

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 24th March, 2010

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

PAPER LAID

The following Paper was laid on the Table:-

Report of the proceedings of the ACP Committees and the ACPEU Joint Committee meeting held in Brussels between September 27th to October 2nd, 2009 and the Report of the 18th Session of the ACPEU Joint Parliamentary Assembly and related meetings held between November, 24th and December 3rd, 2009 in Luanda, Angola.

(By Prof. Kamar)

NOTICE OF MOTION

Prof. Kamar: Mr. Speaker Sir, I beg to give notice of the following Motion:-

That this House adopts the Report of the proceedings of the ACP Committees and the ACPEU Joint Committee meeting held in Brussels between September 27th to October 2, 2009 and the Report of the 18th Session of the ACPEU Joint Parliamentary Assembly and related meetings held between November 24th and December 3rd, 2009 in Luanda, Angola laid on the Table today, Wednesday 24th, March, 2010.

QUESTION BY PRIVATE NOTICE

STATUS OF ICT PROJECT UNDER ECONOMIC
STIMULUS PACKAGE

Mr. Shakeel: Mr. Speaker, Sir, I beg to ask the Minister for Information and Communications, the following Question by Private Notice.

(a) Could the Minister update the House on the status of the Information, Communication and Technology Project for each constituency planned to be funded through the Economic Stimulus Package?

(b) Will the Minister supply desktop computers to each constituency under the same project in view of exorbitant proposal of the IT buses of Kshs7 million which was rejected by this House?

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

(a) My Ministry was earmarked to implement two programmes under the Information and Communications Technology, ICT Economic Stimulus Package, 2009/2010. These are: Mobile Computer Laboratories and one million laptops.

The MCL Programmes are aimed at taking ICT training to constituency level by making sure that students from poor schools have the opportunity to learn ICT skills. The programme involves procurement of 210 buses or lorries equipped with computers and furniture to cater for an average class. This was meant to increase access to ICT in the constituencies for learning purposes. To jumpstart the programme, the Ministry wrote to the Chief Transport Mechanical Engineer for specifications of vehicles and they came up with three models depending on the geographical terrain and climatic conditions of the region of the given constituency.

These models include one mobile computer laboratory and a large bus of 40 students. A medium class of 4 by 4, nine to ten tonnes, high sided, enclosed mobile computer laboratory for 22 students and the third one large truck, 4 by 2, nine to ten tonnes, high sided, enclosed mobile computer laboratory for 18 students.

However, the project was not implemented due to lack of support from both the Parliamentary committees concerned who favoured a fixed computer laboratory located in the schools premises. We were thus requested to initiate another concept. Following this request, my Ministry prepared a concept paper on building ICT skills and capacity for Kenyans through: Provision of computers and band waves to secondary schools and nurturing of ICT incubation centres for hardware and software development for the local and international markets. The programme involves the establishment of computer laboratories for schools targeting constituencies, using locally assembled computers.

The Programme targets at least ten secondary schools per constituency each to be supplied with 20 computers for training purposes. My Ministry is still in consultation with the Treasury and other stakeholders on the best way to implement this particular project.

(b) Mr. Speaker, Sir, as I have alluded in 1 (a) above, the new proposal seeks to establish fixed computer laboratories in identified schools in every constituency. Please note that this proposal is still under discussion.

Mr. Shakeel: Mr. Speaker, Sir, could the Minister inform us when we may expect this new revived concept to actually materialise and when we can expect the computer level at least to be put on the ground?

Mr. Poghisio: Mr. Speaker, Sir, as I have said, this is a new project. It is being written anew and it is going to be presented anew to the Treasury and therefore, I cannot prophesy the time for implementation.

Ms. Karua: Thank you Mr. Speaker, Sir. In view of the fact that the end of the financial year is beckoning and this was a project for this financial year, can the Minister tell the House exactly when he is going to finish these consultations and whether they will include the relevant Parliamentary committee? These days we like the participatory approach as Members too have ideas on how best we can serve our people.

Mr. Poghisio: Mr. Speaker, Sir, I still cannot prophesy. The process has begun. I need to make it clear that by the time the approval for the last one; the one that we think

is inappropriate for this country and the one which was not supported by the committees was received, it had taken a lot of work. It involved a lot of consultations and so this is basically beginning afresh. With a paper already at Treasury, I hope that the process will be fast-tracked. But it is not up to us now. It is something that can be done collectively and the House can push. So the committees can push from their side to make sure that it is fast tracked. I really would want to see Members support proposals given by the technical side because our proposals are meant for the country's good in terms of ICT.

Prof. Kamar: Mr. Speaker, Sir, could the Minister tell us the balance of the money because 200 computers cannot cost Kshs7 million? Could he, in the new proposal, consider giving every constituency Kshs7 million, so that we can cover more than 20 schools?

(Applause)

Mr. Poghiso: Mr. Speaker, Sir, ideally, I would like to do that, but the Ministry of Information and communications is not a money giving Ministry. I will only implement what the Ministry of Finance has approved.

Mr. Imanyara: Mr. Speaker, Sir, given that it is the Committee of the House that thwarted his plans to follow that procedure, could he consider bringing that policy to the main House so that we can amend it and, if necessary, divert those funds to the constituencies? We can spend that money to build computer labs?

Mr. Poghiso: Mr. Speaker, Sir, it is very difficult to hear the hon. Member. May I request him to speak near the microphone.

Mr. Imanyara: Mr. Speaker, Sir, the Minister complained that it is the House Committee that refused. So I am asking him: Could he consider bringing it to the main House so that we can consider the proposal that was rejected by that Committee and, if necessary, amend it? We can send that money to the constituencies directly!

Mr. Poghiso: Mr. Speaker, Sir, I think it is just that technically--- It is not my Ministry that will allow monies to go directly to constituencies.

Mr. Imanyara: On a point of order, Mr. Speaker, Sir. The Minister said that the only reason why that policy has not been implemented is because the House Committee rejected it. I am asking him: Would he be prepared to bring it to the main House? I am talking about the policy that was rejected by a Committee of this House. Could he consider bringing it to the main House so that we could consider it? We can amend it to make sure that those funds are not returned to the Treasury.

Mr. Poghiso: Mr. Speaker, Sir, I had hardly finished the sentence; there was nothing out of order. I had only begun to say "technically" and then I was already interrupted. I am willing to do whatever needs to be done. I think that the two Committees, one in charge of energy, communications and information and the other of Education, Research and Technology can hold their joint meeting and, if necessary, look at ways of fast-tracking the process and, secondly, look at the possibility of proposing that the proposals be brought back to the main Committee. I am held responsible by those Committees and so, I do not see the possibility of now bringing it to the House before the Committees are actually through with it. So, I want to recommend that we go through the Committees and, once we are through with them, and if the process is not going as fast, then the House has the authority to call back this matter for resolution.

Mr. Keynan: On a point of order, Mr. Speaker, Sir. The Ministry has raised the expectations of Kenyans and, especially, those of us who come from disadvantaged regions like mine where computers are rare. The student community is not familiar with computers and it is disadvantaged. Could the Minister consider transferring the money to respective Constituencies Development Fund (CDF) so that we know the money is safe?

(Applause)

If the issue is money, we have less than three months to the Budget! I believe the Minister is not telling the House the truth. If the issue is money, he should know that these are his colleagues; if the money is there, there is no need for his Ministry to take nine months just to design a concept paper. That does not make sense! Could he consider taking the money back to the constituencies as he had promised?

Mr. Poghiso: Mr. Speaker, Sir, I do not understand how I could be out of order! I do not have money. There is no way I can bring monies. I do not have the money. This is a stimulus package. The money is with the Treasury. We are only the implementing Ministry.

Mr. Ochieng: On a point of order, Mr. Speaker, Sir. The Minister is trying to mislead the House. All the monies that belong to the Stimulus Package Programme are channeled through the relevant Ministries. Why is he misleading the House?

Mr. Speaker: Mr. Minister, are you misleading the House or is that a matter of argument?

Mr. Poghiso: Mr. Speaker, Sir, that is a matter of argument and you can protect me from that because obviously---

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

Mr. Speaker: Let the Minister respond to that point of order first!

Mr. Poghiso: Obviously, Mr. Speaker, Sir, the Ministry of Information and Communications simply implements. If the project is supported by this House, then the monies come for implementation. If it is not supported by this House, then it goes back to the Treasury. I do not keep that money because I have nothing to implement.

Mr. Speaker: So, Mr. Minister, in a nutshell, are you saying that you have not received the money?

Mr. Poghiso: Mr. Speaker, Sir, that is what it means. It means that I do not have the money. Technically, I do not have the money. I cannot spend a penny until the project is accepted and supported.

Mr. K. Kilonzo: On a point of order, Mr. Speaker, Sir. In view of the fact that Questions under the stimulus package are coming here now and then, and Ministers have found a way of saying that it is the Ministry of Finance which is supposed to answer--- If you look at the Question under the Prime Minister's Time, it is also on the stimulus package. Would I be in order to ask that since the Ministry concerned is that of Finance and it touches on money, all the matters under the stimulus package be directed to the Deputy Prime Minister and Minister for Finance so that he can tell us where the money is?

Mr. Speaker: You will be out of order as far as this particular Question is concerned. I think the Minister has so far dealt with it very ably.

Mr. James Maina Kamau: Mr. Speaker, Sir, I am wondering what the Minister is doing to make sure that he gets that money. That is because when he tells us that he has not received that money, is his work just to sit there and wait for the money? Why can he not go and find out what is happening at the Ministry?

Mr. Poghio: Mr. Speaker, Sir, I have explained. I do not know whether the hon. Member was following when I was explaining. I will ask for the money when the project has been approved. Treasury will then release the monies to fulfill my obligation of implementing the project. So, I will only get the money as soon as we work with the Committees to conclude the proposals. That will be better for all of us. The money will come from the Treasury.

Mr. Shakeel: Mr. Speaker, Sir, could we ask whether the Minister is misleading the House? In fact, the mobile computer laboratory and the IT concept that he is now presenting and saying he is going to look at address the same thing. They are addressing computerization at the school level. There is no new concept. I think the Minister is misleading the House because he well knows that over Kshs5 million of that Kshs7 million was dedicated to purchasing a bus and those buses from Tata have already been purchased.

Mr. Speaker: Mr. Minister, you have no question to answer!

Mr. Shakeel: I beg your pardon!

(Laughter)

Mr. Speaker: Order, Mr. Shakeel! I think you have utilized your time!

ORAL ANSWERS TO QUESTIONS

Question No.087

STAFFING LEVEL AT DEPARTMENT OF REGISTRATION OF PERSONS IN NEP

Mrs. Noor asked the Minister of State for Immigration and Registration of Persons:-

- (a) to provide the staffing level at the Department of Registration of Persons in North Eastern Province, the months worked in 2009 and the amount of money they were paid;
- (b) to give the names and number of applicants for national identity cards in the province in the last one year, indicating how many were issued with the document; and,
- (c) whether he could also explain the requirements for vetting procedures in North Eastern and clarify whether the procedure applies nationwide?

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang): Mr. Speaker, Sir, the hon. Member was asking a supplementary question

yesterday and I think it would be in order for her to repeat it so that I can answer appropriately.

Mr. Speaker: Mrs. Noor, will you proceed now?

Mrs. Noor: Mr. Speaker, Sir, I would like to thank the Minister for giving me the list of the names but, unfortunately, the list of names has no dates, locations or districts. So, it is very difficult for me to peruse this list and know the people from North Eastern Province (NEP).

Mr. Kajwang: First of all, we have no reason to mislead the House. The Question was about North Eastern Province generally without saying that we should itemize them following the districts that they came from. In fact, if the Question has asked that we list them according to locations, districts and divisions, we would have done that. Of course, it would have taken us a little more time, but we would have definitely done that. But the Question as was put was answered adequately.

Mr. Speaker: So, Mr. Minister, are you confirming that these names are of people emanating from North Eastern Province?

Mr. Kajwang: Yes, Mr. Speaker, Sir. The names provided are for applicants from North Eastern Province for the last one year. We have also indicated the applicants who obtained their identity cards. In that one year, the applicants were 12,236. Out of that, 9,497 obtained their identity cards. A small percentage of 1,641 are still in progress. I think that was the question and we tried to comply.

Mr. Affey: Mr. Speaker, Sir, it is very clear that the Minister is misleading the House. He is misleading the House because on Wednesday, 18th November, 2009, the same Minister is on record as admitting that his Ministry had suspended the registration of persons in North Eastern Province. The same list is purported to have been generated from the province. I just want to quote what the Minister said: "I have inquired and there is a statement to the effect that the registration of persons in North Eastern Province will be frozen until such a time that the security concerns are addressed."

It is very clear that the Minister had suspended the operation last year, which is the same year that he generated a list to say that they are registered persons. Which of the two statements do we take to be truthful?

Mr. Kajwang: The Question covered a whole one year. I think the Question asked me to provide names of applicants for national identity cards in the last one year and we showed who the applicants were, those who obtained and those names which are still in progress.

Sometimes last year, there was a problem of a security nature when there was an influx of foreigners from our neighbouring country. The Provincial Administration then was overwhelmed by the number of applicants, whom when they scrutinized they found were not Kenyans. For a while, they announced in a *baraza* that they had frozen the registration. When the matter was raised in the House, I undertook to consult. Immediately after that, there was an Inter-Ministerial meeting between our office and the Office of the President.

As we talk now, the operations of registration are open one more time. The only other question that was asked was on the procedures for vetting which I have also dealt with. I said that in all border districts, because of the nature of the border districts and the influx of foreigners, we have standard procedures, including my own district which borders Uganda by the lake. We have these standard procedures that the applicant must

appear in person before the vetting committee; the applicant must produce proof of citizenship and age; the vetting process should be done in one sitting; the applicant must have been born in the district where the vetting is taking place; the applicant must be identified as a Kenyan by at least one elder who must vouch by signing or putting a thumb print on the registration form; the vetting proceedings are then captured in the form of minutes which must accompany the application form of the applicant to the headquarters for processing. These are the standards that apply to every border district for obvious reasons.

There may be some difficulty because of the large number of influx from the foreign country, but this is the standard procedure.

Mrs. Noor: Mr. Speaker, Sir, the hon. Minister has given us the requirements for vetting of applicants for identity cards in all the border districts. I have a different set of the regulations that he has read. He read six regulations and I have 19 regulations here. If you allow me, I can read the 19 regulations short-term and six regulations long-term.

Mr. Speaker: Is your point of order that the Minister is misleading the House by referring to a lesser number of conditions to what is actually practiced?

Mrs. Noor: Yes, Mr. Speaker, Sir. The Minister is not in order because he is misleading this House. We have a different set of regulations for North Eastern Province specifically.

Mr. Speaker: Could you table them and let the Minister respond?

Mrs. Noor: Mr. Speaker, Sir, I hereby table the regulations.

(Mrs. Noor laid the documents on the Table)

Mr. Kajwang: It says: “New procedures for issuance of ID cards for North Eastern Province.” I have seen this list of conditions that came out of the Inter-Ministerial Consultative Committee. I have looked at them with my officers and we have said that some of these conditions infringe on the rights of nationality and human rights and they will not be followed.

The only ones that will be followed are the six that I have talked about here because they apply to everybody.

Mr. Affey: On a point of order, Mr. Speaker, Sir. It is very clear that the Minister has brought to the House certain rules that he wants applied yet a different set of rules is being applied on the ground and he has not taken the trouble to harmonize these rules with what is pertaining on the ground. Is he in order therefore, to continue misleading us because we are subjected to the 16 conditions you see here and not even the six?

Mr. Kajwang: I undertake to ask my PS to issue a circular to the registration officers in North Eastern Province to apply rules that apply to everybody from border districts and not to apply any more new rules to North Eastern Province than applies to everybody else because we cannot be seen to be discriminating against applicants in any part of this country. The rules must be uniform.

Mr. Olago: Mr. Speaker, Sir, clearly the Minister’s answer in the regulations that he has read out appear to be discriminatory and this is affecting a lot of Kenyans of Muslim faith in Kaloleni, Manyatta Arab and Mukendwa in Kisumu. Is he sure that these regulations are not discriminative?

Dr. Khalwale: On a point of order, Mr. Speaker, Sir. I was taken aback when I saw the hon. Member asking a question because I thought he had been appointed an Assistant Minister. I saw him discharging the functions of an Assistant Minister in a function in Kisumu as the Assistant Minister for Medical Services. Since there is no clear directive that when the President or Prime Minister makes adjustments to the Cabinet they must announce them, could it be made clear that he has not been appointed? If he has been appointed, he be stopped from asking a question.

(Laughter)

Mr. Speaker: Order, hon. Members! The Chair is guided by official communication that the House receives from the Executive. As things stand today, the Chair has no notice of the hon. Member for Kisumu Town West having been appointed Assistant Minister for Medical Services. So, I will not accept that contention.

Mr. Kajwang: Mr. Speaker, Sir, certain rules may by their own very nature look like they are discriminative. When you say that the border areas will have certain different rules from those that are not border areas and certain cities will have different rules or additional rules, they are discriminative by nature. But the discrimination is deliberate.

Mr. Olago: On a point of order, Mr. Speaker, Sir. The Minister is referring to border areas, but I have referred to areas which are not at the border like Manyara Arab, Mukendwa and Kaloleni. They are in Kisumu Town and not at the border.

Mr. Kajwang: Mr. Speaker, Sir, in my answer, I referred to border areas and certain cities like Nairobi, Kisumu and Mombasa. These are not all the cities in the country. We only chose a few where we have this serious problem. Even in Kibera, we have a serious problem. However, the committees there are working and people are happy. What is important is the committees to work. The choosing of those elders should be fair. The results should not be discriminative, so that a Kenyan is not denied an identity card. At the same time, a non-Kenyan is not given an identity card. It is important that we look at our security.

Ms. Karua: Mr. Speaker, Sir, the Minister has admitted that the rules are discriminatory which is unacceptable. Also, his written answer which shows that 1,098 applications were rejected because some had already registered as refugees reveals irregularities in the Government service. Could he tell this House what action, if any, has been taken against the civil servants who gave supporting documents to these applicants who were already registered as aliens? What is he doing to improve the service, so that the errors of civil servants do not make him discriminate against Kenyans who need national identity cards?

Mr. Kajwang: Mr. Speaker, Sir, if I could enlarge that problem, there is a serious problem in northern Kenya, especially the area around the refugee settlement in Dadaab. Because refugees get some ration of food, water, medication, free education, bursaries and many other little things, some Kenyans are tempted to benefit from these facilities. They then voluntarily lie to our registration officials that they are Somalis, yet they are not. Then they are registered as refugees. We take the thumbprints and give them alien cards.

Later on, when they grow up and they have gone to school, and some of them have gone to university, they realize that they actually made a mistake. They should have been Kenyans. When they now come for the national identity card, we check our records and we find that they are already in our database as refugees. So, we tell them that we cannot register them because they are refugees. Then they say: “No, I only went there because of the food ration and education, but I want to come back and say the truth.” So, we have that problem.

There is another category of refugees who cheat and get our national identity cards. They are few, but they are there. Later on, by some fortune, they get a chance to go abroad, get jobs and live there, and get green cards. Then they come to our department and they want us to give them recommendation, so that they can go abroad. When we check, we tell them: “But you are a Kenyan and we cannot recommend you to go abroad”. They say: “No, I am not a Kenyan. I just cheated that I was a Kenyan because I wanted to use the identity card to get a job.” There is this problem. So, we have a serious problem of cleaning our database of people, who crossed our borders, some said they are Kenyans when they should not be and others said that they are non-Kenyans when they are Kenyans. So, that is a problem. That is why vigilance at our registration centres is a little more heightened because of that serious problem, which is a serious threat to our security.

Mr. Mbadi: Mr. Speaker, Sir, the Minister is doing a lot of story-telling instead of answering the Question.

Mr. Speaker: Order, Mr. Mbadi!

Mr. Gabbow: Mr. Speaker, Sir, under normal circumstances, how long should a Kenyan wait to receive an identity card from the date of the application? That has been a major problem.

Mr. Kajwang: Mr. Speaker, Sir, if you are in Nairobi and you apply normally, it takes 20 days. If you are in up country, normally without any problem, it takes 30 days. Those are our guidelines and we try to meet that target.

Mrs. Noor: Mr. Speaker, Sir, I would like to appreciate the problem the Ministry is facing. The Minister has talked about people going to the refugee camps for basic needs like food. Unfortunately, those are services that the Government is supposed to deliver to Kenyans. Nevertheless, the data he has given to us translates to the fact that from January, 2009 to December, 2009, the Ministry was issuing only two identity cards per day. We have a balance of 1,600 people who have applied for identity cards since January, 2009.

Many students have finished school and are looking for identity cards. The youth in North Eastern Province have been looking for national identity cards because that is their basic constitutional right. What is he going to do to address this particular issue? This is a sensitive, heavy and a weighty issue.

Mr. Kajwang: Mr. Speaker, Sir, I want to agree with my sister that this is a problem for all of us. We want every Kenyan to be registered. In fact, that is my mandate, whether it is at birth or for the national identity card at the age of 18 years. I want all the Members to help me ask the Deputy Prime Minister and Minister for Finance to give me some additional funds just to fuel and repair some vehicles, so that I can go to every school. As we register for voting, we should also register our people along the way, so that every Kenyan gets an identity card.

The Budgetary allocation which I get yearly is not sufficient. I have already written to the Deputy Prime Minister and Minister for Finance. If I get your co-operation, I am sure we will get sufficient funds to reach every secondary school to register our youth.

Mr. Speaker: We will have to take another ten minutes of the Prime Minister's Time. Hon. Prime Minister, please, bear with us.

Question No.009

LACK OF PERSONNEL TO OPERATE BRACHY-THERAPY
MACHINE AT NYANZA HOSPITAL

Mr. Olago asked the Minister for Medical Services:-

(a) whether he is aware that a brachy-therapy machine valued in excess of Kshs50 million, installed at the Nyanza Provincial General Hospital in Kisumu and meant for early detection and treatment of cancer has remained unused for ten years due to lack of personnel trained to operate it; and,

(b) what emergency steps he is taking to have a sufficient number of personnel trained to operate the machine at Kisumu to ease pressure on the similar machine at the Kenyatta National Hospital.

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

(a) I am aware that the cancer detection and treatment machine at the Nyanza Provincial General Hospital in Kisumu is presently not in use due to lack of trained personnel to operate it.

(b) A doctor from the Nyanza Province is currently attached to the Kenyatta National Hospital's Radiotherapy Unit to be trained on how to operate the machine. On completion of the training, the doctor will be deployed to operationalize the machine at the Nyanza Provincial General Hospital. Thereafter, more personnel will receive similar attachment training before being deployed to strengthen the technical work force at the New Nyanza Provincial General Hospital.

Mr. Olago: Mr. Speaker, Sir, cancer is a killer of very many Kenyans, and particularly in Nyanza, throat, cervical and breast cancer is quite prevalent. This machine would help in early detection and killing of cancer cells. This machine has been lying idle for ten years now because of lack of personnel. Could the Minister kindly explain to the House why this machine has been lying idle for ten years when Kenyans are dying?

Mr. Ruto: On a point of order, Mr. Speaker, Sir. A few minutes ago, we had confusion as to whether hon. Olago is not, indeed, the Assistant Minister for Medical Services. To erase the confusion now that he is asking the actual Minister for Medical Services and given that the Prime Minister is here, maybe he may wish to confirm whether, indeed, he is not an Assistant Minister.

Mr. Speaker: I dealt with that matter very categorically. Mr. Minister, you need not make any further observations on it.

Prof. Anyang'-Nyong'o: Mr. Speaker, Sir, the Member for Kisumu Town West is right. This machine was installed at the Nyanza Provincial Hospital in 1992. However, it was not commissioned for lack of technical personnel. One other problem is that of

procuring medical equipment from abroad without proper technical support backing it. It has proved very expensive for the New Nyanza General Hospital to rely on personnel from the Netherlands to come in and repair or operate the machine since 1992. In 2005, an engineer was sourced from a Netherlands based company to check up the machine following several visits and other checks. Finally, in 2009, we managed to get the machine going.

To cure the problem of lacking personnel, we started a programme of training technical power at the Kenyatta National Hospital. It is still a very inadequate attention to the problem of cancer in this country. Therefore, we are starting a cancer centre at the Kenyatta National Hospital and going full throttle to have a robust cancer programme in this country. It is a broader issue and I am glad the hon. Member has brought it. Indeed, this House should ask the Minister: Given that cancer is such a major problem in this country, what is the Government doing to deal with its treatment and prevention? I hope that Question will come up and I will deal with it.

Mr. Baiya: Mr. Speaker, Sir, the Question poses a problem that is recurrent all over the country. In one dispensary in my constituency, an X-ray machine has broken down because of a simple problem. It has been non-functional for over one year. Does the Ministry not have a policy for maintenance of the various equipment we have in hospitals which have cost a lot of money? The maintenance cost would be just insignificant to ensure that the country realizes value for the investment it has in this equipment.

Prof. Anyang'-Nyong'o: Mr. Speaker, Sir, again, I will not agree with the hon. Member more. I agree with him completely that we need to have a proper maintenance and management programme for our machines. Indeed, I have come across many machines in hospitals that are not properly maintained. The basic problem is that our Biomedical Engineering Department at the Kenya Medical Training College has not been training enough biomedical engineering personnel. We have not also established a well functioning biomedical engineering department in the Ministry to take care of the whole issue of biomedical engineering in the Ministry. We are addressing the problem at the moment. I ordered a baseline survey of all the equipment we have in the Ministry so that they are identified and we know where they are. That survey is going on and as soon as it is complete, I shall be in a position to know exactly what equipment exists in the Ministry; those that are functional and not functional. But the issue of biomedical engineering, as the hon. Member has observed, is an extremely important issue that we are addressing.

Mr. Olago: Mr. Speaker, Sir, a new brachy-therapy machine is estimated to cost about Kshs40 million. In the few occasions when one doctor travels from Kenyatta National Hospital to Kisumu, very many patients come for screening. What plans does the Ministry have in place to ensure that, at least, one similar machine is purchased for each provincial hospital, so that Kenyans do not have to travel long distances?

Prof. Anyang'-Nyong'o: Mr. Speaker, Sir, the good news is that apart from Kenyatta National Hospital, we have a provincial general hospital where we are establishing a cancer centre with the help of development partners, that is, the New Nyanza General Hospital. At the moment, the person being trained at Kenyatta National Hospital will take four years to train. At the same time, to effectively utilize the machine, he also requires the following technical personnel: One oncologist, one medical physicist,

one therapy nurse and one therapeutic radiographer. In the whole of the Republic of Kenya, we only have 11 oncologists. Of those 11 oncologists, five work in the public sector. Therefore, there is a big need to train more oncologists to address the issue of cancer.

Finally, this machine was bought in 1992, and such machines retain their market value for only about five years. Although this machine cost this country Kshs40 million, it is now out of date and really it is going to be more problems repairing it than buying a new one. My policy, as we establish a new cancer centre in Kisumu, is to equip that centre with modern equipment that will give the service that we require.

Question No.118

MEASURES TO STAMP OUT TRIBALISM/NEPOTISM
IN PUBLIC SERVICE EMPLOYMENT

Mr. Ngugi asked the Minister of State for Public Service what steps the Government is taking or has taken to stamp out tribalism and nepotism in employment in the public service.

The Minister of State for Public Service (Mr. Otieno): Mr. Speaker, Sir, I beg to reply.

To ensure that there is no tribalism and nepotism in employment, the Government, through the Public Service Commission, takes into account equity, equality and diversity in recruitment and appointments as a way of promoting national cohesion and development. Equity in employment entails regional balancing in recruitment in addition to mainstreaming issues and concerns of gender and people with disabilities in employment. The Public Service Commission makes a deliberate effort to include persons from all districts in recruitment by:

- (i) ensuring that existing vacancies are advertised in the daily print media and in the Commission's websites;
- (ii) making deliberate efforts to include persons from all districts in short listing and appointments especially at entry levels;
- (iii) names of shortlisted and appointed candidates are advertised in the media and the Commission's website;
- (iv) publishing quarterly reports in the media on those who have been appointed or promoted within the Ministries; and,
- (v) upholding the 30 per cent Government policy on appointment of women without compromising merit.

The Government has developed a policy on district based recruitment for lower cadres of Job Groups "A" to "F". The policy provides for:

- (i) open advertisements of lower cadre vacancies at district levels;
- (ii) Recruitment and selection of candidates through a committee chaired by the District Commissioner; and,
- (iii) selection of successful candidates on the basis of fair and equitable representation from the divisions, locations and ethnic groups in the district.

- (iv) Where advertisements and recruitment for vacancies in districts is done at Ministry headquarters, for purposes of minimizing the cost, selection and deployment of candidates is also done on the basis of home districts of the candidates; and,
- (v) The Public Service Commission audits these recruitments to ensure adherence to recruitment criteria, process and meritocracy and regional balancing necessary. Recruitment on the basis of districts also ensures that:-
 - (i) potential candidates in marginalized areas are considered;
 - (ii) Constant candidates turnover and transfers to preferred areas are eliminated; and
 - (iii) Upholding the 30 per cent Government policy on appointment of women without compromising on merit.

The Commission has delegated authority to recruit and promote in Job Groups “A” to “L” to authorised officers in the Ministries. The Commission, however, monitors the application of the delegated powers through its officers from Human Resource Department. The Commission embraced a recent Cabinet decision on district based recruitment and issued guideline in the service on the same. Under the national cohesion, we have issued a circular that 25 per cent of officers serving in any department, Ministries and parastatals, not more than 20 per cent should be from one ethnic group. Efforts are being undertaken to ensure that there is adequate regional balancing in recruitment policy and implementation

Mr. Ngugi: Mr. Speaker, Sir, I am asking this question because I recognised tribalism and nepotism in the Civil Service as a very serious problem for this country.

The answer I got from the Minister is a very poor term paper. I am wondering whether he does not recognise tribalism and nepotism as a serious problem in this country. When will the measures he has outlined make a change in what we see in every Government office? If a Government institution is headed by a person from a certain area then all the employees are from there. When will the measures he has tabulated address this problem?

Mr. Otieno: Mr. Speaker, Sir, this is actually a question which each leader in this Republic should answer.

All of us here who have even private companies or are, heads of Ministries ought to answer this question. The proper answer to this question is going to come after we enact the Proposed Constitution and start enforcing the new Bill of Rights which will allow us to take some of these officers to court when they breach these entrenched rights of the people.

Mr. Gunda: Mr. Speaker, Sir, the Minister has said that the policy is to have recruitment at the local level. But why is it that we still see the Public Service Commission asking candidates to come to Nairobi for interviews?

Mr. Otieno: Mr. Speaker, Sir, that is interim measure because many districts were created in a short period of time and we have not been able to post human resource officers to every district. So Ministries, because of the cost of advertisement, are still advertising here, but they aggregate all the applicants by their districts. Posting and recruitments are done according to the districts.

Mr. K. Kilonzo: On a point of order, Mr. Speaker, Sir. Is the Minister in order to contradict the Head of Public Service who issued a directive saying that 25 per cent of employees in every Ministry should not belong to one community yet they are coming from the same Government?

Mr. Otieno: Mr. Speaker, Sir, there is no contradiction. We are actually implementing that circular.

Mr. James M. Kamau: Mr. Speaker, Sir, is it a Government policy that all the employment done in the Coast Province should belong to the people of Coast Province? If that is the case, could we confine Coast people only to jobs in the Coast Province?

Mr. Otieno: Mr. Speaker, Sir, we are not talking about people in Coast Province by their tribes. We are talking about residents in the districts from where they can be identified. We have not said that you must be an indigenous. We have never used the word “indigenous” in any of our circulars.

Mr. Ogindo: Mr. Speaker, Sir, the Minister has contradicted the policy that was issued by the Head of Public Service and Secretary to the Cabinet. It talked of 25 per cent, but he is talking of 20 per cent. But be that as it may, my question is: At the climax of Kenyatta regime we had 35 per cent of the Permanent Secretaries (PSs) coming from Kikuyu community---

Mr. Speaker: Order, Member for Rangwe! I have previously issued directions that we do not refer to tribes in the House. So, maybe you will find a better way of phrasing that question. But first you must withdraw the word “Kikuyu.”

Mr. Ogindo: Mr. Speaker, Sir, I wish to withdraw that word unconditionally and apologise.

Mr. Speaker: Thank you. Proceed.

Mr. Ogindo: Mr. Speaker, Sir, my question to the Minister is: He has conditioned his answer on the new Constitution. On the event that the new Constitution does not materialise, what steps has he put in place to ensure that in this country people get their equitable share in the Civil Service?

Mr. Otieno: Mr. Speaker, Sir, first, I talked of two percentages; 30 per cent gender equity and 25 per cent in accordance with the circular issued by the Head of Public Service and Secretary to the Cabinet. If I said 20 per cent, it is actually 25 per cent. There is no ethnic community that is larger than 25 per cent.

As to the failure of the Constitution, I do not want to presuppose failure on such an important document as this Constitution.

Mr. Ngugi: Mr. Speaker, Sir, I thank the Minister for admitting that this is a major problem and it must be addressed by every Kenyan. Now that the Government recognises tribalism and nepotism as a major problem in the Civil Service, could he formulate proper and tangible policies to address this problem?

Mr. Otieno: Mr. Speaker, Sir, I am sure the hon. Member is aware that after the Constitution goes through there will be so many enabling statutes where some of these provisions will have to be entrenched to make sure that future administration of this Republic in a manner that deals effectively with tribalism and corruption will be in place in the law.

PRIME MINISTER’S TIME

Question No. QPM 001

IMPLEMENTATION OF ECONOMIC STIMULUS PROGRAMME

Mr. Baiya asked the Prime Minister to explain the slow pace at which the Ministries of Finance, Education, Fisheries, Local Government, Health and Industrialization are implementing the Economic Stimulus Programme and its effect on the projected impact on the economy.

The Prime Minister (Mr. Raila): Thank you, Mr. Speaker, Sir.

Mr. Speaker, Sir, in my Statement today, I want to answer the question on the implementation of the Economic Stimulus Programme that was raised by the hon. Member for Githunguri, hon. Baiya. I wish to take this opportunity to update this august House on the implementation of *Kazi Kwa Vijana* Programme (KKVP).

Mr. Speaker, Sir, the major objective of the Budget of the Government of Kenya for the Fiscal Year 2009/2010 was and still is to stimulate the economic activity in our country. Last year, our economic grew only by an estimated 2.2 per cent, falling well short of the pace at which our population increased. As a consequence, regrettably, poverty deepened in our country. Rather than accelerating as intended, the economic growth actually decelerated in the second half of last year. The slow pace of implementation of the Economic Stimulus Programme, the issue that was raised by the Member for Githunguri, is partly possible for this outcome.

Mr. Speaker, Sir, as you will recall, the Economic Stimulus Programme (ESP) was introduced in the year 2009/2010 Budget as the key instrument to stimulate the economy. In this regard, we are not alone. Many countries in the world that are faced with similar circumstances introduced ESPs. The House will recall that in the United States, President Barrack Obama came up with a massive US\$800 billion programme to stimulate the economy. Accordingly, quite a large sum, namely Kshs30 billion was allocated in the Budget for that programme. Because the very purpose of this programme was to stimulate the weak economy, it was to be implemented almost fully by December, 2009. In other words, our intention was to inject a stimulus equivalent of 1.2 per cent of the Gross Domestic Product (GDP) in the second half of last year through the implementation of ESP.

Mr. Speaker, Sir, by the end of last year, the Treasury had released Kshs3 billion for that programme, which is about one-tenth of what was intended. An additional Kshs1.7 billion was released in the first two months of this year, bringing the total for the fiscal year to about Kshs4.7 billion. Of this total, Kshs252 million was released to the Ministry of Education, Kshs633 million to the Ministry of Fisheries Development, Kshs1.303 billion to the Ministry of Public Health and Sanitation; Kshs250 million to the Ministry of Industrialization and none to the Ministry of Local Government. Those are the Ministries that the hon. Member for Githunguri specifically listed for an explanation of slow implementation. A breakdown of the releases by the implementing Ministries is provided in Table 1, which I shall lay on the Table here. This table also provides amounts that the Treasury expects to release during this month; that is by March, 2010.

Mr. Speaker, Sir, I would like to draw your attention to the fact that these figures relate to the Exchequer releases by the Treasury. The actual amounts spent on the projects are not yet available at the Treasury. I have, therefore, directed that all the implementing Ministries submit a report to the Office of the Prime Minister answering directly and fully the Question directed to me by the hon. Member for Githunguri. I will have the report summarized and forwarded to the House.

For now, Mr. Speaker, Sir, allow me to note that good progress is being made in accelerating the implementation of ESP with regard to each of the Ministries cited by the hon. Member for Githunguri. All the participating schools and sites have been selected for the centres of excellence and modern primary schools, and the tendering process has been successfully completed in 92 centres in 62 constituencies. A total of 4,200 primary schools have been identified for tree planting and have opened accounts for tree planting.

Moreover, Mr. Speaker, Sir, contracts for 186 Constituency Industrial Development Centres have been awarded by 3rd March, 2010, and the implementation process has begun. Similarly, contracts for the 166 fresh produce markets amounting to Kshs1.6 billion have been awarded. Finally, contracts for 180 public health centres amounting to Kshs2.9 billion have been awarded.

Mr. Speaker, Sir, I know that the House has been concerned about the mobile digital laboratory for secondary schools. In order to facilitate further rapid progress, I have directed that the funds allocated for mobile digital laboratory for secondary schools be converted to the purchase of computers and printers for secondary schools.

(Applause)

As Kshs1.26 billion has been allocated for that component of the ESP, more secondary schools will be able to benefit from that project.

Mr. Speaker, Sir, much like the ESP, the implementation of the *Kazi kwa Vijana* Programme or KKVP, has been slow. I regret it because the KKVP is another major undertaking of the Government to provide jobs to the youth and, hence, stimulate the economy. Although there were some problems in its implementation, the programme was popular among the youth and was contributing to reducing crime in some areas. The problem was the release of the funds by the Treasury for the KKVP, which ceased in June, 2009. The funds that were released in 2008/2009, but not utilized by the end of the fiscal year, were not re-voted until 30th October, 2009. Moreover, there were no provisions for the KKVP in the 2009/2010 Budget. There was not even a code for the KKVP project in the Budget. Thus, the KKVP Project virtually came to a halt in July, 2009. The Treasury began releasing funds in September, but the implementing Ministries were unable to access them because of the absence of the budget codes for KKVP. It was in late October that the Treasury issued a circular to the implementing Ministries giving them authority to draw the released funds below the line. That allowed most Ministries to finally restart KKVP activities in November, 2009. The circular also authorized the Ministries to rationalize their budgets for the Financial Year 2009/2010 and reallocate agreed amounts to KKVP activities. That brought the funds available for KKVP in this financial year to Kshs7.4 billion, consisting, one, Kshs2.3 billion for new provisions to be rationalized in the Supplementary Budget and, two, Kshs0.8 billion of carry-over from the last financial year and; three, Kshs4.3 billion to be rationalized from this financial year's Budget. Those funds have been fully released in several steps by February, 2010. A breakdown of the releases by the implementing agencies is given in Table 2, which I will be tabling right now.

Mr. Speaker, Sir, since the KKVP got back to action, the Ministry of Forestry and Wildlife has, to date, replanted a total of 6,400 hectares of land and completed 616 kilometers of boundary clearing. The Ministry of Public Works is constructing 75 foot

bridges in seven provinces. The “trees for jobs” project is ongoing in the Ministry of Youth Affairs and Sports.

Mr. Speaker, Sir, the slow implementation of ESP and the interruption of KKVP programme largely accounts for the under-spending of the Government expenditures so far in this fiscal year. The total Exchequer releases during the July to February, 2010 amounted to Kshs440 billion, falling short of the target for that period by Kshs63 billion. This is equivalent of 2 per cent of the GDP.

Mr. Speaker, Sir, in conclusion, I am going to say the following: That shortfall accounts were due to the fact that the economic growth from July to December, 2009, was significantly lower than expected. Allow me to table Table III which summarises the state of the Budget execution.

Mr. Speaker, Sir, fortunately, we are blessed with good rains in this long rainy season. Our economy is on the mend. It is recovering. In order to solidify economic recovery in our country, I am instructing all senior public servants to rise above self interest and ensure that both the Economic Stimulus Programme (ESP) and the *Kazi Kwa Vijana* Programme (KKVP) are fully executed in the remainder of this fiscal year. This is a necessary step to accelerate and sustain economic growth over the medium-term and transform our country into a prosperous middle income country by the year 2030.

Mr. Speaker: Hon. Members, where are those seeking clarifications? We will begin with the Member for Lugari.

Mr. Jirongo: Mr. Speaker, Sir, while I thank the Prime Minister for his explanation on the stalled ESP and his admission that the Ministries are actually not implementing it and that he has requested the Ministries to give him a report, I would like him to clarify to the House the KKVP.

We know that by the last General Election we had 12 million young people who were unemployed. In the next election, we will have 17 million young people who will be jobless. In 2017, we will have 24 million young people in this Republic who will be unemployed. I would like the Prime Minister to explain whether he is convinced that KKVP is viable and that actually provides employment to the young people of this country and whether it is sustainable.

Secondly, could he indicate to the House when we will have an audit report of the funds already released? This is because some of us have not experienced anything on the ground and yet billions of shillings have already been released.

Dr. Nuh: Mr. Speaker, Sir, with the realization that some of the Permanent Secretaries in some of the Ministries concerned have stepped aside and we have acting Permanent Secretaries in their place, could the Prime Minister confirm that the CDF Committees which were tasked with work at the grassroots level completed their work by November and that works only stalled due to bureaucracies in the Ministries? Could he also confirm whether lack of substantive Permanent Secretaries in these Ministries will curtail further works and realization of the ESP?

Dr. Kones: Mr. Speaker, Sir, the Prime Minister has confirmed that there was no provision for funds for the KKVP. He has talked about the rationalization of other programmes in different Ministries to cater for the KKVP. What steps will he take to ensure that the programmes in those Ministries are not affected as a result of the rationalization which, to me means reduction of activities from the normal programmes in the Ministries and transferring funds to the KKVP?

My second clarification---

Mr. Speaker: Order, the Member for Konoin! Seek only one clarification at a time.

Mr. Mbugua: Mr. Speaker, Sir, I would like to thank the Prime Minister for elaborating on the needs of the youth of this country. However, this Government is not serious in addressing the needs of the youth. I would like to ask the Prime Minister whether he will take the ESP to his docket. This is simply because the youth of this country are crying.

Mr. Nyamai: Mr. Speaker, Sir, I want the Prime Minister to comment more on the issues of the fresh produce markets under the Ministry of Local Government. Could he confirm that the monies which were meant for fresh produce markets in various constituencies will not be diverted to fund those markets which were advertised and tenders awarded last year? Their funding was not factored in the current Budget.

Mr. Speaker: The Rt. Hon. Prime Minister, could you respond? We will see if we can take another five clarifications.

The Prime Minister (Mr. Raila): Mr. Speaker, Sir, I could not agree more with the hon. Member for Lugari that, in fact, the rate of unemployment is very high in the country and that it is increasing. I know that on a yearly basis we churn into the labour market an average of 750,000 people and more. These are people who drop out of primary schools, high schools, colleges and universities. The KKVP was not a long-term solution to the problem of unemployment. This was an interim stimulus programme that was introduced to stimulate the economy in the rural areas and the poor parts of the urban areas around that time. This is not something that is sustainable.

Mr. Speaker, Sir, for this economy to be able to create jobs, it must first of all grow and expand. The economy should grow faster than the rate of population increase. We must invest more in those sectors that will create more jobs. The Government is investing very heavily in the infrastructure sector precisely for purposes of creating jobs for our youths. We must attract both local and foreign investment in the manufacturing sector. Our agriculture sector must also grow. The ICT should also grow so that we can be able to provide more employment to our youth.

The office of the Controller and Auditor-General is in the process of auditing Phase I of the KKVP. Once the audit report is ready, it will be brought before this House.

Dr. Nuh, the Member for Bura wanted to know whether the programmes in various Ministries where there are acting Permanent Secretaries will be affected. I would like to assure him that, that will not be the case. There will be no vacuum and there is no vacuum. The acting Permanent Secretaries are as competent as those for whom they are acting in their absence.

Mr. Speaker, Sir, Dr. Kones wanted to know if the programmes which were ongoing will not be interfered with due to non payment of debts that are owed. I do not expect that to be the case. However, that should be handled on a case by case basis. However, as I have said, I know that funds will now be released so that most of the projects which have stalled can continue.

With regard to my friend, the hon. Member for Kamkunji, the Prime Minister does not intend to take these programmes into the Office of the Prime Minister. The Prime Minister co-ordinates and supervises functions of other Ministries. That is the reason you see the Prime Minister giving directions to Ministries to execute what is

required of them. What I do all the time is to crack the whip to ensure that the Ministries are working.

Mr. Speaker, Sir, hon. Nyamai asked about the fresh produce market *viz-a-viz* the markets that are under construction. He wanted to know whether funds are going to be diverted from the fresh produce market. The answer is “no”. I want to assure the hon. Member that money intended for the Economic Stimulus Programme (ESP) will not be diverted to pay for projects that had already been started last year. Funds have already been made available to ensure that markets whose construction had started do not continue to stall.

Thank you.

Mr. Speaker: Yes, Mr. Njoroge Baiya!

Mr. Baiya: Mr. Speaker, Sir, after listening to the Prime Minister and considering that the ESP came through the budgetary process, and that it has not been superbly implemented, as the PM has explained, what actions have been taken? Has this issue been raised in the Cabinet? Has it been discussed amongst the various Ministries to streamline the implementation process and ensure expedient release of these funds? Are Kenyans not entitled to feel that the Government was not serious about this programme, considering the complaint being launched that we are very poor at implementing development programmes? This again can lead to the increase of wealth and alleviation of poverty in this country.

Mr. Speaker: Hon. Musikari Kombo!

Mr. Kombo: Mr. Speaker, Sir, my understanding of “economic stimulus” is immediate injection of funds into the economy for immediate effect. A sum of Kshs30 billion was set aside for the ESP. The year is ending, and the Kshs4 billion that had been set aside has not even gone into the economy. Is the Prime Minister not satisfied that Kenyans were being hoodwinked, and that we were talking about development programmes and not an economic stimulus programme? If we still want to have an economic stimulus, could the Government have a programme of immediately injecting the funds set aside for the ESP?

Mr. Speaker: Hon. K. Kilonzo!

Mr. K. Kilonzo: Mr. Speaker, Sir, I do not know whether the Prime Minister is aware that one of the problems we have in the constituencies is from the Ministry of Public Works. For instance, to construct a classroom that would cost the Constituencies Development Fund (CDF) between Kshs200,000 and Kshs300,000 under the ESP, the Ministry of Public Works gave an estimate of Kshs1.4 million. A good example is Belgut Constituency, where the area Member of Parliament, together with the District Education Board (DEB), had to intervene to have such estimates stopped. What is the Prime Minister doing to ensure that officers from the Ministry of Public Works do not inflate these costs to the extent that there is no effect of the ESP on the ground?

Mr. Speaker: Member of Parliament for Bomachoge!

Mr. Ogari: Thank you, Mr. Speaker, Sir. I wish to seek four clarifications. We have been told quite a number of times that the delay in the implementation of the ESP is due to other reasons, but the way I see it, especially with an example from my constituency and the constituencies around mine, the delay is due to shortage of personnel from the Ministry of Public Works. Most of the projects are infrastructure

development which require architects, quantity surveyors and engineers, who we do not have.

Despite the issue of over-estimates that my colleague has mentioned, the fact is that these personnel are not there. Where my constituency is concerned, we have one quantity surveyor who is being shared by five constituencies and whose projects are so many. So, what is the Prime Minister, and the line Ministries, going to do about this?

Thank you.

Mr. Speaker: The Member of Parliament for North Horr!

Mr. Chachu: Thank you, Mr. Speaker, Sir. Realising that these programmes have started very slow, and that we are left with only three months before the end of the financial year; realising that we have made commitments to our constituencies, could the Prime Minister assure this House and Kenyans by extension, that the funds earmarked for the ESP will not revert back to Treasury come 30th June, 2010?

Thank you.

Mr. Speaker: The Member of Parliament for Embakasi!

Mr. Waititu: Mr. Speaker, Sir, considering that processing title deeds takes a lot of time and that some of the areas that are earmarked for fresh produce markets and *Jua Kali* sheds do not have title deeds, could the Prime Minister consider waiving the condition of title deeds on this plots before the projects are implemented?

Thank you.

Mr. Speaker: The Rt. Hon. Prime Minister, you may respond to those ones.

The Prime Minister (Mr. Raila): Mr. Speaker, Sir, there are some questions which are related. Maybe, I can answer one for a number of them.

The ESP is an emergency programme that is aimed at stimulating the economy. That is really the purpose of countries coming up with ESP. I agree that the pace of implementing the ESP has not been as fast as it should have been. I have actually owned up to that fact. We are doing something to streamline the implementation of this programme. This is the first time that the Government has come up with an ESP. So, it has been a learning experience.

First, there were attempts to try and create new structures. I remember that hon. Members of Parliament themselves were very concerned about the structures at the grassroots. So, it was necessary for Treasury to have a *Kamukunji* with Members of Parliament to agree on how to implement the ESP. That itself took time. The designs were also to be done, which also took time. What should have happened at the very beginning is that, because most of the projects that were being implemented were replicable, it would have been necessary to come up with standard designs for health centres, schools, markets, *et cetera*. There was no need for duplication.

Mr. Speaker, Sir, I also agree with hon. Members that some officers in the Ministry of Public Works may not be very professional. I know that for a fact because I have given them an assignment to do and after consultations with them, they sent me a fee note of Kshs150,000, which was supposed to cover overtime allowance despite the fact that these were public servants working for the Government.

So, action is being taken to ensure that officers, not only in the Ministry of Public Works, but also in other Government departments do not abuse their professions to over-charge or inflate prices of goods and services, which lead to losses being incurred by the Exchequer.

Mr. Ogari has said that there is a shortage of personnel. However, if what I had said had been done, then the shortage of personnel would not be an issue. This is because these designs and quantities could all have been done at one centre and forwarded to all the constituencies in the country. Implementation would have then started immediately.

Secondly, since all these programmes were being implemented by line Ministries, it should have been the line Ministries to engage the Constituencies Development Committee (CDC) as to how the project was supposed to be implemented in the constituencies. If that could have happened, we would have started implementation almost immediately and the effect would have been felt to date.

Mr. Speaker, Sir, the way things stand, we have only released Kshs4.5 billion and we are already towards the end of March. We only have three months left in this financial year. We had allocated Kshs30 billion for the stimulus programme. Because of this it appears we will need to roll out this programme into the next financial year for it to have the desired effects.

Therefore, I would like to assure the hon. Member for North Horr that the programme will not end this financial year. What will not be spent by the end of this financial year will be rolled over to the next financial year.

(Applause)

Mr. Speaker, Sir, I understand the concerns of the hon. Member for Embakasi about the title deeds. Unfortunately, we cannot spend public funds on a plot whose ownership is not clear. We have the Ministry of Lands and if there are no title deeds and the property belongs to the Government, there is no reason why the hon. Member cannot go to the Ministry of Lands and get the title deeds.

Thank you.

Mr. Speaker: Order, hon. Members! We will have to move to the next Order.

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

Mr. Speaker: What is it the Member for Chepalungu?

Mr. Ruto: Mr. Speaker, Sir, under Standing Order No.1 which gives you latitude, I wish to request you to allow the Minister for Education to issue a Statement on the fate of the children who were locked out of possibly sitting exams for the next two years, since the House is sitting up to 8.00 p.m. today. He had promised to do so because this is a matter of national concern. The Kenya National Examinations Council (KNEC) unilaterally ---

Mr. Speaker: Order, the Member for Chepalungu! Let us cross that bridge when we get to it.

Let us move on to the next Order!

MINISTERIAL STATEMENT

The Minister for Education, can you please assure the Chair that you will last not more than seven minutes? Can I get that assurance?

The Minister for Education (Prof. Ongeru): Yes, Mr. Speaker, Sir. I will have to shorten my response

Mr. Speaker: Please, do!

BARRING OF CANDIDATES INVOLVED IN EXAMINATION
IRREGULARITIES FROM SITTING FOR THEIR NEXT EXAMINATION

The Minister for Education (Prof. Ongeru): Mr. Speaker, Sir, I wish to respond to Mr. Isaac Ruto's question on the regulations barring candidates involved in examination irregularities for the next two years before sitting for the next examination.

My Ministry is mandated to offer quality education by providing, promoting and co-ordinating lifelong education, training and research for Kenya's sustainable development. To fulfill this mandate, my Ministry has to ensure that there is quality assessment of learning which is fair, valid and reliable for certification of the qualified candidates.

Mr. Speaker, Sir, it is important that I make pertinent comments that examination results are the major determinants of access into the job market and into institutions of higher learning in Kenya. Given the very stiff competition for places, it is imperative that objectivity and fairness be the overriding concerns in the allocation of these limited places. Any practice, therefore, that threatens fairness and objectivity in examinations must be stamped out without hesitation. Cheating in examinations is one such practice and can be defined as claiming or appropriating more than one has a right to achieve in an examination. This may take the form of collusion, impersonation, pre-prepared notes and script cases among others.

Mr. Speaker, Sir, cheating in examinations can, if undetected and unpunished, undermine one of the major functions of examinations which are to grade candidates according to their abilities. It can very quickly erode the confidence the public has in examinations if false grades are awarded. Cheating can also undermine values of honest candidates if it appears that dishonest candidates are the once being allocated places on the basis of grades obtained through cheating.

Therefore, the Kenya National Examinations Council (KNEC) has put interventions in place to sensitize all stakeholders involved in the administration of examinations on the roles they are expected to play during the administration of examinations. The evil of examination dishonesty has been displayed through public campaigns, briefing sessions and mass media.

It is not only that, we have spent considerable sums of money in the way of surveillance in order to ensure that these examinations are done in a very comfortable way. Fortunately, there has been a drop in cases of cheating from the previous last two years to a manageable level but we still want to drop it to a much lower level.

Mr. Speaker, Sir, despite all these measures, we are now clear that after frisking, some candidates still manage to smuggle prepared notes and resorted to many other unorthodox methods of cheating in the classroom.

I have examined the issue of the ban and noted that it was irregularly imposed. Subsequently, I have instructed the KNEC to withdraw the two-year ban with immediate effect and issue a circular to this effect.

(Applause)

Meanwhile, the Council has also been instructed to look for other measures of dealing with examination irregularities.

Mr. Speaker, Sir, the KNEC Act was last reviewed in 1981 and you will agree with me that since then the examination environment has changed a great deal. Subsequently, I am in the process of comprehensively reviewing this Act to bring it in tandem with the changing environment. We will soon be tabling the same before this august House for action.

Thank you.

Mr. Speaker: Well done Minister for living within your time!

I will take three clarifications beginning with the Member for Chepalungu!

Mr. Ruto: Mr. Speaker, Sir, I wish to thank the Minister for making that timely intervention. However, I had asked him to indicate to us what statute the Examination Council had quoted in imposing this draconian rule. We know that children are given a cane or two, or you no longer cane them, but do not kill them. I do not know whether there is a subsidiary legislation. Those are the two questions I had asked the Minister. What did they quote in the activity?

Mr. Speaker: The Member for Bomachoge!

Mr. Ogari: Thank you, Mr. Speaker, Sir, for giving me this opportunity. I would like to state that one of the schools in my constituency is the most affected by this issue. I would like to say that 180 students or the whole school was accused of having colluded in the exams although we do not have evidence to that effect.

Mr. Speaker, Sir, I am very grateful to the Minister for waiving the two year ban because that was the most serious of all the issues. Obviously, I do not condone leaking of exams but then I would like to get clarification from the Minister. These kids do not steal alone, there must be somebody right from the KNEC itself up to the school and maybe including the teachers and the rest. What is being done about this one? If children are shown a paper that will be coming tomorrow, they will be tempted to look at it. But then somebody must have been there showing them the answers or somebody brought those papers or still he broke into the safe of the KNEC. I think this is where the heavier punishment should lie.

Mr. Koech: Thank you Mr. Speaker, Sir, for giving me this opportunity. Examinations are there to help our students move to the next level. Some of them look for places outside this country and when we see news on cheating in exams being flashed in our media, it concerns us because it raises the question of validity of our certificates and, therefore, the need to stop cheating completely. First of all, of course, the banning of students for two years will not have been the best solution and I thank the Minister for withdrawing that.

Mr. Speaker, Sir, I wish the Minister could tell us what concrete steps he is taking to ensure that cheating is completely stopped, especially at the KNEC and school level? It does not matter even if a child sneaks some material in some parts of the body that maybe somebody may not be able to reach. If we have an invigilator in class, in the two and half hours or one hour, no student should be able to access that material. What concrete steps are you taking to ensure that come next year there will be nothing called cheating in this country?

Mr. Speaker: You may respond, Prof. Onger!

The Minister for Education (Prof. Ogeri): Mr. Speaker, Sir, hon. I. Ruto asked under what statutes, rules or subsidiary legislation and I have clearly stated it was irregularly done. That also formed the basis upon which I withdrew and exactly ordered the KNEC to resort to other methods of disciplinary measures other than quoting the subsidiary legislation which is nonexistent. As regards hon. Ogari, yes, his school Magina with 80 students got involved in this unfortunate exercise, and they are very clear of the rules; that if your school is in breach of these results, then the best course of action is you are allowed 30 days for appeal and I believe the school has made adequate appeals. It is now before the KNEC and it will be premature for me to hazard any guess.

There have been instances where schools have applied, the issue has been investigated and some remedy carried out. It will not be the end of the road. As far as hon. Koech is concerned; what concrete steps are we taking to ensure that cheating does not continue, it takes two or three to tango, and therefore, we have, in fact, taken very serious measures in this last examination. The people who were peddling rumours, people who were selling fake reports or examinations were netted and in fact one of the students who was from one of our local universities who was caught impersonating has been handed a sentence of 12 months.

Mr. Speaker, Sir, therefore, I want the public to know that we will not condone in any way, cheating, whether it starts at the KNEC, the invigilators level or the student level. There are cases where communities collude with the students and teachers. Like there was a case in Mombasa where one merchant was peddling or trying to buy the papers on the morning of the examinations. He paid hefty sums of money but unfortunately, we caught up with him in time and he was not able to carry out this mischievous act.

Unfortunately, we caught up with him in time and he was not able to carry out that mischievous act. Similarly, we have now put surveillance cameras in all our Kenya National Examination Security rooms and one is being monitored carefully as he or she goes in. We have put in place other security measures. For example, at the centre of the examination, if you open the paper before time, you will not be able to close it. It will collapse and, therefore, it will be seen that, that particular paper has been tampered with. Therefore, we will continue tightening those measures and processes until we eliminate what I think is a very dangerous game. That is because if you begin doubting the integrity of our certificates, then this nation will not be where it should be.

Thank you.

Mr. Speaker: Next Order!

MOTION

APPROVAL OF DRAFT CONSTITUTION OF REPUBLIC OF KENYA

Mr. Speaker: Hon. Members, before we proceed with this Order, I have two Communications to make. One is outside this Order, but it is important that it is made now.

CONSIDERED RULINGS

PRESIDENTIAL MEMORANDUM ON OFFICES OF
MINISTER BILL MEETS PROVISIONS OF SECTION 46
OF CONSTITUTION

Mr. Speaker: Hon. Members, you will recall that on 4th March, 2010, the Chair issued a Communication informing the House that His Excellency the President had submitted a Memorandum in exercise of the powers conferred upon him by Section 46(3) and (4) of the Constitution of Kenya declining to give assent to the Offices of Minister Bill.

In my Communication, I directed the Clerk of the National Assembly to circulate the Memorandum to all hon. Members and further directed that the Memorandum be placed on the Order Paper for Wednesday, 10th March, 2010 Afternoon Sitting for consideration by the House. You will also recall that the Order Paper of Wednesday, 10th March, 2010 Afternoon Sitting did not contain the Memorandum and I issued a Communication in which I indicated that after careful consideration of the Memorandum submitted by His Excellency the President, some important questions of law had been noted and that the issues on the appropriate procedure for the disposal by this House of this particular Memorandum had arisen.

Hon. Members, consequent to the foregoing, I undertook to consult the Attorney-General with a view to determining the best way to proceed. I also directed that the Memorandum be placed on the Order Paper on Wednesday, 17th March, 2010. As hon. Members will no doubt remember, this was overtaken by events as the House did not sit on the said day. I have held consultations with the Attorney-General and in the Supplementary Memorandum, His Excellency the President recommends that Clause 8 of the Bill be amended in subclause (b) by inserting the words, "Subject to the Constitution" immediately after the word, "Shall". The Chair is satisfied that the supplementary Memorandum meets the provisions of Section 46(4) of the Constitution of Kenya which states:-

"Where the President refuses to assent to the Bill, he shall, within fourteen days of the refusal, submit a memorandum to the Speaker indicating the specific provisions of the Bill which in his opinion, should be reconsidered by the National Assembly including his recommendation for amendments."

The House will, therefore, be required to reconsider Clause 8 of the Bill and, in accordance with Section 46(5) of the Constitution, approve the recommendation proposed by the President with or without amendment or refuse to accept the recommendation and approve the Bill in its original form by a resolution supported by votes of not less than 65 per cent of all the hon. Members of the National Assembly, excluding the *ex-officio* members. I direct the Clerk to circulate the supplementary Memorandum to all hon. Members and further, that the Memorandum be placed on the Order Paper in the Afternoon Sitting of Wednesday, 31st March, 2010.

Thank you!

(Several Members stood at the Bar)

Hon. Members at the Bar may want to come in!

STAGE/STATUS OF DELIBERATIONS ON DRAFT
CONSTITUTION OF KENYA

Mr. Speaker: Hon. Members, the second Communication is as follows: You will recall that yesterday, Tuesday, 23rd March, 2010, shortly before the Motion on the draft Constitution was moved by Mr. Abdikadir, the Member for Chepalungu, Mr. Ruto, stood on a point of order and sought the clarification of the Chair on two issues. Firstly, the stage at which we are in the Constitution review process in accordance with the Constitution of Kenya Review Act (2008) and secondly, the nature of the document that is currently before the House.

Mr. Ruto advanced the view that the House is currently at the stage provided for in Section 33(4) of the Constitution of Kenya Review Act (2008) and also that the business before the House is a Motion by the Chairman of the Parliamentary Select Committee (PSC) on Review of the Constitution. It was the view of Mr. Ruto that even though it has been described as a draft Constitution in the Act, the document currently before the House is not the draft Constitution to which Section 33(5)(a) refers and is, therefore, not subject to the procedure provided for at Section 47A(2)(b) of the Constitution. To bolster his argument, Mr. Ruto argued that it was not by mistake that Section 33(5)(a) applies the procedure at Section 47A(2)(b) to only Sub-section 5 and not to Sub-section 4. He further argued that the document before us cannot be a draft Constitution as it has emanated from a group of seven persons. There has been no representation in its discussion to this stage. It was his argument that the document is being discussed by a representative body for the first time.

A number of hon. Members made some interventions on the issues raised by Mr. Ruto. They were Mr. Mungatana, Dr. Khalwale, Dr. Machage and Mr. Orengo. Hon. Members, although Mr. Ruto did not expressly say so, the effect of his point of order is to question the appropriate procedure which this House should utilize in the disposal of the Motion presently before it. The stage at which we are and the nature of the document before us determines the procedure the House should invoke. In particular, these issues determine the number of votes required to approve or amend the document before us. It is, therefore, important that I make a clear ruling on these questions.

Before I do so, allow me, hon. Members, to put the process of constitutional review in perspective. Let me state, at the outset, that I have no doubt in my mind that this process is the single most important national project ever undertaken by this House since Independence. For close to two decades now, the people of Kenya have sought a new constitutional order. Indeed, at this moment, I am certain that the eyes of the entire country are on this House.

We carry the hopes, aspirations and fears of an entire nation. It is a solemn trust that we must discharge with honour and responsibility. The history of the constitutional review process is well known to all of us. I need not repeat it here.

It is a process governed both by statute and by the Constitution of Kenya. The statute governing the review process was enacted by this House, so was the constitutional amendment that inserted a new Section 47(a) to specifically provide for the procedure, hitherto, non-existent of replacing of the Constitution of Kenya. I want to repeat that for emphasis. The Statute governing the review process was enacted by this House. So, was

the constitutional amendment that inserted a new section 47(a) to specifically provide for the procedure hitherto non-existent of replacing the Constitution of Kenya. There was provision for amendment; there was no provision for replacement. That is why I am emphasizing that part.

Hon. Members at the bar may want to walk in.

(Hon. Members walked into the Chamber)

Hon. Members, a proper reflection on the constitutional review process makes it clear that it is a process entirely different from the ordinary process of law making. It is a process that was carefully crafted to respond to the experiences of the past. It is also a process that was carefully calculated to learn from the mistakes of the past. These are important points to note.

Section 5 of the Review Act establishes the organs through which the review process is to be completed and the National Assembly is one of those organs. The other organs are the Committee of Experts, the Parliamentary Select Committee and the Referendum. Additionally, Section 6 of the Act sets out the guiding principles binding these organs in the discharge of their functions. The organs of review are required to, *inter alia* be guided by the principle of stewardship and responsible management. Most importantly, all organs of review are required to ensure that the outcome of the review process faithfully reflects the wishes of the people of Kenya.

Hon. Members, it is important and it cannot be emphasized enough that the review process was carefully tailored to remove it from the ordinary processes of law making. Instead of this House as the sole driver of the process, the National Assembly and its committee, the Parliamentary Select Committee, were made to be participants in a consultative and people-driven process. Instead of Parliament as the determinant of whether the process lives or dies, that prerogative has been recognized in Section 47(a)(2), paragraph (a) of the Constitution as vesting in the people of Kenya collectively and as being exercisable by the people of Kenya through a referendum.

Hon. Members, at the bar may want to walk in. Mr. Konchella, please, walk in.

(Hon. Members at the bar walked into the Chamber)

Hon. Members, allow me to commend the Member for Chepalungu for his vigilance and industry, for bringing to the fore, the matters that are the subject of this communication.

(Applause)

In response to the questions raised by the Member for Chepalungu, I therefore, rule as follows:

1. This House is currently at the stage set out in Section 33(4) of the Constitution of Kenya Review Act. There should be little dispute on this score. The House is currently seized of the documents tabled by the Parliamentary Select Committee on the Review of the Constitution on 2nd March, 2010. These documents are: The final Report of the Committee of Experts and the Revised Draft Constitution.

2. Arising from Item 1 above, the document currently before the House in terms of Section 33(4) of the Review Act is, therefore, the draft Constitution submitted to the Parliamentary Select Committee by the Committee of Experts. It is not a document authored by seven people. It is the culmination of a comprehensive process of the review of the Constitution by the people of Kenya. It is a document that is a product of a process in which the National Assembly has been adequately involved at all stages.

Hon. Members, although some doubt may appear to be created about the procedure to be applied in disposing of the Draft Constitution by the failure of Section 33(4)(a) to refer to this stage, I am satisfied that any such doubt is removed by the provisions of the Constitution at Section 47(a)(2), paragraph B. The section makes it clear that whenever a draft constitution proposing the replacement of the Constitution has been introduced in the National Assembly, no alteration can be made to it unless such alteration is supported by the votes of not less than 65 percent of all the Members of the Assembly excluding the *ex-officio* Members.

The words used are “a draft constitution”. The application of Section 47(a)(2) paragraph B is, therefore, clearly not limited to a specific draft constitution or to only some types of draft constitutions. It is also not limited to some stages of consideration by the National Assembly draft constitution.

Hon. Members, I am, therefore, quite clear that Section 33(5)(a) ought properly to have made reference to Section 33(4) as being subject to the procedure stipulated in Section 47(a)(2) paragraph B of the Constitution.

I am also clear that failure to so refer is not fatal as the provision of the Constitution clearly overrides those of an ordinary statute in case of conflict. To that extent, it may indeed be argued that even the reference in Section 33(5)(a) of the Act to the application of Section 47(a)(2) paragraph B of the Constitution is unnecessary. The constitutional provisions on the disposal by this House of a draft constitution apply because the Constitution says so. It matters not whether an Act of Parliament also says so or even purports to repudiate that position.

Hon. Members, I am fortified in these findings by a careful reading of both the Constitution and the Review Act. I am particularly certain that any interpretation that the document before us is not a draft constitution or that Section 47(a)(2) paragraph B of the Constitution is inapplicable at this stage, will not be consistent with either the letter, spirit or intention of the Constitution or the Review Act.

Such a finding will amount to this House arrogating to itself a higher pedestal than the other organs of Review. It does not appear to me that there can have been any intention that this House, having enacted the Constitution (Amendment) and the Review Act, and having set out a very elaborate consultative process, will wish or even allow itself to easily by a simple majority vote subject to quorum, overturn all preceding agreements.

The threshold to amend a draft Constitution was deliberately set high to ensure that only in the most meritorious of circumstances could this happen. This is a stage where the National Assembly is provided with yet another opportunity to input in the process by which the people of Kenya seek to exercise their sovereign right to replace their Constitution.

Finally, in consequence of this Ruling, the Communication I delivered yesterday, in particular on the procedure that I explained, still stands.

Thank you.

Mr. Chanzu: Thank you, Mr. Speaker, Sir. I stand to support the draft Constitution as prepared by the Committee of Experts (CoE) and the work that has been done on it by the Parliamentary Select Committee (PSC), which was put in place by this House. Just in my preamble, I would like to also echo what was contained in the President's Speech, when he was opening this Session of Parliament. He put first priority to the Constitution. I also want to echo what you said in the same deliberations when you encouraged Members to contribute to the Constitution making process with soberness.

Mr. Speaker, Sir, I also want to pay tribute to those who have toiled for many years up to the stage where we have reached in this Constitution making process. The wish of Kenyans, even as Members of Parliament haggle around, is to have a new Constitution. There are very many reasons, some of which have been tabulated in the Draft Constitution, why Kenyans would like to have a new Constitution. One of them which we kept on talking about is the imperial presidency. Kenyans felt that if they had a President from their own community, then they could benefit from the resource allocation. Kenyans also suffered under the high handedness of the leaders that we have had under the Constitution that is in place now. Kenyans have fought about ethnicity in various ways because of the current Constitution. So, it is the hope of Kenyans that at least, we will deliver to them a new Constitution.

There has been a lot of connotation and caucusing among the Members of Parliament. I only hope that Parliament, which happens to be the third organ in the review process after the work that was done by the CoE and the PSC, will be part of those who are preparing the "chakula". When I see Members of Parliament sometimes behaving as if they are preparing the "chakula" for themselves, I wonder. I want to plead with the Members that we are passing this Constitution for the benefit of all Kenyans. The Constitution that we are debating now in order to take it to the referendum is for posterity. It is for many years to come. It is not something that we can talk about and say that if something goes wrong, we can correct it tomorrow. I would like to urge my colleagues that as we consult even outside this Chamber, like I have seen them doing, we must bear in mind that we must all come together in support of the draft Constitution.

The draft Constitution that we are debating has a lot of unique features, some of which have been highlighted by my colleagues. We have seen some of the exciting features like the duo citizenship. In the past, people were given jobs irregularly in the public sector. This is even happening in the private sector because corruption is now all over. It is even in the private sector where we thought that there was no corruption. We kept on talking about the issues of the code of conduct, but I am happy that these issues have all been incorporated as part of the Constitution. We have seen the benefits that have accrued on the few reforms that we have experienced in this country in the last few years. The Constitution will go a long way in putting together all these reforms, so that we can look at them at a glance rather than looking at things selectively and not being able to have control in coordinating them.

[Mr. Speaker left the Chair]

*[Madam Temporary Deputy Speaker
(Prof. Kamar) took the Chair]*

Madam Temporary Deputy Speaker, this Constitution is also trying to help us to tighten some loose ends. When we talk about leadership in the new Constitution, it has been there before, but we had loose ends when it came to issues of integrity. Most of the people who have been appointed in high positions in this country, including the leaders that we have had, initially have been men and women of high integrity, but as time goes by, they lose track. We have not had a way of checking them and putting them under control. I am grateful that this Constitution is taking care of that.

When we talk about devolution in the Constitution, this is something that has been talked about a lot and it has a lot of definitions according to the dictionary. But what Kenyans are looking at when we talk about devolution, they want to see that the resources that emanate from the top reach them at the bottom. They want to see fairness. They want to participate in whatever goes on in their areas of jurisdiction. I am also grateful to note that the Constitution, in the Bill of Rights and the other aspects which we were taken through, in general terms takes care of the so-called marginalized groups and minorities.

I did not want to talk about the issue of the Kadhis courts, but I will just have to touch on it. I do not see the reason why the Kadhis courts should be contained in the Constitution. If this Constitution goes to the referendum and it is opposed, then we will go back to the old Constitution. Then we will go back to the Kadhis courts in the Constitution. The current Constitution has Kadhis courts. It is proper for people to think sensibly. I said the other day when we were at Kabete that I was born a Muslim in Vihiga, where we are a minority. My people have voted for me twice. I have never interfered in matters of religion in the constituency. That is the reason why they still vote for me. So, sensible Kenyans will not go into the issues of religion. This is a matter of God and people should do what they think their creator feels is good for them. I would like us not to go into these issues. I know they were bringing up the issue of abortion in order to bring up the issue of the Kadhis courts.

Even those who are talking about abortion, that is, the leaders in the Catholic Church; the sisters and nuns, are not even going to give birth themselves. They are talking about something that is not going to happen to them. So, they are misrepresenting themselves.

Madam Temporary Deputy Speaker, as far as I have seen and what I know, we cannot talk about something that is 100 percent perfect. Even if you look at the design of this building, the person who did it thought that it was very perfect, but it always has got some shortcomings and that is the reason we are there to look at these things in future. If there are some adjustments to be made, let us tolerate them now and then we can make them in future.

Madam Temporary Deputy Speaker, I was looking at the Constitution of America at one time and I thought it was a very small document. Ours is fairly bulky. I do not know why we are trying to put everything in and not just making guidelines where certain legislation can be covered. But I think it is a good job, anyway. Maybe, that is the reason some people do not understand it.

Madam Temporary Deputy Speaker, since we are still debating, we will look at whatever other views that come.

With those few remarks, I would like to support the Draft Constitution.

The Assistant Minister, Ministry of State for Immigration and Registration of Persons (Mr. Baya): Thank you very much, Madam Temporary Deputy Speaker. The document which is before us in this House is very important. For many years, particularly from 2005, Kenyans have been waiting for this document. I feel it is important that this House plays its role by passing it and we ask wananchi to vote for it during the Referendum. There are some very interesting and good features of the Constitution. Of course, it may not be good for all of us. There are some areas that may need to be looked into, but as the Speaker directed, this will be done substantively tomorrow, but I would like to mention a few areas.

Madam Temporary Deputy Speaker, Sir, like hon. Chanzu pointed out, the issue of dual citizenship has been long overdue. I know friends and even relatives who lost opportunities abroad simply because they were unable or feared getting citizenship in those countries.

Regarding the issue of devolution, this time we are not talking about the Constituencies Development Fund (CDF), an economic devolution that was made without being entrenched in the Constitution. This is not even an administrative devolution, but a legislative devolution which is very important. It will enable the county assemblies to discuss and pass some policies. It will also assist them collect revenue to some extent. Therefore, this is a real parting from the old Constitution. I know that this will come tomorrow but it is important to mention to it here; that the number of counties need to be increased. The number that we are given at the moment; that is, 47, is too small. It will make life very difficult for those who are supposed to occupy the offices in the county assemblies. For instance, at 47, our county will start from Mtwapa to the border of Malindi and Tana River. That will be too huge. Those who will be occupying those positions will be in a *baraza* and not an assembly. There is also need to retain the current strength of councillors. These, I believe, are the ones who will occupy these positions in the county assemblies.

Madam Temporary Deputy Speaker, lastly, there is the issue of land and environment. Under Chapter 5, forests and national parks have been categorized as public land. Sub-section 2 goes ahead to vest the administration--- It says that this public land shall vest in and be held by the county government. Up to that point, it is very good. But it goes ahead to suggest that the administration of this land be under the National Land Commission. We need to relook into this because those counties that house national parks, for example, Tsavo West and Tsavo East, and huge forests like the Gede Forest, should be made wholly responsible for the management of these resources, so that they can also benefit in terms of the tourists who visit the parks and the products from the forests. These could form part of their revenue.

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

The Minister for Agriculture (Mr. Samoei): Thank you, Madam Temporary Deputy Speaker, for giving me a chance to make my contribution to this very important Motion before this House.

Madam Temporary Deputy Speaker, history gives us in this House, the singular opportunity to define the future of this country; a fete that is not available and has not been available to any other House. I want to start by paying tribute to many Kenyans who for the last 20 years have participated in many ways to get this process to where we are today. Again, I want to pay tribute to the Parliamentary Select Committee chaired by the

very able Chairman, hon. Abdikadir and his deputy, hon. Namwamba, for steering the Parliamentary Select Committee to make recommendations that to a great extent have become the basis for the document that we have in the House today. The onus is now on us, as a House, to measure up to the expectations of the people of Kenya and pass on this document in an improved version for them to make a decision in the Referendum.

Madam Temporary Deputy Speaker, this document represents a big departure from the document that is currently in use in our country. It is a very good document and I want to agree with many that, indeed, a lot of work has gone into creating the document that we have today, and it deserves our support.

The bill of rights has been referred to as the heart of the Constitution. We have a comprehensive bill of rights that insulates the rights of the citizens of this country against arbitrary abuse by any regime or any state organ or any foreign body.

Madam Temporary Deputy Speaker, for the first time, Kenyans take precedence over State organs. Much as there is a bill of rights in the current Constitution, there is equally an elaborate denigration and exceptions that actually make a farce of the bill of rights that exists. Citizenship of our country has been improved. We now have a chance as Kenyans, whether we live in this country or other countries, to enjoy the rights of being Kenyans without any impediments. Kenyans in the diaspora can now enjoy full rights as Kenyans even as they become citizens of the world. There are thousands of children languishing in police cells because the Constitution does not recognise them and because maybe, they have not been identified. This Constitution confers on children found within the boundaries of this country, so long as they are younger than eight years, citizenship of this country, so that we do not subject children who may not know who they are, to jail or sentences that do not help improve their lot.

Madam Temporary Deputy Speaker, in this document, we have spoken very clearly to the issue of representation which has posed a challenge to our country. This time round, we have made provisions in this Constitution that secures everybody; those who come from the densely populated areas like my constituency and those who come from the sparsely populated areas like my friend hon. Chachu Ganya's constituency. I think this document recognises our diversity as a country and the diversity of our regions. Inbuilt safeguards that have been put in this document will help us live as Kenyans together.

Madam Temporary Deputy Speaker, the issue of election petitions has been a nightmare in our country. In this document, there are now clear provisions so that Kenyans can get the leaders they have elected. The petitions around the Presidency are no longer going to be surrounded by mystery, games and mischief. We are going to sort out those problems before anybody is sworn in to office, so that we avoid the pitfalls of the past.

Madam Temporary Deputy Speaker, in this document, we have a clear separation of powers. Remember that the basis for the clamour for the new Constitution was premised on the fact that we had a Government that was not accountable to anybody. The system of checks and balances was weak and, therefore, it led to poor governance in our country. This time round, we have in this document, separated the three arms of Government, given each one independence and demanded out of them performance. We would have a President elected by the people of Kenya with clear executive authority. But he will be under scrutiny. The keen eye of this House, unadulterated House where all

Members of Parliament will not be Ministers. I want to thank Members of this House for having agreed that we would cede the privilege to serve as members of the Executive, so that we can serve the people of Kenya as Members of the Legislature and make sure that the Executive delivers. That is how we are going to change this country for the better.

Madam Temporary Deputy Speaker, in here, we have a clear judicial system. For the first time, the judiciary will hire its members through a competitive process. There will be no games, patronage and excuse. Anybody who deserves and has the qualification to be a member of the judiciary in this country in a competitive manner will have access to that opportunity. It could not be better. We have a clear mechanism of financial independence for the judiciary as well.

We equally have in this document the provisions for a Senate, recognising the importance of devolution in our country, especially in the system of government that we have crafted. We have clear provisions for the Senate to perform, not just the duties of making sure that devolved funds reach the devolution units, but also ensure that when the Presidency runs amok, we have an instrument to make sure that we impeach the President and send him home, if the need arises. It also avoids the opportunity to have a conflict of interest where this House being the House that can impeach the President, also becomes the House that tries the President. That is why we need the Senate. I do not wish to make a case that Senate must be recognised as the senior House because the people who will be elected into the Senate will naturally come from bigger constituencies than people who will be elected to the House of Representatives.

Secondly, there is nowhere in this country where the Senate has been the lower House. It is history and tradition anywhere else in the world that the Senate is always the senior House. Therefore, we have a clear chance to deal with the Presidency and to avoid conflict of interest where the House of Representatives or the National Assembly becomes the investigator, prosecutor, judge and the jury. We will have this House to impeach the President and the Senate to try him. If he is found guilty of the charges that will be preferred by this House, the President will be sent home and there will be an election of the President alone. The suicide clause that currently exists in our current Constitution was mischief, so that this House does not take action against the Chief Executive.

Madam Temporary Deputy Speaker, I want to call upon this House to rise up to the challenge that we have in this House. We have the opportunity to improve on this document. We must not lose this opportunity. I have heard cases being made here that these people are bringing majimbo and federalism through regional governments. This is the same argument that was made during the introduction of multi party into our country. The same feeble arguments were made by people who do not want change. That time, we were told that if we introduced multi party politics in Kenya, we would bring tribalism and divide the country. The country would become ungovernable and Kenyans would fight. When multi partism came into this country, we had better governance. Kenyans could interrogate the Executive. Kenyans could question actions of the Executive. We have a better country this time round. I want to persuade my colleagues that we cannot afford to remain bystanders!

(Applause)

How will this House be judged? That a document was prepared by the Committee of Experts (CoE), it was taken to the Parliamentary Select Committee, it came to this House and all we did was to have a look at it and allow it to pass when we have the singular opportunity to improve on this document?

(Applause)

Surely, Madam Temporary Deputy Speaker, history is going to judge us very harshly; that we had an opportunity to improve on this document, but we were not able to surmount enough courage to take our responsibilities head on! Instead, we chose to evade our responsibility on flimsy grounds that we cannot raise the numbers and say: “You know, we should allow this document! Oh! We are going to change it another day! Oh! You see!”

Surely, Madam Temporary Deputy Speaker, I am asking this House to rise to the challenge and responsibility that faces it squarely! I can see hon. Members have listed issues and we have all agreed that this document has deficiencies. We must rise up and improve on those deficiencies so that we can earn our places in history. Otherwise, if we sit here and say there is nothing we can do, we will have failed the test of leadership! Kenyans are waiting for this House to rise up and improve on this document.

Madam Temporary Deputy Speaker, I want to suggest that the search for a new Constitution was premised on two aspects; one, that we give Kenyans the opportunity to decide; the opportunity to participate in decision-making at all levels so that they can influence their future and the way resources are being used.

Madam Temporary Deputy Speaker, we have seen what bringing Kenyans on the decision table has done, in what has happened in the Constituencies Development Fund (CDF). We are saying: Let us create regions where hon. Members will have the opportunity even to go there and participate in the regions, because they are big enough for hon. Members to sit there and influence the development of our country.

Madam Temporary Deputy Speaker, I ask myself: How many hon. Members sitting here today will agree to go and become councilors in the counties? How many? If, surely, we believe that the counties are the best place for us to devolve power, how many? Nobody!

Madam Temporary Deputy Speaker, I am saying that we must be serious if we sincerely want to develop this country. If we want to create other platforms where other Kenyans can contribute their efforts, talents and their expertise in the development of this country, let us create units that we, as hon. Members sitting in this House, can actually contemplate going to participate there, so that we can develop this country equitably! That opportunity beckons us; we must not run away from that opportunity! That is why we are sitting in this House. Nobody should tell us that we are just another organ of review. We are not! No other organ of review has the kind of mandate that we have in this House! No other organ of review has been voted for by the people of Kenya like this House! Therefore, it will be an indictment on this House that the document came to this House and we were so scared of our responsibility that we just allowed it to pass! How will we look? We will just be a footnote in history if we will have failed to assemble a two-thirds majority and improve on the document that has been brought about by the efforts of other Kenyans!

(Applause)

What will be our contribution? What will we say we did as a House? That we just became bystanders? We created the laws and then we were there and when we were challenged or had the opportunity for us to make an input; when the opportunity came for us to influence history, we ran away from that responsibility because we were scared? It will be a very big shame!

Therefore, Madam Temporary Deputy Speaker, I am asking that we consider some amendments. We must deal with the chapter on abortion so that we eliminate what the Church is talking about!

(Applause)

Madam Temporary Deputy Speaker, we must expand the counties to 80 so that we can secure others who are not in majorities like the rest of us. We can secure North Horr, Teso, Kuria, Suba, Mt. Elgon and all the small communities so that they can also belong to this country! We must give ourselves an opportunity to make a document that every Kenyan, wherever they are irrespective of their size, can believe that they belong to this document and they belong to this country.

Madam Temporary Deputy Speaker, I am challenging us in this House that we have that singular opportunity; let us not run away from it; let us live up to the challenge; let us transform this document and improve on it; let us add our input so that Kenyans can surely say: We are proud we elected men and women into the 10th Parliament!

Madam Temporary Deputy Speaker, I do not wish to say more than that. With those few remarks, I beg to support this document with the amendments that will come.

(Applause)

The Temporary Deputy Speaker (Prof. Kamar): I know it is Mr. Eugene who was next, but I can see hon. ole Ntimama is up and I will allow him to contribute.

The Minister of State for National Heritage and Culture (Mr. ole Ntimama): Thank you, Madam Temporary Deputy Speaker. I want to say, from the outset, that I support this document.

Madam Temporary Deputy Speaker, we must now really decide to have a new Constitution for this country. Let me say, and I have said many times on the Floor of this House, that we never had a Constitution. The 1963 Constitution was abrogated by the leader of our country then; by President Kenyatta and a few of his friends. We lacked a Constitution. There was no Constitution then. The regional assemblies were sent reeling. The Senate was disbanded and we were left with the rule of one person who was installed not by the Constitution, but by his friends and a few people who were supporting him.

Madam Temporary Deputy Speaker, then a situation came into this country. A big black cloud hovered over this country. What really happened is that vicious dictatorship came into this country. People were detained without trial; people went missing and this went on and on and on. Even when President Moi took over, it was a question of following the footsteps; *Kufuata Nyayo za Kenyatta*, and it continued. It became even

worse! There were detentions; there were people missing and total vicious dictatorship continued to rule over this country. That dark cloud continued.

Madam Temporary Deputy Speaker, what I am trying to say is that the country wobbled. There was no way we could exercise the rule of law. What am I trying to say? This is the only time that we really have a Constitution now! We must not lose this opportunity; we must not put this Constitution for self interest or for two individuals going to propose this or that and think that we can come here and follow them. We cannot! We have to consider the whole country! We have to consider the people of Kenya! We do not want more little dictators all around us here.

Madam Temporary Deputy Speaker, let me say quite frankly that we have had no Constitution. The principal and fundamental law is the Constitution. The supreme law is the Constitution. We have never had it. We must now have that rule to avoid this country from wobbling around from one side to another or being directed by dictators and a few individuals who want to ride over a few people.

Let me say quite frankly that the Lancaster House Constitution was abrogated. The Bomas Draft was scuttled. I remember very well when two Ministers came at the door of the hall and said; "All of you gentlemen, it has now been decided that you pack up and go home." That is exactly what we did. We packed up and went home. This is the only opportunity we have to make a Constitution that we think belongs to the people of Kenya. We went to the referendum and it showed exactly that the people of Kenya wanted devolution. People wanted to be in charge of their own affairs. They wanted people to be in charge of themselves. However, it did not work. When we came back from the referendum, some of us were sacked from the Government because we voted for the referendum. You can see the malice that is in this country. That is why we want a Constitution that will guarantee the rights of all the citizens of Kenya. We all agree that the President has too much power which leads to dictatorship and creates problems for others. That is why I am saying that this is the Constitution we must settle on.

Madam Temporary Deputy Speaker, I opposed the Naivasha retreat because I did not know what we were going to do there. The Kabete thing was forced on us. However, what came out of the Kabete retreat except disagreement? What would have come out of this thing called "*Kamukunji*"? Nothing! It is only this Parliament that must decide what we should do about the Draft Constitution. I think we should adopt this document without any amendment.

(Applause)

Rumours are going round that we must be courageous and brave. We have been brave all the time and the bravest thing is to get the people of Kenya a Constitution that will not create a disagreement with other people. I am saying this very clearly, and it is my own view. We have missed the Lancaster House Constitution, the Bomas Constitution and we could be missing this one. What is the so-called Constitutional Assembly for? It is a question of wasting time and money. Going to a *Kamukunji* is a waste of time and money. Although some people are saying that we bravely change this document, I am saying that we bravely hold onto this document as it is now.

(Applause)

Madam Temporary Deputy Speaker, I think this thing is really complete. This is because it went through the Parliamentary Select Committee (PSC) very well. The Members of that Committee did their best. The Committee of Experts (CoE) came back and did their best. I commend the CoE because they were guardians of the citizens of this country in this process. They are experts and we should respect them.

When some people were proposing this Kabete thing, and I want to say that in passing--- We must forget what the media is saying. The Fourth Estate in any country has a right to air what it wants provided it is the truth. We cannot write-off the Fourth Estate at all because it is part of our democracy. We can also not write-off the civil society because it forms the basis of our democracy and we must listen to them. I think the CoE and the PSC listened to them. Every one of us has a little article that they would like changed for their own interest. That is what I oppose. Any personal interest towards this document must be removed.

We tabled our memoranda before the CoE and this is what they included in the proposed Constitution. According to the Constitution of Kenya Review Act, it is finished. It was to start with the CoE and then the PSC and then back to the CoE. Now the document is in Parliament. It is for you and I to decide whether to open up or not. I personally, and I wish everybody would hear that I do not recommend any opening of the discussion of the Draft Constitution at all.

(Applause)

Madam Temporary Deputy Speaker, when it comes to land, because there are some areas that some of us would like to propose changes, we have Parliament and we can always enact legislation to amend some of these things. We need not go to Naivasha or Kabete. Parliament is here. We have got a responsibility and the right to do that.

I am aggrieved somehow because there is legislation here that says that any grievances on land--- It is said that people who are aggrieved will not bring their complaints which were before 1963. For example, this is with regard to the way the British treated the Maasai. We are told that we cannot forward our complaints; that it is passed. We have been told that we have been locked out. For God's sake, we should have Parliament establishing a commission to deal with the historical injustices in this country. That commission should go into these matters properly.

They say in the history books of this country that the Maasai actually faced the biggest rip off in British colonial history, especially with regard to land. We lost one million-and-a-half acres. It was annexed with the power of arms. We never got an inch back when the British went away. We never got any compensation or reparations. This is why I say that Parliament can still be effective even in making small adjustments like the one they would make with regard to restoring the rights of the Maasai. So, to say that we should do this and that just because two individuals feel that they are very important and that they can bring change to this Constitution without the people of Kenya who are out there and not being consulted, is wrong.

Madam Temporary Deputy Speaker, we have a few things to correct in this country. We have to correct things like corruption because it is one issue that has made

this country hang in the balance without being a proper nation. We still have corruption entrenched everywhere.

I would like to say very clearly that I have read the Article on the Judiciary. We can still make amendments here but not overhaul the entire Draft just because a few individuals still want us to go back to the dark days because they want to be presidents of this country. So, they want an opening for perpetuating corruption and seducing the Judiciary and everybody else, so that they can rule us forever, just as they were ruled forever in the past.

We have to be very careful. As far as I am concerned, this Draft has been prepared properly. We have got a little disease in this country. The “Kenyatta” Constitution, with the help of his Attorney-General and many other people who are intimidating people in this House, was amended about twice the number of times the Constitution of the United States of America (USA) was amended. We are now being told to start amending this Draft Constitution even before we start the new constitutional order.

Madam Temporary Deputy Speaker, all these amendments could be personal, malicious and injurious. So, we should stick to this Draft Constitution, as it is. Let us stand together even when it comes to voting. I am sure that we can gain 145 Members of Parliament who will say that this is the right Constitution for this country. We are not going to be intimidated. Some of us are never going to be intimidated by two people who will sit at a corner of this Chamber and say that they will include certain amendments into this Draft Constitution, while banging the Table. Never!

(Applause)

Let me say very clearly that we have a few things to change in Parliament; like the Judiciary. I am not even satisfied that there are enough measures to control corruption in the Judiciary at this stage, but we have an opportunity to enact some of the legislations to improve the role of the Judiciary, so that its officers can be servants of the people and do the right things.

With those remarks, I beg to support.

(Applause)

The Temporary Deputy Speaker (Prof. Kamar): Hon. Wamalwa!

Mr. Wamalwa: Thank you, Madam Temporary Deputy Speaker, for giving me a chance to support this Motion for the adoption of the Draft Constitution as moved by the very able Chairman of the Parliamentary Select Committee on Constitutional Review, my learned friend, Mr. Abdikadir, and seconded by his very able Vice-Chairman, my learned friend, Mr. Ababu Namwamba.

A former President of the USA, Franklin Roosevelt, once said that there is a mysterious cycle in human events, where sometimes, to some generations much responsibility is given; to others, much is expected. To his generation, he said that his generation had a rendezvous with destiny. I believe that to the Tenth Parliament, much responsibility has been given by Kenyans and to this Parliament, much is expected by Kenyans. Indeed, this Tenth Parliament, has a rendezvous with destiny.

I feel very privileged to be part of this Tenth Parliament. I thank God and the good people of Saboti who elected me to represent them here. Many years ago, they had sent different representatives from that region, some of whom went to the Lancaster House before I was born. These were Henry Pius Masinde Muliro, Wafula Wabuge and a very distinguished lady, the late Priscilla Abwao.

Those were the three people who came from that region, who were at the Lancaster House, and who brought the first Constitution at Independence. They were able to live for over 40 years and they saw that Constitution distorted. They saw it torn apart through many amendments that had left both body and soul---

Madam Temporary Deputy Speaker, in 1992, the late Masinde Muliro was amongst those who were in the Lancaster House, who joined the late Jaramogi Oginga Odinga, Kenneth Matiba and Charles Rubia. We had the “young turks” then, who included Messrs. James Orengo, Gitobu Imanyara, Raila Odinga, Paul Muite, Prof. Anyang’-Nyong’o; the late Messrs. George Kapten and Wamalwa Kijana; Dr. Mukhisa Kituyi and Mr. Musikari Kombo, amongst others, who joined the veterans who were at the Lancaster House, and started fighting for a new constitutional order in this country.

This House must pay tribute to those reformists who have stayed faithful to the course. We are privileged to have people like Martha Karua in this House. We cannot, and will never, overlook their contribution to this course. Indeed, after August, 1992, Masinde Muliro was the first one to “exit” when the clamour for multiparty democracy was in high gear. In 1996, Wafula Wabuge “exited”. Amongst the three persons who were at the Lancaster House, the last one to pass away was the good lady, the late Priscilla Abwao.

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

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

Mr. Temporary Deputy Speaker, Sir, the day the late Priscilla Abwao “exited” was very significant. It was on 17th November, 2009, when the Committee of Experts (CoE), under the leadership of Nzamba Kitonga and his very able Vice-Chair, Ms. Atsango Chesoni, delivered the Draft Constitution at the Kenyatta International Conference (KICC). On that day, the Prime Minister made an announcement to the effect that Priscilla Abwao had passed away on that very day, as the Draft Constitution was being handed over.

Those of us who were at the Kenya Institute of Administration (KIA), Kabete, saw what the PSC on Constitution Review had been doing. They were lighting a candle of hope. The candle had burned throughout sessions and it made sure that we keep hope alive. I believe that the passing on of Abwao was very significant because that candle continues to burn today, long after Priscilla Abwao, Masinde Muliro, Jaramogi Oginga Odinga, Ramogi Achieng Oneko, and all the rest, had exited.

Mr. Temporary Deputy Speaker, Sir, looking at history, it gives us a sense of responsibility that we bear today, as a House; to ensure that we pass this Draft Constitution. We must, as we appreciate the work that has been done by the other two

organs, namely the CoE and the PSC. Our role, as the third organ, indeed, under Section 33(4), is to pass this Draft with or without amendments.

Indeed, we do not have a freehand, as Parliament, to do whatever we wish because we remain guided by the guiding principles that were put in the Constitution of Kenya Review Act, under Section 6. The first guiding principle states that the national interest must take precedence over regional, sectarian or tribal interests. The second principle is that all the organs of the review, be it the PSC or the CoE or Parliament, must be accountable to the people of Kenya.

In delivering this Report and the Draft Constitution to the PSC, the CoE said:-

“The proposed Constitution of Kenya herein attempts to capture the consensus achieved by the PSC in Naivasha without – this is very significant – sacrificing the views of Kenyans as expressed throughout our history of constitution-making. It also seeks to conceptualise such consensus and public views within a coherent framework of time-tested constitutional principles and structures.”

Mr. Temporary Deputy Speaker, Sir, looking at those principles that we have been given, indeed, any changes we intend to make – because we have the powers to do it – it is either we pass it without amendments or we pass it with amendments. However, it must be within the principles that we, ourselves as a House, set in the Review Act. We must not go beyond the wishes of the people of Kenya.

On the consensus that was built around contentious issues, we did have the issue of devolution and system of government and transition. The PSC sat in Naivasha and built consensus, taking into consideration the views of the majority of Kenyans. They chose a two-tier system of government. This is the devolution that was agreed upon in Naivasha. Indeed, when we came to this House, we did propose that we go to Naivasha again to build further consensus.

Mr. Temporary Deputy Speaker, Sir, I recall that you were amongst those who were against the trip to Naivasha. I do recall that Mr. ole Ntimama was amongst those opposed to that retreat. I was amongst the proponents of that retreat. However, I must say today that, indeed, I do regret having proposed and having so vehemently argued for the retreat in Naivasha that ended up at Kabete.

Instead of planting the seeds of consensus, what we did out there was to plant seeds of discord. We did open the door. Indeed, when we went there, I had in mind what I had seen in Kakamega a few weeks ago. The people of Kakamega were arguing that amongst the counties given Kakamega was two large. It had nine constituencies in one county. The neighbours in Vihiga had only four. The next day, I was in Meru. I went to Igembe and the same complaint was there that Tharaka and Nithi which are two constituencies had one county, and the larger Meru had seven. The issue was how do we look at the issue of getting more counties so that we can make it fair to all in terms of equitable distribution of resources? This is the issue we were looking at as we went to Kabete.

Mr. Temporary Deputy Speaker, Sir, I think when we arrived there, we got more than we bargained for. We went beyond the counties that we were looking at and we had the issue of regions introduced. We know that we are entitled to bring these amendments at this hour but we must be careful to ensure that we do not, as a House, violate the very principles that we have established.

I do so by referring to the report given to this House by the Committee of Experts (CoE). In their report, they are saying that the major implication of the consensus is the shift from the three level to the two level system of devolved Government. This is under devolution and this is what the experts were saying. The reason we shifted from the three-tier system of devolution to a two-tier system was this. It is noted in this report. The public had expressed concerns over the roles the HDC had assigned to the regional level of Government and the cost of administration. These were not a few Members of Parliament, the 21 or so who were there. They were millions of Kenyans who had from 17th November, 2009 given their views for 30 days. They had said they did not want three-tier system of Government because it would be too costly and cumbersome. In building consensus, we arrived at a two-tier system of Government. This is the consensus we achieved in Naivasha.

If you look at what the CoE did, you will find that they took 21 days after the expiry of 30 days to analyse the over one million views they got from Kenyans. As they did this, they had the expertise and time. They submitted their report to the PSC. After that, the PSC returned their recommendations and the CoE had 21 days to gain synthesis and process the thoughts and come up with this final draft. Therefore, I am saying that the PSC had more than 42 days to give us this document. Indeed, if you look at what the PSC did apart from the CoE that had 42 days, you will find that the PSC in their records show us that they had 46 sittings and 46 days work went into this.

Mr. Temporary Deputy Speaker, Sir, I am saying that in four days in Kabete, we wanted to undo what the CoE had done in 42 days. We also want to undo what the PSC had done in 46 days. I wondered whether what the Jews asked the son of God made any sense when he said; "I can tear down this House and put it up in three days". However, the Jews said; "It has taken us 46 years to put up this temple. How can you pull it down in three days?". Indeed, I am saying that we must appreciate the work that went into this. We must appreciate the principles set out and must do what is not in the interest of our party or our regions but what is in the interest of Kenya as a nation. These are principles that we have set up for ourselves and we cannot abrogate or violate them.

I am urging that although there will be necessity to bring some amendments, there are some proposed amendments that are political in nature that have far reaching ramifications in this country. However, there are also some amendments that the religious group had proposed to do with abortion and the Kadhi Courts. We know that these amendments will be coming. They are ethical amendments. We hope that we can agree to bring these amendments and pass this document. However, if any amendment would violate the very principles set; if any amendment would destabilize the country and bring tension in this country again, we should pass this document as it is without opening the Pandoras box.

Mr. Temporary Deputy Speaker, Sir, I end my contribution by saying that, indeed, it falls upon us as Members of this House to do what we can and to play our role. We have been told that maybe, we are just another organ. We have been told that whether we do anything or we do not, this thing will still go. I want to respectably disagree and say that in our hands as a House, lie great responsibility. Indeed, responsibility greater than responsibility of other Kenyans outside this House. If we disagree here, if we mutilate this document in any way that is so fundamental that the people of Kenya reject it, that is

a mark that will go down on our record as the Tenth Parliament. However, we do have a historical opportunity to rise up to the occasion.

Where we stand reminds me of one of Shakespeare's Julius Ceaser when he said:-

“There is a tide in the affairs of men which captured at the flood, brings fortune, omitted life's void is spent in shallows and miseries”.

On such a high sea we are afloat now as a Parliament and as a nation. Unless we take this opportunity to capture it at the flood and give Kenyans a new Constitution, we will have this country wallowing in the shallows it has in the last 20 years.

With those few remarks, I beg to support.

The Assistant Minister for Nairobi Metropolitan Development (Mrs. Ongoro): Thank you, Mr. Temporary Deputy Speaker, Sir. I rise to give my support for the Draft Constitution before this House.

However, before I say why I support this Draft Constitution, I think it would be in order for me to state why I have problems with the current Constitution. The current Constitution has a lot of defects, chief amongst them is that it puts too much power in the hands of one person. Again, power is concentrated in one region which is Nairobi.

Secondly, it does not have adequate accountability measures that can help this country deal with corruption. Corruption that has permeated generally even within the Executive and most recently, what we have seen exhibited by the police. I also think that our current Constitution does not guarantee equal and fair distribution of national resources. This has been a bone of contention for many years and it is time we had a Constitution that enshrines the equal distribution of resources to all parts of this country.

The current Constitution also discriminates against vulnerable groups like women, children and marginalised communities and some ethnic groups. In view of that, I have taken my time to read the Draft Constitution that has been presented before us and of particular interest are the provisions that are contained in the Bill of Rights. What really excites me is the creation of independent institutions. The proposed draft gives serious consideration to the distribution of power through the creation of independent commissions so that anything that is politically contentious, sensitive or anything that needs or requires special skills will be entrusted to independent commissions.

Secondly, marginalised and vulnerable groups have been given specific attention with the specific inclusion of children, youth and even those with disabilities. That is a very good provision. There is also a very interesting and new provision on access to information. Access to information has been used to cover mega corruption. If we are going to enshrine this in the Constitution, then the public will have an opportunity to access information that is currently classified and that is being abused by various institutions. Within the Bill of Rights, there is also the creation of Economic and Social Rights which is very interesting because one of the major contention of Kenyans is that sections of the society feel that they are left out of what has been known as the “national cake”. If we have these created, it facilitates the well-being of Kenyans and they are able to access basic needs as a right contained in the constitution.

I have also noticed that the new draft has enhanced the operations of human rights bodies and apart from that I have noticed the provisions relating to culture. These have given sufficient safeguard for Intellectual Property Rights. Currently, we have lost a lot of our indigenous knowledge to foreigners who take it to foreign countries and then

patent it in those countries. This provision now will ensure that whatever belongs to Kenyans will eventually be of use and benefit to the people of Kenya.

Mr. Temporary Deputy Speaker, Sir, I support the proposed draft Constitution because of the provisions contained on representation of the people. For the first time in Kenya, they have introduced a regulation that controls what somebody can spend during campaigns. This will ensure that anybody, even that category that classify itself as having lean pockets can now engage in the process of campaigning. That is very good! There is also a provision that political parties are required to present their lists of those they propose to nominate. That is very good because what is currently happening is that many people have even lost their lives because they were given false hope of nomination. When the time comes for lists to be presented, then you are shocked and some people have even dropped dead from shock. It is only fair that those lists are presented before election.

I support the provisions regarding the Legislature; chief amongst them is the creation of the Senate with clear roles and functions. I support that fully! This is what we have been talking about because we have all been supporting devolution. The creation of the Senate is not going to make this House useless. As opposed to that, it is going to make us more relevant because we are going to have the Senate working closely with this House and passing legislation; helping us to regulate certain things that have not been able to pass in this House. Secondly, on the Legislature, they have also made provisions that Parliament can pass a vote of no confidence if there is a rogue Executive. That has been very difficult up to now. But the provisions contained in the draft Constitution makes it very easy. With that, we are going to have an Executive that is more responsible.

Thirdly, still on the Legislature, they have created a clear distinction between the Executive and the Legislature. Currently, we do not really have a clear demarcation between those two institutions and, sometimes, members of those two institutions are confused as to who they should pledge their allegiance to. That is not very good for good governance. I still support because there are changes that have been proposed in the composition of Parliament with a specific provision for representatives with disabilities. This is taking care of a very big percentage of this nation. The last Census gave us an approximate number of 300,000. If we have a section of 300,000 people without proper representation, it is not very good and that has now been taken care of.

I have read the provisions on the Executive and what impresses me most are the checks and balances that have been put in place. Now the Executive is going to be interrogated constantly by this House, even on the issue of appointments. All appointments will be subjected to interrogation by this House. This is going to ensure that all ethnic groups, regions and kinds of interests are taken care of because any list that is presented to this House will be thoroughly checked by all hon. Members. I am sure every hon. Member who will be present in the Eleventh Parliament will make sure that his or her constituency is taken care of.

Mr. Temporary Deputy Speaker, Sir, there are also provisions on the Judiciary and a lot has been said. But what stands out is the creation of the Office of the Deputy Chief Justice. What we have currently is a very critical scenario. In case we went for elections and for some reason, the Chief Justice decides to make a disappearing act, we will not have anybody to step into his shoes. The creation of an office deputising the Chief Justice is, in my opinion, very good.

Again, we have a new system of courts with one that will specifically take care of land and environment issues. This is very good as you know, most of the contentious issues now relate to land and the environment. Still on this, they have provisions for the process of appointment of Judges, the Chief Justice and his deputy. This process, according to me, will be competitive but it still needs Parliament approval. I support that provision.

I support the provision on devolved governments because we have been talking about devolution of funds and everything. What is contained in the Draft Constitution is a devolved government with the counties and the national Government. Sometimes, I am torn between the two with those who are advocating for the creation of regional governments. While it could be good because that would be enhancing devolution, I ask myself the question: Right now, having looked at what we went through after the 2007 elections, is this country ripe for that kind of balkanization? Devolution is good and I support it but I want to go on record that it is my opinion - I was in Nairobi and I know what took place. This country is not currently ripe for that kind of balkanization because the memories of 2008 are still too fresh in the memories of our people. Clustering them together and telling them that now, you have your own cluster with your own people, with those who are responsible and you can visit as far as you can go, they will separate themselves from the national Government and we might end up with more problems.

Mr. Temporary Deputy Speaker, Sir, it is my honest opinion that while this provision is good, let us have the provisions as contained in the Draft that was presented by the Committee of Experts which contains the counties and the national Government for the sake of our people and the avoidance of insecurity.

I want now to make a comment on the provisions contained on public finance. What impresses me most under this is that they have now put in place institutions that will control the use of public money. That is one thing that if this Government can put in place and implement effectively that any member of the society is able, not just to access information but to interrogate the use and allocation of public money, I think this will solve the problem of suspicion of people thinking that they are either marginalized or left out of the national cake. I support this.

Mr. Temporary Deputy Speaker, Sir, secondly, I support what is contained in this Draft because they have separated the roles of the Auditor-General and Controller of Budget. That is not happening now. Putting this in place, now having the roles of Auditor-General and Controller of Budget creates checks and balances from one institution to the other. The Auditor-General can now be checked by yet another institution and I support that fully. Currently, you cannot interrogate the Auditor-General. So, whether he makes mistakes or is not transparent in certain things, that cannot be put to question.

Another provision that I support fully under the provisions on public finance is that they have created a process on equitable sharing of revenue. The process is very clear as contained in the Draft Constitution and when you read through, you can actually see that even a layman, given the knowledge that this is what we have for this year, you can almost calculate how much will go to Nairobi, this county and the other county. This is very good. We are not leaving this now in the hands of a few people who might use other avenues to make decision about which region gets what.

Mr. Temporary Deputy Speaker, Sir, there is also the creation of the Equalization Fund. I took my time to read what this stood for and I also talked to those who have done finance to some high level. It is my opinion that when we want to devolve at this stage, we are not starting our devolution at par. Some regions are more developed than others. So, the creation of this Equalization Fund, which is put at 0.5 per cent per year, will allow those regions that are going into devolution without much development to upgrade their development status to be at par with those regions that are going into devolution already developed. This Fund is specifically for development projects within marginalized regions.

They have also made very specific provisions to enhance how they think that equitable sharing of revenue between the national Government and the county governments should be. Some people were of the opinion that the creation of counties will bring a lot of problems, but the draft puts it very explicitly. If you read through, you will know that there will be no confusion between the counties and the national Government. So, I support what is contained in the draft.

May I now comment on my support for the provisions of national security? It is very interesting that when you read the papers, the blame game that is happening is really amazing. One force blames and accuses the other force and the other force thinks that it was the responsibility of the other force. So, the creation of the office of Inspector General gives us a platform that the buck stops somewhere. This person will be in charge of the combined police forces. That means that in case of interrogation, whichever way, we have one person to interrogate on matters of security. Again, the draft now subjects our forces to some constitutional checks. This has never happened. Our Armed Forces are operating in an amorphous kind of a structure that you cannot question, interrogate or even know exactly what happens.

With those remarks, I support.

The Minister for Roads (Mr. Bett): Thank you, Mr. Temporary Deputy Speaker, Sir, for affording me this opportunity at this momentous occasion and historical moment when we are debating the draft Constitution and deliver to the people of this country the much needed document; the new Constitution.

On the onset, I want to pay tribute of congratulations for a job well done to all the institutions and organs that have come before us. I want to thank the CoE. They may be 14 members, but they are people of integrity and knowledge. I also want to thank the (PSC), more so the Chairman and his Vice-Chairman. These are first timers in Parliament, yet with eloquence and commitment, they have guided the PSC until we are here today.

I also want to thank these hon. Members who are assembled here. They are assembled here with one purpose; to debate and deliver to the people of this country a new Constitution.

Mr. Temporary Deputy Speaker, Sir, every morning before 6.00 a.m., a friend of mine in Kericho sends me a text message or an inspirational note for the day. Today, he sent me one. It says: "Embrace this day with hope." The liberating word is "hope". The people of this country have hope in us. They have placed their confidence in us. They believe in the minds that the Members of Parliament they elected shall give them this Constitution. Then I took time to look at the Holy Book and what it says about hope. I came through a statement by King Solomon, writing in the 10th Century B.C; he said:

“Hope deferred, hope delayed makes the heart sick.” Let us not delay the hope of our people. It will make their hearts sick. Let us not give them more pain on this document. Let us take the challenge, decide, bite the bullet and deliver to our people a Constitution. Let us avoid situations where the councillors, under the headship of Councillor Majiwa, picket on the streets saying that their roles have been obliterated from the Constitution. I would be very happy also to see the Prime Minister of this Republic picketing because his role has also been removed from the Draft Constitution. I would expect these Members of Parliament to also picket because the possibility of one of them being appointed Minister has also been removed. Also, on the Clause on recall Members of Parliament are not worried, yet it is a security for them, but they are not picketing at all. So, I want to advise our friends the councillors not to take things emotionally and start demonstrating; not realizing that others are also sacrificing their positions. Let us not take it personal; let us take it for the nation, this country and our land. It is not meant for the sitting President, Prime Minister or these Members of Parliament. It is meant for this generation and generations to come. If we do not see it that way, we will not get a document. We will just be replaying what happened in Bomas.

Mr. Temporary Deputy Speaker, Sir, I want to indicate that this document should be seen as a serious document. It is our life and the lives of those people who are marginalized, disadvantaged in our society and every person in the land. It is the hope of this generation and generations to come. We must all look at it in that light. It must be fair and have adequate checks and balances. If it does not have, let us throw it into the dustbin, because we will be introducing dictatorship, nepotism and such other situations which we do not want to have again in this country. I want to appeal that we look at it that way. It must be a document that will procure for us the peace that we so much need and the harmony, togetherness and unity that we all need very much in this country. It must be a document that will procure for us prosperity and secure the welfare of the nation on equitable basis without one section of the country suffering. That is the document I am looking for.

Mr. Temporary Deputy Speaker, Sir, I hear a voice that let us not change it. Yes, those voices have got the right to do so. But if you go to tea processing factory, there is a section of that factory that is called the conveyor belt. It simply conveys what has been processed. It does nothing about it. It simply takes into the export section or distribution point what has been processed. I do not want to see myself as being a conveyor. We need to ask ourselves: Are there faults in this document? Are there loopholes in this document? There are even editorial problems. We cannot simply say for example, Clause 36(1) under Freedom of Association, you find that it is stated that all of us are free to join any association of any kind. We must find a way of qualifying it. We cannot be simply sent into joining associations which are not necessary, legal or which are going to be dangerous to our lives. Of course, I am saying that knowing very well that an American once upon time in South America got into a cult. In that cult, he simply gave cyanide to his followers and he told them: “Take it and you will be in heaven today.” They had no choice. They took it and they all died. Let us interrogate this document where it is necessary to do so. Let us not be a conveyor belt. Let us not fear to say a section needs to be refined, improved and strengthened, so that we are able to have a document that will serve our children and children of our children.

Mr. Temporary Deputy Speaker, Sir, look at the Senate and the National Assembly. Elsewhere in this document, it is stated that the President can be impeached. Then we are asking the two Houses to perform that function. Supposing the other House refuses to pass on its findings to the next House because of other interests, what shall we do? We need to clear those cobwebs.

Mr. Temporary Deputy Speaker, Sir, I know the police force will reform. I know my sister hon. Karua said so eloquently that the police will be reformed. It will bring a force that is disciplined and able to enforce law and order in this country. But there are other forces. There is the Kenya Forest Service. There is the Kenya Wildlife Service. My worry is what happened in Narok the other day where we found a cache of arms and several guns in the hands of a person. We were told that people who are buying ammunitions from the factory are many, so we cannot know who took them. We need to net in these other institutions that are also authorised in law to own and use firearms.

There is a common statement which is often said. I find it a cliché that there is no perfect constitution in the world. Yes, there could be. Why should we place ourselves in a defeatist position? Why should we demean ourselves? Why should we downgrade our capabilities and wisdom? Why can we not rise up and face the institution and simply say we will do our best as opposed to saying that there is no perfect constitution in the world? As we look at this document, there are varied views and opinions. That is an entitlement of every person. There are passions. I saw the hon. Member for Kuria constituency yesterday. I know of other Members of Parliament who are passionate about this and that. There are other local interests. There are even selfish interests. I dare say those of us who want to be the President; I can assure you, they got selfish interest in this document. Now, these are the issues we must tame. We must bring them to a level of compromise so that we come to a common ground, so that nobody is trampled upon or thrown out for no apparent reason. I want to say that at the end of it all, after looking at all those views and opinions, we must do one thing. We must give to the people of this country an instrument for the management of their affairs. I do not want to subscribe to that pessimistic attitude that “if we pass this Constitution”. I want us to say we will pass this Constitution. That is being positive. But if we start giving up, I find it so difficult.

Mr. Temporary Deputy Speaker, Sir, let me now turn to the Chapter on Devolution; Chapter 11. I want to indicate from the outset that every time there is talk of devolution, people run quickly to the word *Majimbo*. There is no equality between the two words, devolution and *Majimbo*. Those who are asking for regional governments are not asking for *Majimbo*. We are not asking for that! That is because the word *Majimbo* has been tainted; it has been messed up and it appears as if every time it is mentioned, it means that people will be flushed out from other areas!

Mr. Temporary Deputy Speaker, Sir, Rift Valley has got 42 tribes in there. Coast Province has got 22 tribes there. Can you imagine the efforts or the exercise that any mad man will undertake to remove people from that province because of not being indigenous? It is an impossible task! We are simply saying that regions are meant for people who are there; they are meant for the Kenyans who are already resident in those areas. O, how I wish I was resident in hon. Ndambuki’s constituency! I will belong to that region comfortably! How I wish I was resident in Dr. Ottichilo’s constituency; I would be happy. That is what we are simply saying. Anybody thinking it means removing people is simply thinking backwards! That is not acceptable at all to my mind.

Mr. Temporary Deputy Speaker, Sir, let me indicate that, one, I am a system analyst. I have a lot of experience and I am familiar with our national structures and issues thereto. Ask yourself, and if you will allow me, Chair, I have taken the trouble to do some drawings.

(Mr. Bett displayed some drawings)

Mr. Temporary Deputy Speaker, Sir, what is on the document is, for those who can see, a diagram of national and straight to counties. It is a drop from up there up the bottom. That is what is on the draft. My fear of this document is that this group here---

*(Mr. Bett pointed at the counties
at the bottom of his drawing)*

If they decide to channel their information up to the national level, they will be overloading the national office because they are too many for the national office. Also, the national office can easily manipulate, on political grounds, the counties.

Mr. Temporary Deputy Speaker, Sir, I am saying: Let us think about the organizational structure and the ability to move things. Then, what I am proposing and suggesting is what has been said; that is the structure.

(Mr. Bett pointed at the drawing)

That is national, regional and counties. The counties can have other things below it. What I am saying there is: This national level will not be overloaded because some of the issues will be filtered at the regional level, either coming upwards or going downwards.

(Applause)

Mr. Temporary Deputy Speaker, Sir, the other thing which I am also saying is that this national level will benefit the regional level, which will be a training ground for ascension to the national level.

Another thing, Mr. Temporary Deputy Speaker, Sir, is that there is the concept of delegation which is lacking in this one. You will be able to delegate some issues from the national level to the regional level, and from the regional level to the county level.

Mr. Temporary Deputy Speaker, Sir, I am not averse to 25 regions. I support the 25 regions and that those regions be done without recognizing the problem of ethnic community and all that. That is why I will be very comfortable if I am told today that there is a region in Central Rift to put together the old Kericho District, together with the old Nakuru District.

I will be the most comfortable man. I know the people who live in Nakuru. I am not ignorant to that. They are Kenyans and they deserve to be in Nakuru District. I will be very happy to work with them. Anything beyond there will amount to not being kind to one another.

Mr. Temporary Deputy Speaker, Sir, I would like to talk about the Kadhis' Courts. I want to tell my brother Sheikh Dor that I am not asking, for one moment, for

anything to throw it away. I am simply saying that I am a Christian. I belong to the Deliverance Church which is Pentecostal. My Bishops, Mark Kariuki and Kipruto have told me that we should do the following. That is what I want to say now. We love all human beings on earth. The command in the Bible is “love your neighbor”.

We love the Muslims. They arrived in the Constitution before us. What we are only asking--- Please allow me to quote from the Holy Bible, that is, the book of 1st Corinthians, Chapter 6, verses 1- 4. It was written by St. Paul in Ephesus in AD 55. He was writing to the people of the City of Corinth which was of religious diversity. It was full of immorality and corruption. We do not sound far away from there.

St. Paul wrote as follows:-

“When one of you has a grievance against another, does he dare to go to law before the unrighteous instead of the saints? Do you know not that the saints will judge the world? And if the world is to be judged by you, are you incompetent to try trivial cases? Do you not know that we are to judge angels? How much more then on matters pertaining to this life? So, if you have such cases, why do you then lay them before those who have no standing in the church? I say this to you.”

That is St. Paul writing to the Corinthians.

I am aware that Christians have made attempts to request that a law be written for them to handle family issues. They have done so. Family issues are not the preserve of our brothers, the Muslims. We, Christians also quarrel with our wives. We have got issues of marriage and divorce, just like the Muslims. What we are simply asking for, and I want my brothers the Muslims to hear me out, is to be accommodated in that provision without bringing down the house or interfering with the other occupants in the house. That is all we are asking for. We are asking to be accommodated in a provision that equally affects us. I believe that request is not too tall.

It is a request that we be allowed to call them “religious courts” which will be mandated to mind the Kadhis Courts, Christian Courts, Hindu Courts and others so that we are able to have somewhere to run to on matters that are personal to Christians, Hindus or animists. I would like to appeal that both the Muslims and Christians draw themselves to a compromise. We also need to benefit the same way the Muslims benefit from that particular provision in the Constitution.

We are only asking to join you in benefiting from that provision. I want to repeat that we are asking for accommodation in the house, without bringing the house down and without disturbing the occupants of that house. That is all we are asking for.

As I conclude, I want to say that I had made an indication on the issue of checks and balances. The Senate must be able to crack the whip when it is necessary to do so. I support any other form of checks and balances as was stated with regard to auditing.

Mr. Temporary Deputy Speaker, Sir, I will rest my case and plead with hon. Members on the issue of abortion. I do not have much to say. I would be happier if we could leave it to legislation. I also want to ask Christians to re-look at that provision, as I said before, with a view to repealing it.

With those remarks, I beg to support the adoption of the Draft Constitution, with amendments.

The Assistant Minister, Ministry of State for Special Programmes (Mr. M.M. Ali): Thank you very much, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to add my voice to this very important debate. Allow me at the outset to

congratulate the men and women of the PSC on Constitutional Review for a job well done. Allow me to equally congratulate the CoE for doing an equally wonderful job.

Kenyans have been yearning for a new Constitution for many years. We have been waiting patiently for this moment. This is a golden opportunity for us to make that very important decision, which is going to be acceptable to the nation for posterity. I have carefully listened to many hon. Members contribute to this debate the whole of this afternoon. The way this proposed Constitution is drafted is such that nobody can have his way without the support of the other. We all need each other.

Mr. Temporary Deputy Speaker, Sir, there are some people who feel very strongly about certain positions. There are others who do not feel as much on those particular issues. In that context, I urge all hon. Members that as we debate this Draft Constitution, let us do so soberly. Let us accommodate each other because if we go out a divided House – and we appear to be, unfortunately – history will repeat itself. We might face the same music we faced following the Bomas of Kenya constitutional review process debacle. In 2005, Parliament went out to the field a divided House. I was not in Parliament then, but Kenyans were divided because the House was divided. What I see now is a similar situation. We should save the situation right from the word “go”.

When we went to the KIA, Kabete, we were longing to build consensus. As they say, consensus is the best friendship. Unfortunately, listening to a few colleagues speak here, some people are still condemning that consensus building effort. It is very unfortunate because, if we had built consensus, this debate would be very easy for us. We would be speaking in one voice and Kenyans would get the Constitution they want.

Mr. Temporary Deputy Speaker, Sir, let me say that I support the Draft Constitution before us. We need to pass the Draft Constitution but, as we do so, let us not merely pass it. The document we are going to adopt is one for posterity. It is going to affect the lives of Kenyans for many years to come; in many generations.

It will affect our children and children of our children and so on. I have heard people say that the proponents of amendment or change of this document represent narrow, individual and regional interests. I disagree.

Mr. Temporary Deputy Speaker, Sir, I support all amendments that add value to this document. I do not support any amendment that does not add value to this document. We were given an opportunity to discuss this document, debate it, agree on some issues and concede some grounds so that we can move forward. Otherwise, why do we have the National Assembly?

I would like to tell my friends that we are here on behalf of the people. The whole of my constituency cannot come here and debate. Therefore, unless you want me to fail in my duties, I have to echo what is of particular interest to my people. It is these people and the region plus many other regions which make up this great country called “Kenya”. For some people to start saying that I speak like this because I come from that region---- I disagree that I should not represent a region.

My region is Moyale, Marsabit and Isiolo - the upper Eastern, which you know very well. You know the difficulties the whole of northern Kenya and many other Arid and Semi-Arid regions in this country have been facing. You recall Sessional Paper No.10 of 1965 said that development funds will not be channeled to areas where there will be no good returns. That denied us economic opportunity for years and years. That is why when we see some chapters or clauses in this Draft Constitution like the

Equalization Fund we feel a sigh of relief. This is because an opportunity has come for us to also share the national cake. I support such clauses which take into consideration the country as a whole and not selected parts of this country. This nation needs to move together and not in pockets.

Constitutions all over the world have been there to defend or take into consideration the interests of the marginalized communities. This is not done in isolation because it takes into account interests of all the people and safeguards particularly, those groups of “nations” who are affected or marginalized.

Mr. Temporary Deputy Speaker, Sir, I have a particular chapter in mind. This is the chapter on representation. The Committee of Experts (CoE), the Parliamentary Select Committee (PSC) Members had very good intentions when they tackled this chapter on representation. They wanted to consider, fairly, representation of all Kenyans regardless of where they come from; region; geographical locations and so on. In so doing, they talked about some formula in the Constitution. This formula attempted to address the problems that we have been having. However, if you look at it carefully, you will find that it further marginalises the areas which are sparsely populated.

Mr. Temporary Deputy Speaker, Sir, when you apply the formula strictly, then you realise that those regions do not benefit at all. I will support any kind of amendment to change that kind of formula in the Constitution in order to make it better and to add value. I am personally going to initiate the introduction of that amendment and thanks to all the hon. Members who attended the Kabete retreat both from the PNU and the ODM and agreed to this position. At least, we have developed consensus on this and for that, I want to say, thank you very much.

It is not unique only to this country. In Canada, the people’s Constitution has a formula for this Chapter to safeguard the interests of everybody. Two regions were specifically exempted from the application of that formula because those two regions would have been seriously disadvantaged.

In India currently, where the Speaker of the National Assembly comes from, they have 2.5 million people in that constituency. In the same country, we have areas which have populations of as low as 35,000 people. This is clearly recognised in that country. So this notion that people must have populations as near as possible, will disadvantage some regions and that must be addressed. If you say let us have equal or nearly equal populations, are the living conditions almost the same? When you talk of those arid and semi arid lands, we do not have health centres or health facilities like all the others; people travel over 70 kilometres to reach a dispensary. By the time that mother who was to deliver reaches there, either the child or herself will be pronounced dead.

Some research showed that out of 1,000 babies born in other parts of the country, only 3 pass away while in arid and semi arid areas, out of the same number of babies born, a whole 300 of them pass away. How then do you compare the two? There is a whole world of difference. We do not have road networks, communication is impossible because of these difficulties. I want to say that that chapter on representation be amended. I hope all the Members will support it.

Mr. Temporary Deputy Speaker, Sir, on the devolved Government, I support a situation where resources trickle down to the grassroots effectively. If we can increase the 47 counties, that would be better. They made a good effort but that was not enough. Historical formula must be considered. At independence – let me use my region because I

understand it best – in 1963, we had six Senators from Upper Eastern Province and in their wisdom, even though we were sparsely populated, Moyale, Marsabit and Isiolo each got one Senator out of the six.

So, what am I trying to say? Even in those old colonial days, the sense of balancing and taking into consideration disadvantaged regions was heeded. But when you propose 47 counties and remove a place like Moyale, for example, where we had among the first senators in the country--- Senator Sora’s file is still lying here. If you knock it off and ask the people of Moyale to support that, and then expect the Member of Parliament to keep quiet and just pass the document, it is not acceptable. We have to be balanced in our debate. We have to appreciate each other. We have to take into consideration many factors when we debate this very important document.

Mr. Temporary Deputy Speaker, Sir, on regional governments, many people have argued for or against. I do not understand where everyone else is coming from in their arguments but, for me, I will go back to the same region that I have mentioned. From Moyale to my provincial headquarters in Embu is 700 kilometres away. I hear these big communities saying that they shall do this or that. We are talking about services being brought closer to the people. I advocate for those kinds of regions because they add value. My region, given the opportunity, will be able to take charge of its resource allocation and development agenda. The leaders and the people at large will be able to participate in the progress of the region. For that, I support the proponents of the regional government, not for anything else, but to ensure that all the regions come up together. It should not be in isolation. Previously, with regard to resource allocation, some regions have benefited more than others and any system to check that is welcome, as far as I am concerned.

There are many issues that we need to raise but because of time, I want to say that I am happy, to a large extent, about the document. This is a document that we must agree to discuss soberly and pass. This is the only opportunity we have, as hon. Members, to deliver this document to the great nation of Kenya. But we must accommodate each other. I do not want to see a situation where we will go to the Referendum and the House is divided again. That way, we will not reach anywhere. Let us not just be too happy when a few people who have debated in a certain direction are applauded and think we are supporting their point of view. We must make an effort to get on board others who are thinking in that different direction. That is the only way we can rescue this document.

Before me, my respected friend, Mr. Bett touched on something to do with Kadhi’s court. He had requested that, as Christians, you be accommodated. I hope he is in the House. I want to say that he is a senior hon. Member, very respected and I respect him very much. Let us not create other contentious issues which have not been contentious. This will just widen the gap and will narrow the opportunity for this document to succeed when we go out there.

(Applause)

He has touched on a very sensitive Chapter. We have been living in this country with the Kadhis’ court from time immemorial. I do not think it has affected Christians in any way. Please, let us not imagine problems which are not there. Let us not say that because Kadhis’ courts have been entrenched in the Constitution, let us also be entrenched there.

Kadhis' courts have been entrenched there because of the unique characteristics of the Islamic religion.

I want to urge my dear colleagues, please let us not go there because that will jeopardize this very important process and affect delivery of this document.

With those few remarks, I beg to support.

The Assistant Minister for Agriculture (Mr. Mbiuki): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me the opportunity to contribute to this Motion on the Draft Constitution. From the outset, I want to take this opportunity to congratulate the Committee of Experts for work well done. I would also like to take this opportunity to congratulate our colleagues in the PSC for really walking the talk and being able to unite and come up with a more improved version of the Draft Constitution.

I will mostly dwell on representation. I would like to support the representation of the people on Chapter 7. We have had challenges of unfair representation in this House. This House is the most skewed House we ever had. There is no semblance of fair representation in terms of population and geographical size. The Committee of Experts has articulated well and has gone a great way to try and address the issue of unfair representation. They have come up with a formula. They have come up with a population quota which will enable us to achieve the much cherished fair representation in this House.

Currently, there are constituencies which are far much bigger than others yet all the devolved funds are channeled to the constituencies, therefore, making some of us very aggrieved. When you look at Chapter 7 on representation of the people, you will realize that the population quota which is being used together with the deviation of maximum of 40 percent for the cities and the ASAL areas, I think it is adequate and will be able to serve the purpose of fair representation in this House.

During last elections, there were some people who said there was rigging in some of the constituencies because of the massive numbers. Never again should massive numbers be construed as stolen votes as it happened in my constituency, Nithi.

Most of the post-election violence which occurred in this country--- Some people mistook massive numbers to mean that the elections were rigged which was also confirmed in the Kriegler Report. Therefore, I am here to support the representation of the people as it is well articulated in Chapter 7. We cannot mind an improvement of the same to take care of our brothers in the ASAL areas so that they can also feel comfortable in the representation of the people. One man, one vote should be the cardinal factor when it comes to creation of the constituencies.

I would like to comment about devolution. We went to the Kenya Institute of Administration (KIA) at Kabete to try and build consensus. Unfortunately, we were not able to get anywhere. When people talk about marginalization, we, the people of Tharaka, have been marginalized by our big brothers, the Imenti from the other parts of Meru. We are happy and comfortable with the 47 counties because we, the Tharaka, have been taken care of.

We support the two tier level of government because our economy will be able to support the same. The Committee of Experts was able to send a memorandum through the Kenyan population. It was well noted that the country cannot be able to support a three tier system which will be very expensive and a big burden to the taxpayers.

Therefore, I wholly support the current counties. Through consensus, we will be able to come to a reasonable number.

Unfortunately, each and every community wants to have a county of its own. If we cannot afford to pass the 47 counties and we have to take care of everybody, let us then have 210 counties, so that each and every Member in this House can be comfortable. Whoever will still be aggrieved by that, it will be upon him or her to bring an amendment to this House and we will look at it. That will be determined by this House.

Mr. Temporary Deputy Speaker, Sir, I am supporting the Senate as the Upper House. The Senate will emanate from a bigger constituency, mostly the counties which are far much bigger than the current constituencies. It will play a cardinal role; that of even impeaching the President. Therefore, we, as the House of Representatives, namely, the National Assembly, need to accord the Senate the right position it requires as the Upper House of governance.

I would like to comment about the Executive. There is a very clear separation of power between the Executive, the Legislature and the Judiciary. Under the current system, it has been extremely difficult for Ministers to survive the following elections because they are so much committed doing Government business to the detriment of their voters. When it comes to the following elections, most of them lose their seats. I wholly support the separation of power between the Executive and the Legislature. Therefore, I support the idea that Members of Parliament should not be appointed to the Cabinet. If it is the wish of the President to appoint any Member of Parliament to the Cabinet, then that Member should vacate this Parliamentary seat and join the Executive.

I want to appreciate one centre of power which is well articulated in the draft Constitution. It took a lot of time and pain for Kenyans to really ensure that they have only one centre of power, namely, the presidency. We are currently in a Grand Coalition Government, where we have the Prime Minister and the President. We are able to see that the working of the Government is not smooth. With only one centre of power, all the issues pertaining to the execution of the executive authority will be well articulated. Therefore, I want to wholly support the separation of power between the Executive and the other arms of Government.

I have only one issue with the absence of Assistant Ministers. The clause on the Executive eliminates the position of Assistant Ministers. It will be extremely difficult, especially in this House when Ministers are so busy elsewhere, maybe in the Cabinet or representing the Government in foreign countries and there will be nobody to take care of their parliamentary duties here. I do not think the Permanent Secretaries will be permitted to come and answer Questions here. So, I strongly believe that there is need to have some deputy Ministers to assist the Ministers in case they are not available to execute their day to day responsibilities, mostly in this House.

Mr. Temporary Deputy Speaker, Sir, we, Christians are pro-life. We strongly believe that this contentious clause on abortion should be relooked at. I wish to call upon my colleagues in this House to relook at this clause, so that we can address the issues which are being propagated by our Christian brothers. We cannot afford to have a clash with the Christians in this country. I would like to recommend that all the clauses pertaining to abortion be relooked at afresh; bring amendments so that we can support the same.

The Budget of this country is presented in this House in June and debated almost up to August. It will be extremely difficult for us to go to an election or dissolve this House one or two months before August. This simply means that if we will go for elections in August, the House is supposed to be dissolved some times in July when we are just done with the Budget. I shall be moving an amendment so that at end of the day, we can have sufficient time to debate the Budget and have it passed.

Mr. Temporary Deputy Speaker, Sir, lastly, I want to comment about the Kadhis' Courts. As my brother, Mr. Bett, had indicated, we, as Christians, are feeling deeply aggrieved by this contentious issue of the Kadhis' Courts. We know that the Kadhis' Courts are in the current Constitution. But, unfortunately, we, as Christians, are feeling that we are not really being treated fairly. We also have a right to have our own religious courts. Therefore, I want to support the issue of introducing the religious courts to replace the Kadhis' Courts, so that all the religions will be at liberty to seek interpretation of their community and religious issues, through the religious courts, since no religion is greater than the other in the eyes of the Lord.

Mr. Temporary Deputy Speaker, Sir, with those few remarks, I beg to support, with minor amendments.

The Minister of State for Special Programmes (Dr. Shaban): Thank you, Mr. Temporary Deputy Speaker, Sir.

First of all, I want to add my voice to that of all my colleagues who have been congratulating the work which has been done by the Committee of Experts together with our own colleagues, the Parliamentary Select Committee. A lot of work has gone into this document. As we are looking at it, when the law was being crafted so that this document could come to this House to be debated for 30 days, it was because we were meant to actually add value to what the Committee of Experts and the Parliamentary Select Committee have already done.

Mr. Temporary Deputy Speaker, Sir, I want to touch on a few issues. One is the issue of the right to life. Yes, we agree that this beautiful life begins in several stages. It starts with a zygote and then goes to a foetus. From a fetus it ends up being a baby. This life must be protected. If we do not protect the two stages, then finally we will not have a baby. So, certainly, I agree that life is God's gift and it must be protected. But at the same time, you cannot protect life without protecting the vehicle which takes care of it. The vehicle here is the mother. Some of the pregnancies do manifest as a disease. If they manifest as a disease, the only way for that disease to be taken care of is through treatment. Now, as we are debating on this, I am calling upon all colleagues to give support to the amendment which will be brought by one of our colleagues, on making sure that we have good language so that we can carry all of us, including the religious leaders. This is because we need to make sure that we protect the baby, the mother and also the medical practitioner who will be taking care of the two. A medical practitioner is not a witchdoctor. He is a person who takes care of life and the only happiness a doctor would have is to deliver a safe and healthy baby and also to have a healthy mother. We can work on that and I am sure our colleagues will support this so that we have the right wordings and make sure that our religious leaders and all Kenyans will be with us on this.

Mr. Temporary Deputy Speaker, Sir, I come from an area where land is such a thorny issue. I have read the land chapter and I am not happy with what I have seen in it. That is why I have said that we have come here to add value to this document. In the

current Constitution, Chapter IX on trust lands, some of our trust lands have actually been protected in the current Constitution. But this new proposed Constitution has set aside all the gains we had made. All the protection that we had in the Current Constitution has been set aside and in a way, we have lost the right that we already had and which exists in the current Constitution.

It is important for us to regain what we have lost, especially for the people whose trust land has been mentioned by name. There are quite a number of areas which have been covered in the Trust Land Chapter VIII of the current Constitution that, really, we cannot afford to lose that particular pride. It was very important for you to be there and when people were discussing this current Constitution at the time of Independence they decided that we needed protection. Protection has always been there. If we go with the Proposed Constitution the way it is, certainly we will lose all those gains. If we lose those gains, then our people will be left hanging without anywhere to turn to. The trust land which is protected in our current Constitution will be left in the hands of the high and mighty, and Kenyans who deserve that land will not have any right.

Mr. Temporary Deputy Speaker, Sir, there are quite a number of issues which affect us. We are now talking about the devolved Government. Why are we at this stage today? We are at this stage of discussing on how we will share the national cake. We cannot share the national cake if we will share it layer by layer and forget about sharing it equally. The national could have an icy sugar. It will not be fair if some of us are given the icy sugar and they do not get the other layers of the cake. So, the idea of sharing out this national cake has got to be carried on board. If it has to be carried on board, we have looked at the Proposed Constitution. We have seen that for anything to be amended where the devolved Government is concerned, we have to go back to a referendum. Can we afford it? The answer is no. So, what is wrong with what is there?

We will have a second chamber which is the Senate. It will be our upper House. When you look at this Proposed Constitution with 47 counties, the marginalisation will be more serious than it is in the current Constitution. The minority communities who have never been heard anywhere, probably, will not have an opportunity to articulate their issues in the Senate. It is important for the marginalised and minority groups to be carried on board. Just the other day, we saw the Endorois going to the African Union court. They went there to seek redress. We had the Iichamus going to court a few years back. They were fighting to have their own constituency. But when we look at that formula to get constituencies to be increased, you will see the Iichamus, again, will not make any gains. So, we must have a vehicle where we can give them an opportunity to be able to come on board. They might not all of them come on board, but at least, one or two of them can be taken on board to articulate the issues of the minorities in the Senate. In any case, that is where the cake is being shared. If the cake is being shared, they also deserve to be given a fair share of it.

When talking about devolution, I look at places like North Horr. When I look at places like North Horr, it is very painful. When people are talking here and they have never gone to North Horr, they will not understand what other people are talking about. Some of us who have gone to North Horr, we do understand problems of the people of North Horr. They may not succeed in getting a second constituency, but what they can be given is a special seat. They can have a Senator who will be able to articulate their issues through devolved government. That is the only way we can bring them on board. As we

discuss these issues, let us give an opportunity to the minorities also to be taken on board. When we talk about the 47 counties, who are we talking about? Again, we are talking about the big communities. Even in the lower Chamber or the National Assembly as it is today, it is only the big communities who are better represented than the smaller communities. We need to carry everybody on board.

Mr. Temporary Deputy Speaker, Sir, in 2005, when we went for the Referendum, we were so divided. We went there, some of us, with pain; some of us were fighting because--- The Chapter on land was not well taken care of because we know how much we have suffered where land issues are concerned. As we were going there fighting, we actually put in a precursor for the war we had in the following general elections. We killed each other and, after killing each other, one of the recommendations which came out of the Serena Team under the Chairmanship of Kofi Annan is that the Constitution must be tackled, so that some of these issues can be corrected.

Mr. Temporary Deputy Speaker, Sir, if we do not use this opportunity to correct those inequalities and that unfairness, at what point will we do this? So, I do urge my colleagues that we need to do something about the devolved governments; we need to do something that is going to be useful to our people and, in the process of doing something about devolution, we have to make sure that most of those funds go towards development in all the areas in this country. It will be useless for us to devolve after a cry of wanting to share in the national cake and then, at the end of the day, we will just have so many politicians getting salaries and allowances and nothing will trickle down for development. So, we have to really think on whether these 47 counties must be improved or do we add the marginalized groups? We must do something about it so that most of those funds can end up going towards development.

Mr. Temporary Deputy Speaker, Sir, there are some things which are very good in the proposed Constitution. For example, I like the idea of not having a chamber with more than two-thirds--- I like the idea of having at least two-thirds of either gender – I like that idea because that is the only way we can be able to carry our sisters on board. For some of us who have contested in the constituencies, it is a difficult task. Many women have tried and it has not been easy. This is the only time that we have an opportunity for women to be carried on board. Since we want women to be carried on board, we will hear that other voice from the women who will be here and who will be 30 per cent. There will also be 30 per cent in the Senate and I thought the idea of having representation of affirmative action towards this direction is welcome.

On the issue of the Kadhis' Courts, Mr. Temporary Deputy Speaker, Sir, in the current Constitution and even in the proposed Constitution these courts deal only with issues of marriage, divorce and inheritance. We, as Kenyans, cannot talk about reconciliation and loving each other. We, as Kenyans, cannot talk about loving each other because love comes from God who put us here. We will not progress if we keep on fighting over small issues. Why are we not giving the people the truth about issues surrounding the Kadhis' Courts and the way they are? They are there in the current Constitution. If we are going to go round the country as religious leaders or as hon. Members, telling the people: "We must also demand for our own thing!" What are we doing? If this draft Constitution is rejected, what happens? We will still remain with the current Constitution which still has the Kadhis' Courts. So, we have to be very, very open and, as political leaders who are lawmakers, we can sit down and pass to the people the

right message? Let us not be the ones who are adding fuel into the fire. It is important for Kadhis' Courts to be taken seriously because they are already there in the Constitution. They have not harmed anybody and even if they continue to be in the new Constitution, they will not hurt anybody. Why do we, as politicians, think that Muslims are only good to vote for us and not good for anything else? Why are we denying the Muslims the Kadhi's Courts when we know we have that opportunity of sensitizing our people and telling them that Kadhis' Courts have not hurt anybody?

Let us be one and reconcile because this is part of the Agenda IV although it had started prior to it being decided that it was really part of the Agenda IV. We want to put all Kenyans together. We want to reconcile our people and give them the right message. Let us not inflame what is there already because we want everybody to be part and parcel of the new Constitution.

Mr. Temporary Deputy Speaker, Sir, the PSC did a very thorough job. However, as we were borrowing things from other countries--- We keep on talking about the American type of Executive Presidency, but I think it will only be right for us to have our own version of what we are going to refer to as our Cabinet. Calling our Cabinet Members, "Secretaries---" When you borrow a dress from somewhere for your child, it does not mean that you must also change your child's name. No! We can borrow the dress but retain the name of the child. I believe Kenyans know about Cabinet Ministers. The word "Cabinet Secretaries" is quite confusing. To make the document neat, could we stick to what we are used to? At the same time it confuses the Cabinet Secretary with the Principal Secretary. The Permanent Secretary is a Secretary. The Cabinet Secretary is a Secretary. So, this will bring a lot of confusion. In our Kenyan style, let us examine the documents and stick to the words "Cabinet Ministers" although they will be coming from outside, which is welcome to all of us. We think that if we have to make a change, then it is good for all of us to accept it.

You cannot have a Cabinet Minister without having the Deputy. I heard my colleague, Mr. Kareke Mbiuki, talking about it. I agree that even in America where we are borrowing these dresses from, they have more than one deputy in each department. Why are we running away from that fact? These people are needed. They must be given specific job descriptions. We need to have the Deputy Ministers so that work can go on even when the Cabinet Ministers are not around.

All in all, I think Kenyans are looking at the Tenth Parliament. This is the time we must have the new Constitution. Time has come for us to do this once and for all and move on to other issues. We have to be very careful about what we do because people are saying that it is easy to amend this proposed Constitution. It is not easy to amend most of the issues we think we have the opportunity now to correct.

Thank you very much, Mr. Temporary Deputy Speaker, Sir. I beg to support.

Dr. Otichilo: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to make my comments on this very important document for this country.

First and foremost, I want to support this document without any doubt. Kenyans have waited for this document for a long time. This is the time and we cannot afford to postpone it any more. I believe that my colleagues will rise above personal interests and discuss this document in a very sober manner and pass it. I know there are a number of contentious issues that need to be addressed. Those that we cannot address, it will be nice

for us to find a solution or go ahead and pass this proposed Constitution and hope that in future we shall be able to amend it.

A constitution is a living document and we will continue to amend it as need arises. So, I want to take this early opportunity to thank particularly the Committee of Experts (CoE) which has been driving this process. They collected all the information that was required to prepare this document. In my view, they have done a commendable job and I want to laud them.

Mr. Temporary Deputy Speaker, Sir, I also want to thank many other organisations that have given their views and proposals on this document. They are many of them, including all Kenyans, but I want to single out religious organisations and civil societies who have played a very crucial role in making sure that this document is worked on well and is acceptable to Kenyans.

I also want to thank Members of the PSC on Constitutional Review, who did a commendable job in trying to harmonise some of the issues that have been raised. Our PSC did an excellent job. I want to thank them for a job well done. Members of this House have also done a good job for the four days we were at the Kenya Institute of Administration (KIA), Kabete. It might be believed that we did not gain much. However, I can assure you that our being in Kabete for those four days enabled us to understand this document very well, and internalise it. As I talk to my colleagues, I realise that we understand this document very well. We are able to articulate the issues in it well.

Mr. Temporary Deputy Speaker, Sir, our being at Kabete for consensus building was very important. We might not have come up with any tangible agreement, but I can assure you that quite a number of the proposals for amendment being put forward came out of Kabete, where most of us were able to understand this document. That is why we have proposed quite a number of amendments to this Draft Constitution.

While at Kabete, we raised quite a number of technical issues, which I believe the CoE and the PSC on Constitutional Review will be addressing, so that we can be able to protect this document. While at Kabete, we also pointed out quite a number of typographical errors contained in the Draft Constitution.

So, we should congratulate ourselves for having been to Kabete to discuss this document. I am personally very happy with that retreat. I can now go to Emuhaya and talk to the people very strongly about this Draft Constitution, because I have read and understood it very well. This was out of our retreat at Kabete.

Mr. Temporary Deputy Speaker, Sir, I want to highlight a few areas, which I consider very fundamental in this Draft Constitution. One Chapter that stands out very clearly is the Bill of Rights, which is the chapter that I think, has captured the soul and aspirations of Kenyans. This is the chapter that puts local Kenyans on the forefront of the management of this country. It is the chapter that gives Kenyans the right to own this country; the right to be in this country; the right to be what we aspire to be.

So, the Chapter on the Bill of Rights is very good. I think we did a lot of very good work while in Kabete, in terms of modifying and adding value to it. I think it is a very important chapter in this document. For the first time, we are giving Kenyans the role of being their own leaders.

Mr. Temporary Deputy Speaker, Sir, the Chapter on Land and Environment is also very good. At least for the first time, we are identifying land as the basis on which our economic activities are based, and something that we all have to consider and ensure

that we conserve, and use appropriately. Most of the problems we have had in this country are centred on land. Land has been so crucial in the history of Kenya. Even the struggle for Independence was all about land.

All the problems we have had in this country are largely centered on land. Putting land and environment in the Draft Constitution is a milestone. We need to go further after we pass this Draft Constitution to ensure that we make or enact the relevant laws that will make sure that we manage our land sustainably. Therefore, we will need to put in place, as early as possible, a land use policy that will ensure that we use our land sustainably.

Mr. Temporary Deputy Speaker, Sir, as of now we have mismanaged our land resources very badly. Unless we go back to the drawing board and come up with very prudent measures to conserve our land and the environment, this country is at risk.

I also want to highlight the importance of enforcement of environmental rights. We have taken for granted the environment in this country. Everybody in this country seems not to realise the importance of the environment. At least, in this Chapter we are now recognizing that an environmental right is a very important right and we must make sure that these rights are enforced.

Mr. Temporary Deputy Speaker, Sir, in this regard I believe that the environment is so crucial to this country and the world in total. Unless we conserve our environment, the future is very bleak. I believe we need a National Commission on Environment and Climate Change to be enshrined in our Constitution. This is because climate change is something that will change this world. It is a reality. It is not something that will be there for only one decade. It will be there for many decades. So I believe we need a fully fledged National Environment and Climate Change Commission to be enshrined in this Constitution. I will be taking that liberty to propose an amendment to include this Commission in this Constitution.

On the issue of representation, I laud the Parliamentary Select Committee on Constitutional Review for the good job they did on this aspect. I want to acknowledge the concerns that have been raised by people from various marginalized areas where the formula that has been proposed may not be appropriate because of the vastness of the area and the adverse conditions of those areas. But I think when we were at Kabete; we were able to come up with modalities on how best to use the formula but give exceptions for those marginalized and areas with unique characteristics. So, I believe it is a very important area and we need to look into it.

On representation, I also believe that we need equality. We have some constituencies that are so large that one Member is not adequate. I believe the Interim Independent Boundaries Commission (IIBRC) will be able to look into this aspect. For example, my constituency, Emuhaya, has almost 300,000 people. I believe that is not fair for one Member of Parliament. This is the case not only for Emuhaya, but many other constituencies. We need to come up with an equalization measure to ensure that representation is good.

On the Executive, I am very happy with this document. For the first time, we have separated the Judiciary, the Executive and the Legislature.

Mr. Temporary Deputy Speaker, Sir, we have separated the three. This is very important because previously, we have had a big problem because of lack of separation of powers. I believe what has been done in this document is going to solve many

problems. I can see the issue of the imperial presidency disappearing if this Constitution is going to be implemented.

I also want to support the proposal that Cabinet Ministers be appointed from outside Parliament. This is very important so that we can have Parliament just doing the work of legislation. As my other colleagues have said, I believe in Kenya we are just used to Ministers and we should call them Ministers. The word “secretary”, I believe, is not right. So, let us just call them Ministers. I also believe that there is need to have deputy ministers because they will deputize the Minister when he is not there. Business should not stop because the Minister is not there. So, I believe somebody will come up with an amendment so that we can have deputy ministers and ministers.

I am very happy because of the proposals about the Judiciary. We have had a lot of problems in this country emanating from the Judiciary. Justice has never been seen in this country for many years because of the way the Judiciary operates. I think, for the first time, we are making the Judiciary independent. Once the Judiciary is independent, I believe it will be able to carry out its functions independently without bias. So, the establishment of the Judicial Service Commission (JSC) is something that we have been crying for but, for now, we can see it being included. The issue of setting up a Judiciary Fund so that the Judiciary can be independent is a very important provision which will make that arm of the Government independent and do its work very well.

The Senate is important and it needs to be strong. I want to support the Senate the way it has been presented in this document. I would have even loved the Senate to be given more powers than what it has been given.

*[The Temporary Deputy Speaker
(Prof. Kaloki) left the Chair]*

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

So, Madam Temporary Deputy Speaker, I want to say that the Senate should be given the powers so that it can have an oversight role on Parliament and the Executive.

As regards devolution, Kenyans have been yearning for it for many years. The need to have a new Constitution has been largely based on the need for devolution so that we can have powers at the grassroots. We can have Kenyans making decisions on governance and development. So, I believe devolution is going to promote social and economic development, particularly at the grassroots. It will also ensure equitable sharing of national and local resources. I believe it will also facilitate the decentralization of state organs so that we can have most of those activities done at the local level. I also believe that devolution will enhance checks and balances which we need.

As regards to whether we should have regional or county governments, I want to support what has been proposed in the draft Constitution. I want to support it because when we had the first draft Constitution and it was presented to Kenyans, they said that we did not need a three tier system. I remember very well most of the presentations that were given and most Kenyans wanted a two-tier system.

We have the national and then we go to the county. I believe the regional tier will add a big financial load to our country. So, I believe the two tier system is the best for

now. However, when the need arises later on to bring in the regional system, then when that time comes, I think it will be good.

Having supported the need to have county governments, I believe the 47 counties which have been proposed in the Draft Constitution are not adequate. This figure will not take care of all the communities, particularly the minority communities. I believe that we should increase these counties from 47 to 74 which were proposed during the Bomas Draft so that we can incorporate other communities that have been left out. For example, in western Kenya, we have minority communities which we believe should be included in the counties. Otherwise they will be disadvantaged in many areas. In this regard, I am talking of the Teso community in western Kenya, the Mt. Elgon community in western Kenya. I believe if we increase the counties to 74, we shall be able to take care of so many other areas that have been left out.

I am very happy with the chapter on public finance. At least for the first time, this chapter is looking at how we can have equitable sharing of our financial resources. So, I believe this chapter sets up a good foundation on how this country will share its financial and other resources. So, I want to support in total what has been proposed in this chapter.

I believe that what we came up with in Kabete should be incorporated in this through an amendment where at least we should have 30 per cent of the GDP being allocated to the counties rather than 15 per cent. Out of the 30 per cent, at least 20 per cent should go to the counties and 10 per cent should go to the constituencies.

I also want to laud the inclusion of the equalization fund which will be very crucial for areas that have been ignored for many years, particularly marginal areas where no development has taken place. We are talking of areas like North Eastern Kenya and other areas. I believe this fund will be able to bring these areas to faster development so that they can catch up with the rest of Kenyans.

Under this chapter I am very happy that they have now included a clause which clearly says that no law may exclude or authorize the exclusion of a state officer from payment of tax. This means that all of us will pay tax. This is good. I have not always felt comfortable when we MPs are told we do not pay tax. I believe this clause will put all of us at the same level so that we can all pay tax. I want to laud and ask all hon. Members to support this clause so that it remains.

Finally, the chapter on amendment of this Constitution is very strong and I think we need to support it.

With those comments I wish to support this draft constitution.

The Assistant Minister for Co-operatives Development and Marketing (Mrs. Kilimo): Madam Temporary Deputy Speaker, Sir, I stand to support the coming into force of the new Constitution. However, I have a few amendments to raise.

I would like to put something straight. I heard some previous speakers talk against regionalization. It is negative to think that when people ask for regions, it is because they want to balkanize this country. They have given a negative connotation to regional governments. I would like to support the view that we have 25 regions in this country. I am not supporting these regions for negative reasons as people perceive them. Let us forget the past because it is all behind us. We, as Members from the marginalized areas in this country, feel that we need to have a structure that will draw up proposals within the reach of the people living in that area and reach out to investors to invest in this region. It

is for economic purposes that we are asking for regions and not for political reasons, as people might think. However, the leader is always a politician.

I want to give an example of the North Rift where you have the Turkanas. As people come from Turkana, when they reach Eldoret, they think they have reached Kenya. They do not imagine that they are part of this country. When they come from Moyale, they think they are just people from the bush. They do not imagine that they are Kenyans. So, regional governments will give people in the marginalized areas an identity. It will give the people from the coastal region a reason to feel that they are Kenyans and not people from just along the coastal region. Right now, they still feel that they are just a protectorate because their issues are not addressed. If there was a regional assembly at the Coast, the coconut and the cashew nuts factories would have been revived by now. But policies are drawn in a Central Government in Nairobi by civil servants who do not know where those regions are. But a regional assembly will be able to come to the Central Government and push the agenda of those regions.

Madam Temporary Deputy Speaker, if you look at the issue of food in this country, you will realize that people from the ASAL areas wait for food to be imported from America when we know very well that countries like Israel, Egypt and Emirates, which are practically deserts, are food sufficient. Why are we buying rice from Egypt? Why do we import grapes and apples from Israel? It is because they know the challenges facing them, namely, desert conditions, and so they draw their own policies and see how to utilize the water that they have. But here in Kenya, during the rainy season, all the water from North Eastern drains into the Indian Ocean. All the water from Cherangany Hills travels through the Kerio Valley into Lake Turkana without being utilized by the Pokots, the Marakwets and even the Turkanas who live in that region. At the end of the day, we wait for somebody in Nairobi, especially the media to raise an alarm that people are hungry. If there are regional governments, they will notice early enough that there is a shortage of food and see how they can utilize the resources within the region. They can drill dams. Right now, policies that are drawn in Nairobi are not helping the marginalized in this country. It is for that reason that I support regional governments. I hope that people will support us, from the marginalized areas, so that we can feed ourselves. We are not happy begging for food all the time.

Another issue is to do with the educational institutions that we have in this country. They are centralized in one region, which is also arable. Regional assemblies will be able to decide the cut off points for secondary school admission for the children in their regions. They will come up with programmes that are acceptable to the children in that region. When questions are asked about the railway line or electricity in schools, how will a child in my constituency or in North Horr, who has never seen electricity, pass that examination? Children from the marginalized areas sit for the same examination with children from Nairobi. How fair is that? I support the Equalization Fund. But for it to be effective, we need to have regional assemblies to monitor it. It should be utilized well to make sure that the less developed areas are at par with developed areas.

There is the issue of a Land Commission or regulation of land, especially Article 68C(1) which talks of a land legislation to prescribe a minimum and maximum land holding acreages in respect of private land. Kenya is made up of over 42 tribes. Others are being discovered by the day. Each community has got something that they hold dear or has a different perception of what they mean by wealth. For others, like those of us

who are now in Nairobi, owning an estate or building with many storeys is wealth. But there is somebody who believes that if I have ten acres of land, I am rich. A pastoralist would wish to have 1,000 acres because in his perception, the cows are his wealth roaming in the wild. This is disadvantageous to people in the Arid and Semi-Arid Lands (ASALs) and pastoralists of North Eastern, Central Rift and many others who are pastoralists by nature and have not embraced zero-grazing. How can they do zero-grazing when to them value is the number of cows? They have their own mobile banks in the form of cows. So, this chapter is disadvantageous to these people and I think the issue of a Land Commission has to be reviewed. I hope hon. Members will support the amendment when it comes.

Madam Temporary Deputy Speaker, the other issue is on the bill of rights. I support the Article 32 on the bill of rights. I want to propose that we should add another article there giving people the right to convert from one religion to another. This is because as you grow in life, you tend to discover that, maybe the house you were in yesterday does not address your spiritual needs. So, you go to another one. That chapter closes somebody to remain in the religion in which he or she was born. Article 32, again, provides for access to institutions or facilities on the basis of one's religion. But I would propose that we add another one saying that it shall not apply to institutions and facilities that are established solely for religious purposes. It would be difficult for me to just walk into a mosque. So, there should be that article to show that restriction is only to places of worship.

Madam Temporary Deputy Speaker, there is the issue of subordinate courts, that is, Article 169. I have no problem with that. I have got Muslim brother and sisters. But when we talk of subordinate courts and you include the Khadhis' courts, then you should also include the Christian courts so that I can feel that I am also a Kenyan and that we are equal. Otherwise, we must delete that and say then that our law will protect anybody from any religion provided they are Kenyans.

Madam Temporary Deputy Speaker, finally, what describes Kenya? How do you describe Kenya?

Kenya is made of up of eight provinces. But in the Proposed Constitution, we must give our country a different definition. Kenya will be made up of 25 regions and counties.

We want more women representatives in Kenya, so that we can feel it is our home. A home will not be complete if there is just a man. I am appealing to all male colleagues in this House to support women representation both in the Senate and the National Assembly because they cannot walk the development road alone. They need the company of women, so that together, we reach our destination faster.

Madam Temporary Deputy Speaker, as I said, I support the idea of us having 25 regions. There will also be the Senate to check the imperial Presidency. There will be 25 male Senators and 25 female senators. They will be 50 of either gender. We are talking of equality. This is our time to implement the talk of equality. When we implement it, we will not be talking about this issue of equality any more. By the way, the 25 women we are talking about are daughters and mothers of men sitting in this House. We have been promised 47 positions. The 25 women will come to the Senate. But we also need women in the National Assembly. I beg to be supported as a woman of this nation, so that we get two more women from the regions. This will make 50 women to come to the National

Assembly, but from their regions. We can decide on how they will come. That will give us a total of 75 women. We are still below the 30 per cent of the proposed 290 seats. We have been promised by every leader of a political party that 30 per cent of the seats will go to women. What we are asking now is 30 per cent of the proposed 290 seats. This will give us about 75 seats. It will be below 87 seats.

With those few remarks, I beg to support.

Mr. Kiuna: Thank you, Madam Temporary Deputy Speaker, for giving me this opportunity to contribute to this Motion.

We, as elected leaders, represent Kenyans in this House. We are supposed to defend their rights at all time. The issue of a new Constitution has been discussed for so long in this country. In fact, many Kenyans have been agitating for a new Constitution for a long time. It has taken us over 20 years to look for a new Constitution.

Madam Temporary Deputy Speaker, this is a noble opportunity that has been bestowed on us by our electorate. We need to make sure that Kenyans this time round have a new Constitution. The Members of the Tenth Parliament have the responsibility to deliver a new Constitution to Kenyans. We have now reached a point of no return in this process. It is a long history. I urge my fellow colleagues as we debate this proposed Constitution to ask ourselves what kind of legacy we want to leave behind. This Constitution is not meant for us. It is not meant for His Excellency the President or the Prime Minister. It is for the future generations. As we debate this draft Constitution, we should remember what happened in this country in 2008. This country was headed to the dogs. It is through God's grace that we were able to salvage it. Where we are now is because of God's grace and mercy.

Madam Temporary Deputy Speaker, as much as I support this Constitution, I would like us to agree on one thing. We know very well where we were in 2008 and where this country was heading. It is just through God's grace that we have managed to be where we are. I am so much incensed by those people who are talking about regional assemblies. It is as if they were not here in 2008. It is so painful for some of us who saw everything and witnessed all that had happened. I think you will agree with me that whatever happened, especially in the Rift Valley, nobody else in this House would like to see it recurring again.

Madam Temporary Deputy Speaker, when we come to regional assemblies, the perception that people have down there is: "This is our kingdom." We are going to create tribal kingdoms whereby some communities will feel too threatened or intimidated to live in those particular regions.

Madam Temporary Deputy Speaker, I hope you are aware, and a majority of us are aware that, there are some areas in the Rift Valley where some communities feel that they cannot even go and buy land; neither can they invest because of what they saw or how much they suffered. So, those who are advocating for regional assemblies, I do request them to think as national leaders. Let them not see the gain they are going to get as individuals. How about their children? That is because right now, there are some people who have said that we should go for the regions.

Madam Temporary Deputy Speaker and hon. Members, I hope that when we shall come to voting, those patriotic Kenyans who think that they are Kenyans and who know that they belong to Kenya, will support this draft the way it is. For the time being, let us heal those wounds. If there will be any amendments, it is this same, same House which

has the power to come and debate whichever clause they feel should be amended and amend it! But for the time being, let us try to be realistic and nationalistic and support this document the way it is.

(Applause)

From there, Madam Temporary Deputy Speaker, there are some areas where I feel we, as hon. Members, although some people out there are trying to criticize us, have shed our powers and we have given them to some other people. That way, we are seen as if we are only fighting for our own interests.

Madam Temporary Deputy Speaker, the Senate has been put there and we are going to support it. We are doing that so that the people who may feel that we are trying to fight for our own benefits can also come in. When it comes to the Executive, this time around, we have put in good machinery to closely monitor whoever will be in that office. That will be done by the Judiciary, the Senators and others.

We do not want to have the kind of leadership we have been having before whereby the Chief Executive had all the authority and power and nobody could dare question him. That is why many people have died. Many others were detained and tortured. We have undergone all these things. This is the right time to rectify this. We support this draft the way it is because if we fail to do that, we will be judged harshly by the future generations.

Madam Temporary Deputy Speaker, with those few remarks, I support the draft the way it is. I do not request for any amendment, and not even a comma. Let us pass it the way it is. Thank you.

Mr. Shakeel: Madam Temporary Deputy Speaker, I rise to support the draft as it is. The process of changing the Constitution has taken a long time. The only perfect Constitutions that I know of are the Bible and the Holy Quran. There is no other perfect Constitution. We can continue to improve on this Constitution with time. We will be judged harshly by our citizens. The people who voted for me to come here have said to me: “We want our right. We want this *Katiba* to be completed. We want it as it is.” Why are we trying to change it now? We will continue. We will never finish this process. It will continue and continue. The only way to do it is to start now.

I am totally against the issue of regions. I think it is creating many openings for people to go tribal, to be misused and to have little kingdoms. Governments come from below and not from above. Regions are above counties. However, counties are the actual deliverers of service. Even if we had 47 counties, they can also be effective in policy making because they are closer to the people. It is not somebody in a region who will be in a position to understand--- The Senate is there and it will be corrective.

I want to support the issue of counties as it has been set up in the proposed Constitution. The counties were meant to be an umbrella to the Provincial Administration as it was going to be “collapsed” together with the local authorities into a service delivery. The county was going to be near the people. It would have powers. We would have county governors and county representatives who are councilors or administrators. I do not want to dwell too much on this.

Democracy is based on the sovereignty of the people. The people of Kisumu Town East, say that they want the proposed Constitution as it is. They are saying: “We

are tired of Members of Parliament and others going around to change it. Give us what is 80 per cent good and then we can wait for the rest later.” The Constitution that we rejected in the referendum was 85 per cent good, but because of politics, we rejected it.

ADJOURNMENT

The Temporary Deputy Speaker (Prof. Kamar): Mr. Shakeel, you will have an entitlement of 15 minutes when we start tomorrow.

Hon. Members, we have come to the end of today’s sitting. Therefore, the House stands adjourned until tomorrow, Thursday, 25th March, 2010, at 2.30 p.m.

The House rose at 8.00 p.m.