thinking objectively on a devolved system which is going to empower our people both economically and politically. That is why we had eight provinces before. I will support the regional system of eight provinces, but also I appreciate that there are some regions which are too big and because of the difference of community interests, we need to address those issues.

Mr. Deputy Speaker, Sir, I will recommend that we support a 25-region structure and, particularly, when we talk about regions. It is because we have changed the system of Government from a parliamentary system or a mixed system between parliamentary and presidential, which is currently in place; it is a corrupted system. I think it is important for us, when we bring a pure presidential system with separation of powers, then it is important for us to have levels of checks and balances. The only structures that can do the checks and balances are the regions

Mr. Deputy Speaker, Sir, I can see that in the proposed Constitution, we have the counties. Out of the experience of county councils and the old districts, they are too weak in terms of infrastructure and capacity. That is because we have not developed them. The presidential system will overrun the counties. It is important for us to consider the regions. Do not be deceived or get worried about the creation of a Senate. We need to have a Senate to check the Executive at the national level; we need to have senators who are going to protect the counties and the regions at the lower levels.

So it is important for us to have 25 regions and a strong Senate with legislative powers. It must be able to counter the legislation coming from the National Assembly. We are creating a Constitution not for the current Parliament. Some of us would like to be in the Executive or occupy the presidency seat tomorrow. Some of us would like to serve in the Senate as senators while some of us would like to be governors in the executive of the counties and regions. Some of us also would like to be in the National Assembly to legislate national issues.

I believe that to check the presidential system and to avoid any imperial and dictatorial presidential system, we need to have a strong Senate comprising of 25 regions. Under the 25 regions, we should create counties which will address the issue of taxation as well as service delivery to the people. For the sake of addressing the interests of our communities, instead of us getting representatives from the regions to the Senate, we should now consider getting representatives from the counties to the Senate. This is a direct representation and will reflect the face of Kenya. This is because counties are more and they are meant to address matters affecting the communities on the ground.

Mr. Deputy Speaker, Sir, let us not be cheated. Kenya is a tribal State. It is divided into tribes and communities which we must consider. It is important to say that the Senate has to look at the interests of the communities and the regions so that they can protect them and

appreciate the difference. It is important for us to consider a formula that will help us get this representation on board.

The other aspect is about financial implication. The proposed draft is talking about 15 per cent of the national Budget. That is too little. I propose that we increase that to 30 per cent. We also need to increase the CDF allocation to Members of Parliament to five per cent. So, a total of 35 per cent of the national Budget will go down to the people vertically. We cannot compromise on these issues because if we want to address the issue of marginalization and lack of development in certain areas, it is important for us to address the issue of devolution in the right perspective so that we do not have a challenge.

Mr. Deputy Speaker, Sir, I know that we have proposed 290 seats in the House of Representatives, which is the National Assembly. We had also set aside 50 seats for the women. We also need to address the issue of women in the Senate. When electing members from each of the 80 counties, we need to consider 20 more nominated members as women to sit in the Senate so that we can address the issue of gender and move forward together as a people.

It is also important that I comment on the non-contentious issues. With regard to the issue of the Kadhis Court, it is important that it is there. We are not changing anything. We are talking about what the current Constitution talks about; the Kadhis Court. That is on personal law, inheritance, divorce and marriage. This is specific to people who profess the Islamic faith. The only change we have made is to delete the line that says: "Under the protectorate." Let us understand the background of "protectorate".

The coastal area was under a protectorate while the rest of Kenya was under colonialism. We merged as one country and so, we need to address this issue as one country. We are not supposed to separate the two. One of the reasons for merging was to have the Kadhis Court. So, the minute we tamper with the Kadhis Court, we will also be tampering with boundaries of the Republic of Kenya and doubting the whole unitary system of Kenya. These are very important issues that we need to address. I believe that with support from both political divides, we should rise above our political interests and look at what is good for this country. I believe there should be dialogue.

We need to do away with this issue of political deceit where people come here to discuss matters and at night, you change and hide the cards. We need to table all our cards in this House. We should appreciate that this country has to move forward. The world is moving forward. Why can Kenya not move forward? We have the best human resource in Africa. Why are we still backward so as to be compared to the failed States in Africa? Because of political dishonesty that has taken place and has become a culture in Kenyan politics; we need to change our political behaviour. We need to be honest and deliver a just Constitution for all, and not one for the few. We need to move forward both economically and socially.

Mr. Deputy Speaker, Sir, I rise here to support this proposed Constitution with amendments. I believe the right time will come where we will forward the amendments to the Chair so that we can be effective. I believe my colleagues in this august House will support what is right. For the sake of time, I will leave it at that. I support, but with amendments.

The Assistant Minister for Regional Development Authorities (Mr. ole Metito): Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to also contribute to this historic Motion on Constitution-making. From the onset, I support the Motion before this House. However, I would like to make some observations.

A Constitution is normally supposed to prescribe the principles of governance. The proposed Constitution has 208 pages. I think it could have been made better if it had, at least, 50

pages. This document is too big. I want to believe that there is a lot that has gone into the draft and which would have been pieces of legislation through Acts of Parliament. Nevertheless, I would like to share the observations of my colleagues who have said that the proposed Constitution is far much better than the current Constitution. All efforts should be made to ensure that the Draft Constitution sees the light of day. It needs to be passed and accepted by Kenyans.

Mr. Deputy Speaker, Sir, my concern is that when you make laws, you should try to come up with laws that will make the welfare of *wananchi* far much better than it is now. A Constitution, being a set of laws, is mostly concerned with the equitable sharing of resources. It will be very good if we considered some amendments. I urge my colleagues that when the time for amendments comes, we should consider each amendment on its own merit and not on political or regional blocking. The amendments have to do with the benefits that will trickle down to the people of Kenya.

Mr. Deputy Speaker, Sir, a lot has been said about the devolved units. This is a very contentious issue because a constitution should, first of all, devolve resources to the grassroots or devolved units. A constitution should devolve those resources in a very equitable manner.

I want to talk with respect to Chapter Five of the proposed Constitution, which is on land and environment. Land is a very critical resource in this country. It will be very necessary not to deprive the citizens of this country the right to access, own and benefit from land and land resources.

Looking specifically at Articles 62 and 63, which deal with the issue of public land versus community land, a lot has to be said. We need to specify the two categories of land. Public land belongs to the Government whereas community land belongs to a group of individuals or communities of similar interest. When you talk of certain land belonging to a community but the resources within that land belonging to the public, I do not think the people will be happy about it.

Even when you look at Article 66 of the same Chapter, which are the regulations on land, land use and properties, it will be necessary to refine that Article specifically, to ensure that communities are not deprived of their land and land benefits through land regulations. The same applies to Article 67 which is on the National Land Commission. This is very contentious because, if you devolve units and resources within those units, but the management and use of those resources is again centralised through the National Land Commission, you are not empowering those people to decide on how resources within their units are going to be managed and used.

Mr. Deputy Speaker, Sir, Article 68 of the same Chapter addresses the issue of legislation and land, where we are going to legislate on the maximum and minimum sizes of parcels of land that an individual or group of individuals can own. Again, this contradicts Chapter Four, which is on the Bill of Rights that gives citizens the right to access resources.

I am, therefore, particularly concerned on the Chapter on land and environment. If we are talking of devolved units, and then you put in the Schedule that: "There shall be the following devolved units---", it is very important that we consider not only the communities or the region to have that devolved unit, but also the viability of that devolved unit. Devolved units are going to be viable if we do not take away the resources within those units and put them under the management of the Central Government.

Later on, I will be forwarding to you my proposed amendments on this Chapter. If we devolve units and put resources such as game reserves, national parks and other community owned resources under the Central Government, that particular unit is not going to be viable. It is

very critical that this time round, we give Kenyans the power to make decisions on how those resources are going to be managed. Even if you give a region a certain resource but the management of that resource is put under a central Government organ – in this respect, the National Land Commission – you will not have empowered the communities living in that unit.

Mr. Deputy Speaker, Sir, Chapter Four is the Bill of Rights, which is considered to be the “people’s Chapter”. As we expand the Bill of Rights, we should do so with the national security in mind. In my opinion, this Chapter seems to compromise the national security. If you look at Article 31, on privacy; Article 5, access to information; Article 36, the right to association; and, Article 37, the right to assembly, demonstration, picketing and petition, these Articles need to be re-looked at with national security in mind. We should not compromise national security in the name of giving people more rights or expanding the Bill of Rights.

An issue that I know is contentious is that on transitional and consequential provision as stipulated under Chapter 18 of the proposed Constitution. Under Article 261, Separation of Powers, we are trying to separate, say, the Executive from the Legislature, and either of the two arms from the Judiciary. I think we need to re-look at Article 261(7) and others under this Article, where we are having one arm of Government, specifically the Judiciary, giving orders to the Legislature to do “a”, “b” and “c” within a particular period of time. This will overlap the need to ensure separation of powers.

Mr. Deputy Speaker, Sir, my concern on Chapter 16 is the issue of amendment to the Proposed Constitution. We should not live in an environment of mistrust or too much fear. As other hon. Members have said, we cannot have a perfect Constitution. There is no single perfect Constitution in the world. We have also been told that laws are not cast in stone. They can always be improved for the betterment of the lives of the people. So, it is not necessary to live in an environment of mistrust and too much fear to an extent that we lock that room for amendment.

Under Chapter 16 of this Proposed Constitution, there are a lot of things that have been included providing that every time you may want to amend the Constitution, you will have to go for a referendum. Even when you want to amend a specific Chapter, you will have to seek the support of citizens through a referendum. So, this Chapter should be looked into, because a lot of things can be achieved through amendments in the National Assembly which will be checked by the Senate. We do not need to subject the people of Kenya to a referendum every time it becomes necessary to amend this proposed Constitution.

With those few remarks, I beg to support.

Mr. Deputy Speaker: Yes, Mr. Gitobu Imanyara!

Mr. Imanyara: Mr., Deputy Speaker, Sir, I thank you for giving me this opportunity.

It is a historic moment, indeed, that finally, we can stand before this House and say that we have a real opportunity of giving this country a new Constitution. A Constitution for which many people have fought and for which many have died. It is important, as we stand in this House to celebrate an occasion like this one, to recognise the fact that we, as the National Assembly, today are not sitting as a legislative body.

Mr. Deputy Speaker, Sir, there is a lot of confusion that is coming up in the minds of hon. Members, which is confusing this House’s role of law-making from that of acting as an organ of constitutional review. It is very important that we recognise the fact that it is stated clearly in Section 47 of the Constitution of Kenya Review Act that the right and the power to replace the Constitution lies collectively with the people of Kenya. When today we stand here to speak in

support of this proposed Constitution, we speak as one of the organs that are recognised in the Constitution of Kenya Review Act.

The other constitutional review organs are the Committee of Experts (CoE) and the Parliamentary Select Committee on Constitutional Review, which is headed by my good friend who presented this Draft Constitution Bill to this House yesterday. We must recognise the fact that each of those review organs has a duty and a way. So, today, we must differentiate the role of this Assembly acting as a review organ, in terms of the Constitution of Kenya Review Act, and as a legislative Assembly. If we get that correct, we will understand why these fears about certain things that have not been taken into account, can be taken into account in due time.

Mr. Deputy Speaker, Sir, Article 119 of the proposed Constitution on the right to petition Parliament says:-

“Every person has a right to petition Parliament to consider any matter within its authority including to enact, amend or repeal any legislation”

I want to appeal to my colleagues who have certain misgivings and are proposing amendments to the proposed Constitution to rethink. Let us pass this proposed Constitution as it is because it does give Dr. Machage the opportunity to come back and ask this Parliament to enact a law that specifically takes into account his fears.

I appeal to my colleagues that the way forward is to accept this Constitution as proposed by the Committee of Experts (CoE) and the Select Committee of this House. Let us go to the people of Kenya who have the final responsibility of enacting this Constitution. Under the Constitution of Kenya Review Act, the final organ of review is the people of Kenya in the referendum. That is where the people of Kenya will exercise their final authority as envisaged in Section 47 and give us a new Constitution.

So, as I stand here today, I feel a very happy man that all the days I spent in Nyayo House were not in vain. The days I spent at Kamiti Maximum Security Prison were also not in vain. The days I spent at Naivasha Maximum Security Prison were not in vain. We have been fighting for this Constitution for all those years. I am sure wherever Jaramogi Oginga Odinga is lying today, and may God rest him in peace, is a happy man after seeing that finally, what his dream for Kenya was is getting attention in this House.

(Applause)

There are many others before him namely Marie John Saroney, Philemon Chelagat, Bishop Alexander Muge, the late Chief Justice Magano of the High Court and the late George Anyona. There are those who are alive today like John Khamiwa, Pheroze Nowerjee, Makau Mutua, Martin Shikuku, Prof. Wangari Maathai, Wanyiri Kihoro, my good friend, Prof. Peter Anyang-Nyong'o who has also spent many days in this struggle, Raila Odinga, James Orengo, Kiraitu Murungi and Martha Karua who spoke yesterday. These are sons and daughters of Kenya who have given substantial parts of their lives to the struggle for a new Constitution.

Mr. Deputy Speaker, Sir, today, I can stand in this House and say they were not acting in vain. My good friend from the days of university, and I can see he is looking at me, Mr. Kajwang', today I am sure you can stand up and say that you struggled and those struggles were not in vain. Finally, the people of Kenya have an opportunity to enact a Constitution that reflects their will and wish. It is a happy day that those who have fought so hard against the Constitution are today acting with us and supporting the introduction of a new Constitution.

I am happy that today, I am not seeing the anti-reformers and reformers. I am seeing people, collectively, committed to giving us a new Constitution. I wish the President was here today to see that what he said so many years ago that it will never happen can happen during his presidency. So, this Mugumo Tree that they did not believe can be cut--- The President should be happy that during his time in office, we are finally giving the people of Kenya a Constitution they deserve.

Mr. Deputy Speaker, Sir, this Constitution that the people of Kenya are going to get an opportunity in a referendum to approve, gives us one to five years of realising the true intent of what we are doing today. When we look at the document that is before us today, let us remember that the real test is not the passage of the Motion in this House today or in the referendum but in the period of five years that is provided for in Schedule 5.

If you look at Schedule 5, you will see that we have time ranging from one to five years to realise the full dream. Therefore, all these issues that hon. Members are concerned about are provided for in Schedule 5 where we have put a time frame within which we must create and enact other laws. There is no point of passing this law today and getting the people of Kenya to accept it in a referendum if we are not going to faithfully adhere to the Schedule that contains the other laws that need to be passed in order to give meaning to the true intent and purpose of this Act.

Schedule 5, that is on page 192 tells us what we must do between Chapter 1 and the very last Chapter; that is, between the first year and the final year. With regard to legislation in respect of culture, we have five years from enactment of this legislation. We have five years within which to enact laws in accordance with this new Constitution to ensure that culture is entrenched in the Constitution.

Mr. Deputy Speaker, Sir, if you look at the citizenship, you will find that we have one year within which to enact a legislation under Article 8 relating to citizenship.

If you look at Chapter 4 on the Bill of Rights, you will find that we have three years within which to get the freedom of the media as provided for in Article 34.

We have five years within which to enact legislation on consumer protection as provided for in Article 46.

When it comes to fair and administrative action provided for in Article 47, we have four years within which to enact this legislation. It is all set out there.

Mr. Deputy Speaker, Sir, therefore, all the concerns of hon. Members relating to when life begins and family organization--- We have made provisions for this. The CoE in its wisdom and the PSC set out in this Constitution a Schedule which if we faithfully adhere to, all the concerns that are being raised today by hon. Members will be met. We will have enacted comprehensive legislation as is provided for in the Constitution to ensure that all the concerns that are being raised in this House today are met.

My fear is that if we go to the extent of undoing this proposed new Constitution, we will be performing a role that is not ours. We will not be making the law. We will be re-making the Constitution. That has been the problem in this nation since 1963. Parliament has been used by the Executive to mutilate, scatter and make it impossible for people to enjoy their fundamental human rights because Parliament itself has been under the control of the Executive.

Let us not confuse our functions and roles. Let us enact this Constitution as proposed. These concerns that are now finding expression in this House are concerns that have been addressed at various stages, namely at Naivasha and in the various retreats, the last one being two days ago.

Mr. Deputy Speaker, Sir, it was recognized that, indeed, these concerns cannot be met by a simple amendment of the proposed Constitution. The way forward, and I plead with my dear colleagues in the House, is for us to let the proposed Constitution as it is; as recommended by the CoE and as is provided for in the documents that have been circulated. Thereafter, let us set a timetable. Let us go back to our legislative roles as Members of Parliament and within the next five years, ensure that we have the legislation that gives meaning to the proposed Constitution.

Even as we do that, the other concerns of petitioning Parliament to address special concerns remain. If it is an issue relating to abortion and those raised by the faith-based organizations, let us address that as one rather than lump it with all the 260 or so clauses in the proposed Constitution. That way, we do not give it full attention. Let them allow us to pass this Constitution and then let us in our legislative role, enact those pieces of legislation that all Kenyans feel are necessary and, indeed, are necessary.

Mr. Imanyara: The reason that a lot of concerns are being raised about this Constitution and the reason why proposals are being made for amendments of the Constitution is because the areas provided for in the transition period have not been addressed. If we can address those issues at the right time, then we will get a Constitution because no Constitution will ever be perfect and no document even the amendments we bring to this House will ever be perfect. They will never be agreeable to 100 percent of Kenyans. So, let us get what has been carefully thought out. Let us look at what the Committee of Experts (CoE) has come up with because they are the only ones who received submissions from Kenyans. They told us that they got more than one million submissions from the people. Those of us sitting in this House never received any such submissions. We never considered them. Let us give them credit for the work they have done and let us enact this legislation as is provided and let this country move forward. It is one chance we cannot afford to lose. It is an opportunity that comes only once in a lifetime. Let us seize the opportunity now and enact this document as it is and move forward.

I beg to support.

Mr. Bahari: Thank You Mr. Deputy Speaker, Sir, for giving me this opportunity.

(Mr. Deputy Speaker left the Chair)

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

I want to join my colleagues in supporting the Draft Constitution that is before the House. From the outset, I want to congratulate this House and those who crafted the Constitution of Kenya Review Act, 2008 because of the way it has laid out all the steps in a proper manner, to ensure that we realise the new Constitution which Kenyans have fought for, for a long time. From the outset, the Review Act recognises the Committee of Experts as one of the key organs of the review. In doing that, the Act ensures the independence of the Committee of Experts - by ensuring that the people who are on that Committee had their qualifications clearly spelt out; so, they are real experts. In addition, the same Act has also ensured that we borrow expertise from outside this country in order to ensure independence and to bring in that expertise that is going to add value to the review process.

Mr. Temporary Deputy Speaker, Sir, in Article 16, the Committee of Experts was expressly given the independence to ensure that they should not at any time be subjected to

control of any person and authority. So I am not surprised, therefore, that this document has been very thorough and revolutionary in all aspects.

The same document has laid the foundation for a good Constitution. It has spelt out very clearly, the framework within which this Constitution is expected to be crafted. If you look at Article 4, it says:-

“The Objects and purpose of the review of the Constitution is to secure provision therein of promoting the people’s participation in the governance of the country through democratic, free, fair elections and the devolution and exercise of power”.

Times have changed and we cannot continue doing things the same way we did them in 1963 or before then.

Mr. Temporary Deputy Speaker, Sir, Article 4 says that the object and purpose of the review of the Constitution is to secure provision therein for promoting the people’s participation in the governance of the country through democratic free and fair elections, devolution and exercise of power. Times have changed! We cannot be doing things the same way we did them in 1963 or before. The total environment has changed. It is time, and I think that is what this Constitution has spelt out, that the matters of devolution, exercise of power and democracy are fully entrenched and internalized by all those who are in public offices, so that we do not pretend; we actually act as we ought to. Section 4(f) of, the Review Act says that one of the provisions or parameters is the provision of basic needs for all Kenyans through the establishment of an equitable framework for economic growth and equitable access to natural resources. We have been talking about commissions. One is called the National Cohesion Commission. You cannot expect a nation to be cohesive when you are not equitable in the distribution of resources; when a section of the community is completely neglected. You cannot do it through a commission!

(Applause)

You can only do it when I am, for example, sure that when the Chair is there, I have an opportunity to speak; that Kenyans have an opportunity to participate in the development of the country; not through commissions, police cells or maximum security prisons. It is not those kinds of things that are going to bring national cohesion. It is not fear! When Kenyans are free and the system is just and it is equitable, then national cohesion will come. That definite love and respect for each other will be developed.

If you look at Part (d)(v) of the Review Act, it says that we should also be guided by respect for principles of human rights, equality, affirmative action, gender equity and democracy. I want to speak about gender equity. For a long time, this country has been left behind in terms of ensuring that everybody is respected and participates in the development of this country. We have to wake up now and ensure that in this Constitution, that is provided for as envisaged by the Constitution of Kenya Review Act. It must also be provided in the draft Constitution.

I want to speak about different arms of the Government which form the bigger pillar of the State. One of the radical things that have, perhaps, been proposed here and which I strongly support is all the three arms of Government being independent. For example, the idea that Ministers should not reside in Parliament - and I know hon. Members here in their contributions have repeated - is a brilliant idea. You cannot have your cake and eat it! You cannot pretend that you are in the Executive and the Legislature at the same time. The people who elected us must be appropriately represented in this House without having to be fooled by the flags that hon.

Members have been flying around. So, that is an excellent idea. I think Parliament, over a period of time, has been trying to emancipate itself from the Executive and get the necessary independence through the Parliamentary Service Commission (PSC) and through funding directly from the Exchequer and the charge in the Consolidated Fund. We are happy that the same has been extended to the Judiciary. The Judicial Service Commission (JSC) enjoys some degree of independence. The appointments are vetted by this House to ensure that friends and relatives of those in high positions or classmates are not appointed to those positions. The fact that funds for JSC will now be charged to the Consolidated Fund is a move in the right direction. That will ensure the independence of JSC. That way, there will be proper checks and balances. The Judiciary will be effective and it will promote business affairs and public management.

Mr. Temporary Deputy Speaker, Sir, a time has come when institutions are going to run this country and not individuals. The moment this draft Constitution is passed, I have no doubt that the minds of many Kenyans will rest and that this country will realize its full latent potential which has been denied all along.

I want to comment on the issue of public finance and, particularly, on matters related to the Commission on Revenue Allocation (CRA). Even when we refer to the issue of devolution and resource allocation, I think the Committee of Experts (CoE) has gone a long way to define the role of CRA. It is the one which is going to advise. It is the one which is going to recommend the formula. This is not something new. It is there in South Africa and many other countries with devolved governments. So, nothing is arbitrary. Everything is going to be dependent on expertise. Everything will depend on a formula and a clearly defined path so that our future is guaranteed as a nation. I have no doubt that, even if we passed this Constitution as it is, this country will be better off than it has always been. I think that is where we need to go without wasting a lot of time.

At the same time and, perhaps, to wind up my argument, this is an organ of review. I think we expect to live with this Constitution for a long time. That is why we need to exhaustively discuss and make proposals of amendments that we think are radically important. Otherwise, what is the use of this House? Fine! I agree it is not a legislation process but it is an organ. Any organ, whether it is the heart or kidney has its functions. Those functions must be seen to be applied appropriately. It is only in this spirit that we are saying this House must play its rightful role. According to the Review Act, there is no organ which is supposed to dictate to the other. All organs are equal. The only thing that is going to determine our direction is the reasoning behind what the organs propose to do. You realize that the CoE, at every given moment whenever they make a decision, they try to justify that decision. Therefore, it is up to us who are in this House to try and redefine what we are not comfortable with and give a fresh justification. For example, in the Review Act, reference has been made about a Reference Group (RG) as part of a conflict resolution mechanism process. I do not see any situation in the Review Act where the RG is going to dictate to either the CoE or the National Assembly. It does not exist! If it so happens and CoE convinces the PSC to bring in the RG, it will propose recommendations on how to resolve conflict. It will be on the basis of decisions made by the CoE in conjunction with PSC after deliberations. I think that decision is going to be democratic. The appropriate recommendation will be made in re-drafting or passing the draft the way it is.

Mr. Temporary Deputy Speaker, Sir, since many hon. Member also want to make their contribution, I want to say that the structure that has been set up is the right one. For example, in matters to do with devolution, you will realize that 80 per cent of this country is arid and semi arid areas (ASALs) and through a deliberate Government policy, 80 per of the area has been

ignored. Therefore, there is congestion in this country. You find us developing Mathare, Kawangware and Mukuru kwa Njenga. All those places sprung up as a result of wrong Government policies which must now be corrected through the new Constitution. It will devolve resources to ASALs and marginalized areas. Everybody will feel he or she is participating not because of love, but out of necessity for this country; we just want to move this country forward.

The Senate is basically meant to hold the nation together so that nobody dictates to the other, irrespective of how influential you are or the numbers that you command within your community. This nation must hold together. That is envisaged in the Review Act. We must have a unitary Government in as much as we devolve resources. This nation must hold together. We will not be doing anybody any good by bringing a new Constitution that is going to dismember this country. The world is going in the direction of unification.

Mr. Temporary Deputy Speaker, Sir, you obviously know the issue of the East African Common Market, the East African Community, the African Union. That is the direction we are going. From the review Act, at any given time, whether we are proposing devolution or whatever, we have no intention of dismembering this country. Therefore, there should not be any fear at all. The spirit in which this Constitution is being crafted must be very clear to everybody in that we want a unified Kenya and a just country and a developed country. We want an efficient country where everybody will realize his or her full potential.

With those few remarks, I beg to support.

Mr. Mungatana: Bw. Naibu Spika wa Muda, ninataka kuchukua nafasi hii kukushukuru kwa kunipa nafasi ili nitoe mawazo yangu machache kwa Hoja hii ya Katiba mpya ambayo iko mbele yetu.

Kwanza, ningependa kusema ya kwamba tuko katika hatua zile ambazo tulikubaliana kama Wabunge na tukapitisha katika sheria ya Kenya za kutengeneza katiba yetu mpya hapa Kenya. Tulikubaliana na tukapitisha katika sheria yetu ya kwamba Kamati ya Wataalamu watafanya kazi yao. Wakimaliza kufanya kazi yao, watapeleka maoni yao kwa kamati yetu ya Bunge ya PSC. Nao, chini ya mhe. Abdukadir walifanya kazi yao. Bunge ni hatua ya tatu. Bunge pia inahitajika kutekeleza wajibu wake.

Bw. Naibu Spika wa Muda, tukitoka hapa, tutaenda kwa hatua ya nne ambayo ni wananchi wenyewe kupitia kwa kura ya maoni ikiwa wao watakubaliana na kazi yote ambayo imefanywa ama wataikataa.

Wakati Bunge ilipoanza kufanya kazi yake, kulikuwa na utatanishi. Wengine wanasema kuwa tunaenda kuharibu Katiba. Wengine wanasema Wabunge wanaenda kupoteza pesa. Lakini umeona hali ambayo iko katika Bunge leo hii na jana; waheshimiwa Wabunge wanazungumza mambo bila chuki ama fitina au kukosana. Kwa hivyo, wale ambao walikuwa wanasema tusiende kuzungumza, tungewakosoa kidogo.

Sisi ambao tuliamua ya kwamba tutaenda kule, kuna wengine wetu ambao pengine hawakusoma kila kipengele. Lakini baada ya hizo siku tatu, tumesoma vipengele vyote. mhe. Abdikadir na Mhe. Namwamba walisoma kipengele kwa kipengele na ndio sababu leo hii tunazungumza kwa utaratibu. Kwa hivyo, tunataka tuongee tukijua kwamba kuna mambo ambayo lazima tupitie ikiwa tutakuwa na mazungumzo ya kisawa sawa.

Bw. Naibu Spika wa Muda, nimepata nakala ya Katiba ile yetu ya zamani ambayo iko hapa. Pia, nina nakala ya Katiba Rasimu ambayo tunataka kupitisha. Kwa Kiingereza inaitwa proposed Constitution. Ukiangalia Katiba hii yetu ya zamani ambayo tumeishi nayo, ingawa imebadilishwa muda kwa muda, lakini tuko nayo mpaka sasa, ina vipengele 127. Katika vipengele hivi, Katiba Rasimu ambayo tunataka kuipitisha, ina vipengele 264. Ukiangalia

mazungumzo na Hoja ya Bw. Mwenyekiti aliyokuwa akisema jana, amezungumza kati ya mambo ambayo yamefanywa mazuri zaidi katika Katiba Rasimu. Ukiangalia mfumo wa utawala, Rais ambaye tutamchagua kwa wakati huu hatakuwa tena Rais ambaye anaweza kufanya mambo bila kuhusisha wananchi. Ninakubali kuwa atakuwa Rais mwenye nguvu lakini kumewekwa vipengele mahususi vya kuhakikisha kwamba tena katika Kenya hakutakuwa mtu ambaye atakuwa na nguvu za kutawala na kufanya atakalo katika Katiba yetu mpya.

Mtu akisema: Je, tukipitisha hii ni vizuri au la, una jibu lake. Tumeregesha tena senate ambayo Rais wa zamani kupitia chama chake cha KANU walivunja. Pia, walivunja sehemu za wananchi kujisimamia wenyewe kwa sababu ya kuongeza nguvu na mamlaka ya kati kati.

Ukiniuliza mimi kama Katiba hii imeenda mbele katika demokrasia au la, nina jibu langu. Lakini wewe mwananchi na wenzangu pia mna majibu yenu. Hakuna mtu atakayekujibu zaidi ya hapo.

Ukiangalia siku ya Jumanne, na siku zote tunapokuja hapa kwa vikao vya Bunge, hawako. Kazi zao za maeneo yao ya bunge zinachukua nafasi ya mbele kwa sababu walikuwa wabunge kwanza kisha wakawa mawaziri. Sasa tumepitisha katika Katiba hii ya kwamba wewe ukiwa waziri, fanya kazi yako ya uwaziri. Wewe ukiwa mbunge ama seneta, fanya kazi yako ya ubunge ama useneta. Ikiwa unafanya kazi yako ya kupitisha sheria, fanya kazi yako ya kupitisha sheria. Tumekuwa na sakata hapa juzi kuhusu mawaziri na makatibu wa kudumu katika wizara. Wakati ambapo ilikuja ya watu kufutwa kazi, makatibu wa kudumu watano walifutwa kazi kwa wakati moja. Hakuna mtu aliyetoa tone moja la jicho angalau kusema pole ama chozi moja; hata chozi la mamba la uongo. Hakuna hata mtu aliyesema. Lakini ilipokuja wakati wa kufuta mawaziri kazi; hawakufutwa kazi. Waliambiwa tu: Ondoka tu, tufanye uchuguguzi. Tunataka mfumo ambao utasema: “Wewe utakuwa chini ya jicho la Bunge. Wewe ni waziri lakini uko chini ya jicho la Bunge. Ukifanya makosa, utafukuzwa kama vile makatibu wa kudumu walivyofanywa. Ukiniambia je hii Katiba ambayo niko nayo ambayo ilimfanya waziri awe na nguvu kupita kiasi, na hii ambayo tunaitaka sasa, nzuri ni ipi? Jibu ni lako.

Bunge letu lina nguvu kusema ukweli. Lakini Bunge letu la sasa halina nguvu ya kumfukuza Rais. Kwa sababu ukimfukuza Rais, Bunge letu pia linakufa. Hii inamaanisha kwamba tunajinyonga sote. Kutumia kipengele hicho, Rais aliweza kufanya mambo mengi kupitia Katiba hii ya zamani. Katika Katiba hii mpya, Rais akifanya mambo mabaya, Bunge limepewa mamlaka, tukipata thuluthi tatu hapa Bunge na likienda kwa bunge la senate, Rais anaenda kwao. Tena sio kuwa eti nchi itakuwa katika taabu; hakuna. Kuna Makamu wa Rais ambaye amechaguliwa na wananchi. Zamani, ilikuwa Rais ako na nguvu mpaka anasema kwani nikiwapatia huyu Makamu wa Rais ndiyo mtaongezea ugali katika sufuria zenu? “Haya chukueni Makamu wa Rais.” Makamu wa Rais alikuwa anachaguliwa kwa bara bara. Jambo hilo halitatendeka tena. Sitaki mtoto wangu, mjukuu wangu wala kitukuu changu kiishi chini ya Katiba hii ya zamani.

Bw. Naibu Spika wa Muda, wakati huu tuko na Makamu wa Rais ambaye tulimchagua. Kwa hivyo, Rais akitimuliwa kutoka mamlakani kwa sababu ya kuiba au kufanya uhaini, basi Makamu wa Rais atachukua mamlaka na nchi yetu itaendelea bila shida yoyote. Lakini kama hatuna Makamu wa Rais, basi Spika wa Bunge atachukua mamlaka kuambatana na Katiba hii mpya. Ukiniuliza kati ya Katiba ya sasa na hii mpya, ni ipi nzuri, jibu nitakuwachia wewe mwenyewe.

Ukiangalia kipengele juu ya Parliamentary Service Commission (PSC), utaona kimewekwa vizuri zaidi chini ya Katiba hii mpya. Ukiangalia jinsi tunavyopitisha sheria hapa

Bungeni au the *legislative programming and making laws in this country*, utaona kuwa imewekwa vizuri sana katika Katiba hii mpya kushinda ilivyo katika Katiba ya sasa.

Ukiangalia kipengele juu ya uteuzi wa majaji au mahakimu wa mahakama zetu umeelezwa vizuri katika Katiba hii kuliko ya zamani. Uteuzi wa majaji chini ya Katiba ya sasa, haufanywi kwa njia ya haki. Utaona ni wale watu ambao wanajulikana kwa wakuu wa nchi; Rais, Waziri anayehusika au wakuu wa Civil Service, wanachaguliwa na kuapishwa hata kama rekodi zao si nzuri. Wakati mwingine, mtu anayechaguliwa kama jaji anajua kuwa ana dosari fulani na hata Waziri anayehusika anajua kuna shida, lakini kwa vile anajuana na Rais au wakuu wa Civil Service, anachaguliwa na kuapishwa kama hakimu. Baadaye Tume ya kupambana na ufisadi au the Kenya Anti-Corruption Commission (KACC) inasema kuna makosa yaliyofanyika na jaji huyo anasimamishwa kazi. Mambo haya yote yanafanyika chini ya Katiba ya sasa.

Katiba hii mpya inatoa mamlaka kutoka kwa taasisi mbalimbali za Serikali na kuyaweka mahali pengine. Kwa mfano, the Judicial Service Commission (JSC) inapewa jukumu la kuwateua majaji chini ya Katiba hii mpya. This is superior. Hii JSC hapa ina nguvu zaidi kuliko vile ilivyo sasa. Hata katika kanda ya nchi za Afrika Mashariki, taratibu hizi za kuwateua majaji zimewekwa wazi. Ukiniuliza juu ya vipengele vya uteuzi wa majaji ni vipi vizuri katika Katiba ya sasa au hii mpya, hilo ni jukumu lako kuwamua wakati wa kura ya maoni. Mwananchi atapata nafasi ya kulijibu swali hilo.

Bw. Naibu Spika wa Muda, wakati tunagawa pesa za Kenya kwa Wizara na maeneo Bunge mbalimbali, tunaona hakuna msukumo katika Katiba ya sasa wa kuhakikisha pesa hizi zinawafikia wananchi wetu mashinani. Wakati Naibu Waziri Mkuu na Waziri wa Fedha aliposoma Bajeti ya mwaka huu, alijaribu sana kuhakikisha kuwa pesa zilifika mashinani kupitia maeneo ya Bunge. Lakini jambo hili halijashughulikiwa vizuri katika Katiba ya sasa. Lakini Katiba mpya ambayo tunayoijadili wakati huu, haitakuwa na maoni ya Waziri wa Fedha kusema katika Bajeti hii tutatenga pesa kiasi fulani za kwenda mashinani kwa ajili ya miradi hii na ile, bali itakuwa ni lazima kufanya hivyo kuambatana na Katiba hii. Itakuwa ni lazima kutenga pesa fulani kwa ajili ya maendeleo mashinani. Mtu akiniuliza kati ya Katiba ya sasa na hii mpya ni ipi nzuri, swali hilo tulijibu wenywe wakati ufaao.

Kipengele cha dual-citizenship au kuwa na uraia zaidi, kimepewa umuhimu katika Katiba hii. Ikiwa mtoto wako anafanya kazi nje ya nchi hii na anataka kuendelea kuwa Mkenya, basi Katiba ya zamani inasema jambo hili haliwezekani. Ni lazima ukiwa Mkenya ubaki Mkenya. Lakini Katiba mpya ambayo tunataka kupitisha inasema unaweza kuwa na uraia zaidi ya nchi yako ya Kenya. Kwa mfano, ukienda kutafuta kazi Afrika Kusini, Saudia au Tanzania na inakuhitaji kwamba kazi ambayo unayoifanya huko ni lazima uwe na uraia wa nchi hiyo, basi uraia wako wa Kenya haupotei. Ukiniuliza kati ya Katiba ya sasa na Katiba hii mpya tunayoijadili hapa, ni ipi nzuri, swali hilo nitakuwachia wewe mwenyewe kulijibu wakati wa kura ya maoni.

Je, tukijadili maoni ya Kamati ya Wataalamu, Kamati ya Bunge na yetu sisi hapa Bungeni, tutakuwa tumepata Katiba ambayo haina hata dosari moja? Hilo ndilo swali ambalo ningelipenda tujiulize. Kamati ya kwanza ya Wataalamu ilitoa nakala ya Katiba ambayo ilikuwa na dosari fulani. Mwenyekiti wake, Bw. Nzamba Kitonga, alisema kuwa wao wameandika Katiba kielelezo lakini kuna maswala kadhaa wa kadhaa ambayo wangependa sisi kama Kamati ya Bunge kuyaangalia. Mimi nikiwa mmoja wao chini ya Mwenyekiti wetu Bw. Abdikadir na Naibu wake, Bw. Namwamba, tuliyaangalia mambo hayo yote kwa udani. Leo tumeyaleta mambo hayo yote kupitia kwa ripoti yetu hapa Bungeni. Kuna mambo mengine ambayo hatuwezi kusema ni kamili ndugu zangu. Mtu yeyote ambaye atakuja hapa na atoe mawazo yake

pendine bora zaidi kuliko ya Kamati ya Bunge na yale ya Kamati ya Wataalamu, tusiwe na chuki naye, bali tuyaangalie kwa makini. Kama kuna maelewano kwamba kuna jambo ambalo ni lazima kuliangalie, ingefaa tuliangalie kwa makini. Hivi ndivyo tutaendeleza Katiba yetu.

Ningependa kuwasihii wananchi wetu wakati wanapiga kura ya maoni, ikiwa kuna jambo mbaya zaidi ambalo tulilipitisha kama Kamati ya Bunge, Bunge au Kamati ya Wataalamu, basi tusikatae msimamo wa wananchi wetu. Sisi tumepewa nafasi nzuri zaidi ya kuwa na Katiba mpya. Sheria ambayo tumeunda sasa inatuelekeza njia hiyo ya kupata katiba mpya. Ndio, kuna hizi nafasi zote za kubadilisha na kuifanya hii Katiba iwe nzuri zaidi, lakini tusipoibadilisha nakala, itakuwa vyema zaidi kwa sababu ni nzuri hivi ilivyo. Tusiikatae na tusiwadharau wanaosema kuwa tuipitishie vile ilivyo. Lakini sio kusema kwamba yule ambaye ana wazo nzuri zaidi pia tumkashifu. Tusiwe na mioyo namna hiyo.

Ninaomba tusikizane na tuelewane. Ikiwa kuna mtu ambaye atakuja na jambo nzuri zaidi, basi tukae tubadilishie. Lakini kama hatutaweza kupata nambari ya Wabunge thuluthi mbili, yaani 146, basi wananchi watukufu, Katiba ambayo tutaipitisha ni Katiba nzuri. Ni nzuri zaidi ya hii ambayo tumekuwa nayo kwa muda wa miaka mingi.

Juzi wakati Rais wa Marekani alipokuwa akiipigia debe sheria juu ya mabadiliko ya afya au The Health Bill, alisema jambo ambalo ningelipenda kulizungumzia hapa kwa ufupi. Alisema kwamba Wabunge wa nchi yake walikataa kuogopa siku sijazo, wakazikumbatia. Katika Lugha ya Kiingereza alisema hivi: *"We did not fear our future, we embraced it."* Tusiogope mambo yajayo, tuyaelewe na tuyakubali. Ni lazima tukubali kwamba Kenya imebadilika. Tunataka Rais na pia Bunge la *Senate* na Bunge letu la kawaida tofauti. Pia tunataka *Judiciary* tofauti. Tusiogope mambo yajayo, tuyakubali na kuyaelewa. Tusiwe na vita. Tupitishie Katiba Rasimu hii vile ilivyo ama kama mtu ataleta wazo njema zaidi, tuliangalie na kulipitisha kama Bunge.

Bw. Naibu Spika wa Muda, kwa hayo mengi, naomba kuunga mkono *even the way it is*.

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang): Mr. Temporary Deputy Speaker, Sir, I want to take this opportunity to thank the people of Mbita for bringing me back to this Tenth Parliament, so that I can be a participant in the discussion and enactment of a new Constitution which will usher in a new constitutional dispensation for this country.

Mr. Temporary Deputy Speaker, Sir, one time I came to this Parliament as a visitor. I came to the Gallery on the day the Section 2A was introduced into our Constitution. I was then a young lecturer at the Kenya Polytechnic. I was disturbed that Parliament was likely to amend the Constitution to say that Kenya will from henceforth be a *de jure* one party state. While in the Gallery, the Mover of the Motion, the then first Attorney-General of the Republic of Kenya, who had been defending the Constitution after the first President died and said that we cannot change the Constitution for certain people who wanted to stop the second President from taking over, changed his tone that day. When he stood up, he carried the Constitution in his right hand and said: "This House made this Constitution and this House will this afternoon amend this Constitution." I was shocked. So, while seated there, he quickly gave a chance to our current President to support and he did it in very few words. There were some young parliamentarians including Messrs. James Orengo, Koigi Wamwere and Abuya Abuya. They were referred to as Seven bearded sisters. One of them stood up on a point of order because the debate was being closed before hon. Members debated. I remember the Attorney-General standing here and saying: "Mr. Speaker, Sir, who is that?" I saw hon. Orengo and Abuya Abuya duck under their chairs. That was the power of impunity and that is what has brought us here.

Mr. Temporary Deputy Speaker, Sir, I am glad that you are today presiding over this debate, because you are personally intrinsically connected to it. This is because we have suffered that impunity and I know that you have suffered more than some of us. But it is a beautiful morning that you are presiding over the debate of changing the current Constitution and ushering in a new constitutional dispensation.

Mr. Temporary Deputy Speaker, Sir, may I thank the Chairman of the Parliamentary Select Committee and his very able deputy for yesterday's speeches and, of course, the speeches they made at the Kenya Institute of Administration (KIA). They made them with passion and learning. I think they put a brilliant effort in driving this process forward. When I was reading law at the university, the most important question in our subject of Jurisprudence was: What is law? Law can be defined in many ways, but the definition which I concocted is that law is the command of the sovereign. I think my professors accepted that definition. If somebody is sovereign and gives a command, then that is law. You only disobey it at your own peril. Now, the beauty of this proposed Constitution is that it says that the sovereign is the people of the Republic of Kenya. If I were in a political rally this morning, I would be saying: "We are the people!" The people would be feeling good about it because they are the sovereign. Of course, if the people are the sovereign, then it is the command of the people that is law. The people of Kenya will soon vote on this Constitution and will give to this country a Constitution and law which you will now disobey at your own peril.

Mr. Temporary Deputy Speaker, Sir, we have many reasons why we went this long and torturous way to change this Constitution. Mine were two. The reason I was so upset with the current Constitution that made us go all this way was not because of termination of pregnancy. Definitely, it was not. If you read the notes and minutes of the Ufungamano meeting of which I was a Member, I do not remember that featuring anywhere. In fact, it was not about the Kadhi's Court. Matiba, Jaramogi and I were in Ufungamano and I never heard a session talking about the Kadhi's Court, because those were not the reasons we were changing the Constitution. The reasons why we were changing the Constitution were things called impunity and abuse of power. Those are the only reasons why we were changing the Constitution and that is why we are here.

Let me just give you one example of abuse of power. First of all, I did not tell you that when I was sitting in the Gallery and they said the debate was over, I protested. I said, "no way!" I was thrown out through the door and went back to the polytechnic to tell my students that I had been thrown out of Parliament because I said: "No way! You cannot change the Constitution this way." That is impunity. I will give an example of impunity. One day Messrs. Matiba, Raila and Rubia were arrested. We all went to court *habeas corpus* – we wanted the State to bring them so that we could see them. The Director of Public Prosecution then, who is a former Chief Justice came in quickly and said that there was already a Gazette Notice and that they had already been detained and so there would be no proceedings. We told him: "We want to see them because we came in here earlier than you brought that Gazette Notice." Of course, we were heard a bit but still they ruled the same way. What is interesting is that when the lawyer for these three, Dr. Khaminwa, went to see them, he was also detained. So, now we were afraid to check on how our clients were doing because if we tried, we would also be detained. That was impunity and we hope it never happens again.

Mr. Temporary Deputy Speaker, Sir, power is a terrible thing and it is also a beautiful thing. Those who exercise it enjoy it. Those who are oppressed by it really feel terrible. There is a very old man who never went to school and used to preach to us when we were in high school. He used to say that power is dangerous and it must be guarded like fire, because if it is not

guarded, it can burn the whole world. That is what power is. It can also be enabling, empowering and bring wealth, industry and all those beautiful things that you want to see in Kenya. In Kenya, this power has been used like that fire that burns everything. This power is dangerous if it is in one hand; one man or one woman. Let us devolve it. I am glad that this Constitution has tried to deal with it. I said let us diffuse it. If we cannot devolve or diffuse it, let us rearrange it because the way it is, it is terrible. At that time, we were together.

There was another voice that gained a lot of momentum recently that said power must be in one centre. What it means is that power must be in one hand. I was afraid that we are going back to where we came from. But it is good that we have realised that it is dangerous enough to be checked. Even if it is God himself who is in charge, the Satan ran away with one-third of the angels. Satan rebelled against the power of Almighty God. So, it does not matter who you are, power is bad. So, it must be checked. We have designed certain institutions to check it. We have said that we will check it through this National Assembly. I want to be a Member one more time to preside over the legislation which will follow, and then I can retire. We must give Kenya a good foundation on which we will prosper. We have designed the Senate as a guarantor of our devolved units. We have dispersed power and as much as people say it is in one hand or one centre; it is not in one centre. A bit of it is in this House, a bit of it is in Senate and, a bit of it is at the County. Even the County Council has something. That is what we want for this country. A bit of it to me because I also need a little power as an individual. There was a student at the University of Nairobi who was campaigning to be the President during our days and used to campaign: "Power to the people! Power to the power people" and then he would say: "A bit to me." He did not want to be left alone without some power.

Mr. Temporary Deputy Speaker, Sir, this Proposed Constitution is a collective aspirations of the Kenyan people. I am sure the Kenyan people are happy. In one of today's newspapers, the headline was: "Good Start." I am sure we will have some good Press because this is good. Let me tell you why. For the first time, the President will not take half of this National Assembly and make it part of Government. If you do so, then Mr. Otieno Kajwang' who was very vibrant automatically becomes silent and opposition loses massively. Let the President be where he is and let the people of Kenya be represented here. That is one beautiful thing about this Constitution.

The second thing which is good about this Constitution is that whoever he appoints, we will check whether he can serve Kenyans or not. If Kenyans are happy through the House, they will serve us. But they will serve us at our own pleasure. This House can say, "we appointed you to serve, but you are no longer serving the national interest, we are evicting you from your office". By majority here we can evict a Minister from office. That is a check on the Executive.

I also saw the Judiciary. The Judiciary was made of the Judicial Service Commission (JSC) which is not a JSC at all. This is because there was the Attorney-General, Chairman of the Public Service Commission (PSC), Chief Justice and some other two judges who are all appointed by the President. So, appointees of the President must give the President what he wants. For the first time, we will have an independent JSC. This JSC will be independent of this House and the Executive.

For the first time, we will have a police force that will answer to some civilian authority. I had a beautiful debate with some of my colleagues whether we should retain the Administration Police (AP) as they are or not. My reason for saying that the AP should be merged with the police and not answer to one body, was that the AP as they are, are a militia of some politicians. They are used to do whatever a politician wants. That is the danger in which we put ourselves. I

accept the design that has been given that they will be answerable to a civilian authority. That we can now discipline and promote them, not at the whim of somebody, but on the recommendations of that civilian authority.

The Police Commissioner was the commissioner who had no commission. Originally at Independence, there was a commission. It was disbanded because of the same thing, impunity and abuse of office. You concentrate power until you remove it from everybody.

I will give one last example on impunity; I saw the Attorney-General; I think he was then the fourth Attorney-General. The Fourth Attorney-General came to this House and was proposing an amendment to the Constitution that would remove his own security of tenure. Just imagine an Attorney-General coming to this House and saying: "Mr. Speaker, Sir, the Attorney-General does not need the security of tenure. His Excellency the President can hire and fire the Attorney-General." These are some history that we must remind ourselves joyfully today because we are dismantling this impunity.

Mr. Temporary Deputy Speaker, Sir, we must make this Constitution difficult to amend. I had a friend of mine speak ahead of me and say that it is so difficult to amend it. We must make it difficult to amend it because it has been amended before very easily. The Senate was disbanded together with the regional assemblies one afternoon. In fact, they brought a Bill that said, amend this, remove this, and create more constituencies for these guys so that they can--- In fact, Mbita Constituency was a creation of this House. It was hived off of Ndhiwa Constituency to allow a Senator to get a seat, so that he would not complain of loss of job. They were actually bribed to dissolve themselves. That is the first institution that ever dissolved itself voluntarily and popularly. Things have happened in this country sadly. So, we must make this Constitution difficult to amend. I think the recommendations that have been made are good. There are certain pillars that you cannot touch in this Constitution. You cannot touch sovereignty of the people. You cannot touch the human rights unless you go to the same people and ask them: "Do you think you do not need these rights anymore?"

I am glad that we are debating and passing this Constitution. What I learnt that makes me happy is that it is self propelled. It has an engine that moves forward. Even if we make a lot of debate and try so many things, it will go on anyway. I am glad. I am celebrating this thing that will go on anyway.

Thank you.

Dr. Khalwale: Mr. Temporary Deputy Speaker, Sir, through you, I would like to thank the Speaker of the National Assembly for having been supportive of the process of consultations and consensus buildings among us, Members of Parliament. I would also like to thank the Parliamentary Select Committee (PSC) on the Constitution for the breakthrough that we achieved in Naivasha. It is this breakthrough that enabled the ball to start rolling. I would also like to thank the Committee of Experts (CoE) for the successful discharge of their mandate given the mind boggling mountains of volumes of views that they had to comb through before they gave this sensitized document.

Mr. Temporary Deputy Speaker, Sir, having thanked those three groups, I would also like to remember the civil society. I would like to remember the media and the entire nation for the role that they have played and they continue to play. I would like to urge all those people, since we are all mentioned as Kenyans, to strongly join me as I strongly join them in supporting this particular draft for the sake of the following sacrifices that have been made to bring us this far.

Mr. Temporary Deputy Speaker, Sir, I want to remember the heroes of this process. This has been a struggle for reforms and good governance in this country and many people have paid

either with broken limbs or lost lives. Mr. Josiah Mwangi Kariuki popularly known as J.M. Kariuki was killed because he believed that it was wrong for Kenya to be a country of 10 millionaires and 10 million poor Kenyans. Today, as I speak, I know that J.M., wherever he is, is even more unhappy because, today, we risk having a Kenya where we have 40 billionaires and 40 million poor Kenyans who are literally begging.

Mr. Temporary Deputy Speaker, Sir, I want to remember hon. Kenneth Matiba, hon. Charles Rubia, hon. James Orengo, hon. Martin Shikuku and hon. Masinde Muliro; who successfully galvanized the entire nation in the repeal of Section 2(A) of the Constitution of Kenya. At that time, I was a small boy at the University of Nairobi in first year. I want to remember Titus Tido Adungosi, who was by then in third year, and who was our student leader. The late Titus Tido Adungosi, who died because he believed in a better Kenya, again galvanized students to stand up against Moi.

Mr. Temporary Deputy Speaker, Sir, these are the heroes who gave birth to the indomitable spirit for change that has today put us in a firm course where we are now headed for a very exciting climax when we shall, next week, vote to pass this Draft Constitution.

Mr. Temporary Deputy Speaker, Sir, we must not fail; we must not fail at all! That is because if we fail, it will be tantamount to betrayal to so many people; including the ones that I have mentioned above and others. It will be betrayal to those little children and their parents who ran to a little church in Kiambaa, Eldoret, hoping to seek refuge during the post election violence, only to end up being burnt to death. We do not want to betray those people because if we had this draft in form of the law, those little children of God – completely defenseless – and those women in the Kiambaa Church in Eldoret would have been protected by the law. They would not have died!

Mr. Temporary Deputy Speaker, Sir, I want to say that never again should we have a document that gives the movers and shakers of politics in this country an opportunity to trade in the lives of poor Kenyans for the sake of achieving their political power games!

Mr. Temporary Deputy Speaker, Sir, I would like to urge my colleagues to refuse completely to be drawn into regional jingoism. It is that regional jingoism that is now dividing us. Let nobody cheat himself that what we are having in the country from the time we reached a stalemate in Kabete; let nobody cheat himself that it is a standoff between ODM and PNU. No! It is not! It is tribal, regional and ethnic jingoism. The Manifesto of PNU, which I have read, and that of ODM do not provide that the interests of any one ethnic community in this country be placed above any other!

(Applause)

These hon. Members, honorable as they are, as they retreat the way they did last night; and the way they have been doing in their tribal cocoons, let them know that, they are writing in very big letters that, to them, tribes come before Kenya.

Mr. Temporary Deputy Speaker, Sir, I would like to remind hon. Members that we are all brave men and women in this House. I urge them to rise and shed off the unwanted, useless and unhelpful tag of ethnic jingoists. It has never helped any country in the history of mankind and it is not about to help Kenya.

Mr. Temporary Deputy Speaker, Sir, just for this once, I want to beg you to allow me to mention two or three ethnic communities in this country. I want to mention my own community, the Abaluhya. I want to mention Kikuyu, Kisii and Somali communities. Those are three

communities which have successfully moved from the natural habitats where their grandparents left them 200 years ago. They have gone and ventured into other areas of this country. At any one time, if you pass a Constitution in this country that embraces regionalism, I have no doubt in my mind that any hon. Member would look at that regionalism to mean that more resources will go to his or her region. That is a good thing! But the consumers in that region - the youth and the old men on the ground - will take advantage of that region to perpetuate ethnic chauvinism.

Mr. Temporary Deputy Speaker, Sir, it is this community nationalism that has, over the years, visited the tribes that I have said before; every year or every general election. We have to bury our people because they have settled elsewhere. Other communities have to do the same. Therefore, if we have this opportunity to write a law that will protect those people who normally die for no reason during an election, why do we not do it? You know, the people who die are not these tough politicians! When you look at television footages and see Luhyas running - you have allowed me to use that word - you will see a woman with an old torn mattress rolled on the head; she is pregnant, carrying a child on the back and on her side, a child of five years or so is carrying a hen in his or her armpit. You will find the husband following with a jembe and holding the rope of a cow. We do not want to be seen like that when we have gone to school so well. We have come there to exercise our brains so that we can meet with minds from other communities in this country!

Mr. Temporary Deputy Speaker, Sir, this is going to be made so easy for us because our business has never been made easier! The Committee of Experts (CoE) and the Parliamentary Select Committee have synthesized for us all the divergent views into this draft. We have all, individually and collectively, read the draft and we have found that, actually, there is nothing threatening any community in that draft. There is nothing threatening any gender in that draft. There is nothing threatening any so-called marginalized or minority communities in this country! All that has been enshrined in that document is affirmative action to pull our own brothers who come from those respective minorities and marginalized communities.

Mr. Temporary Deputy Speaker, Sir, we have to do the simplest thing which, in my view, is merely to clear and forward the document to the final stage. If we are clearing and forwarding this document to the final stage then we must endeavour to be faithful clearing and forwarding agents. We must not look at ourselves as a special crop that will do something unique. All that we are doing, having read the document, is clearing and forwarding it to the final stage.

A careful walk through this draft confirms the following issues: You need to have been in this country longer than some of the youth who pen stories in our newspapers and run documentaries on our FM stations which are supposed to help certain powerful people to achieve their means riding on regionalism or community interest. It takes those who have been here longer to realise how nice this thing is. I have looked at it and found, for the first time, that the principle of separation of power, which I was taught in Civic Education in Standard Seven many years ago in Malinya Primary School has now been achieved. Secondly, this document has carefully provided that the Executive authority of this country is not placed in two centres. It is, thankfully, in only one centre. It will be exercised by the supreme who is at the top and the other levels to which his authority has been devolved.

Thirdly, this draft has ensured that the excessive presidential powers that have existed over the years have been devolved not into the hands of another individual with whom they can sit in a room be it at Harambee House, State House, or in a meeting in their constituencies and cut deals. The powers have been devolved into the following institutions: An independent Parliament; an independent Judiciary and independent constitutional commission.

Mr. Temporary Deputy Speaker, Sir, this document has gone further, and that is why I support it, to ensure that any presidential appointments, from the time we enact this law and subsequently, shall never pass without vetting and approval of the National Assembly. Just in one stroke, the era of patronage has been brought to an end.

I would like to mention something about devolution. When I think about devolution, it reminds me the scar of colonization. The colonialist left us something in this country. He did it in a very clever way in his theory of divide and rule. He taught our people in the various regions and communities to think small and act locally. We should use this particular draft to encourage Kenyans to think big and act nationally. Kenyans must be taught to think beyond their tribes and regions and identify with Kenya itself. They must be taught that the only form of federalism which we must embrace should not be federalism within the borders of Kenya, but it should be within the East African Community which offers us an opportunity for a strong common market, an effective and sensitive monetary union and a political integration that can bring the over 120 million East Africans together so that we can do business sensibly.

I want to say here that when I will be going to the rallies to promote this draft, I will be saying, "To hell with Majimbo!" I will tell Kenyans that we must discover the magic of thinking big and proudly say "Yes" to the 47 strong viable counties that have been proposed in this draft. I know there are a few people who have been meeting overnight because they want to defend regional interests. Let me give you an example of America.

When the Constitution of America was being negotiated so that it could become a union, the leader of the State of Boston walked out and refused and said that they wanted their autonomy as Boston. So, when a decision was made in his absence and he was asked why he had refused, he said: "We, in Boston are a fishing community. The interest of the fishing community is not going to be preserved if we come together with people who are cowboys, gold miners from California, and so on."

However, when he came to read the draft later after they had operationalized the Constitution, he discovered that the people of Boston were not being shortchanged! Today, I urge hon. Members to go to the regional assembly of Boston. They have a very big symbol of a fish. Mr. Kajwang, I know you come from a fishing community. A big fish is in the assembly and it rolls like this when debate is going on to constantly remind the people of Boston that their interest of fishing was preserved even in the Union.

Mr. Deputy Speaker, Sir, having passed this draft as it is, we would like, in future, posterity to remember that we passed it when we were aware that it is not perfect and we could have improved on it a little. However, this is not the time to do that because we shall open a Pandora's box. We want to tell the future that Clause 26 which mentions abortion could have been improved this way. Why do you want to put in the Constitution of Kenya matters of consent between two people who agreed to go to bed in the absence of all Kenyans and the Constitution and got a child? It has no room there!

Mr. Temporary Deputy Speaker, Sir, Clause 170 refers to the Kadhis Courts. We would like Kenyans to know that this could have been done better, but we will leave it there because nobody will die from it. There was no need of mentioning the Kadhis Courts in the Constitution. All we needed to provide is that Kenya is a secular State. Once we provide that, we leave the rest to secondary legislation. If Muslims want Kadhis Courts, this Parliament will give them an Act of Parliament. If Hindus come, this Parliament will give them an Act. If Christians are not satisfied, they will be given an Act. Kadhis Courts have no room in this Constitution but because we want it to pass, let it pass. Future generations will address this matter.

I would like to talk about Clause 22 which mentions the Controller and Auditor-General. As the Chairman of the Public Accounts Committee, I have seen the mischief of allowing somebody to be the Controller and Auditor-General when he is not a qualified accountant.

My time is up. With those many remarks, I beg to support.

The Assistant Minister for Education (Prof. Olweny): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me an opportunity to support this draft.

I wish to congratulate Kenyans for giving us their views which we have in this draft today.

Mr. Temporary Deputy Speaker, Sir, this is a product of what Kenyans contributed in the previous arrangement, when the views of Kenyans across the country were collected. This is what we got from the long search for a new constitution for this country. It is something that took Kenyans several years. So many Kenyans died for it. So many Kenyans were tortured for it. So many Kenyans were detained for it. It is good that we have some of them amongst us. Their names have been mentioned, including those of Mr. James Orengo, Ms. Martha Karua as well as yourself, Mr. Temporary Deputy Speaker, Sir.

I was still in school those days, when some Kenyans died while others were detained fighting for a new Constitution. Today, I am a grey-haired old man, sitting here with them. It is my pride that I am party to this process of making a new Constitution. This Draft Constitution is a result of what Kenyans cried for; there were mutilations in the name of amendments that were made to the Independence Constitution, which was the best Constitution that we could have had.

Mr. Temporary Deputy Speaker, Sir, it is unfortunate that the Independence Constitution was amended so many times such that the document that we have today, in the name of the Constitution of Kenya, is so different from what we had at Independence. It was amended so as to give previous regimes room to detain, murder and abuse the rights of others. Somewhere along the line, as Kenyans were crying for change, we came up with some reforms under the Inter-Parties Parliamentary Group (IPPG) initiative. Earlier on, we had the repeal of Section 2A of the Constitution.

It is unfortunate that the last Parliament threw away the reforms that were effected through the IPPG initiative. It is unfortunate that the last Parliament could not let us have a new Constitution. I was part of the last Parliament, but what that Parliament did is what led us into bloodshed after the general elections. It is very unfortunate that the last Parliament could not give us a new Constitution which Kenyans longed for so much. That Parliament threw away the gains we had registered over the years.

Mr. Temporary Deputy Speaker, Sir, this Parliament has the opportunity to go into the books of history as having given Kenyans the new Constitution that we have searched for, for so many years. Why did Kenyans look for change? It is the imperial presidency that we have had. The President would one day say: "So-and-so should die", and Tom Mboya died. He would, on another day say: "So-and-so should die", and J.M. Kariuki died. He would say: "So-and-so should die", and Dr. Robert Ouko had to be killed as he was watching.

These are some of the things that made Kenyans to long for a new Constitution. This country's imperial presidency had the power to hire and fire. When the President felt that you were not serving him well, you would be sacked. So, we are coming up with a Constitution that will check the powers of such presidents. This new Constitution will allow the National Assembly to reject appointments of persons who, in the opinion of the National Assembly, are not fit to hold public office, and endorse appointments of persons whom, in the opinion of the National Assembly, deserve those appointments.

Mr. Temporary Deputy Speaker, Sir, during the search for a new Constitution, many Kenyans suggested a parliamentary system that would allow for power sharing amongst the President, the Prime Minister, the Senate, the National Assembly, the regional assemblies and the counties. Unfortunately or fortunately, what we have in this Draft Constitution is a Presidential system because others thought that coming up with the position of a Prime Minister would create two centres of power, which were thought to be dangerous.

People thought that if we have a Prime Minister and a President, there will be conflicts that would put Kenya into jeopardy. However, a presidential system can be very dangerous, as we have seen in this country and in Africa at large, if it is left unchecked. A presidential system needs proper checks and balances. It needs a strong Senate and strong regional assemblies, so as to check Mr. President, who can be a very deadly person if left unchecked. We have seen people killed in this country. We have seen people who have been detained in this country. We have seen people who have been sacked from their jobs in this country, all because of the powerful Mr. President.

Mr. Temporary Deputy Speaker, Sir, I strongly support the creation of a strong Senate for this country. If anybody is of the opinion that we should make the Senate weaker, that person is taking this country back to where it was. A strong Senate will help in controlling the powers of Mr. President. It will help to hold the President responsible and make him accountable to the people of this country.

The idea of keeping away Members of Parliament from the Cabinet, in this document, as it is, is wonderful. It becomes very difficult for one to represent one's people in Parliament while at the same time being in the Executive. Today we have some "thieves" who have been appointed by the Government, who are working in my constituency. It is so difficult for me to criticise the same Government that appointed these people since I am in that Government. Nobody listens to you just because we are in the same Government.

Mr. Temporary Deputy Speaker, Sir, it is good that this Draft Constitution provides that if a Member of Parliament or Senator is to be appointed a Cabinet Minister, he or she must resign as Member of Parliament or Member of the Senate. That is a major achievement that will take this country very far.

Over the years, so many parts of this country have been economically marginalised. There have been lots of disparities in resource allocation in this country. For example, even today, the national Budget shows that a certain part of the country has been allocated a lot of money, while other parts of the country, some of which are experiencing serious water problems, have been allocated nothing. We have lived with these disparities since Independence. This disparity has lived with us since Independence. Those are the days the President would say *siasa mbaya maisha mbaya*. "*Maisha mbaya*" would mean you would be denied resources. Some parts of the country would be denied resources simply because they were not singing the tune of the powers that be.

Mr. Temporary Deputy Speaker, Sir, this Draft proposes that 15 per cent of the Government revenue will be devolved to the counties. That is too little. It will not take us where we want. Why are we leaving 85 per cent in Nairobi? What the hell is the President going to do with it? We want most of the money back in the villages. We have the example of the CDF where only 2.5 per cent of the revenue has been taken to the constituency and it has done a lot.

In my constituency we had only nine secondary schools at the time I was elected for the first time at the beginning of 2003. Today, we have additional 16 secondary schools built using the CDF money. Today, women and youth in my constituency are contractors. This is work that

would be done by contractors from Nairobi if we did not have the CDF. The CDF contracts them to do simple works like making drainages and clearing bushes along the roads. This is possible because we devolved that amount to the constituencies. We would be better off if a larger amount was devolved to the people. This is because the people are down there.

It would be better if we had a good arrangement; a three-tier system namely the national, regional and counties to control the devolved funds. I would like to propose that the 15 per cent be raised to 35 per cent. Out of 35 per cent, we will give 20 per cent to the regional Government, ten per cent to the counties and five per cent to the constituencies. It defines very well the roles of the regions, the counties and how they will use the money.

Mr. Temporary Deputy Speaker, Sir, there is the contentious issue of abortion. It is said very well here that life begins at conception. The life of an individual begins at fertilization. You know, the egg is not an individual. The sperm is also not an individual. So, why are these people making noise? It has been stated here very clearly that life begins after fertilization. This is the life of an individual and not the life of the egg. Of course, the egg is alive and the sperm is alive but the life of an individual begins after the union of these two cells.

Unfortunately, the people who are shouting loudest about this issue are people who will never become pregnant to be faced with the problem of a dying fetus. They will never become pregnant! Some of these religious leaders are old *wazee*. I do not think any of those gentlemen I see complaining about this issue will ever become pregnant. Why are they complaining? They do not have wombs. It is unfortunate that they are complaining but we are listening to them.

Mr. Temporary Deputy Speaker, Sir, dual citizenship is a good idea and it has been put here. Kenyans have complained about it. You have been to another country and got the citizenship of that country. But when you come back home, you have a problem in your country. It is good Kenyans listened to that. We have given Kenyans who have acquired other citizenships the opportunities to keep their country's citizenship. It is indicated here that if a Kenyan is having an account abroad, he or she cannot hold a public position. I think that is unfair. If someone is working abroad or is a student abroad and has some investments, you should not be denied the opportunity to become an officer in the Government simply because you have an account and investments abroad. Of course, if you have investments abroad, you can only benefit from them if you have an account abroad. We should not deny Kenyans the opportunity to invest outside this country.

Mr. Temporary Deputy Speaker, Sir, the idea of bringing Administration Police (AP) and the regular police force together is great because the APs are wild. The other day, they just went out and killed seven people at once in Kawangware for no reason. The other day, an AP shot a military officer for no reason! It is good that the APs are going to be put under one command. They will be under one officer and they should be re-trained. They should be taken for better training that is similar to the one undertaken by regular police officers.

The amendment of this Constitution--- The way it is put here is the best because Kenyans have had problems with the current Constitution because it was very easy to amend it. Anybody would come up with an amendment to make the President happier. The President would come up with an amendment any time he wanted to do something that would benefit him. So let us keep Chapter 16 the way it is. Let it remain the way it is so that we do not just amend our Constitution for the sake of it.

Lastly, Mr. Temporary Deputy Speaker, Sir, today, the budget process in this country is one of the worst because, after the Minister has read his Budget Speech, we are given huge books of estimates. We do not understand those things and they are just passed. The Budget is

passed the way it is! The budgeting process is the most important thing for the country because that is what allocates and distributes resources. This time, according to this proposed draft, the Budget will be subjected to proper verification and debate. It will be interrogated properly before it is passed.

With those few remarks, I beg to support the document but with some amendments.

Mr. Nyammo: Thank you, Mr. Temporary Deputy Speaker, Sir. I am grateful that you have given me this opportunity to speak on the draft Constitution. My first reaction is: Lets us accept and pass it the way it is.

(Applause)

There is always a starting point and as a country, we cannot afford to make one step forward and two steps backwards. We have come a long way. We have entrusted this process to our own; the Parliamentary Select Committee (PSC). They have come with a proposal and, personally, I think it is very good. There are issues like the Kadhis courts. We have the Kadhis courts in our old Constitution. We will have them in this new Constitution.

Mr. Temporary Deputy Speaker, Sir, I would like to pose a question or two. when I look at the Kadhis courts I ask myself and for the people of Tetu, is it imposing any obligations on me and the Tetu people or Kenyan people? The answer is no. Is it taking away any rights from me, the people I represent of Tetu Constituency or the Kenyan people? The answer is no. Why do we want to remove it? Why do we want to amend it? We have an existing Constitution. The problem with this country is not lack of laws; it is that we do not have enough political power to enforce our laws. One can take a very simple example. Recently, the former Minister for Transport, Mr. Michuki, who came up with the "Michuki rules". As soon as those rules were accepted and supported by other institutions, we saw some kind of sanity in the *matatu* industry. The Traffic Act still exists but because there are those who do not want to enforce those laws, that is why chaos persist.

Mr. Temporary Deputy Speaker, Sir, I want to repeat what has been said by many others. At no time shall we have a perfect document. Let us accept that this is an ongoing job. The Americans whose constitution has lasted for more than 200 years still think of amending it. It is for us to pass this Draft Constitution as it is, and consider amending it to suit Kenyans as the country develops.

Mr. Temporary Deputy Speaker, Sir, I think we will be unfair to Kenyans who have been looking forward to a new Constitution for 20 years. We have engaged in all manner of tactics. Let us agree that this Constitution is not for a set of individuals; it is not for a tribe, it is not for a political party, but it is for Kenyans. Let us forget about our selfish motives and give Kenyans a new Constitution.

With those few remarks, I beg to support.

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Imanyara): Hon. Members, it is now time for interruption of business. The House is, therefore, adjourned until this afternoon at 2.30

The House rose at 12.30 p.m.