

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 30th March, 2010

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

PETITION

INTERVENTION TO SETTLE KIBOROWA SQUATTERS

Dr. Khalwale: Mr. Speaker, Sir, I stand up under Standing Order No.207 to present a public petition on behalf of Kiborowa Squatters Alliance who comprise a membership of 21,297 squatters, being citizens located in the Trans Nzoia District of Kenya. They say:-

“We would like to draw the attention of the House to the following matters:

We, the above mentioned squatters, reside in the rural and peri-urban slums within Trans Nzoia and, like our forefathers, remain landless, living in deplorable conditions. We serve as temporary laborers on the former colonial settler farms currently known as Agricultural Development Corporation (ADC) farms. Our girls and women are forced into prostitution and early marriages, occasioning high incidents of HIV/AIDS and gender-based violence.

There are high poverty levels leading to school dropouts and child labour. Despite making several presentations to the Government with assurances from the District Commissioner, Permanent Secretary and Minister for Lands, we are yet to see any positive action.

Mr. Speaker, Sir, we are therefore, as squatters, making a humble request for the following prayers:

(i) That immediately the Government may settle all the squatters on the following ADC farms: Sabwani, Sikhendu and Olingatongo.

(ii) The Government restrains those persons who are currently inciting members from non-squatter communities from invading these farms.

(iii) We are praying to the Government that the Agricultural Development Corporation, the Commissioner of Lands, the Director of Lands and Adjudication and Settlement, the Commissioner of Police and the Attorney-General to respect the High Court ruling that was made at Bungoma, Petition No.26 of 2010, concerning this matter”.

Mr. Speaker, Sir, this petition has been signed by 5,100 squatters on behalf of the 21,297. They have requested that I table along with this petition, a copy of the High

Court ruling in Kakamega that gave a conservatory order against them being evicted. The order is signed 10th March, 2010.

*(Dr. Khalwale laid the document
on the Table)*

Mr. Speaker: Hon. Members, according to Standing Order No.207, the Speaker has the prerogative to allow hon. Members who may want to make any comment, observations or clarifications in relation to the petition to do so in a period of not more than five minutes.

Dr. Eseli: Mr. Speaker, Sir, I thank Dr. Khalwale for bringing this petition to this House. The squatters in Trans Nzoia are not just simple squatters. These are people who have been displaced originally from their land, maybe, in Mt. Elgon and other places. Maybe, they are also descendants of squatters from the original White Highlands.

Over the years, the Government has been unable to settle them and none of them has ever received any land from the three regimes we have had. We do pray that in this particular time these squatters will be looked upon kindly and given some of these large estates of the ADC farms that are due to them by right of history.

Mr. Wamalwa: Mr. Speaker, Sir, I also wish to support this petition and thank Dr. Khalwale for bringing it here. The story of the Kiborowa squatters spans over 20 years, when they were evicted from Kiborowa Forest at the time when Mr. Yusuf Haji was the PC. From the time these squatters were evicted from Kiborowa Forest the Government promised to settle them.

It has been over 20 years and there are those who were there when we were in school. There is a Mzee Chemombut, Mzee Muyekho, Mzee Kabuya who moved there when he was a young man, but he is now a Mzee; there is Mzee Wandachi. They have been waiting for the Government to settle them for all this time and now their patience has run out.

Mr. Speaker, Sir, the squatters have now decided to look for land. This is a time bomb that must be addressed. This House did pass a Motion which I brought here in 2008 for settlement of squatters. The Motion asked for setting up of a fund that can address the issue of squatters in this country, but it has not been implemented to date.

As we speak, in certain parts of the country, squatters have been settled. Those who were in Kyulu Hills were settled, although there are some who are still awaiting settlement. We do know that there were squatters who were evicted from Aberdares and Mt. Kenya, and were settled on Solio Ranch. We do know that there were squatters in Trans Nzoia who were settled in neighboring ADC farms during the KANU reign. It is not strange that this petition has come to this House. Others have been settled. The Government must now move with speed to settle these squatters.

Thank you.

Mr. Speaker: Order, Member for Saboti! The relevant Standing Order does not permit me to allow these interventions to go beyond five minutes and that time has elapsed. So, that petition will stand committed to the Committee on Lands and Natural Resources which should then prepare its report after investigation and table it in the House within 21 days from today.

NOTICE OF MOTION**SETTING UP OF SMALL-HOLDER IRRIGATION
SCHEMES IN ALL CONSTITUENCIES**

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

THAT, considering that the country relies on rain-fed agriculture for food production; aware also that rainfall is inadequate and unreliable; appreciating the need to ensure that all households can reliably and affordably access basic food items; aware that the Government has put in place measures to develop and revitalize various irrigation projects which had collapsed, this House resolves that the Ministry of Agriculture in collaboration with the Ministry of Water and Irrigation move to set up small-holder irrigation schemes of at least 2,000 acres in all constituencies where applicable as to facilitate food production.

QUESTIONS BY PRIVATE NOTICE**TREASURY'S PLAN TO RAISE MONEY
FOR EMERGENCIES**

Mr. Pesa: Mr. Speaker, Sir, although I have not received the written reply, I beg to ask the Deputy Prime and Minister for Finance the following Question by Private Notice.

(a) Could the Minister confirm to the House how Treasury plans to raise money for growing list of emergencies, given that the process of the sale of Consolidated Bank of Kenya has run into trouble after a group of investors moved to court to block it?

(b) What stake does Treasury (together with the Deposit Protection Fund) own in the bank and what percentage has been earmarked for sale in the 2009/2010 Financial Year?

(c) Is it true that proceeds from the sale was to help plug the Kshs168 billion Budget deficit in 2009/2010 Fiscal Year and that Treasury had projected to raise Kshs0.6 billion from privatization by June 2011 and, if so, what will happen in the event that the court case succeeds?

Mr. Imanyara: On a point of order, Mr. Speaker, Sir. Just last week, you prevented me from raising an issue because the matter was in court. Given that this Question directly refers to a court case and in connection to your recent ruling when I raised the issue of Esther Arunga, is it in order for the Question to be on the Order Paper? It identifies the fact that the matter is in court.

Mr. Speaker: Deputy Prime Minister and Minister for Finance! Member for Central Imenti Constituency, I have heard you. We will revisit this Question a little later and see what position the Deputy Prime Minister and Minister for Finance takes before we decide what to do.

**DISAPPEARANCE OF 2009 KCSE ARABIC PAPER FOR
GRIFTU/HONOURABLE KHALIF SCHOOLS**

Mr. Keynan: Mr. Speaker, Sir, although I have not received a written reply to this Question, I beg to ask the Minister for Education the following Question by Private Notice.

(a) What are the circumstances surrounding the disappearance of the 2009 KCSE Arabic Paper 503/1 for the candidates of Griftu Boys' and Honourable Khalif Girls' Schools, and the subsequent awarding of arbitrary marks to the students?

(b) Why were all the students from the said schools awarded a D Grade in the Paper?

(c) What measures will the Ministry take to correct the mistake and properly grade the affected students?

The Assistant Minister for Education (Mr. Mwatela): Mr. Speaker, Sir, I beg the indulgence of the House because I have an answer which I consider very inadequate to this Question. I only got it this morning. I have tried my best to get a proper answer from the relevant officer and it was not possible to do so. So, may I ask that the Question be deferred to tomorrow, so that I can properly address the issue?

Mr. Keynan: Mr. Speaker, Sir, while I have no problem in giving the Assistant Minister one more day, the issue touches on the lives of very young Kenyans who were duped by none other than the Kenya National Examinations Council (KNEC). These students have all been awarded arbitrary marks contrary to what they have worked for, for the last 12 years. It is prudent that the Ministry brings a satisfactory answer that will save the lives of these young and innocent Kenyans.

(Mr. Speaker consulted with the Clerk)

Secondly, it has become a tradition for Cabinet Ministers in this House not to provide written answers to the Members of the Back Bench. Could the Chair order the Ministers to be giving written answers to the Members of the Back Bench, one or two hours before the Questions are asked on the Floor of the House? I do not know whether I should repeat because you were too busy with the Clerk.

I have said that this Question touches on the lives of very young Kenyans who have been duped by none other than the KNEC. Arabic Paper is one of the easiest examinable subjects in this country. However, all the students have been awarded arbitrary marks of Grade D. I have not seen any written answer and this has become a trade mark for Members of the Front Bench. They are taking the Members of the Back Bench for granted. I wish to request you to order Cabinet Ministers to be giving written answers to the Members two or three hours before the Questions are asked on the Floor of the House. I have no problem in giving the Ministry an additional day, so that they can come with a comprehensive answer.

Mr. Speaker: Mr. Assistant Minister, will you be ready to answer this Question on Thursday afternoon? Please, bear in mind the sentiments expressed by the Member. I do not want to make any findings on that for the moment.

The Assistant Minister for Education (Mr. Mwatela): Mr. Speaker, Sir, I have a written answer here, but it is completely inadequate. That is precisely why I am asking the indulgence of the Chair to allow me answer it on Thursday afternoon.

Mr. Speaker: Order, Mr. Assistant Minister! Whatever answers you will come up with, ensure the Member has a copy within reasonable time before you come to the Sitting. So, it is directed that this Question appears on the Order Paper on Thursday afternoon.

(Question deferred)

ORAL ANSWERS TO QUESTIONS

Question No.93

SHORTAGE OF TEACHERS/INFRASTRUCTURE IN TURKANA SCHOOLS

Mr. Ethuro asked the Minister for Education:-

(a) whether he could state (i) the number of primary pupils who qualified, but did not get chances in Form I from 1998 to 2010, (ii) the current shortage of teachers in primary and secondary schools, (iii) the number of additional secondary schools classrooms for 2010, (iv) the number of school auditors for both primary and secondary schools and (v) table a schedule of audited schools in Turkana Central District, indicating the respective dates of audit and the auditors;

(b) the number of school-age children who are not attending schools and the reasons therefor; and,

(c) what urgent measures he is taking to address the serious shortfall of classrooms, teachers and the attendant infrastructure?

The Assistant Minister for Education (Mr. Mwatela): Mr. Speaker, Sir, I beg the indulgence of the House that the answer that I have is lengthy considering the nature of the Question.

Mr. Speaker, Sir, I beg to reply.

(a) (i) An estimated 3.54 million primary school pupils failed to get chances in Form 1 admissions from 1998 to 2010.

(ii) There is a shortage of 66,000 teachers in both primary and secondary schools. Of these, 43,000 are for primary and 23,000 for secondary schools. Turkana Central District has a total shortage of 285 teachers. Of these, 249 are for primary schools and 36 are for secondary schools.

(iii) The number of additional secondary schools classrooms for 2010 is estimated at 40,213.

(iv) There are 223 auditors for all secondary and primary schools in Kenya. For the larger Turkana District, there are two school auditors for both secondary and primary schools. I beg to table the list of the audited schools in the larger Turkana District, including Turkana Central.

(Mr. Mwatela laid the document on the Table)

(b) There is an estimated population of 588,126 of school aged children out of school. This is due to poverty, drought, long distances from school establishments, chronic food insecurity, hardship conditions, poor school facilities and infrastructure, ignorance by parents, traditional and nomadic lifestyle and HIV/AIDS pandemic. All these factors have mostly affected Arid and Semi Arid Lands (ASAL) areas, including the Turkana Central District.

(c) The Ministry has initiated the following strategies to address the shortage of classrooms, teachers and infrastructure:-

1. Increasing the allocation of School Infrastructure Improvement Programme (SIIP) funds in tandem with Treasury budgetary allocation and donor development support. For example, a total of over Kshs94 million has been disbursed to finance SIIP in 102 primary schools in Turkana District.

2. Introducing double shift mode of learning. Already, ten schools have been identified and funds provided to pilot this project.

3. Establishing Centers for Academic Excellence in 210 constituencies, including Turkana Central, under the Economic Stimulus Programme to improve education quality and infrastructure.

4. Making intense use of idle primary schools facilities to open new day secondary schools.

5. Opening day wings in the existing boarding schools.

6. Expanding all the existing single-streamed schools to a minimum of three streams in 50 per cent of the existing single-streamed secondary schools.

7. Reviewing the class size to 45 students per class and 20 students per class in Arid and Semi-Arid Lands (ASALs) areas including Turkana Central District

8. Applying curriculum-based establishment and reviewing average workloads for teachers to a minimum of 30 lessons per week.

9. Recruiting 2,780 additional teachers from April, 2010 to replace teachers who have left the service through natural attrition. Of these, 1,480 will be posted to primary schools, 1,104 will go to secondary schools and 196 for Technical and Vocational Training Institutions (TIVET).

10. Hiring part-time teachers for schools by Board of Governors (BOGs) and Parent Teachers Associations (PTAs).

11. Formulating a redeployment policy and redeployment of teachers to achieve equity and better utilization.

12. Enhancing quality assurance and standards for monitoring academic performance, infrastructure development and quality maintenance.

13. Revising and increasing hardship allowance and other incentives for teachers in ASAL areas.

14. Introducing peace education for conflict management and resolutions, especially in ASAL areas to provide favourable environment for teachers and learners and development infrastructure.

15. Developing partnership with the Constituencies Development Fund (CDF), private sector and Non-Governmental Organizations (NGOs) in the provision of primary, secondary, adult and informal education.

Mr. Ethuro: Mr. Speaker, Sir, I want to thank the Assistant Minister for attempting to answer this Question. But he is talking about generalities. This Question was

attempting to enable him to compare the national statistics *vis-à-vis* Turkana Central statistics as a district. This is a district which has the highest poverty index in the whole country. The mean score has been declining for the last five years. These answers are generic in nature and they do not help to determine exactly what the Ministry is doing to address the serious problems of education in Turkana.

Mr. Speaker, Sir, having said that, he says that school infrastructural money – because that is where we are really hard pressed and we want more support--- A total of Kshs94 million in 102 schools, on average, I would be getting Kshs1million per school. That is not correct. I have a table here where we have only been getting a total of Kshs2 million for all those schools.

Mr. Speaker: Can you, please, come to the question?

Mr. Ethuro: Mr. Speaker, Sir, I need to develop it so that he can understand better, because we do not seem to be communicating.

Mr. Speaker: Order, Member for Turkana Central! I cannot allow you infinite time to develop a question.

Mr. Ethuro: Mr. Speaker, Sir, I am about to ask the question.

If the figure the Assistant Minister is telling the House is correct and I have one for Kshs2 million, it means that if you divide Kshs100 million by two, that should give you Kshs50 million. This means that really he has been giving me more money than even what we have gotten since Independence, which cannot be true. What specific actions, in terms of money, is the Assistant Minister going to take in order for us to develop more classrooms and dormitories?

Mr. Mwatela: Mr. Speaker, Sir, in reference to the money disbursed for infrastructure development, we, in the Ministry, are willing to provide detailed information as regards which particular schools have benefited from the amounts that we have disbursed.

Mr. Ogindo: Mr. Speaker, Sir, the Assistant Minister is aware that the Ministry of Education is consuming about 6.8 per cent of our Gross Domestic Product (GDP). In Uganda, the budget on education is about 5.2 per cent. In Kenya, secondary schools are all congested. What policy is there in the Ministry of Education to ensure that the students coming from primary schools into secondary schools have adequate infrastructure?

Mr. Mwatela: Mr. Speaker, Sir, I have enumerated in this lengthy answer the measures that the Ministry is employing to ensure that we have adequate schools for our pupils. I would only say that it would be prudent for all hon. Members to work very closely with the Ministry using the CDF funds to expand the existing opportunities in their constituencies.

Mr. Bahari: Mr. Speaker, Sir, this problem is not unique to Turkana Central. It is very common in most parts of this country. I am particularly perturbed by the situation of staffing in the rest of the country, including my own constituency, where half of the classrooms have no teachers. What is the Ministry actually doing to ensure that we have enough teachers in classrooms because the problem is soon going to explode? This is a very serious problem.

Mr. Mwatela: Mr. Speaker, Sir, I fully concur with hon. Member that we are really in dire need of extra teachers. The proposal by the Government to hire extra manpower

was stifled by the action of the Kenya National Union of Teachers (KNUT) which has interfered with the---

Mr. Ochieng: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to mislead this House by telling us that the exercise that they were trying to do in order to employ teachers was stifled by KNUT, yet he knows that there is a shortage of 60,000 teachers in this country? Is he in order to mislead the House when they were only recruiting about 5,000 or 6,000 teachers in that exercise?

Mr. Mwatela: Mr. Speaker, Sir, we were going to recruit an extra 50 primary school teachers and ten secondary school teachers in every constituency. This has not happened purely because of the action taken by the KNUT. We hope – and we are negotiating with the KNUT – that this matter can be brought to an end so that we can, at least, alleviate the problem.

Dr. Eseli: On a point of order, Mr. Speaker, Sir. The answer given by the Assistant Minister is very unsatisfactory. The points of order have been very specific. The shortage they were trying to address in recruiting the 12,000 teachers was very big. This is over 60,000. What measures have they put in place? He has not been very specific in his answers. Right now, we are faced with---

Mr. Speaker: Order, Dr. Eseli! You have made your point. Mr. Assistant Minister, you have not answered the Question which has been raised.

Mr. Mwatela: Mr. Speaker, Sir, the Ministry has been trying. If we had hired 50,000 teachers per constituency, this would definitely have alleviated the problem of shortage of manpower in primary schools. That was in excess of extra teachers apart from regular hiring. The ten teachers for secondary schools were also in excess of the regular hiring.

Mr. Koech: On a point of order, Mr. Speaker, Sir!

Mr. Speaker: Order, Mr. Koech! You will have to resume your seat. Do not assume that you caught the Speaker's eye merely because you stood up!

Mr. Mwatela: Mr. Speaker, Sir, we may not be 100 per cent, but we deliberately put some efforts to address this problem.

Mr. Gabbow: Mr. Speaker, Sir, we know that it is not Kenya National Union of Teachers which is not employing teachers, there is an issue of contract. We cannot be held at ransom by KNUT. What is the Government doing to employ those teachers on permanent basis? That is the major problem. The Ministry has money. Could he tell this House when he will employ those teachers on permanent basis, so that we get enough teachers to teach our children? How long will our children continue to suffer? In some schools, we have two teachers. How do we expect them to teach from Standard I to Standard VIII?

Mr. Mwatela: Mr. Speaker, Sir, the Ministry has more than Kshs1.6 billion set aside for that purpose. However, we will employ teachers immediately the KNUT withdraws the case from court. That is stifling the exercise.

Mr. Ethuro: Mr. Speaker, Sir, education is extremely important to this country, particularly to the marginalized areas. Out of 102 schools, you have 50 of them that are most understaffed. Two schools with six streams have no teachers. Another school has a shortage of almost 15 teachers. What criteria will he use when he is employing teachers to ensure that most of these areas which are understaffed get more teachers, especially Turkana Central?

Mr. Mwatela: Mr. Speaker, I am sure that if we got the matter sorted out between us and the KNUT, within the next few months, we will employ the extra ten teachers for the secondary schools which have been outstanding. In the next financial year, we will also employ more teachers to ease the current shortage.

Question No.122

TONNAGE OF DRIED PYRETHRUM FLOWERS BOUGHT
BY PYRETHRUM BOARD OF KENYA

Mr. Kiuna asked the Minister for Agriculture:-

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

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

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

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

(a) The Pyrethrum Board of Kenya (PBK) bought 3,370 metric tonnes of dried pyrethrum flowers between the year 2006 and 2009.

(b) The current purchase price offered to pyrethrum farmers for dried flowers delivered by the PBK ranges from Kshs58 per kilogramme to Kshs220 per kilogramme depending on the percentage of the pyrethrum content.

(c) The Ministry through the PBK is currently paying an advance of Kshs50 per kilogramme of pyrethrum delivered. From April 2010, the PBK will increase the payment to Kshs100 per kilogramme in the short-term and still pay the balance after analysis of the pyrethrin. Further, in July 2010, the Board will start payment of interest to growers based on the value of their stock units for the year 2008/2009.

Mr. Kiuna: Mr. Speaker, Sir, while I thank the Assistant Minister for answering my Question, I really do not agree with his answer. I think he is misleading this House by saying that the farmers are being paid Kshs50 per kilogramme. At the moment, they are paid less than that. Worst of all, there are some brokers who are moving around in my constituency buying the same produce and taking it to the PBK and selling it over Kshs100 per kilogramme.

Mr. Speaker: Ask your Question!

Mr. Kiuna: Mr. Speaker, Sir, what is the Ministry doing to make sure that these brokers are not given a chance to exploit the ordinary *mwananchi*?

Mr. Ndambuki: Mr. Speaker, Sir, on the issue of brokers, we have talked to farmers. They know exactly what is happening. As I said, the payment is based on the pyrethrin content and the supply of the farmers.

(Loud consultations)

The lowest, if it is 0.8--- There is too much consultation.

Mr. Speaker: Oder, hon. Members! Shall we hear the Assistant Minister?

Mr. Ndambuki: Mr. Speaker, Sir, I appeal to the farmers not to sell their produce through brokers. They should take it directly to the PBK where they will be paid Kshs50 per kilogramme in advance. After the analysis has been done, they will get their balance so that they avoid being exploited by the brokers.

Mr. Litole: Mr. Speaker, Sir, I want to ask the Assistant Minister whether there are any plans to add value to pyrethrum plant in this country by processing it instead of selling it as a raw material.

Mr. Ndambuki: Mr. Speaker, Sir, the new management is looking into it. Instead of selling it as raw material, they will be selling it in finished form.

Mr. Mureithi: Mr. Speaker, Sir, considering that pyrethrum was the mainstay in a district like Nyandarua, what programme does the Ministry of Agriculture have in terms of promoting it, so that famers can go back to their past cash crop, particularly in my constituency, Ol Kalou?

Mr. Ndambuki: Mr. Speaker, Sir, everybody is aware that the Pyrethrum Board of Kenya almost died off. Now, the Ministry has constituted the board which will improve the production of the crop. Currently, we are only dealing with areas where it is grown in high quantities. I can assure the hon. Member that we will revive the growing of this crop in many parts of the country where it used to grow.

Mr. Kiuna: Thank you, Mr. Speaker, Sir. I would like the Assistant Minister to assure this House, and more so, Molo residents, that the PBK officials will not arrest the ordinary *wananchi* who are selling their produce to brokers.

Mr. Ndambuki: Mr. Speaker, Sir, as I said from the beginning, I would like to assure the pyrethrum farmers that Pyrethrum Board of Kenya is buying pyrethrum products and they should take them to the Board instead of selling them to brokers who are really making money. Everybody should take it to the Board. I assure them that the Board will buy the flowers.

Question No.029

ILLEGAL STAY IN OFFICE BY HARAMBEE
SACCO MANAGEMENT TEAM

Ms. Karua asked the Minister for Co-operative Development and Marketing:-

(a) whether he is aware that the Chairman of Harambee SACCO and the entire management team continue to hold office in contravention of the Public Officer Ethics Act even after being charged with theft of SACCO funds vide NRB/Misc. Application No.45 of 2004, and what action he plans to take against them; and,

(b) what action he has taken on the Mwaliko Inquiry Report of May, 2002 in respect of Harambee Plaza Investment Housing Co-operative Society Ltd and Harambee SACCO.

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

(a)The Chairman and the Management Committee of Harambee SACCO Society Limited are not holding office in contravention of Public Officer Ethics Act (Case No.NRB/Misc. Application No.45 of 2004 was an intention by a private prosecutor to initiate criminal proceedings against the management team of Harambee SACCO. The intention was not granted by the Chief Magistrate's Court. And, therefore, no action is contemplated.

(b)The Mwaliko Inquiry Report did not mention Harambee Plaza Investment Housing Co-operative Society as it is not a registered co-operative society. However, the inquiry team recommended that Harambee Co-operative Society Plaza, the building, be managed as a separate and independent entity. Arising from Mwaliko Inquiry Report, the Ministry constituted an inspection team to explore the possibility and implications of separating Harambee Plaza, the building, from Harambee SACCO Society Limited. The inspection report did not recommend the separation of Harambee Plaza, the building, from Harambee Society Limited.

Ms. Karua: Mr. Speaker, Sir, I am appalled by the answer that the Minister has given which is not factual. Criminal Miscellaneous Criminal Case No.45 of 2005 was not an intention to prosecute but an actual private prosecution where a plea was taken. The Ministries concerned, one of them being the Ministry of State for Home Affairs, actually interdicted a Ms. Nyambura Mugure Weru vide letter dated 27th, January, 2005 which I wish to lay on the Table. The current chairman of Harambee SACCO, Mr. Maclaud Malonza was similarly interdicted by the Office of the President on 20th January, 2005.

Is it in order for the Minister to mislead this House by claiming that the case was just an intention to prosecute while he very well knows that it is a case pending because the accused persons have sought a constitutional reference? Could he lay on the Table evidence that the intention to prosecute was declined by the court, which as these documents show, was not the case?

(Ms. Karua laid the documents on the Table)

Mr. Nyagah: Mr. Speaker, Sir, since the issue of Harambee SACCO comes too often, I have brought documents that trace the whole case and which prove my argument. So, may I table this package which can be looked at by the Questioner and the House and if there are any issues, I would be very happy to follow up. What I said was my understanding of what the situation is.

(Mr. Nyagah laid the documents on the Table)

Mr. Speaker: Have you looked at the documents tabled by the Member for Gichugu? Do they make sense to you?

(Mr. Namwamba passed the documents across the Table)

Order, Mr. Namwamba! Next time pass the documents through the Clerks-at-the-Table.

Mr. Nyagah: Mr. Speaker, Sir, these are so many documents and I am not a lawyer. If you do not mind, I would like to look at them together with my people as they

also look at what I brought so that we can continue next week. That is the best way because we need to resolve this thing once and for all.

Mr. Speaker: Order! Member for Gichugu, I am inclined to defer this Question so that we save time and ensure that we expedite it.

Ms. Karua: Mr. Speaker, Sir, the Minister also answered part “b” by saying that he ordered a further inspection report. I want to draw his attention to the recommendations and observations of the Mwaliko Inquiry, on page 25, which say that “In view of the poor----“

Mr. Speaker, Sir, allow me to refer you to a different page, which is page 136 which says:-

“The inquiry team observes that the SACCO has suffered mismanagement over the years despite successive changes of the Central Management Committee and the Supervisory Committee. The inquiry team further observed that stability in the SACCO is of paramount importance. Continued cyclical replacement of supervisory members and top management would be disruptive.”

So, they are urging for immediate implementation of this report.

Could the Minister come with a full report on why this mismanaged SACCO, which has over 90,000 members and which receives over Kshs500 million per month, has not been attended to, lest we believe that the Ministry is complicit?

Mr. Speaker: I will defer this Question to Wednesday next week at 2.30 p.m.

(Question deferred)

Question No.052

WORLD BANK’S LOW RANKING
OF KENYA BUSINESS FRIENDLINESS

Mr. Lekuton asked the Minister for Trade:-

(a) how the World Bank ranks Kenya on business friendliness and ease of doing business;

(b) why Kenya was ranked so low in areas of property registration, starting of a business and getting credit; and,

(c) what the Government is doing to improve in “a” and “b” above?

The Minister for Trade (Mr. Kimunya): Mr. Speaker, Sir, I beg to reply.

(a) The World Bank uses a standardized methodology to rank 183 participating countries on ten carefully selected indicators chosen to provide an assessment of the ease of doing business. Kenya was ranked 95 out of 193 economies in the World Bank Doing Business 2010 Report, which is the latest. In the previous year, Kenya was ranked No.84 out of 181 countries. Obviously as we go by, Kenya has also had some successes in the past.

(b) The World Bank’s Doing Business 2010 indicators on registering a property is constructed from recording the full consequence of procedures that are necessary for a business or a buyer to purchase property from another business or another seller and to transfer the property title to the buyer’s name. There is a whole sequence of all those

procedures. On this, Kenya was ranked 125th in the latest report of this indicator compared to 121st in the previous report.

On starting a business, the World Bank Doing Business indicator on starting a business again is constructed from surveys and research on the procedures that are standard small and medium size companies. It works however time it takes to complete the exercise in terms of starting operations, including obtaining all the necessary permits, licences, verifications and notifications to the Authority. Kenya was ranked 124th in the latest World Bank Doing Business 2010 Report on this indicator again compared to No.110 in the previous year's report.

In terms of getting credit, Kenya was ranked No.4 globally in the World Banks Doing Business 2010 Report on this indicator, which is unchanged since the year 2009. Kenya's legal rights index was assessed on a scale of 1:10, while the debt of credit information coverage was merited at a score of four on a scale of 1:6.

The Private Bureau Coverage was 2.1 per cent of the adult population compared to 2.1 per cent in the previous year's report. The World Bank ranked Kenya among the very best in the world on this indicator based on the country's framework for legal rights, the depth of credit information and private bureau coverage.

(c) The Government is carrying out a number of initiatives to improve the ease of doing business. This is a very holistic set of report, but we would just identify a couple as illustrative. These are as follows:-

(i) At the national level, there is establishment of Regulatory Reform Working Committee that is drawn from a broad section of the public agencies and private sector to oversee and guide the regulatory reforms.

(ii) Formulation of Business Reform Strategy and a draft Business Regulatory Reform Bill that will entrench the regulatory reforms. Again, both of which have been shared with the stakeholders and are currently being finalized. This is aimed at reducing the licences required to start a business in Kenya.

(iii) There is also establishment of a Tax Revenue and Harmonization Committee to advise on the long term measures to improve the structure and administration of taxation, which is again one of the indicators that is limited in terms of ease of paying taxation within Kenya. Alongside that there is the launch of an electronic e-registry to provide easy online access to licences and regulation and the ongoing exercise to complete and finalize the electronic registry. The Government has also developed regulations for operations of credit reference bureaus. This has improved credit accessibility, especially to small and medium enterprises.

(iv) The other is business reforms at the sub-national level. In September, 2009, the Ministry of Trade launched Doing Business Benchmarking Studies at the sub-national level in the Doing Business 2010 Report which will assist in cascading the Doing Business reforms from national to local government levels.

(v) We have also established the District Business Solution Centres initially starting with pilot project within Siaya, Bungoma and Kakamega. Business solution centres are again a one-stop shop for information where SMEs can get ready information on markets and other information they need in doing business. These business solution centres will eventually be rolled out throughout the country subject to availability of funds and requisite personnel.

(vi) We have also rolled out business information centres to help our people in terms of compliance issues. We also have the implementation of the private sector development strategy goals namely the improvement of the business environment, trade expansion, and support to entrepreneurship and enterprise development.

Our Ministry also through its training wing of the Kenya Institute of Business Training continues to hold trainings for SMEs throughout the country and is in the process of decentralising to the districts.

Lastly, other Ministries are also playing a pivotal role in terms of reforms and particularly, relevant to this Question, the Ministry of Lands is also in the process of computerising the land registry which will reduce the cost and procedure of land and property registration significantly.

Mr. Lekuton: Mr. Speaker, Sir, I am looking at the figures of the World Bank Report in 2008. We were ranked No.72 in the world. In 2009, we were ranked No.84 and now we are ranked No.95. This is a big drop. Could the Minister explain to this House or at least to the common Kenya, why we are sliding down the lane and the rest of the world is catching up and passing us?

Mr. Kimunya: Mr. Speaker, Sir, it is true that in 2008, we were not only ranked as No.72 in the world, but Kenya was ranked as one of the top ten reformers on a global basis. I remember travelling to London to receive a trophy that Kenya was awarded for the reforms we had done. If you recall during that time, we reduced the number of business licences and regulations that were in operation from a total of 1,325 by eliminating 400 plus licences and simplifying others. That was a very significant step that was taken as part of the business reforms.

You must remember that we did that in Kenya in that year and moved forward. All the other countries are also doing their reforms and it is a competition. So, if you do not do much more than all the others, then your ranking goes. So, it is not because Kenya is not reforming, but even other countries are also reforming. We are in that competition. I am happy that we still are operating within the lower half in terms of the reforms. With efforts all round in terms of what this House needs to pass and what the Government needs to bring in, I believe we are on the way forward. Come 2011, perhaps, our ranking will be far much better than this. But in terms of 2009/2010, we also know what we went through. People who came to transfer their properties in the first half of 2008/2009 were reporting total disappointment. As a result then the indicator fell. But I think we are on the reform path.

Mr. Imanyara: Mr. Speaker, Sir, could the Minister agree with me that unless and until we deal with the issue of corruption, particularly until we deal with the Goldenberg, Anglo Leasing and Triton scams, we will continue to be ranked very lowly because no single serious prosecution has taken place with regard to corruption? As long as that remains the status quo, our ranking will always be low. Would he agree with that?

Mr. Kimunya: Mr. Speaker, Sir, I agree totally that we, as a country, need to sort the devil of corruption. The whole of that evil needs to be removed from our eyes. All those scandals have to be brought to a conclusion at some point or the other. But in terms of the Doing Business Report, the ten indicators that the World Bank look at are; one, starting a business. That is one of the indicators and the ease of doing that. Obviously, there is rent seeking opportunities within all those procedures, which needs to be handled.

Dealing with construction permits, because construction is a big driver to the industry, the ease of employing workers and, I think, within there, Kenya is ranked very poorly because the cost of employment in this country is ranked as one of the highest in the region. I think within the labour laws and within the agitation by our trade unions, the freedom that has been given has now worked against us in terms of everyone coming to this country and saying that the cost of employing labour in Kenya is higher than in most of the other places within the region. The other one is, obviously, registering a property and we have a whole sequence of about ten procedures that one has to go through. Getting credit, as I said, we are doing very well. In terms of protecting investors, we are doing well, because we have all the laws that make people feel they are protected. Paying taxes, again, I did cover that. Trading across borders, again, we are doing very well in that. Enforcing contracts, we are doing very poorly in that, because there is a whole backlog of cases in our courts. Lastly, in terms of the ease of closing down a business, it is probably the easiest. But in terms of corruption and in terms of all the issues that need to be sorted out, I believe that we all, as Kenyans, have a duty--- This House has a primary role to ensure that all corruption is brought to an end. You can count on my support in that.

Eng. Maina: Mr. Speaker, Sir, first of all, I must say that it is a good thing that the World Bank has actually pointed out the unfriendly climate in this climate of doing business. But is the Minister aware that the bulk of this unfriendliness is actually meted against Kenyans, who comprise nearly 99 per cent of the population and, consequently, this country is not likely to develop at the rate it should be developing? We are also aware that the foreign companies enjoy untold kind of treatment in terms of favoritism and protection from their embassies when the local business people are frustrated, when they should be the ones contributing significantly to the employment and wealth of this country. What is the Minister going to do to change this scenario for the benefit of this country?

Thank you, Mr. Speaker, Sir.

Mr. Kimunya: Mr. Speaker, Sir, I am not aware that Kenya is an unfriendly place to do business in . In fact, the reverse is true. Even in the midst of economic recession, the companies that have returned the highest profit almost at the global level are the companies operating in Kenya. If you look at company closures, more closures have been seen in the USA and Europe than in this country. I believe it is because the environment is conducive to doing business; that is also in terms of the thriving of the Kenyan entrepreneurship.

Now, in terms of whether there is any discrimination between foreign and local companies, I am not aware of any laws passed by this House that discriminate against locals as compared to foreigners. In fact, the one law that I am aware of that actually protects the locals is the Public Procurement and Disposal Act that has specific preferences for local products *vi- a-vis* the foreign products. So, all in all, I believe that every business operating within Kenya is treated equally, whether local or foreign. Unless there are any specific cases that have been tabled, I am not aware of where there is discrimination. But I am very happy that, obviously, the business community, especially in Kenya, is doing very well, and not just within Kenya.

Mr. Speaker, Sir, just allow me to share some of the statistics with the House. Look at the flow of foreign direct investments within the region--- If you look at

Tanzania, the number one source of direct investment is the United Kingdom. The number two source is Kenya. So, Kenyans are not just investing and doing business within Kenya, but they are the second leading investors in Tanzania. If you look at Uganda, it was the same scenario until India and Libya replaced us. A similar thing is true in Burundi and Rwanda. So, within the region, Kenyans have already asserted themselves; all that charity begins at home; they can do business at home and transfer the same best practices and the same way of doing business in the region.

Thank you, Mr. Speaker, Sir.

Mr. Lekuton: Mr. Speaker, Sir, I would like to thank the Minister for a good answer. But I would like to ask him, in this report for 2010, the World Bank ranks Kenya as 147th in cross-border trade. We are almost ranked last. What are we doing to make sure that we go up in this specific indicator?

Mr. Kimunya: Mr. Speaker, Sir, in terms of cross-border trade, we are referring to Kenyans' reports about the hurdles they face when they go to neighbouring countries to do business, or when they pass through neighbouring countries on transit to other neighbours. There have been cases of discrepancies in the application of laws, but, luckily, last year in November, the five East African Countries signed the East African Common Market Protocol, which comes into force on the 1st of July, 2010. As of 1st of January, 2010, the duties were all removed in terms of the trade within the region; that has reduced some of those hurdles that were there.

Mr. Speaker, Sir, I did launch in Mombasa a Common Market for Eastern and Southern Africa (COMESA) regional customs transit guarantee. That, again, is going to help in terms of trans-shipment of cargo by having one document acceptable throughout the region. So, some of these issues may have been historical, but the efforts that we are now putting in as the five regional Governments between Kenya, Uganda, Tanzania, Burundi and Rwanda, and also within the wider COMESA and then within the wider Africa by integrating COMESA, Southern Africa Development Community (SADC) and East Africa Community (EAC) will specifically help in terms of cross-border trading and in terms of ensuring that everyone who has something to sell can move capital, goods and intelligence and sell or market it within the region. So, there are processes or things which are happening, and I believe that you will see the true benefit of that from the 1st of July, 2010, with the Common Market Protocol coming into due force.

Question No.130

DELAYED PAYMENT OF COMPENSATION
TO VICTIMS OF BUDALANGI FLOODS

Mr. Namwamba asked the Minister for Regional Development Authorities:-

(a) to explain why the Government has not implemented the resolution of this House on 15th October, 2008 that the Government compensates all victims of Budalang'i floods from the year 2000 as well as land owners who lost their land during the construction of the Southern and Northern dykes in Budalang'i; and,

(b) whether he could outline a concrete, time-bound plan with clear budgetary projections for the compensation, especially in the light of the fact that the Government is now in the process of preparing the 2010/2011 Budget.

The Minister for Regional Development Authorities (Mr. Gumo): Mr. Speaker, Sir, I beg to reply.

(a) Flood mitigation through construction of dykes in major rivers which are prone to flooding is a project which was initiated and implemented by the Ministry of State for Special Programmes under the Western Community-driven Development and Flood Mitigation Project (WKCDD & FM) funded by the World Bank, which funding was subsequently suspended.

Mr. Speaker, Sir, in this regard, I wish to refer you to Question No. 106 tabled before this House on Tuesday 23rd March, 2010, and addressed to the Minister of State for Special Programmes on the status of the said project. Although Budalang'i falls under the Lake Basin Development Authority area of jurisdiction, the authority was left out in the implementation of the project, even with various attempts to be actively involved. In view of this, and given the fact that the Ministry of State for Special Programmes is not doing it any more, my Ministry will now take the initiative and put it in the next financial years' Budget.

Mr. Namwamba: Mr. Speaker, Sir, with all due respect, that answer is a clever attempt by the Government to evade responsibility. The Question is a precedent setting in the sense that it tests how the Government responds to resolutions of this House. Since the day the Motion, the subject of this Question, was "asked" on 15th October, 2008, there has been a whole ping pong of one Ministry passing the buck to the other to an extent that the Minister has admitted that his Ministry is not responsible for this.

Mr. Speaker, Sir, could you, indulge me a moment to remind the Minister the subject of the Motion so that he gets full understanding that this Question---

Mr. Speaker: Order, the Member for Budalang'i! As I understood the Minister while responding, there is no doubt that he has understood the Question. He has said that he will ensure the implementation as required by the Motion in the next financial year. So, he has actually answered the Question unless you have a specific aspect he has not addressed.

Mr. Namwamba: Mr. Speaker, Sir, first of all, kindly allow me to pass to the Minister the full text of the Motion and how it was "prosecuted" in this House on 15th October, 2008.

Mr. Speaker: You may do so, but ask specific questions.

(Mr. Namwamba laid the document on the Table)

Mr. Namwamba: Mr. Speaker, Sir, my concern is that the Minister is making reference to a project which started in 2007 while my Motion referred to the period commencing 2000, which is seven years prior to the commencement of the project the Minister is making reference to. It worries me that the Minister may not be completely familiar with the content and subject of the Motion. That will, of course, affect how the Minister responds to the issue at hand. Could the Minister confirm whether he is fully familiar with this Motion and the responsibility he will take as a Minister?

Mr. Gumo: Mr. Speaker, Sir, I am fully aware of the Motion. As the Government operates, responsibilities can be removed from one Ministry to another. I have made an undertaking that since all the Lake Basins fall under the Ministry of Regional Development Authorities, from now on, I will make sure that it is included in the next Budget so that the people who are affected by the floods are compensated.

Ms. Karua: Mr. Speaker, Sir, it has taken over 11 years for the Government to admit through the Minister that they will pay. Could the Minister tell the House why it has taken that long and whether they will pay interest to those poor farmers who have been waiting for more than a decade?

Mr. Gumo: Mr. Speaker, Sir, this project had been going on for a long time until the World Bank withdrew its funding. We will make sure that it is included in the next Budget so that it can continue and the people who were affected compensated.

Dr. Khalwale: Mr. Speaker, Sir, when the Government eventually accepts to compensate people usually, either the Provincial Administration or other implementing officers will alter the intention of the Government as pertains the rate of payment. Could the Minister confirm at what rate the Government will pay those people per acre?

Mr. Gumo: Mr. Speaker, Sir, it is difficult to confirm the payment per acre. As you are all aware, there are Government rates. The land has to be valued before the people are compensated. There have been floods in this area since time immemorial. This is not a new thing. So, it is difficult for me to tell this House that those people will be compensated this much. I am sure they will be happy as long as they will be compensated.

Mr. Namwamba: Mr. Speaker, Sir, this is a happy day for the people of Budalang'i and I want to commend the Minister who is also a son of Budalang'i for taking the responsibility to implement this Motion fully. All I want is for the Minister to confirm that, indeed, the people of Budalang'i can look forward to this compensation within the 2010/2011 Financial Year.

Mr. Gumo: Mr. Speaker, Sir, I will do my best to ensure that, that is done.

Mr. Pesa: Mr. Speaker, Sir, although I have not received a copy of the written answer, I beg to ask Question No.1 by Private Notice.

QUESTION BY PRIVATE NOTICE

TREASURY'S PLAN TO RAISE MONEY FOR EMERGENCIES

Mr. Pesa: Mr. Speaker, Sir, I beg to ask the Deputy Prime Minister and Minister for Finance the following Question by Private Notice.

(a) Could the Minister confirm to the House how the Treasury plans to raise money for the growing list of emergencies, given that the process of the sale of Consolidated Bank of Kenya has run into trouble after a group of investors moved to court to block it?

(b) What stake does the Treasury (together with the Deposit Protection Fund) own in the bank and what percentage had been earmarked for sale in the 2009/2010 Financial Year?

(c) Is it true that proceeds from the sale was to help plug the Kshs.168 billion budget deficit in the 2009/2010 Fiscal Year, and that the Treasury had projected to raise Kshs.6 billion from privatization by June, 2011 and, if so, what will happen in the event that the court case succeeds?

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Finance (Dr. Oburu): Mr. Speaker, Sir, first, I apologise for coming later. The Permanent Secretary of our Ministry has written to the Clerk requesting that this Question be deferred until next week. I seek your indulgence so that we can come up with a comprehensive answer to this Question including the issue of sub judice which we are also investigating in respect to this matter.

Mr. Speaker: How long do you require?

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Finance (Dr. Oburu): Mr. Speaker, Sir, I request that this Question be deferred until Tuesday in the afternoon.

Mr. Speaker: What is it, the Member for Gwassi?

Mr. Mbadi: Mr. Speaker, Sir, given the fact that this is a Question by Private Notice, is it in order for the Assistant Minister to request for that period of time?

Mr. Speaker: Order, the Member for Gwassi! The difference when this event occurred and today and next week is such that it is, on the balance of convenience, best deferred to next week which is just six days away.

So, I will defer this Question to Tuesday, next week at 2.30 p.m.

Mr. Imanyara: On a point of order, Mr. Speaker, Sir. You had indicated that I revisit the issue of the matter being in court when the Assistant Minister is in the House. I am not sure that he knows that.

Mr. Speaker: Order, the Member for Central Imenti! The Assistant Minister has indicated that one of the things he will be looking into and he will canvass when he comes back on Tuesday, next week in the afternoon is whether or not this matter is sub judice. He may very well make that claim and the Chair will make a finding depending on the facts that will be before the House.

So, this Question is deferred until Tuesday at 2.30 p.m.

(Question deferred)

MINISTERIAL STATEMENTS

Mr. Speaker: Are there any Statements that are ready for delivery? The Minister for Lands, do you want to indicate whether or not you are ready with your Statement?

The Minister for Lands (Orengo): Mr. Speaker, Sir, I was looking for Mr. Kioni so that I seek his indulgence to issue my Statement on Tuesday, next week. I was a little bit optimistic that I would be able to prepare the Statement in time, but it has not been easy to do so. In view of the events of today and tomorrow, I will not really be out of order to ask for more time.

Mr. Speaker: Very well! I defer the Statement to next week on Tuesday at 2.30 p.m. Please, come and deliver it then.

Mr. Ethuro: On a point of order, Mr. Speaker, Sir. You have heard Mr. Orengo say that he is not in a position to deliver the Statement tomorrow and Thursday because

of the pending business. I am just wondering whether he is the alternative Attorney-General in the Coalition Government.

Mr. Speaker: Order, the Member for Turkana Central! First, you are out of order because I have already given directions on that matter and it is, therefore, concluded.

Yes, Mr. Ojode!

WITNESS PROTECTION FOLLOWING BURGLARY
INTO ICPCR OFFICES

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, on Tuesday, 16th March, 2010, Mr. Imanyara, the Member for Central Imenti rose on a point of order seeking a Ministerial Statement on witness protection, and in particular, the breaking into the offices of the International Centre for Policy and Conflict Resolutions (ICPCR) Chief Executive Officer, Mr. Ndung'u Wainaina. The hon. Member sought assurance that witnesses will be protected and measures taken to investigate to find out the real cause of this raid; circumstances under which the computers were taken and give assurance for the safety of Mr. Ndung'u.

Mr. Speaker, Sir, on 16th March, 2010, Mr. Ndung'u Wainaina, the Chief Executive Officer of the International Centre for Policy and Conflict Resolutions reported at Central Police Station, Nairobi, vide Occurrence Book No.17/16/3/2010 that when he opened his office on the Ninth Floor of Hazina Towers at 6.30 a.m. he found files and papers scattered all over and the lights were on. When he left the office on the previous day, at 3.45 p.m. all was in order. The scene was immediately visited by the Officer Commanding Police Division (OCPD) and the District Criminal Investigations Officer (DCIO), Central Division, amongst other officers.

Investigations indicated that there was no actual break-in and the door appeared to have been opened using a master key or a duplicate key. Mr. Wainaina informed the investigators that the following items had been stolen: Two HP computer monitors; one compact CPU with data; one laptop computer, and Kshs28, 600. The scene was dusted for fingerprints and later, two suspects, namely, Daniel Muthoga and Shem Apollo, both of Gilleys Security Services, were arrested and charged before court vide Central Police Station File No.111/160/210 and Chief Magistrate's Nairobi Criminal Case No.560/2010.

Mr. Speaker, Sir, the case is, therefore, before court. However, when Mr. Ndung'u Wainaina made the report to the police, he did not reveal the contents of the data that was stored in the computers nor did he claim that his life was in danger. As such, the case is being treated as a normal and isolated case of office break-in. There are no reported or known threats to the life of Mr. Godfrey Ndung'u Wainaina.

I rest my case.

Mr. Imanyara: Mr. Speaker, Sir, I wish to thank the Assistant Minister for a very thorough answer. If I had the authority, I would recommend that he be elevated when the reshuffle comes, so that he can be the substantive Minister, because he takes his work more seriously than the substantive Minister who is looking at me in the House today. I am very happy for the answer.

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): On a point of order, Mr. Speaker, Sir. Is the hon. Member in order to impute improper motive on another Member of Parliament?

Mr. Speaker: Order! Member of Parliament for Imenti Central, you are certainly out of order. You do not decide or determine or influence for that matter, the competence of Ministers from your position.

Mr. Imanyara: Mr. Speaker, Sir, I will go by your ruling, but I only said “if I had the authority”, which I do not have. So, maybe, he did not listen to me carefully.

Mr. Speaker: Order, Member of Parliament for Imenti Central! That matter is friendly!

(Prof. Saitoti stood up in his place)

Order! Order, Prof. Saitoti! I have already made a ruling on that matter. I have found that the hon. Member is out of order!

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Thank you, Mr. Speaker, Sir.

Mr. Speaker: Hon. Orwa Ojode, would you want to say anything more?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, I thought that he would seek more clarification but, from what I heard, he is satisfied.

Thank you.

Mr. Speaker: Fair enough! Let the matter rest there!

Yes, Member of Parliament for Turkana Central!

Mr. Ethuro: On a point of order, Mr. Speaker, Sir. I am shocked that the Assistant Minister referred to the breaking into an office as “normal”.

Mr. Speaker: Order, Member of Parliament for Turkana Central! What matter are you alluding to?

Mr. Ethuro: Mr. Speaker, Sir, I want to confirm from the Assistant Minister whether a robbery can be normal business that this Government is entertaining.

Mr. Speaker: Order, Member of Parliament for Turkana Central! You are certainly out of order. Could you proceed? You caught the Speaker’s eye on a request to seek a Ministerial Statement. So, proceed on that basis.

Mr. Ethuro: Mr. Speaker, Sir, I abide by your ruling.

POINTS OF ORDER

EFFECTS OF HEAVY FLOODS IN TURKANA CENTRAL

Mr. Ethuro: Mr. Speaker, Sir, I rise to seek a Ministerial Statement from the Minister of State for Special Programmes on the raging floods in the country generally, but specifically in Turkana Central, which have caused displacement of people. In that Ministerial Statement, I would like her to address the following issues:-

(i) how many people have been affected by these floods, in terms of being displaced;

(ii) how many people have been killed by these floods, particularly those who were crossing rivers Kawalase and Tukurnyang' for lack of bridges;

(iii) confirm that some of these people were civil servants who had been posted to work in that area by the same Government that has not been able to construct the bridges and repair the roads in that area to the extent that those people are now being killed as they go about doing Government business; and,

(iv) state what compensation packages she is putting in place, as a matter of urgency, to ensure that all the displaced and disposed persons are compensated, especially having heard the Minister for Regional Authorities Development confirm compensation of Kshs3, 000 for Budalang'i residents.

(Mr. Outa stood up in his place)

Mr. Speaker: What is it, Member of Parliament for Nyando!

RELEASE OF KACC INVESTIGATION REPORT ON
PURCHASE OF CEMETERY LAND TO PRESS

Mr. Outa: Mr. Speaker, Sir, I had previously sought for a Ministerial Statement, and I can see that my learned friend, the Minister for Justice, National Cohesion and Constitutional Affairs is here.

(Laughter)

Mr. Speaker, Sir, I want to withdraw the phrase "my learned friend" and replace it with "my colleague".

I had sought a Ministerial Statement from the Minister for Justice, National Cohesion and Constitutional Affairs concerning the manner in which the Kenya Anti-Corruption Commission (KACC) released confidential documents to the public before investigations were complete. The Minister is here. I wonder whether he will respond to that request today or confirm when he will be able to issue the Ministerial Statement.

Mr. Speaker: Yes, Minister for Justice, National Cohesion and Constitutional Affairs!

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Speaker, Sir, I am actually working on that Ministerial Statement. I have received preliminary responses to questions I have asked. Some of them are not completely satisfactory. Therefore, I want to beg the indulgence of the House to issue the Ministerial Statement on Wednesday, next week, when I will have a comprehensive answer to the issue raised.

Mr. Speaker: Minister, if Thursday next week is convenient for you, I will defer it to that day.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Yes, it is convenient, Mr. Speaker, Sir.

Mr. Speaker: Bring it on Thursday afternoon. Member of Parliament for Nyando, please, note.

Mr. Outa: Thank you, Mr. Speaker, Sir.

POINT OF ORDER

ISSUANCE OF IDENTITY/VOTERS CARDS

Eng. Maina: On a point of order, Mr. Speaker, Sir. I seek a Ministerial Statement from the Minister of State for Immigration and Registration of Persons on the issuance of identity cards and voters cards.

Mr. Speaker, Sir, the people with old generation identity cards are not being allowed to register as voters. Could the Minister tell us what he will do to ensure that these people get registered as voters because they hold a valid document that is issued by the Government?

Secondly, there is delay in the issuance of identity cards and, therefore, several people are holding documents showing that they applied for identity cards and yet they cannot be allowed to register as voters.

Mr. Speaker, Sir, we are going to the referendum and this matter is serious besides being of national importance. Could the Minister explain why the two categories of people namely those with old identity cards and those waiting to be issued with these documents are being denied to register as voters? When will these people be allowed to register? What will the Minister do to expedite the issuance of identity cards so that everybody has his or her right as a voter in this country?

Mr. Speaker: Order! Is it the Minister for Justice, National Cohesion and Constitutional Affairs or the Minister of State for Immigration and Registration of Persons?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Speaker, Sir, I undertake to make this information and request available to the Minister of State for Immigration and Registration of Person so that a Statement can be issued. Perhaps, you can give me up to Thursday, next week.

Mr. Speaker: Order, Mr. Minister! The question seems to lean more towards registration of voters.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Speaker, Sir, if it becomes relevant to my Ministry, I can issue the Ministerial Statement on Thursday. I understand there are serious concerns about registration of voters. I will issue a Statement on Thursday, next week.

Mr. Speaker: Please, issue it on Thursday afternoon!

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Thank you, Mr. Speaker Sir.

IMPLEMENTATION OF HOUSE RESOLUTION
ON MIGINGO ISLAND

Mr. Mbadi: On a point of order, Mr. Speaker, Sir. About three weeks ago I had sought a Ministerial Statement from the Ministry of Foreign Affairs with regard to Migingo Island. Up to date I have not received that Statement. Could I get an indication from the Minister on when he is likely to issue this Statement in this House?

Mr. Speaker: Mr. Minister, are you able to deliver the Ministerial Statement on Thursday, this week?

The Minister for Foreign Affairs (Mr. Wetangula): Mr. Speaker, Sir, can I do it next week?

Mr. Speaker: Next week on Wednesday morning?

The Minister for Foreign Affairs (Mr. Wetangula): Yes, Mr. Speaker, Sir.

Mr. Speaker: That is okay. It is so ordered!

The Minister of State for Special Programmes, could you issue the Ministerial Statement requested for by the Member for Turkana Central, on Thursday, this week? It is a matter of life and death since it is about floods.

The Minister of State for Special Programmes (Dr. Shaban): Bw. Spika, kwa sababu ninahitajika nitoe Taarifa Kamili, ninaomba nipewe mpaka wiki ijayo ili niitoe siku ya Jumanne.

Mr. Speaker: Waziri, inasemekana kwamba wananchi “wanauwawa” na maji!

(Laughter)

Order, hon. Members! *Mtu akikufa kutokana na maji anauwawa?*

(Laughter)

The Minister of State for Special Programmes (Dr. Shaban): Bw. Spika, kwa heshima yako, ni kweli kuwa janga la mafuriko linaleta maafa ya kifo. Kifo ni kifo hakijalishi kinakuja namna gani. Ningeomba nipatiwe hizi siku chache ndiyo niweze kutoa Taarifa Kamili kwa sababu shughuli zinaendelea. Serikali haijalala inaendelea kufanya kazi.

Mr. Speaker: Waziri, upewe muda mpaka lini?

The Minister of State for Special Programmes (Dr. Shaban): Bw. Spika, mpaka Jumanne wiki ijayo.

Mr. Speaker: Maombi yako yamekubaliwa na utatoa Taarifa Jumanne wiki ijayo.

(Applause)

Mr. Ethuro: Kwa hoja ya nidhamu, Bw. Spika. Ninakubaliana nawe kwamba hayo mafuriko yamekuwa kwa wiki mbili. Ukiongeza wiki moja itakuwa ni wiki tatu. Ningeomba sana kwa heshima yako na heshima ya watu wa Kenya na hasa Waturukana, Waziri atoe Taarifa hiyo Alhamisi wiki hii.

Mr. Speaker: Mheshimiwa wa Turkana ya “Katikati”, tayari nimeamuru Taarifa itatolewa Jumanne, wiki ijayo!

(Laughter)

Order, hon. Members! That shows us how much we need to continue refining our ability to converse in Kiswahili.

Hon. Members, before we move to the next Order, I have a communication to make.

(Several Members stood at the Bar)

Those Members who are just at the verge of coming in may do so!

COMMUNICATION FROM THE CHAIR

SCREENING OF FEMALE MEMBERS LEGS BY MEDIA

Hon. Members, you will recall that on Thursday the 25th March, 2010, the Member for Wajir North, Mr. Gabbow stood on a point of order under Standing Order No.34. The Member drew the attention of the Chair to Regulation 5 paragraphs 2 and 3 of the Standing Orders which has the heading “Protection of the Dignity of the House”. The two paragraphs aforesaid provide as follows:-

“(2) Shots designed to embarrass unsuspecting Members of Parliament shall not be shown.

Recordings of Parliamentary proceedings may not be used for purposes of political party advertising, ridicule, commercial sponsorship or any form of adverse publicity”

Mr. Gabbow complained that *The Standard* had contravened this provision and supported his contention by laying on the Table of the House a picture carried on page six of its *Crazy Monday* pull-out showing the uncovered body parts of some lady Members of this House.

(Laughter)

A number of hon. Members contributed on the matter. They included Ms. Martha Karua, Dr. Sally Kosgei, Mr. Washiali, the Rt. Hon. Prime Minister, Ms. Milly Odhiambo, Ms. Rachel Shabesh, Mr. Mwiru, Dr. Shaban, Mr. Wetangula and Prof. Kamar. Most of these were in support of the contention of Mr. Gabbow that the picture in question contravened the rules of this House and was sexist and demeaning to the women Members of this House.

After allowing that level of canvassing, I undertook to make a comprehensive finding and give directions on Tuesday the 30th March, 2010 in the afternoon.

Hon. Members, I have looked at the picture in question as laid in the Table of the House. I have also perused a copy of *The Standard* of Monday the 22nd March, 2010. It would appear that *The Standard* daily newspaper publishes a weekly pullout dubbed *Crazy Monday* in its Monday Edition. In the largely comical weekly pullout, the newspaper usually runs a teaser column christened “Eye Identify”.

Wherein the newspaper publishes shots of prominent people’s eyes and challenges the readers to identify the owner of the eye. On 22nd March, 2010, at the same column, a similar publication was run albeit with a change. This time the puzzle involved some uncovered body parts as opposed to eyes.

Under the heading which was “politically incorrect/a skewed look at the political scene” and the caption, “Below the hem” the newspapers carried the picture complained of with the following explanatory note:

“Elsewhere in this pull out, we have the eyedentity quiz which is predicated on the assumption that people’s eyes have a distinct personality. Nobody has ever thought of running a legdentity quiz though. A prize for whoever can correctly identify the owners of these pairs of legs. Clue: The picture was taken in Parliament.”

Hon. Members, the question on which I have to rule is whether the picture in question and the manner in which it was carried by the newspaper amounts to a violation of our Standing Orders and if so, the action to be taken by this House against the newspaper. In arriving at these findings, I have made some assumptions. The first assumption, and this does not appear to be in context, is that the picture in question was in fact taken in Parliament. The newspapers itself asserted so and if this were to be false, perhaps different considerations will apply. The second assumption is, of course, that the images in the pictures complained of, are those of the body parts of hon. Members of this House. Again, this has neither been denied nor disputed.

Hon. Members, the purpose of media coverage of Parliamentary proceedings as envisaged in the Standing Orders and Broadcasting regulations and as would be reasonably expected is to relay fair and responsible presentation of parliamentary proceedings to the public. This seems, to me, to be straightforward enough. It is not clear to me how the taking and publishing of pictures of uncovered body parts of lady Members will amount to fair coverage of Parliamentary proceedings. That the picture was published in a comic magazine is particularly instructive. It shows a clear intention that the pictures were to serve as a comic tool or object. It was an object of fun and amusement. This, certainly, without doubt is not in keeping with purposes for which journalists are invited or permitted into this House.

Hon. Members, the spirit behind the provisions permitting media coverage of Parliament is really no more than that the public is entitled to follow the proceedings and conduct of their representatives in the Legislature. Media coverage should not be used to serve any other purpose. That is why Regulation 3 of the Broadcasting Regulations restrict the camera’s scope in television broadcasting. The camera is required to focus on the Member recognised by the Chair until the Member has finished speaking. Group shots and cut-aways should only be taken for purposes of showing the reaction of a group of Members to an issue raised on the Floor and wide angle shots of the Chamber can only be used during voting and division.

Hon. Members, to draw a conclusion on the propriety of the publication, we have to be guided primarily by what the Standing Orders provide as regards Parliamentary reporting. This matter falls under the purview of the Standing Order No.34 addressed together with the First Schedule of the Standing Orders which embodies the broadcasting regulations. Standing Order No.215 is also germane. The Standing Orders prohibit the showing of shots designed to embarrass unsuspecting Members of Parliament. They also provide that recordings of Parliamentary proceedings may not be used for the purpose of political party advertising, ridicule, commercial sponsorship or any form of adverse publicity. While this provision appears to dwell more on television broadcasting, I am satisfied that it equally applies to pictures published by newspapers as in the current case.

Hon. Members applying the Standing Orders and also the test of a reasonable person, I have no difficulty in finding that the publication does not meet the minimum standards of responsible reporting of Parliamentary proceedings. Not only does it overlook the need to uphold the dignity of the House and its Members, but it also

amounts to an abuse of the privilege vested in the Fourth Estate in covering Parliamentary proceedings. Indeed, looking beyond Parliamentary reporting, I take the view that this publication may well be a contravention of the Code of Conduct for the practice of journalism as provided for under Section 35(2) of the Media Act, 2007. That Code requires journalists to “present news with integrity and decency and respect the dignity and intelligence of the audience as well as the subject of news.” In my view, the publication of that picture neither shows respect for the dignity or intelligence of the subjects, nor even for the readers. The Code requires journalists to stick to issues and avoid intrusions into individuals’ private lives without their consent unless public interest is involved. Clearly, the picture went out of the domain of any legitimate public interest in concerning itself with the body parts of Members of this House. More importantly, women and men are required to be treated equally as news subjects and news sources.

It does not feel right for me to leave this matter at this finding. Considering the totality of the circumstances, I think that this was a piece of bad judgment on the part of the newspaper. I say this because I believe I express the earnest hopes of this House and indeed of the whole country that this was an aberration, a lapse rather than any properly defined and agreed to editorial policy of the Standard Group. I want this House to enjoy the benefit of that doubt. This is a country where women complain of definite and systematic discrimination or chauvinism of deep seated negative attitude of subtle and not so subtle sexism. This publication does not help to dispel this concern. It tends to confirm that women are not free from being hassled even if they are Members of Parliament.

Thirdly, it also appears to convey the message that this assault will follow women wherever they go even to the Floor of this House. Coming from an organ as powerful as the media, it sends a wrong message. Far from being funny, I think and I hold that the publication complained of undermines the dignity of the National Assembly and was demeaning and embarrassing to a section of its membership.

Hon. Members, before pronouncing myself on the appropriate recourse, I wish to note that I have become aware that on page 6 of *The Standard* edition of yesterday, Monday 29th March, 2010, in the same *Crazy Monday* pullout, the following words appear under the heading Clarification: “ In view of the sensitivity that has arisen following the publication of a picture on a light touch in last week’s issue of *Crazy Monday*, the editor wishes to assure those concerned that it was in no way meant to disparage the character of hon. Members of Parliament. The editor, therefore, regrets any embarrassments that may have been caused.” I think that is the correct decision by *The Standard*. Although I was going to, and, indeed, hereby reprimand the newspaper for this publication, I am in the same breath prepared to accept that this constitutes a satisfactory apology and mitigation without prejudice to bring this matter to a close. Let me conclude by calling on all media houses to stay focused and maintain the amicable partnership that has existed with this House, particularly at this time when the attention of the whole country is fixed on the all important constitutional review process.

Thank you!

(Applause)

Mr. Olago: On a point of order, Mr. Speaker, Sir. Clearly, you have delivered a suitable ruling in view of that complaint but as we proceed to go on, chances are going to

arrive at the interpretation of the Standing Orders in relation to live broadcast of the House proceedings. Although the newspaper appeared to have apologized, in yesterday's issue, again, there was a print-out of a picture of the legs, clearly, one pair of the legs was Mr. Speaker's and the other was Mr. President's. I think this was meant to test to the limit, the interpretation of the Speaker of the Standing Orders. I draw the attention of the Speaker to look at this and draw another conclusion and a ruling so that the Press understands what their role truly is.

(Mr. Olago laid the newspaper on the Table)

(Loud consultations)

Mr. Speaker: Order, hon. Members! The issue raised by Mr. Olago is quite obviously genuine and relevant to the matter that I have just addressed, save for the fact that this photograph is purported to have been taken at a place other than Parliament. But as it stands, this picture is taken of feet, apparently feet of men but these feet this time are covered.

(Laughter)

So that in those circumstances, I am inclined to find that there is a distinction between these legs as captured wherever they were and those that were unfairly captured in the House. At any rate, my ruling is very clear and the Standard Group is well aware of what consequences will follow if there is any further breach or any attempt to hold Members of this House in contempt. At any rate, Members of this House are representatives of the whole Kenyan public including the Standard Group and I will not waver in taking firm action in future which may include precedents set before, barring the Standard Group from covering Parliamentary proceedings. We have taken into account their action to purge the impact of the picture that they brought in the newspapers a few days ago.

Mr. Wako: Mr. Speaker, Sir, I want, as always, to thank you for your very good ruling that you have made on this matter. I have noticed that in addition to the supplementary question by Mr. Olago, you have emphasized the issue of covering the legs and that forms a very critical part of the ruling; that the legs should be covered. I was just wondering; if I came here with a Scottish kilt where my legs are not covered – as you know for kilts, you are not covered about two or three inches above the knee – would that be in order, taking into account that the Scottish kilt is consistent with quite a number of our traditional clothes that we wear?

Mr. Speaker: Order, Mr. Wako! Hon. Members will notice from my ruling that I have handled this matter with a lot of seriousness and I have given it considerable weight because it is an important matter; a matter that goes to the integrity of Members of this House. Mr. Attorney-General, the Speaker does not make rulings or make findings on suppositions; on things that are not; on things that do not exist! So, please, refrain from trivializing this matter!

(Laughter)

Mr. Shakeel: On a point of order, Mr. Speaker, Sir. May I also ask your guidance on a matter that also affected hon. Members carried by *Kiss Radio* about a week and a half ago, where abusive comments were made against hon. Members? Are you aware of that?

Mr. Speaker: Order, Mr. Shakeel! Your Speaker has already dealt with that matter discreetly and I would rather let it rest where it is.

The Minister for Nairobi Metropolitan Development (Mr. Githae): On a point of order, Mr. Speaker, Sir. I rise under Standing Order No.87 which gives---

Mr. Speaker: Order, Mr. Githae! You have already approached the Chair on that matter earlier and we have not come to that order. I have weighed that matter and I will be able to give directions presently.

COMMUNICATION FROM THE CHAIR

LIMITATION OF DEBATE

Mr. Speaker: Order, hon. Members! As we come to Order No.8 on the Order Paper, the Chair has become aware of the considerable interest that this matter has drawn and I have, among other things, weighed the import and effect of our Standing Orders, including Standing Order No.87. Hon. Members, I have further taken into account that notwithstanding that this House has been meeting for a period of upwards two days, only 41 hon. Members have been able to contribute to this very important Motion. Bearing in mind the historical significance of this matter, it is, therefore, necessary that we accord as many Members as possible an opportunity to make their contributions.

(Applause)

In those circumstances, therefore, doing the best I can, I have exercised the discretion that I have to direct that hon. Members restrict their contributions to not more than ten minutes save for two persons: The Mover who will still be allowed the time that is provided for under the Standing Orders and the Minister for Justice, National Cohesion and Constitutional Affairs under whose portfolio this matter falls. I will urge that hon. Members proceed accordingly. Please, avoid being repetitive and avoid going into areas that are not critical to this process.

Eng. Maina: Thank you, Mr. Speaker, Sir. I thank you because I have stood up many times.

(Loud consultations)

Mr. Speaker, Sir, I need your protection.

Mr. Farah: On a point of order, Mr. Speaker, Sir. Given the weight of the matter that is being debated, would I be in order to ask for your protection, that hon. Members remain silent as much as possible so that we can hear every contribution which will be made by Members of Parliament?

Mr. Speaker: Order, hon. Members. Could you please lower the level of your consultations, so that we can hear hon. Members speaking?

MOTION

APPROVAL OF DRAFT CONSTITUTION OF KENYA

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

(Mr. Abdikadir on 23.3.2010)

(Resumption of Debate interrupted on 25.03.2010)

Mr. Speaker: Eng. Maina, proceed expeditiously, please.

Eng. Maina: Mr. Speaker, Sir, the new Constitution has been awaited in this country for a long time. It has been a long journey and now it is at the stage where this Parliament is supposed to come out, as leaders of this nation, rise above their personal interests and see that the new Constitution of Kenya is a document that will serve the people truly.

I think the greatest thing we can do, as a people, is to ensure that the new Constitution brings unity in this country. We are all aware of the ethnic divisions that are in this country. We are all aware of the risk that this country is running, unless the ethnic divisions are given important consideration by every leader of this country.

Mr. Speaker, Sir, I wish to support the document that is on the Table of the House, because I wish to see this country move forward. I think at a later date when there is need, we could all come back, and we will be in a position to make changes to the document in places where we think it is not in proper shape.

There are a few clauses that I would wish to comment on. One of them is the issue of abortion. It is my considered view that Kenya is a God-fearing country. Those of us who are Christians will recall that God said: "I knew you even before you came into your mother's womb." I think it would be inappropriate for us to tamper with the making of life, which is best effected by the almighty, God the creator.

Mr. Speaker, Sir, there is the issue of devolution. Devolution has to take two parameters. There is the devolution of power and devolution of resources. Democracy has to do with the people. I wish to underline that as we discuss this document and move ahead, we should ensure that population is the basis of making decisions regarding resource allocation. I think the document, as it stands, points out that. I wish to support the document as it is. There is the issue of the ethnicity. Let this House not introduce anything that will stir the ethnic divisions that are already in the minds of Kenyans. I would wish that we come up with the document as it is. I support the 47 counties that have been proposed. It would be very wrong for us to introduce any amendments or issue in the document that would actually worsen the ethnic divisions that are already in the country.

Mr. Speaker, Sir, this country has to move forward. The greatest challenge to this country today is one; eradication of ethnicity in the country, and two, the economic development of this country that the Government has pledged to undertake. Finally, the

greatest challenge we have is employment of our youth. The greatest challenge we have is to ensure that 70 per cent of the population is usefully employed, and usefully contributes to the economic development and the future of this country.

Therefore, as we discuss this draft Constitution, let nobody try to create the feelings that we have created in the minds of Kenyans that once this document is through, employment will be generated tomorrow, the cost of living will go down and that ethnicity will be wiped out tomorrow. It will be the duty of the leaders of this country to ensure that we go ahead and preach to our people the need for reconciliation and remaining together. Nobody can say that Kenyans fought because there was no new Constitution. I do not believe in that theory. Kenyans did not fight just because there was no new constitution. There was a Constitution which guaranteed every Kenyan security and justice.

Let us not try to create the false impression to every Kenyan that once this document is through, Kenyans will live a better life tomorrow, there will be employment for our youth, and that Kenya will be united out of utopia. No. I call upon the leaders of this House to realize that we have another bigger duty, even after passing this document, to ensure that it is implemented in the proper way and that we continue working on the reconciliation of our people.

Mr. Speaker, Sir, there is the issue of some marginalized groups in this country. I do not think that there are people who are more marginalized today than the IDPs. There are people who were displaced in this country, and whose economic activity was brought to an end. They are from everywhere. If you go to Western Province, they are there. If you go to Nyanza Province, they are there. If you come to Rift Valley Province, they are there. If you go to Central Province and Coast Province, they are there. I think we, as leaders, will be expected, after passing this new Constitution, to ensure that these people are accorded a decent living, as they had been living.

Mr. Speaker, Sir, there is the important issue in this country of land. We have the land policy that is in front of us. We must be careful not to treat land as ethnic property. Therefore, I support that land should be administered through the national policy of this country. If we use land to divide the people further, that is not what is expected of us.

Mr. Speaker, Sir, I wish to comment on the amendments that are before this House. I want to beseech this House that these amendments are numerous but this House should concentrate on those relating to the technical accuracy of this document. Let us not try to get ourselves involved in political issues by introducing amendments that could bring further political divisions in us. Long live Kenya!

With those few remarks, I beg to support.

The Vice-President and Minister for Home Affairs (Mr. Musyoka): I thank you, Mr. Speaker, Sir, for giving me the Floor. I intend to be very brief.

Allow me to congratulate this House, more particularly the Parliamentary Select Committee on Constitution Review (PSC). All of us are, indeed, very proud of the membership of that Committee that we put together. We are also proud of the able presentation by the Chairman, hon. Abdikadir and the Deputy, hon. Namwamba. They put up a very strong case for us to be able to now deal with this draft as it is. I wish also to congratulate Mr. Speaker, for showing leadership. Indeed, you are very concerned about the need for this House to build consensus.

I hold the view that if ever there was a constitutional moment, it is now. I can see my friend, Member for Kisumu Town West who had occasion to be with me before the members of the Law Society of Kenya (LSK) last Saturday nodding in agreement. I want, therefore, to call all of us---

(Loud consultations)

Mr. Speaker, Sir, if the Members could consult quietly, I will be very brief.

Mr. Speaker: Order, hon. Members! Let us hear the Vice-President and Minister for Home Affairs!

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Speaker, Sir, the country is fixated at the present moment at the goings on in this House. This Tenth Parliament has a singular opportunity to go down in history as the Parliament that handed this country proper reforms. I want to plead that between now and tomorrow morning, because the next three days are indeed, that we all rise from self interest. That we banish self interests and think only of what is in the best national interest. This House will go down badly in history if, indeed, it will be that this is the Parliament which had the greatest opportunity to bring real change and reforms and then we will have been seen to have squandered the opportunity.

I know that Members are concerned about various amendments. We have a whole raft of proposed amendments. I want to suggest that we sleep over this issue, so that when it comes to voting tomorrow morning, because I gather that the Speaker has set aside the whole of tomorrow, we will sincerely look at those amendments that are making issues and affecting our people. We know our people from every corner of this Republic. We should take into account the marginalized communities. There is need to bring equity and justice. We can, even without looking at our party affiliations, rise to the occasion and deliver this Constitution. I do not think we have much of an option. I heard the Member for Laisamis concerned and rightly so, about the credit rating of our country internationally in terms of business. If we do not deliver this Constitution this time round, we will be seen as a nation that is not able to get her act together. Yet we have in our midst, Members of Parliament constituting as we do, the Tenth Parliament who are able to rise above self and look at, as I said earlier on, the best interest of the nation.

Mr. Speaker, Sir, in 1787 when the American people decided that they wanted to give a new Constitution to their country, they did so. At the same time, that Constitution was inaugurated together with some four amendments. We can never write a Constitution on stone. It is not a stake take document. Therefore, I want to urge my fellow citizens to know that everything can be discussed at a table. We should not take positions which are hard, fast and cannot change. If we do not change, change will eventually change us. Having been Member No.126 at the Bomas, I remember that there was a possibility to isolate issues that were not contested and the country would pass the aspects of the Constitution that were not in contention and go to a referendum over others that were seen to be contentious. This particular proviso is not available to us at this time. Therefore, I want to urge that we do whatever it takes, even if it means consulting overnight, so that we can come up with the necessary amendments and rise to this occasion.

I wish it is also possible, and I raised this issue with the members of the Law Society of Kenya, to come and legislate on a referendum law. It is sad that a country like Sudan which will have the southern part going to a referendum in January next year already has in place the necessary law to enable them to exercise their inalienable right to self determination through a referendum, yet here, we are leaving everything to the Interim Independent Electoral Commission (IIEC). I want to urge that we come out, get together and act together as the Tenth Parliament which is able to take decisions that may even be painful with regard to our respective party affiliations, but decisions that will lift this country to the next level. This country needs lifting. I am sure we will do that.

Thank you for giving me the Floor.

The Prime Minister (Mr. Raila): Thank you, Mr. Speaker, Sir. I would like to thank the hon. Members who have spoken on this subject before us. I also want to thank, in particular, the Chairman and the Vice-Chairman of the PSC for very ably moving this Motion before the House.

We are at a defining moment in our country. Kenya is at a defining moment. A Constitution is an expression of the will of the people. So, sometimes these days, it is said that Kenyans have been at this process for 20 years. Nothing could be further from the truth. The struggle for democratization and the struggle to get this country a new democratic Constitution is as old as this country has been Independent. There have been all the time historically, two forces pulling in two diametrically opposite directions. The forces on the retention of the status quo; those who wanted to inherit the privileged positions that were left by the outgoing colonial masters and use them to lord it on their people versus those who wanted to make Independence more meaningful by giving the people a wide participation in the decision-making process in their country. It is against this background that you can understand the struggle that has taken place from Independence right through. Against that background, the assassinations of Pio Gama Pinto and J.M. Kariuki could make sense.

Against that background, the assassination of the late Dr. Robert Ouko and the late Dr. Odhiambo Mbai would make sense. So, this Constitution is a product of a very consultative process. In the national constitution making circle, it is now said that the Kenyan Constitution making process has been the most consultative. Hon. Members will remember that we started by setting up a Constitutional review Commission headed by one of the best constitution experts in the world, Prof. Yash Pal Ghai. That Commission set up a review architecture that involved consultations right up to the village. Kenyans were asked what kind of Constitution they wanted and they said it. After that process, a national draft was published and members of the public were invited to make their comments. After that, we then had a constitutional conference which lasted for months at the Bomas of Kenya, where each district was represented by three people and all Members of this august House. So, if that is not a people-driven process, then I do not know what a people-driven process is. What we now have here by and large contains what the people of Kenya said. Any hon. Member can go and consult and will know what the people of his or her constituency said or what kind of Constitution they wanted. So, this is not a Parliament-made Constitution. This Constitution is made by the people of Kenya and Parliament is just one of the organs of the review process.

Mr. Speaker, Sir, last time round, this process was shot down here in the House. We do not want this process to be shot down this time. Some fears have been expressed

and proposals forwarded for amendment to the Draft. I have said that this is democratic. There are those who believe that the kind of Executive created is so powerful that unless you create strong checks in the Constitution, we will end up with a more imperial President than what we have today. In countries where we have got pure presidential systems, there are always two chambers. They always have an upper house and lower house and each house is given sufficient powers in the Constitution to check the excesses of the Executive. That is an issue that needs to be looked at.

[Mr. Speaker left the Chair]

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

Mr. Temporary Deputy Speaker, Sir, secondly, there is the question of devolution where people are given the powers to decide on how they want to be governed and what kind of processes they want to initiate down there. Therefore, there has been a proposal to form a three tier system. All the time, the issues of cost are raised as excuses. Also, the issues of ethnic cleansing are given as an excuse. I want to say that these are excuses rather than the reasons. A country like South Africa has got eleven provincial governments. Some of them have even been given ethnic names like Kwazulu Natal. Let us not use ethnicity to stop the people of this country from getting a good Constitution.

Mr. Temporary Deputy Speaker, Sir, the other one is the issue of Kadhis' courts. Hon. Members will remember that this was as a result of a settlement when the protectorate and the colony of this country were coming together. That is when the Kadhis' courts was introduced as a settlement which was negotiated democratically and agreed upon. The Kadhis' court does not refer to Christians. It only deals with marriage, divorce and inheritance among the members of the Islamic community. So, I do not know how it hurts our fellow Christians to have the Kadhis' Courts in the Constitution. If you shoot this one down because of the Kadhis' Courts, you will end up with the current one which has also got the Kadhis' Courts.

Mr. Temporary Deputy Speaker, Sir, the other one is the issue of abortion. All of us who are involved in birth making do not want to see unborn children killed. But all that is being provided for here is that if there is a complication in a pregnancy, professionals are given the option to take measures to save life. When I spoke to one of those people who are opposing this, I asked him: What do you want the doctor to do if there are some complications? The answer was: "Let the child and mother die." That is so inhuman and inconsiderate that you can see that these people are not really interested in a Constitution.

Mr. Temporary Deputy Speaker, Sir, the Bill of Rights in our Constitution is fairly comprehensive. It is one of the most comprehensive bills of rights. It captures the Kenyan dream as coined by our founding fathers of our country who said: "Lord of all creation, bless this land of ours. Justice be our shield and defender. May we dwell in unity, peace and liberty and plenty be found within our borders." That is what the founding fathers of this country wanted. They wanted to be able to master the four major enemies of mankind, that is; ignorance, poverty, disease and bad governance. This country has failed to realize the dream of its founding fathers because of the mediocrity

with which this country has been led since Independence. We now have an opportunity to come out with a governance order that will enable us to realize the Kenyan dream.

Mr. Temporary Deputy Speaker, Sir, we have also a programme which we call Vision 2030 which is aimed at propelling this country into a middle income economy.

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

Mr. Farah: Mr. Temporary Deputy Speaker, Sir, I thank you for according me this opportunity to talk about this landmark historical Motion.

Mr. Temporary Deputy Speaker, Sir, all constitutions when very critically analyzed have got a lot of follies and faults. The American Constitution, when they were claiming or reclaiming their own Republicanism, it took 11 years.

(Loud consultations)

The Temporary Deputy Speaker (Mr. Ethuro): Order! Order, hon. Members! We need to listen to the Deputy Speaker. He has the Floor. Let us consult in low tones.

Mr. Farah: Mr. Temporary Deputy Speaker, Sir, it took 11 years to get the American Constitution in place. At the time when it was being enacted, among other things, one of the pioneers of constitutionalism in the world said: "With all its imperfections, let us accept this Constitution." It is my humble submission that with all its imperfections, let us accept this Constitution as it is without any amendments. I say this because I care about this country and want us to have a Constitution. I say this because there are upwards of 150 supposed amendments to the Constitution. If we have to debate each of them and some Members feel that some of their amendments have been left out because they are not able to garner the requisite two-thirds and others get it, we do not want to go into the Referendum as a divided Parliament.

Mr. Temporary Deputy Speaker, Sir, there are a lot of issues that people worry about now because they look at the parochialism of their own communities. Let us strive to have a nation that does not essentially have those distinctions on the basis of anything other than what is healthy, which is devolving the Government to the extent that it has to be devolved, for faster delivery of services to the communities down there, but not because of our fears. We do not have to fear anything other than fear itself.

In 1963, when we got our Constitution, you will remember that there were small tribes and the big tribes. The Luhyas in Kenya were far less than 1 million people. Today, it is the second biggest tribe with a very small margin from the first tribe. These demographic margins will change in future and we do not have to look at them as a permanent situation. In any case---

(Loud Consultations)

Mr. Farah: Order!

(Laughter)

Mr. K. Kilonzo: Mr. Temporary Deputy Speaker, Sir, that is acceptable because the Deputy Speaker was assuming that he was on the Chair. However, my point of order is that the Deputy Speaker has made a claim that the Luhyas are now the community with

the highest population. Where did those figures come from? Could he substantiate or withdraw? This is going to bring a problem when hon. Members, who are responsible leaders, stand here and make allegations which they cannot substantiate.

The Temporary Deputy Speaker (Mr. Ethuro): Order! The Deputy Speaker did not say that---

Mr. Farah: Mr. K. Kilonzo, I did not say so. If you look at the philosophy of it and the ideology of it and you leave parochialism out of it, and you listen, instead of jumping up with points of orders, because you are a nationalist and you are supposed to be a statesman, you will understand what I am talking about.

The Temporary Deputy Speaker (Mr. Ethuro): Order Mr. Farah! Address yourself to the Chair!

Mr. Farah: Mr. Temporary Speaker, Sir, there is nothing static in this country. There are no small tribes and big tribes in Kenya. We are all Kenyans. In any case, there is no community in this country which forms over 50 per cent of our population and can be considered as the majority. My position is that we should strive for a nation and a tribe called Kenya. Let us not look at other small parochialism issues in determining the future of this country. I am using this as an example because when you try and take a position and say that it will be permanent--- The only position that will be permanent is that there is a country called Kenya where we have one land that does not expand in any way and that we will all live together for posterity and for future until the end of the world. We need to live together and accept one another as a nation and as a State.

(Several hon. Members stood up in their places)

The Temporary Deputy Speaker (Mr. Ethuro): Order Members! The Chair is on its feet. The moment I rise you should be down. The Deputy Speaker still has five minutes to go.

Mr. Farah: Order hon. Members! What is the matter with my hon. Members?

We can have a very good constitution, but unless we respect it, our nation and our people, it will be a piece of paper. We are not in a constitutional vacuum and we would still have a better country than we have today. Let us respect ourselves. We have a culture of always looking outside for help when we have the best. We have the best men and women in the world in this country.

Let us not witch-hunt one another. Not at such a critical moment when we are trying to make a constitution for ourselves.

Mr. Olago: On a point of order, Mr. Temporary Deputy Speaker, Sir. I am getting very concerned about the movement of hon. Members from their seats to the Chair. Is it meant to lobby for them to speak? We are all waiting!

Mr. Temporary Deputy Speaker (Mr. Ethuro): I agree that hon. Members should keep their contact with the Chair very minimal.

(Laughter)

Mr. Farah: Mr. Temporary Deputy Speaker, Sir, one of the dignified positions that I want hon. Members of the august House to appreciate is that when a Deputy Speaker, who hardly gets a chance to speak on the Floor of House, they do not keep on

interrupting him with points of order. Why can we not have a culture that essentially respects the nation, State and the House itself?

I do not see why we should run to Bishop Desmond Tutu. Bishop Tutu is an important person in his own country and also in the continent. However, we also have our own Desmond Tutus in this country. Dr. Bethwel Kiplagat is one of our Desmond Tutus in this country.

(Applause)

If he will be hated in this country simply because he comes from the community of the former President, then that will not be right for us as a State, leaders, nation, and culture of posterity. Someone has gone through a whole process which came through our Parliament and then you try to lynch him outside there, for reasons that we do not know.

We have many of our own Desmond Tutus and many Bethwel Kiplagats. Personally, if you ask me today, to mention one person who can make a very good President for this country, I would go for Bethwel Kiplagat as one of the very few that I can count on my fingers. However, we are here lynching him in our daily newspapers. The next day, we will do so, to somebody else. Next day, we do so, to another person. It will be a tit for tat all the way.

Let us respect our own selves and our Constitution and constitutionalism. As for the Kadhis' courts---

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

Mr. Farah: Mr. Temporary Deputy Speaker, Sir, please, rule them out of order!

Dr. Khalwale: Mr. Temporary Deputy Speaker, Sir, the hon. Deputy Speaker has raised the issue of Bethwel Kiplagat. Could he confirm to this House whether he has or has not read Ndung'u's Report on Injustly Acquired Land in this Country where Kiplagat is mentioned?

Mr. Farah: Mr. Temporary Deputy Speaker, Sir, there is no one who came from his mother's womb with a title deed on his own navel.

(Applause)

Everyone got a title deed because it is a document that is respected. If we could accept and respect title deeds, when the colonialists kicked us out of our own land and appropriated 100 acres to a family--- We do not even talk about it because you look at him as a white man and we get scared. However, because a fellow black Kenyan man has a small piece of land, you cannot do anything else, but envy him or her.

(Applause)

On the issue of the Kadhis' Courts, we want to have a nation in which we appreciate one another. The best litmus test for any country is to protect its own minorities. The Muslims in this country are a minority.

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

Mr. Farah: Mr. Temporary Deputy Speaker, Sir, I can face the Chair or even face the other side as long as I address the Speaker all the time.

The Kadhis' Courts have never been a threat to anybody in this country, not even to the majority. Over 70 per cent of the population of this country are Christians or profess to other faiths other than Islam. This is just a family court. However, when you get people being paid by evangelists outside this country to create chaos among their own ethnic brothers and sisters in this country---

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

Mr. Temporary Deputy Speaker (Mr. Ethuro): Let the hon. Member proceed!
Mr. K. Kilonzo, you are out of order!

Mr. Farah: Mr. Temporary Deputy Speaker, Sir, with those few remarks, I beg to support the Motion.

Mr. Ruto: Thank you, Mr. Temporary Deputy Speaker, Sir. I rise to contribute on this very important issue on constitution making. Constitutional review is a very important exercise. It is, indeed, an exercise that Kenyans have invested heavily in. I want to restrict myself to the last 20 years when Kenyans have been clamoring for a people-driven constitution. Today, instead of this being a climax, I can see it being an anti-climax. The single most important institution that we wanted to reform in this country is the Presidency. Kenyans were crying for 40 years for the reform of an institution that had destroyed all the other institutions and had raised itself to a pedestal that was beyond reproach and even beyond any sanction.

Mr. Temporary Deputy Speaker, Sir, today, we are about to install a super imperial presidency with very weak systems of checks and balances. The institution of the Presidency has actually, systematically run down all the institutions. It is the Presidency that has over the years, perpetuated the culture of patronage and, therefore, bred corruption and impunity to levels that are unmatched. Today, we are about to install a super-imperial Presidency. This, in my view, is a negation of what Kenyans have been looking for. That could be mitigated if we were able to put in place institutions of checks and balances. These institutions of checks and balances include an improved Parliament and a strong Senate that is capable of ensuring that this Presidency does not ride over the rest.

We have also been asking for devolution. Resources have been over-concentrated at the centre and that has been used by the institution of the Central Government to perpetuate the same misallocation of resources; lopsided development. That is why we are saying that we must have proper institutions that will take care of devolved funds. If you look at the Bomas Draft, all the views of Kenyans had been gathered by a review commission that went round the country. That information is available. In fact, that particular Committee of Experts (CoE) utilized that information and came up with the first draft. The Harmonized Draft was closest to what Kenyans asked for. Unfortunately, in our hurry, we came up with a review act that allowed the CoE to start receiving text messages, e-mail, letters and presentations at the Kenyatta International Conference Centre (KICC). I am not certain that the presentation of the CoE reflected the entire Kenyan population. We are aware that 95 per cent of Kenyans cannot even communicate via e-mail. When we are told that the e-mails and text messages which the CoE received was used to change the Harmonized Draft, which drastically changed the character of what we have been asking for since Bomas of Kenya, is a let-down to Kenyans.

Mr. Temporary Deputy Speaker, Sir, when we were in Bomas of Kenya, we had talked of devolution all the way to the location but now we are ending it at what is called a county, which is about three or four constituencies. We are moving further away from the people. At the moment, even the national Budget for this year, devolved funds to the constituencies amounted to Kshs250 million which in my rough calculation amounts to about 10 per cent, if you have to conglomerate the entire lot. There is a lot of money now going to the constituencies as devolved funds. This Constitution intends to take all that back to the counties and bring them to Nairobi. I accept the counties as a basis of devolution but we must also have another institution called either a provincial government or a regional government. I am aware that there are some chauvinists who have been saying that provincial governments are *majimbo*s and they want to associate regional governance with exclusivity of communities from certain regions. This is pure propaganda and has got nothing to do with what we have been talking about since Bomas of Kenya.

Unless you intend to retain the supervision of these devolved units by the Central Government and therefore retain the Minister for Local Government and Cap.265 to actually oversee the counties, then I do not know which other institution can ensure that they can provide capacity building over these counties because they are so many. Today, we are proposing to increase them to 80 from 47. There are proposals to that effect. That, in itself means that we will be having so many centres that we are sending millions of money to with no capacity even to utilize it. Then we shall be jailing these fellows and disbanding these counties. I am proposing that we have a provincial supervisory structure that will ensure that there is a representation at that level.

Mr. Temporary Deputy Speaker Sir, this is not far-fetched. It is practiced all over the world. This type of system that we want to install in Kenya without these levels, is unknown. It is not working anywhere else. We intend to copy it from certain places like the United States of America (USA) and Nigeria. I am aware that Kenyans wanted one centre of power. Then we can go the South African model where there is one centre of power but there is devolution.

I am a little bit worried about certain sections in this Draft Constitution, which in my view, will mitigate against its passage when we go to the referendum. For example, in the Bill of Rights, this Constitution does not include land as property to be protected by the Bill of Rights. It excludes under Article 40. I will show you that, although that debate is for tomorrow. What do we want to achieve in this? It even tells us that they will start implementing--- Parliament must put in place a law to determine the minimum and maximum land holding. I do not know why we should bring such issues to the Constitution. There are certain things that are in this Constitution that ought to go to ordinary legislation. If we had enough time, we should polish this document and give Kenyans something that is good and that can be passed.

Mr. Temporary Deputy Speaker, Sir, I have even seen the number of amendments that are being proposed and yet we are being told to pass it as it is. This is hypocrisy. I think the mistake we made was when we accepted rushed constitutional amendments from Serena. They were pushed down our throats from the Serena Committee and we decided to put in our Constitution Section 47(2). I am sure Mr. M. Kilonzo is not comfortable about that but I will blame him for every other mess that may come because of the laws that we passed in a hurry. This country has a history of ---

(Several hon. Members stood up in their places)

The Temporary Deputy Speaker (Mr. Ethuro): Order!

Mr. Ruto: Mr. Temporary Deputy Speaker, Sir, I still have time and I do not understand why they are in a hurry. I will welcome them to speak when I am through.

I wanted to say that this country has witnessed very serious challenges that have occurred because of rushed constitutional amendments. The various constitutional amendments that we have rushed through in a day have led to terrible sufferings by Kenyans. For example, the introduction of a single party system through the introduction of Section 2(A). That was rushed and we ran into trouble. We are rushing through a major document without scrutinizing it. We have been given one week to look at it. I do not even know whether these gentlemen seated here are going to take the responsibility for the mess that we will create through some sections of this document which we may not be allowed to amend.

I have been a proponent of consensus. That we look at this document with a toothcomb and confirm to Kenyans that what we are presenting to them in a referendum is actually appropriate.

The Temporary Deputy Speaker (Mr. Ethuro): Your time is up, Mr. Ruto!

The Assistant Minister for Water and Irrigation (Mr. Kiunjuri): Mr. Temporary Deputy Speaker, Sir, I would like to start by saying that really, this is a historic moment for this country. This is the time to tell Kenyans the truth because by the end of the day, they will listen to us. Kenyans watch their television screens and have the HANSARD that they can go through this year, next year and even some decades to come. We should be able to inform Kenyans on what we are going through, not coming here to do politics everyday and do political posturing. Kenyans do not really understand the process we are taking them through. There are fundamental principles in a constitution making and we have been advised about them. We must look at this Constitution not as a document for 2012; not a document for horse trading; not a document that when So and So comments about it, I will look at him and say: "Because I hate hon. Jirongo, I will not support whatever he brings up in the form of amendments." We should not look at any issue raised here, even amendments in terms of my region, tribe or other issues. It is about a Constitution of this country. Why do I say this? Definitely, in this document that is already proposed, there are issues that you must scrutinise. We have to look at them chapter by chapter and article by article to make sure that we have a Constitution for ourselves, children and for the future of this country. We must look at what is so crucial in this document. We know for sure that there are crucial things in this document.

There are features of a democracy that a Constitution must address. We should be able to say where we are coming from. What is the problem with the document that we have today? What has it failed to address? Have we been able to address these issues? We are all accepting that a Constitution cannot be 100 per cent. We have heard the history of Philadelphia, we have heard the history of Lancaster and all the constitutions of the world. That is one thing that all Members of Parliament are agreeing; that, there is no way we shall come out with a perfect Constitution. If we are all agreeing with that, then we must look at those crucial things like what sets the fundamental principles and pillars of democracy. We must check on whether this Constitution will be able to separate

powers and take them where they belong. We must look at the national executive of this country. Can we have a national executive that is checked and give it its functions? The main functions of the national executive are to propose policies and laws. When it comes to laws, it is Parliament to form those laws. The work of the legislature is to make sure that it passes laws and check Executive. Does this Constitution guarantee us that this Legislature can be able to check the Executive?

If you come to the judiciary, it is charged with the responsibility of interpreting the laws. At the same time, judiciary administers justice. We must make sure that this Constitution protects the judiciary. Does this Constitution that we are about to take to a Referendum protect the judiciary? If those three questions are in affirmative, then we start looking at other issues that can affect the common man in this Constitution.

We can now address the question of human rights. A good Constitution must address human rights of its people. The rights of the people of a country are natural. They are God's endowment and they cannot be taken away. The first thing we look at in a Constitution is whether it is taking away the rights of its people. If any Constitution takes away the rights of its people, then the citizens of that country have the right to reject that kind of a Constitution. We must look critically at the Bill of Rights. At the same time, we must be very careful on the rights we give to our people. All over the world, rights are given. But some are really fundamental and mandatory, but some are aspiratory. If you go ahead and pass a Constitution where you give people mandatory rights where they are supposed to be inspirational, then that will precipitate chaos and it will be difficult to govern this country. We will have problems like the South African Government has today. They over-emphasized on these rights and gave rights that they could not deliver to their people. So, we must be very cautious of what we do today and know whether we can live with consequences. Yes, we can have a Constitution that is not perfect, but are ready to live with the consequences of that Constitution.

Mr. Robert Shaw had this to say about belief.

"Sometimes when we believe in something we suddenly tend to argue about what we believe in to an extent that we become blinded completely of any other argument against it."

When we argue on whether we should amend this Constitution and our arguments are based on the party I come from or whoever believes, then we are not making any rational decision for this country. We must be able to interrogate every amendment and know whether it is viable for this country. If we cannot agree, by the end of the day, the document we have is good for this country. It is 100 times better than the Constitution we have. Therefore, we should not panic. Secondly, we are not the only organ of review. If we cannot amend anything in this House, then we give it to the people of Kenya to make their decision through a referendum. Kenyans will take charge of this Constitution making process. So, there is no panic about this. It is not about life and death.

The first Chapter of this Constitution is about sovereignty. It is about the supremacy of the country and defence of the Constitution. In the defence of this Constitution, we are talking of respecting, upholding and defending. You cannot respect something you do not believe in. You cannot uphold what you do not believe in. You cannot defend what you do not believe in. Let us not divide Kenyans. We start to talk of regions and you start telling us your way of understanding the regions. Yes, South Africa has regions. In America, there is federal system of Government. But where are the South

Africans coming from and where are Kenyans coming from? Have we debated majimbo in Kenya for a long time? How do Kenyans view majimbo? How do they interpret majimbo? Those are questions we must answer. If we decide that we want to go regional, then we look at the history because history repeats itself because men do not want to learn from it. We must ask ourselves whether this is a divisive issue or an issue that unites this country. We must be able to address those fears. My submission is that we can amend this Constitution although Article 255 is very clear that there are some of these things that you cannot just tamper with. You cannot just amend them without two-thirds majority in this House. But we have to ask ourselves: Do we want to declare a Constitution tomorrow, then we will destroy our country? Do we want to declare a Constitution that scares Kenyans? Therefore, I submit that we must be very careful on the issues of regions and counties. We cannot implement everything, but we have to decide on these issues. We must sit down and ask ourselves where we are coming from? How do I understand region as Mwangi Kiunjuri coming from Central Rift Valley? How do we understand regions coming from Mombasa? What do my people think about them? You should be reminded that any seeds of discontent and hatred planted in this country are not being planted by those guys who live in the villagers; it is us, leaders, who do that. We must remember where we are coming from. In the last campaigns, what did you tell them about regions? Therefore, you want to come here and do window dressing, pamper each and convince each other that this country can work. We can speak of regions 50 years to come because by then, we should have been a cohesive nation.

A good Constitution should be able to address historical injustices. It should be able to look at the deep sited issues that the country has. It should be a responsible and productive Constitution. Therefore, every person must be given an opportunity to be heard. The majority and minority should be listened to. The dominated must listened to by the dominant. The Church must be listened to and its 30 million people. You cannot just say that these people are not making any claim that is worth listening to; we are 30 million! Some of us are Christians. They are not saying that we remove the Kadhis' Courts; all they are saying is just to have a clause that can accommodate everyone!

An hon. Member: Exactly!

An hon. Member: What does that mean?

The Assistant Minister for Water and Irrigation (Mr. Kiunjuri): Mr. Temporary Deputy Speaker, Sir, with those few remarks, I beg to support.

An hon. Member: We are intimidated!

Mr. Jirongo: Thank you, Mr. Temporary Deputy Speaker, Sir. Let me take this opportunity, first of all, to thank the Chairman of the Parliamentary Select Committee, Mr. Abdikadir and his deputy for the good work they have done so far. Let me also take this opportunity to thank the Committee of Experts (CoE) for the work they did.

Mr. Temporary Deputy Speaker, Sir, there are a few issues which this House has been debating for a long time, all the way from Naivasha to the Kenya Institute of Administration (KIA) and up to this House. For all that time, hon. Members have not been able to come to a consensus on how to handle these issues. Before I proceed, I want to make my stand very clear. The first thing we need to do is to give Kenyans a new Constitution. We know that there are very many amendments that are required to be done. We all agree that there are problems in various areas, but let us be amending a new

Constitution; let us give Kenyans a new Constitution, then thereafter we can think of amendments.

Mr. Temporary Deputy Speaker, Sir, the number of amendments on the Floor are clear indications that if we attempted to alter anything in the Constitution at the moment, it would not be something that would have been thought through seriously, because any amendment must also co-ordinate the entire document. There are interests in this document; everybody is coming up with an issue that he feels touches him, his community or the region he comes from. But we have not taken time to see the effects of the changes we are proposing to the other ends of this Constitution.

Mr. Temporary Deputy Speaker, Sir, despite the fact that I am saying that we should pass this Constitution the way it is, there are many areas that have glaring mistakes. For instance, issues to do with land have not been thought through seriously. In fact, if you look at headline, Chapter 5, the first thing that is talked about is the land policy. I thought a Constitution is an agreement under which we must live. The way I understand a policy is simple; company policy means, this is the action plan. If you read down from 60 to 68, you actually find it is an action plan; we have the National Land Commission. Inside the National Land Commission, there are certain mandates which we have been given. One of the mandates is that we can correct historical injustices. If you have a problem of land, you can complain to a commission and that they will look at it and give direction on what should be done. That leaves out the role of the court! One wonders what the courts will be doing.

Secondly, Mr. Temporary Deputy Speaker, Sir, if, really, you are to envisage what people call historical injustices, where are we going to begin? At certain times, you have said that some of us came from South Africa; sometimes you have said that others came from Sudan while others came from I do not know where in Arabia! So, really, whose country is Kenya? That leads me to the thing that I have consistently been against; the issue of Majimbo.

Mr. Temporary Deputy Speaker, Sir, many of our friends will cover it and will give it the best name; they will paint it to look like gold, but we know the reality. We know the campaigns that took place before elections; those campaigns were specific, particularly in the Coast region and in the Rift Valley, where people were promised majimbo. I want to agree with some people who say that some of the activities that took place after the elections were spontaneous, because most of the people there believed that if the ODM won the elections, they were going to get free land! I do not know what we are going to do tomorrow to change that kind of thinking. That is why we are seriously against majimbo, and my brothers cannot pretend that, that is not the implication.

The Assistant Minister for Energy (Mr. Keter): On a point of order, Mr. Temporary Deputy Speaker, Sir. I hate interfering my colleague here, but is it in order for him to say that people had been promised free land if the ODM had taken over power? Can he justify that?

Mr. Jirongo: Mr. Temporary Deputy Speaker, Sir, sometimes, it is impossible to justify the obvious. All of you heard the campaigns; all of you read about it; so really, I do not know what he is asking me to substantiate---

Mr. Temporary Deputy Speaker (Mr. Ethuro): Order! Order, Mr. Jirongo! We were not there at the rallies; you have just been challenged! You either prove it or you just withdraw!

Mr. Jirongo: Mr. Temporary Deputy Speaker, Sir, land is divided into three, according to this Constitution. It is very clear that the three positions taken---

An hon. Member: On a point of order.

Mr. Jirongo: Okay, I withdraw!

An hon. Member: Thank you.

Mr. Temporary Deputy Speaker (Mr. Ethuro): Order, all of you! The hon. Member has withdrawn.

Mr. Jirongo: Mr. Temporary Deputy Speaker, Sir, land is divided into three; public land, community land and private land. There is no description given to private land, but when you come to community land, even public land is owned on behalf of communities. Really, if you look at that deeply, and you combine it with what we are calling regionalism, that is a recipe for disaster in this country. I have no problem with the counties; a county is such a small unit. It has no capacity, despite the fact that you have given it a lot of power. It has no capacity to cause instability in this country. But a region, which is doing succession and which has power, the way it is spelt out under Section 1 (4) in this Constitution, that sovereignty shall be expressed at two levels, sovereignty being supreme power and independent authority. We are actually agreeing to balkanize this country.

The excuses our friends are using to say that we are creating an imperial presidency is English Language. We have, for once, a president that we can sack. How is he going to be imperial, unless you are telling Kenyans that the entire National Assembly and the entire Senate will be compromised by this one man called the President? So, the issue of arguing that we are creating an imperial presidency does not arise! We will have our own independent calendar. As hon. Members, if we do fail and cannot handle a single man, yet we have been given the powers in the same Constitution, there is something else we are telling Kenyans – that we are not able to stand firm and serve their interests! Otherwise, devolution, as far as I am concerned, is what we have been talking about. The way I understand Kenyans, they wanted money on the ground; that is all they need! This Constitution will give Kenyans money at a very low level. What is the purpose of mini regions with mini presidents called governors, if it is not mischief?

[The Temporary Deputy Speaker

(Mr. Ethuro) left the Chair]

[Mr. Deputy Speaker took the Chair]

Mr. Deputy Speaker, Sir, I am convinced beyond any reasonable doubt that we should pass this proposed Constitution the way it is. Later on, now that we know that there are many mistakes in it, we sit down when we are sober enough, and not as emotive as we are, so that we correct those mistakes.

The Minister of State for Defence (Mr. Haji): Ahsante sana, Bw. Naibu wa Spika. Kwa muda mrefu, Kenya ni taifa ambalo limekuwa likijigamba eti linaheshimu demokrasia na lina umoja mpaka mwaka wa 2007 tulipokuwa na matatizo baada ya uchaguzi. Tangu wakati huo, inaonekana nchi hii imegawanywa kwa misingi ya kikabila, kidini na kisiasa. Ninasema hivyo kwa sababu ijapokuwa tumekuwa na Katiba kwa

miaka zaidi ya 40, wengi waliozungumza hapa wamesema kwamba kwa muda wa miaka 20 tumekuwa tukipigana kubadilisha Katiba.

Kama alivyosema Bw. Naibu wa Spika, Katiba ni karatasi. Kama chombo chochote kile, karatasi inaweza kutumika vizuri au vibaya. Hadi Wakenya watakapokubali kubadilisha mienendo yao, kwa mfano, kukataa kupeana rushwa, ukabila na kugawanya watu kwa misingi ya dini, hata Katiba hii irekebishwe mara 1,000, hakuna faida yoyote italeti nchini.

Mimi nimetumikia nchi hii kwa miaka 40. Nimefanya kazi katika matarafa ambamo hata Waislamu hawafiki 12 lakini hakuna hata siku moja nimebaguliwa kwa kuwa mimi ni Mwislamu wala sikubagua mtu kwa sababu ya dini yake. Ni jambo la kustaajibisha kwamba kipengele kinachohusu korti za Kadhi kilipitishwa huko Bomas of Kenya na Wakenya zaidi ya 600 waliotoka katika kila wilaya. Vile vile, kulikuwa na Wabunge 210 wakati majadiliano yalikuwa yakiendelea. Hicho kipengele kilipigiwa kura na ijapokuwa Waislamu ni wachache wakilinganishwa na wananchi wengine, kati ya zaidi ya watu 347 waliopiga kura, watu 237 waliunga mkono mambo ya korti za Kadhi.

Pia, kipengele kinachohusu korti za Kadhi kilipitishwa katika Wako Draft. Isitoshe, Kamati ya Wataalamu wameidhinisha korti za Kadhi. Wabunge walipokuwa Naivasha walikubaliana kwamba suala la korti za Kadhi halidhuru Mkristo, Baniani au kafiri. Jambo la kushangaza ni kwamba baada ya zaidi ya miaka 40 tumejitawala, mbona watu wameamka leo kupinga korti za Kadhi? Hili ndilo jambo linalonifanya niseme kwamba kuna watu ambao wanataka kuleta uhasama miongoni mwa Wakenya kwa misingi ya kidini. Sisi hatukubaliani na mambo haya. Ninawaomba wale ambao wana fikira kama hizo waachane nazo kwa sababu hatutaki kitu ambacho kitadhuru umoja ambao tumekuwa nao miaka hii yote.

Mr. K. Kilonzo: Kwa Hoja ya Nidhamu, Bw. Naibu wa Spika. Kwa heshima na taadhima zote kwa ndugu yangu, Bw. Haji, amesema kwamba kuna watu ambao wanaleta uhasama katika dini. Unajua jambo la dini hushika watu sana. Je, Bw. Haji anaweza kueleza ni watu gani wanaleta uhasama? Ikiwa hawapo, basi Bw. Haji akanushe matamshi yake ili tuendelee na mjadala huu.

Mr. Deputy Speaker: Nidhamu, Bw. K. Kilonzo! Bw. Haji hajamtaja mtu yeyote. Amesema, "kuna watu". Kwani wewe unajua wanafikiria vipi Wakenya wote 40 milioni?

Endelea Bw. Haji!

The Minister of State for Defence (Mr. Haji): Ahsante, Bw. Naibu wa Spika. Hakuna mtu ambaye amesema kwamba Katiba tuliyo nayo leo imefanya jambo hili na lile. Ninasema hivyo kwa sababu wenye kufanya mambo ni watu binafsi. Wao ni Wakenya ambao walikuwa kwenye madaraka. Katiba haijiharibu kitu. Isitoshe, Katiba mpya inayopendekezwa ina vipengele vingi ambavyo vikipitishwa vitaweza kuleta moto katika nchi hii. Kuna kipengele kinachohusika na usalama ambacho kinasema kwamba kila mtu ana haki ya kuadamana. Kuna kipengele vile vile ambacho kinasema kwamba Bunge linaweza kurekebisha hicho kipengele kwa kuunda sheria ya kuyatoa majeshi, polisi na maofisa wa jela. Ikiwa kwa bahati mbaya Bunge linavunjwa ama linakwenda mapumzikoni kabla ya kutengeneza hiyo sheria, nani atazuia majeshi ama polisi kujiunga na maandamano? Hii ni kwa sababu Katiba hii inayopendekezwa inapeana huo uhuru.

Kuna kipengele kinachosema kwamba mwanajeshi ana haki ya kuchukua wakili amwakilishe katika kesi ndogo. Kwa mfano, ikiwa kuna meli ya jeshi baharini nayo

inaelekea vitani na kuwepo na askari mmoja ambaye atakosea, basi Mkuu wa hiyo meli ataweza kumwadhibu. Lakini tukifuata hii sheria inayopendekezwa, italazimu meli irudi itie nanga ndiposa huyo mwanajeshi atafute wakili. Je, hii ni sheria nzuri kwa nchi hii? Sidhani hivyo. Kwa hivyo, mimi ninaomba Bunge hili liangalie vile vipengele ambavyo vinaweza kuleta taabu katika nchi hii ili tuvibadilishe.

The Assistant Minister for Youth Affairs and Sports (Ms. Ndeti): Thank you, Mr. Deputy Speaker, Sir. We can have a good Constitution, but surely, not a perfect one. This is the reason the British do not have a Constitution. They only have laws through Acts of Parliament. However, we cannot go to the extreme the British went to. As a country, we need a Constitution which will be the foundation of what we intend to build. A Constitution is an evolving document and it is a continuous process. For example, Thailand has had its Constitution reviewed so many times. We can pass the proposed Constitution as it is and start working on it. However, as the Minister of State for Defence has said, there are key clauses that we need to look at, especially with regard to the military. I believe that those are very sensitive areas for the Government.

What I am trying to say is that we can pass this Proposed Constitution as it is and work on it later but, as the Minister of State for Defence has said, there are key issues that we need to look at, especially those relating to the military, because they are very sensitive issues for the Government.

Mr. Deputy Speaker, Sir, a good constitution will impact positively on our day-to-day life as it will provide for governance, fair and transparent electoral systems and a definite process of electing the President. We should ensure that our people get where they need to be by putting together a good Constitution for them. We can debate and argue in Parliament but, at the end of the day, we need to give our people a basis from where they can start on.

There are some issues we need to look at as Members of Parliament. There are some issues that have been burning the country. We have the issues of ethnicity and tribalism and abortion. We need to have adequate checks and balances within the organs of Government and make sure that---

(Loud consultations)

Mr. Deputy Speaker, hon. Members are consulting too loudly.

Mr. Deputy Speaker: Order! Order, hon. Members! Hon. Members, consult in low tones, so that the gracious lady can be heard.

Proceed, hon. Ndeti!

The Assistant Minister for Youth Affairs and Sports (Ms. Ndeti): Thank you, Mr. Deputy Speaker, Sir.

Before the interruption, I was saying that we must ensure that the new Constitution addresses the issues of ethnicity and tribalism, abortion and ensure that there are adequate checks and balances within the different organs. Abuse in any form should not be allowed.

Mr. Deputy Speaker, Sir, there is a clause providing for the recalling of Members of Parliament. I know that what I want to suggest may not be popular with the public, but if we allow that clause in the new Constitution, the country will always be in a campaign mood. If somebody loses an election, he will go and mobilise the people on the ground to

recall the sitting Member of Parliament. If you are re-called, you will go and mobilise the people on the ground to recall the one who replaced you. So, we need to look at this clause very carefully.

I will now address the issue of centralisation *viz-a-viz* devolution. Centralisation discourages fair distribution of resources to the people. We know very well that a centralised system is inefficient and ineffective. So, it is very important for us to make sure that devolution is well spelt out in the new Constitution.

Mr. Deputy Speaker, Sir, people have been talking about the Kadhis' Courts. I have no issues with the Kadhis' Courts so long as it deals with particular members of that community. We are being told that Kadhis' courts only address the family law where a Muslim woman is married to a Muslim man. Where a Muslim is married to a Christian, that is a different matter. If we refuse to pass the Proposed Constitution, we will still have the Kadhis' Courts under the current Constitution.

Therefore, we need to have a constitution that will foster vigilance of the people, encourage accountability, remove impunity, eliminate graft and provide for the establishment of independent organs of the Government. If we have all these attributes in the new constitution, it will serve as a basis for a new beginning for us.

Therefore, I suggest that we pass the Proposed Constitution as it is, but look at the sensitive issue of the military.

With those remarks, I beg to support.

The Minister for Industrialization (Mr. Kosgey): Thank you very much, Mr. Deputy Speaker, Sir, for giving me this opportunity, which I have been waiting for since last week.

At the outset, I would like to thank all those people who have been involved in the Constitution-making process right from the day we set up the Constitution of Kenya Review Commission (CKRC). Particular thanks go to the Chairman of the Parliamentary Select Commission (PSC) on constitutional review, and his Vice-Chairman, for their dedication and perseverance. The two young Parliamentarians have shown a lot of patience during all this time.

Mr. Deputy Speaker, Sir, this has been a very long process. Although some people have said that this process started immediately after Independence, 22 years ago, Kenyans realised that we were not headed for the right direction, and that we needed a new Constitution. Kenyans realised that equity and justice were a far cry in this country and, therefore, we needed a new Constitution to correct the injustices that were building up.

One aspect that came out very clearly is that we needed to devolve power and resources, so that the people could have power and money. That is the crux of the matter. Kenyans realised that the Presidency had become too powerful. Over the years, the Presidency had become "imperial", as they called it at that time, and it became a hindrance to the attainment of justice and equity in this country.

Mr. Deputy Speaker, Sir, the presidency controls the Executive, because it appoints members of the Executive Arm of the Government. The presidency controls the Legislature, and I will tell you how. The presidency also controls the Judiciary as it appoints members of the Judiciary. Members of Parliament know that there are 210 Elected Members and 12 Nominated Members, making a total of 222 Members in this House.

At one time, 30 of these Members of Parliament were Ministers, and 70 were Assistant Ministers, making a total of 100 Members of Parliament in the Executive. Therefore, all that the Government needed to pass anything was just additional 10 Members, a number it could get from the Nominated Members. So, actually, the presidency controlled this House.

Mr. Deputy Speaker, Sir, therefore, there is need for proper and clear separation of powers, so that we can have the Executive, Legislature and Judiciary arms of Government being truly independent of each other and hence, the need to provide for checks and balances. One of the ways to provide for checks and balances is devolution of power and resources. Kenyans actually want to split the powers of the presidency to be shared by a Head of Government and a Head of State.

Be it as it may, eventually, the argument for having one centre of power carried the day, and we now have a document providing for a Presidential System of Government. However, if we do not provide for enough checks and balances in the Presidential System that is provided for in the Proposed Constitution, we will not have moved away from the current Constitution.

Therefore, the proposal of having a Senate is acceptable, only that we need to enhance the proposed Senate and give it more teeth. Devolution, as envisaged by Kenyans and a lot of us, should be a three tier system of Government comprising of national, regional and county governments. I know that many of my colleagues have fear or phobia for a regional or provincial type of governments. I want to dispel those fears. You can call it "*majimbo*" if you wish, but have no fear. These fears are unfounded.

You can call it Majimbo if you wish but have no fear because these fears are unfounded. This is because the provincial assembly or the Government does not say that anybody who lives anywhere will be sent away. For example, the Kenyans who live in Rift Valley, which is a cosmopolitan province because all the 42 tribes of Kenya live and work there will not be sent away.

Mr. Deputy Speaker, Sir, I can assure you that those of us who come from that that province, when we call for a provincial assembly or Government, we do not call for the expulsion of anybody. The laws of Kenya must be followed and---

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

Mr. Deputy Speaker: Order, Mr. Jirongo! You are out of order! Allow the Minister to make his contribution. It is a lifetime opportunity.

Proceed Mr. Kosgey!

The Minister for Industrialization (Mr. Kosgey): Mr. Deputy Speaker, Sir, thank you. When Mr. Jirongo was making his contribution, I actually listened very carefully.

Mr. Deputy Speaker, Sir, I was saying that the rights of every Kenyan wherever they are will be protected by the laws of this country. Nobody is saying that if we have a devolved system, you will be sent away from where you live now. Devolution says that power and resources will be devolved to the people.

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

The Minister for Industrialization (Mr. Kosgey): Mr. Deputy Speaker, Sir, there is nothing new in this. I am not out of order---

Mr. Deputy Speaker: Order, Mr. Jirongo! You are out of order!

Proceed Mr. Kosgey!

The Minister for Industrialization (Mr. Kosgey): Thank you, Mr. Deputy Speaker, Sir.

The intention of the hon. Member is to disrupt---

Mr. Jirongo: On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member in order to mislead Kenyans while he knows very well that the Independence Constitution which he is referring to--- At that time, the Rift Valley people actually threatened to declare a new Kenya whereas the Minister says that our fears are unfounded. It is on that basis—

Mr. Deputy Speaker: Order, Mr. Jirongo! You are out of order!

Mr. Jirongo: This is historical, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Mr. Jirongo and Mr. Sirma, one more moment and you will give me the pleasure of seeing you both out of the House for the remainder of the day!

Proceed, Mr. Kosgey!

The Minister for Industrialization (Mr. Kosgey): Mr. Deputy Speaker, Sir, that even confirms that the fears are unfounded. Since Independence, there have been more migrations of Kenyans into the Rift Valley, Nairobi and Coast provinces. Kenyans are free to live and work wherever they find gainful employment, including Rift Valley Province.

Mr. Deputy Speaker, Sir, Mr. Jirongo who is agitated lives in Rift Valley. I wonder whether anybody has ever disturbed him.

(Laughter)

Mr. Deputy Speaker, Sir, we need to devolve power and resources. We had proposed that for ease of management, the current eight provinces should be turned into regions which would be called “Provincial Assembly” or “Provinces” as they are called in South Africa and Canada. This is contained in the Draft by the Committee of Experts (CoE). Since everybody wants a county, we can have as many counties as recommended in the original CoE’s draft which had 74 counties. That will take care of the devolved system. We should then empower the senate to take care of the regions and the devolved units.

Mr. Deputy Speaker, Sir, if we do not have a provincial or level between the national Government and the county, it will be skewed. How will you move from the national Government up to the county? We have small little units we are calling “counties” which are 47 or 74 as proposed. If there is no middle level, we will have a very weak devolved system that ensures that the same imperial Presidency--- In fact, one of the Articles here says the President can dissolve those units without even giving a reason.

Hon. Members: No! No!

The Minister for Industrialization (Mr. Kosgey): Mr. Deputy Speaker, Sir, yes, I read that!

Hon. Members: Where?

The Minister for Industrialization (Mr. Kosgey): Mr. Deputy Speaker, Sir, you can read it. We read the same document when we were at the Kenya Institute of

Administration (KIA). It says the dissolution can last for 90 days and then they will be recalled.

Mr. Deputy Speaker, Sir, what we need are checks and balances on the Presidency. I am saying that a three-tier devolved system will provide the necessary checks and balances on presidency.

On land, the National Land Commission is supposed to administer community land. Communities should be allowed to administer their land---

Mr. Deputy Speaker: Your time is up!

The Minister for Industrialization (Mr. Kosgey): Mr. Deputy Speaker, Sir, you should have added me a few minutes.

I support with amendments.

Mr. Deputy Speaker: Mr. Murungi, proceed!

An hon. Member: Na sisi?

Mr. Deputy Speaker: Order, hon. Members! There is no any less hon. Member than the others!

*(Mr. Murungi proceeded to the
Dispatch Box from the Opposition Side)*

Ms. Odhiambo: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the hon. Minister to be speaking from this side of the House?

Mr. Deputy Speaker: Order, Mr. Murungi! Move to your side of the House! It is a directive!

*(Mr. Murungi proceeded to the Bar, bowed and
moved to the Government side of the House)*

The Minister for Energy (Mr. Murungi): Mr. Deputy Speaker, Sir, I am sorry. I went to sit there so that I could catch your eye.

Mr. Deputy Speaker, Sir, first, I want to make my position regarding this Draft very clear. We have done a lot of consultations to see whether we can come together and go to the referendum as one team. We have consulted with almost all the factions. Some of the amendments that are being proposed are reasonable, like those relating to right to life, increase in the CDF and the number of counties. We thought those could be brought so that we could carry more people along with us. However, when I read the Order Paper and saw that there are 150 amendments--- The 150 amendments to a document which has 264 Articles, would radically change the character of this document. Let us forget whatever amendments we want to make now.

(Applause)

Mr. Deputy Speaker, Sir, let us pass this document the way it is. There is provision within the current Draft for amendment by Parliament once the document is passed. We have waited for such a long time and it will be criminal for this Parliament to delay this process any longer. It is for those practical reasons that I have decided to support this document the way it is.

Mr. Deputy Speaker, Sir, we came to this Parliament in the 1990s as younger people under the leadership of the late Jaramogi Oginga Odinga, principally as street fighters for Constitutional reforms. I am very happy that some of us are still here. They are the Rt. hon. Prime Minister, Prof. Anyang' Nyong'o, Mr. Gitobu Imanyara, Ms. Martha Karua and Mr. Musikari Kombo.

Mr. Deputy Speaker, Sir, I have been involved in all those stages of the constitutional reform so far; starting from a street fighter, we came to Parliament, we joined the *Saba Saba* riots just before Parliament. We organised street riots in the 1980s under the aegis of the National Convention Executive Council (NCEC) which was led by Prof. Kivutha Kibwana and Rev. Mutava Musyimi. Then we came to the Inter Parties Parliamentary Group (IPPG) where hon. Dalmas Otieno and I were the co-chairs of the Constitutional Reform Committee. Then I had the privilege of being the Minister for Justice, Constitutional Affairs and National Cohesion, organising the process at the Bomas of Kenya. I also had the privilege to organise the first referendum in this country. I organised the walkout from Bomas and I thank God that I am here today to see the conclusion of this process through this Parliament.

Mr. Deputy Speaker, Sir, on a personal footnote, I would like to say that this whole journey has been a very painful personal journey of discovery for me. I have learnt a lot by going through this process and listening to others. I am a very different person from when it began and I want to thank, especially my colleagues from marginalised areas because they have really educated me; people from Laisamis, North Eastern and other places. I have come to appreciate the world in which they come from. I have come to appreciate the concerns that drive them. I think I am now in a position to say, let us make a constitution for Kenyans. The days when we used to make the constitution for oranges and bananas are long gone. Let us have those days behind us. Let us sing a new song and create a new constitution for all Kenyans. I have also discovered something else. When we entered this struggle for constitutional reforms, that time we were fighting for justice. We were trying to lift the burden of oppression and tyranny from the backs of Kenyans. Over the years, the constitutional reform struggle has changed in both form and character. These days, constitutional reform is about power. It has been reduced to a complex political game. The reason why it is taking us such a long time to agree on this constitution is because there are too many political intrigues. There are endless ethnic caucuses, backroom political machinations and cloak and dagger politics, all masked as constitutional reforms.

Mr. Deputy Speaker, Sir, it is becoming very difficult to agree on this Draft not because we have any ideological differences among ourselves, not because we do not want to do good for Kenyans but because we have become captives. We have become prisoners of where we come from. Most of the amendments that are being proposed in this Draft are being proposed because you come from this or that region or tribe. They are being proposed because you come from this or that religion or they are being proposed because you think if that amendment goes through, your preferred candidate for 2012 presidential elections is going to benefit. I think we have to put all these things aside if we are to write a good constitution for this country.

Mr. Deputy Speaker, Sir, God has made it possible for us to live so that we can walk freely in this our country, but many of us are not contented merely to live and enjoy the country. They want to own it, dominate others, and if possible, own them. That is the

problem! The resistance that is being made is because people are looking for the games in this Constitution about who wants to dominate who; who wants to cheat who and who wants to expel who from where. So, this is what is complicating our own constitutional making process this time round.

Mr. Deputy Speaker, Sir, I think time has come for us, as hon. Members, to rise above ourselves. We are not the first country to write a constitution. Even when Adolf Hitler was ruling Germany, he had a constitution. Even as he was roasting six million Jews, he still had a constitution. We should be careful not to amend this draft so as to constitutionalise tribalism.

(Applause)

We should not amend it so as to write into this Constitution future ethnic conflicts and we should not amend the draft so as to constitutionalise inequality. If freedom is good for the Kalenjin, it is also good for the Kikuyu, Luo, Kambas, Merus and Somalis. So, freedom is good for all of us. If wealth and prosperity is good, it is also good for the Luhyas, Indians, the Subas and everybody else. So, why do we not write a Constitution which gives all of us freedom and prosperity?

(Applause)

We support this Constitution because there has been a serious attempt to empower Kenyans through a vibrant grassroots leadership. We support this Constitution because there has been a very clear attempt to bring tangible benefits to every village in this country through the Equalization Committees that have not been there in the past.

Mr. Deputy Speaker, Sir, let me conclude by saying that, let us not have theoretical equalities of “the prince and the beggar lying under the bridge”. Let us pass the Constitution with our eyes open.

Thank you!

Mr. Deputy Speaker: Prof. Saitoti!

(Several hon. Members stood up in their places)

Hon. Members: Ah!

Mr. Deputy Speaker: Order!

An hon. Member: Back Bench!

The Minister of State for Provincial Administration and Internal Security
(Prof. Saitoti): Mr. Deputy Speaker, Sir, to the skeptics, let me begin by saying---

(Loud consultations)

Mr. Deputy Speaker: Order, hon. Members!

The Minister of State for Provincial Administration and Internal Security
(Prof. Saitoti): Mr. Deputy Speaker, Sir, to the skeptics, let me begin by saying I have been here since the debate started and have been patient so that I can also participate like all those who have participated.

Mr. Deputy Speaker, Sir, getting back to the point, it is important to realize, that this is a momentous occasion. We are discussing the future of this country; the way we visualize what kind of a country is going to be there, even when we are no longer here. We should fully understand that today as leaders and Members of this Parliament, we are looked upon as trustees of the future. What kind of a country are we going to have? So, I, therefore, want to say this---

(Loud consultations)

There is too much noise from my side! I think we are discussing about the future of this country.

Mr. Sirma: On a point of order, Mr. Deputy Speaker, Sir. Hon. Members do not make noise; they consult, possibly loudly. Could the Minister---

Mr. Deputy Speaker: Order, Mr. Sirma! Proceed, Prof. Saitoti!

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Deputy Speaker, Sir, I will proceed!

I want to say that this occasion calls for us to have very sober minds, to be totally dispassionate and to weigh very carefully the actions and decisions we are going to make as far as the fate of the current document before us is concerned. I have gone through this document several times. I have gone through the document prepared slightly earlier by the Parliamentary Select Committee (PSC) and apart from a few differences, fundamentally, you will find that there is agreement. My position, which I want to tell this House, is that, yes, there are a number of areas that deserve amendments.

(Applause)

But at the same time, I doubt whether, indeed, we need to go through 150 amendments and I also doubt whether if we went through those amendments one by one and given the limitation we have and the fact that on each particular amendment to even pass it or constitute a quorum, we will require two thirds majority of us here. We may go to the extent where we may not be able to touch the fundamental areas which are important.

I, therefore, make a request and appeal to hon. Members that: Let us look at those amendments which are crucial. Let us go through a reduction process and agree on the few amendments which are important for this Constitution to go through. However, if we go through so many of these amendments, as we have been debating here, we should not lose sight of the fact that the eyes of Kenyans and the international community are looking at us to find whether we, hon. Members of the Tenth Parliament, this time round, will give Kenyans the Constitution that they have been longing for, for more than 20 years.

Mr. Deputy Speaker, Sir, I can say that it is true that Kenya needed a Constitution and wanted democratic space much earlier and that is why we fought for Independence. But let us also agree that immediately after Independence, in Africa, the kinds of governments we had were almost all dictatorial and that was instilled by the Cold War that existed during that time. If you look at other countries including America, they were not as democratic as they are today. If that was the case, how come you had Joseph McCarthy and Capricious? A number of Americans; innocent people, were destroyed.

What I am trying to say is that it was later on as the Cold War began to ease that democratic processes started, not only in Africa or Kenya but all over the world. Ours started in 1999 and had been triggered by an extremely flawed General Election that was held in 1988 through the one party and the queuing system. Kenyans expressed a great deal of dissatisfaction and that is why in 1990 a committee was set up to go all over the country and hear the views of Kenyans. I can state because it is documented that I happened to have been the chairman of that particular committee. I had among the members, His Excellency, the President and many others. At the conclusion of that, Kenyans told us clearly in no uncertain terms that they wanted a new Constitution; that they wanted freedom to choose the party; that they wanted freedom to decide where to move and freedom of expression. We documented that and most of the things we are asking for today were documented then. Unfortunately, given the situation as it was in those days because I remember as I presented the report as the Chairman, some of my colleagues turned back and said it was a Saitoti thing. Eventually, I had to pay a price!

The key thing here is this: Looking back, I asked, suppose we had actually passed the document apart from just paving the way for multi-partysm? Suppose we had done that? We would not have had the tribal clashes of 1992, where the blood of innocent Kenyans was shed. We then promised Kenyans immediately after the elections that we would give them a new constitution.

Mr. Deputy Speaker, Sir, we spent a lot of time. We spoke, we argued even during the period when we were in Parliament. We could not agree. In 1997 we got nearer there and we had done nothing. The situation was very precarious at that particular time. A few people were there; Ms Martha Karua, Kiraitu Murungi, Dalmas Otieno and others were there. We sat somewhere and worked out a scenario to save this country from going to the dogs. We ended up with the IPPG agreement, under which we looked for the minimum constitutional, legislative and administrative reforms. We could not just promise Kenyans again that once we were elected and had a new Parliament, they would be given a new constitution.

In 2002 we did not deliver the new constitution to Kenyans. We betrayed Kenyans. Since we did not have a new constitution, in 1997 once again Kenyans' blood was shed. I am taking a little bit of time to say this, so that we know where we are headed to. Property was destroyed. We have IDPs.

We went to the 2002 elections and we promised everybody that we would give Kenyans a new constitution within 100 days. Those who were in the NARC Government during that time will remember that although we told Kenyans we would do so, we never did it. We betrayed Kenyans. We then made an attempt and ended up with the referendum in 2005. Due to the emotions, hatred and hostility amongst ourselves, we, as Members of Parliament, divided Kenyans. We went to the general election---

I want to submit, let us pass this constitution. Although there are some amendments which are fundamental, let us this time not betray Kenyans. If we do so, in 2012 we will have a repeat of 2007.

Mr. Deputy Speaker: Mr. Dalmas Otieno.

Hon. Members: Ahh! He has just come!

Mr. Deputy Speaker: Order! Hon. Members, do not undermine the discretion of the Chair. The hon. Member was not only here today, but even the last time we had this the Motion he was here.

Proceed, Mr. Otieno.

The Minister of State for Public Service (Mr. Otieno): Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to also give my contribution to this Motion. I want to start by saying that we have a good document before us. The document may appear bulky, but it is bulky for a good reason.

Mr. Ngugi: on a point of order, Mr. Deputy Speaker, Sir. Seeing the interest in this Motion, can I suggest that we take five minutes per Member?

Mr. Deputy Speaker: Proceed! You must acquaint yourselves with the provisions of the Standing Orders. Proceed!

The Minister of State for Public Service (Mr. Otieno): Mr. Deputy Speaker, Sir, we have a large document, but it is a large document because of the past practices in the governance of this country. There has been glaring abuse of power and we have been trying to seal every loophole, so that we do not get subjected to that process.

Kenyans have witnessed the growing inequality and injustice in regions, income and gender. It has become necessary that we seal all these loopholes in this particular document. Every chapter has this time incorporated matters of leadership and integrity. We have allowed our country to reach a point where a perception has been dominant that it is our turn to eat. That this society, at one time, was described as “a man eat man” society. The point I am trying to make is that we have a Constitution which we must live. We must think of it, act according to it, feel, behave and believe in it. If the national, regional and the local leadership of this country will not emphasize the values and the principles that are elaborated in here, we shall not benefit from this document to the extent that we really should.

The change objectives have first of all been to improve governance and make sure that we shall have a structure and a system that is effective, efficient and accountable. Unfortunately, the structure of devolution is so inadequate that we cannot agree on a proper design because of fears that we have allowed to accumulate between our communities. The hatred that we have allowed over the years to grow within us makes it difficult for some of our societies to live amicably with one another. The second change objective was to accelerate development. We have come through a period where even a lot of Members, after 46 years of Independence, have not been to some regions in this country. In order to live this document, believe in it, act according to it and live within and feel the principles and values in it, every national leader, namely, Members of Parliament and Senators, should be made to visit each and every corner of this Republic, so that they get to know what really Kenya is.

Mr. Deputy Speaker, Sir, the third objective was resource allocation. When Members say that we should not amend some parts, I am not satisfied with 15 per cent. It should be higher. Those are some of the clauses that we should amend. I am not satisfied that we should allow some transition clauses to target say, the Chief Justice or the Attorney-General. Some of those should be amended. I am not satisfied that a Kenyan should not have an account outside the country when we are in a global economy and we expect Kenyans to invest all over the world. We should accept to amend some of those clauses. The country has become hostage to several bad practices. Corruption and tribalism have been mentioned, but the worst is the fear of ourselves. Out of the experience during the retreat, I can say that Kenyans, leaders, Members of Parliament

fear for their own personal security. Members fear marginalization. We heard a Member saying:-

“Please, sympathize with me. My entire community lives in fear. Please, allow me to have a Senator because I will never have one if you did otherwise”.

We fear the unknown and we fear the loss of dignity. These are serious fears amongst our people. Unless we pass a Constitution in which we all agree that we are going to practice politics in accordance with the principles and values enshrined in this Constitution, we shall still be rendering lip service to this particular Republic.

As we are now, the bill of rights says that the rights of an individual belongs to the individual and is not granted by the state. We have come through 47 years where we thought it was a privilege to be given those rights by the State and not your inherent right as an individual. The current bill of rights binds all the state organs and, literally confers a duty on the entire leadership of this country to look after the minorities, marginalized and disadvantaged, so that this Constitution will totally change the attitudes of our people in leadership.

Mr. Deputy Speaker, Sir, there are some points that some people have not noticed. The moment we say that the President shall be elected by 50 per cent plus one vote, we are going to have serious and good developments. The country will come up with two political parties where every member of an ethnic group will belong to one or the other. This will be a major step towards uniting the country and believing that we all belong to one country, either on the basis of issues or the agenda of a particular party.

We still have the clause of 25 per cent in half the regions or counties. I retain my pride for having brought this clause in 1992 with Prof. Nabwesi. It is subsisting because this is how the marginalized of this country have been taken seriously. This is why in North Eastern, every party has had to give due regard that Kenyans are out there, yet we have Kenyan leaders including those aspiring even to be presidential candidates, who have not visited some of the marginalized areas.

Mr. Deputy Speaker, Sir, I would like to point out that Chapter 6 on leadership and integrity should be a must reading. We must all commit ourselves to actually teach the values given in this chapter. Let us consider some key amendments. I wish to suggest that our caucus which has come a long way in helping us reach consensus should isolate some of the technical items which should be brought forward. If we are unanimous, we pass those ones and then the contentious issues can be put to the vote.

Mr. Deputy Speaker, Sir, I will leave a few minutes to the other hon. Members.

Mr. Deputy Speaker: If you are a Minister and you are on this side, you will not catch the Speaker's eye. You must go to your side of the House!

Proceed, Hon. Mwadeghu!

Mr. Mwadeghu: Bw. Naibu Spika, naomba nichangie Hoja hii ya Katiba ili nami nitoe maoni yangu kuhusu Katiba ambayo natarajia Wakenya wanaitaka.

Je, Katiba hii ni ya nani? Je, Katiba hii inauia nini na inatuongoza wapi? Je, Katiba hii inatililia maanani haki za wananchi? Nitaanzia baba zetu ambao walienda Lancaster miaka hiyo ya awali. Nawashukuru. Nawasifu pia hawa wataalamu wetu ambao tuliwachagua hapa kwa kazi nzuri waliofanya. Pia nawashukuru Wabunge wenzetu 27 kwa kazi ambayo wamefanya mpaka tukapata Katiba kielelezo. Katiba hii kielezo ambayo tuko nayo hivi sasa ni nzuri nikilinganisha na ile inayotungoza wakati

huu. Kwa hivyo tukishindwa kuelewana kama Wabunge kwa vipengele ambavyo labda huenda vikahitaji kugeuzwa, basi Katiba hii kielelezo ipitishwe vile ilivyo.

Bw. Naibu Spika, naomba kuchukua nafasi hii kuwashukuru wenzangu ambao wametoa maoni yao. Nilimsikia Prof. Saitoti akisema kwamba amekaa hapa kwa muda na pia Waziri wa Kawi akikiri dhahiri kuwa amejifunza mengi kutoka kwa wale wenzetu ambao wamenyanyaswa.

Bw. Naibu Spika, wamejifunza uvumilivu kuwa kuna watu ambao wamenyanyaswa kwa muda mrefu sana na hadhi yao ilikuwa haiwekwi maanani na wenzetu. Hivyo basi, Katiba ya 1963, ikaanza kugeuzwa. Ilipogezwa, ni nini kilichotokea? Haki za wenzetu zilianza kuondolewa, moja kwa moja. Wakenya wakaanza kuulizana, nini kimetokea? Hapo, mori wa kutaka Katiba nyingine ukaanza kuingia na mbegu ya chuki ikaanza kupanda na kuota wakati huo. Tusipokuwa waangalifu, hapa pia tutapanda mbegu ya chuki. Hiyo mbegu iliyopandwa iliendelea. Mwaka wa 1997, tukawa na uchaguzi. Uchaguzi huu ulikuwa na hitilafu. Wakenya wengi walikasirika lakini hawakuwa na namna ya kuweza kugeuza na wakayabana. Mwaka wa 2002, hali ilikuwa kama ile ya 1997. Watu waliumizana na kuuwana. Chuki ikaendelea kumea mizizi. Uchaguzi wa 2007, wenzetu wamekiri dhahiri hapa kama wangekuwa wamegeuza Katiba, labda haya maafa hayangewapata Wakenya. Swala nyeti ni hili: Kwa nini walishindwa kuigeuza Katiba wakati huo? Ni kwa sababu mara nyingi walikuwa na ubinafsi. Huo ubinafsi, hivi leo umedhihirika kwa waheshimiwa Wabunge. Kila mhe. Mbunge akisimama hapa anafikiria upande wake. Katiba kielelezo hii ni nzuri sana na ikiwa tutashindwa kugeuza vipengele, basi tuipeleke kwa wananchi kama vile ilivyo. Msimamo wangu ni kuwa ugatuzi au mfumo wa majimbo, hautaleti shida. Tunasema Rais ana mamlaka ambayo ni ya kiimla. Haya mamlaka yameletea nchi hii shida, tukianza na Rais wetu wa kwanza. Alichukua mamlaka ya kiimla baada ya kuondoa Katiba ya mwaka wa 1963. Rais aliyefuata alikamilisha kuhakikisha kwamba imla imekita mizizi. Ilikuwa hamuwezi kufanya lolote bila yeye kujua.

Watu wa Pwani wanapendekeza majimbo kwa sababu ya kunyimwa haki zao. Ilikuwa ni haki gani kwa watu kutoka sehemu nyingine, kuja na karatasi wanazoita "title deeds" na kunyakua mashamba yetu? Walitimua watu wetu kutoka mashambani yao na kusema ni yao. Hapo mbegu ya chuki ilipandwa wakati huo na uoga ukaanza kuingia. Hivi sasa tukisema tunataka ugatuzi wa mamlaka, watu fulani wanashikwa na uwoga. Wengine wanadhani watu fulani watafukuzwa kutoka sehemu wanamoishi wakati huo au watu watafukuzana. Jambo hili si kweli. Tunataka kupeleka mamlaka kwa wananchi mashinani. Tunaomba tuwe na ngazi tatu za mamlaka. Tuwe na Rais, Senate na Serikali za Mitaa. Tukifanya hivyo, tutakuwa tumemaliza tatizo hili.

Tatizo la ardhi ni lazima lishughulikiwe kwa undani zaidi. Wenzetu ambao wana matatizo ya ardhi ni lazima wafikirie. Tangu hapo awali, wenzetu wa *northern frontier* walikuwa hawajihisi kuwa wao ni Wakenya. Hivi sasa wanajihisi kuwa Wakenya kwa sababu wamepigania haki yao kwa muda mrefu. Tusidanganyane kuwa hatuna uwoga. Uwoga upo lakini sisi tukishirikiana, tunaweza kuumaliza uwoga huu.

Naomba pia kipengele ambacho ni cha kutoa mimba kiangaliwe kwa makini. Sikubaliani nacho. Mekanisa nayo yawe wazi na yaseme ukweli. Tunachangia shughuli za kutoa mimba zisikubaliwe kwa sababu ni hatia kuavya au kutoa mimba. Nakubaliana nao. Lakini kwa nini tusiwafundishe watu wetu tabia nzuri ili waepukane na mimba ikiwa

hawako tayari kuanzisha maisha ya familia? Kwa nini sasa tunajishughulisha na suala hili? Kwa nini tuzozane juu ya jambo hili?

Naomba niweke tamati kwa sababu wenzangu wana nia ya kuzungumza.

Nikizungumzia mambo ya Mahakama---

An hon. Member: Mahakama ya Kadhi?

Mr. Mwadeghu: Sizungumzi juu ya Mahakama ya Kadhi. Nina uhuru wangu!

Bw. Naibu Spika, ningependa kuzungumza juu ya mahakama ya rufaa na ile ya Supreme Court.

(Loud consultations)

Naomba nipewe uhuru wangu na nitautumia vile Naibu Spika atakavyosema

Mr. Deputy Speaker: Waheshimiwa, kaeni chini maanake Ndugu Mhe. Mwadeghu hajamaliza mazungumzo yake.

Mr. Mwadeghu: Bw. Naibu Spika, naomba niendeleo kuchangia lakini kwa sababu wenzangu wanakerwa, naomba kwamba kipengele ambacho kinaruhusu vikundi vya usalama kama jeshi, polisi, maafisa wa magereza na vijana wa huduma za taifa wagome kiondolewe.

Kwa hayo mengi, naomba nipatie wenzangu nafasi.

The Assistant Minister for Tourism (Ms. Mbarire): Mr. Deputy Speaker, Sir, I rise to support this Motion and I will begin by saying that it is such a time in our history when we must finally give Kenyans a new Constitution. It has taken us a very long time to get this Constitution. Many people have sacrificed for it. As many speakers have said, it is time that we delivered a new Constitution to Kenya. The labour pains have begun and as a woman, I want to tell you that when labour pains begin, the baby has to be delivered, whichever way. Therefore, we must recognize the important role that we are playing of supervising the delivery of a new Constitution and do just that.

I have listened to many speakers and it is important to remember history; where we have come from and where we are today. I have heard many speakers since last week speak about the great men and women who played a role in ensuring that we have a new Constitution. They fought for the review of the Constitution. As I listened to them, they forgot some unsung heroes who sacrificed and stuck out their necks to speak about a new Constitution when it was not fashionable to do so. Today, you can go out there and talk about Constitution review because nobody will hurt you. It is a song in every person's mouth. But these great men and women talked about Constitution review when it was a risky thing to do. I want to recognize the role that was played by the youth movement of this country: the National Youth Movement. They came together and filled the streets of Nairobi, Kisumu and Mombasa to seek and agitate for the review of the Constitution. They had to brave the teargas and the live bullets to get a new Constitution. For those young people, I stand here today and say that never again are we going to have lives lost and people maimed because of the clamour for Constitution review.

Mr. Deputy Speaker, Sir, within the National Youth Movement, we have young people who risked their lives. They include Mr. Kabando wa Kabando, Milly Odhiambo, Betty Ndomo, Cyprian Nyamwamu, Duncan Okello, Dan Irungu, Suba Churchill, Jackson Mwalulu and many other young people who fought and yours truly, Mr. Deputy Speaker. We are lucky that a few of us like Mr. Namwamba are here. So, we cannot fail

those young people. During the *Saba Saba* of 1997, lest we forget, 27 young Kenyans lost their lives for this Katiba. For those young people, we cannot afford to fail. We cannot afford to fail because of fears that are unfounded because we must have a Constitution that will enable us to be presidents at 2012; or to have our own places where we are the leaders. We must give Kenya a Constitution for all Kenyans.

I also want to recognise the special role played by the women movement. Many women came out and were beaten up by the police because they were fighting for their children and grandchildren.

Mr. Deputy Speaker, Sir, we had Prof. Maathai who was treated as an enemy of the State at that time. We had Ms. Martha Karua, Charity Ngilu, Martha Koome, Maria Nzomo, Tabitha Sei, Phoebe Asiyo, Ida Odinga, Betty Murungi, Njoki Ndung'u, Wanjiku Kabira, among others, who came out to fight for this Constitution. It is for those women that we stand here today to deliver a new Constitution to Kenya. I also thank those brave men and women who formed the National Convention Executive Council [NCEC] that was then the enemy of the State. We had Prof. Kivutha Kibwana, Dr. Willy Mutunga, Paddy Onyango and Rev. Njoka who almost lost his life right outside this Parliament. We also had Wahu Kahara, Kamau Kuria and Mutava Musyimi for this day to be.

I am happy that I have this chance to stand here today and speak while they cannot speak in this Parliament. I know what they wanted. They wanted a presidency that is not as powerful as we have today. They wanted to ensure that resources get to the people. They did not want justice. They wanted a bill of rights like the one we have, that gives rights with one hand takes them away with on the other. They wanted a bill of rights that recognised every single Kenyan. That is what we have in this draft. But most importantly, they fought for the unity of this country, so that we lead a united country where we think about Kenya and not our own individual benefits, so that we can have a Kenya that can uplift all of us in this Parliament.

Mr. Deputy Speaker, Sir, there are many things that are right about this draft. There are also a few things that are not right about this draft. I do not believe there is a day we will have a draft that everybody will be happy with. That is not realistic. If we cannot pass one single amendment, let us pass this document as it is. We would come back and make the necessary amendments. Let us look only for the very necessary amendments because this document is not so bad. Out of 150 proposed amendments, it is as if we want to write a new document from here. My worry is that most of those amendments are not backed by any technical support. It is just our own feelings. Where you feel you are not happy with this thing, you bring an amendment without knowing its implication on another chapter or even on the resources of this country. More importantly, let us get a Constitution that protects every Kenyan and unites us together as a nation.

With those few remarks, I beg to support.

The Minister for Livestock Development (Dr. Kuti): Mr. Deputy Speaker, Sir, I stand here to support this document.

Many speakers ahead of me had named people who contributed from early times to the struggle for the creation of a new Constitution. I stand here to mourn those people and areas affected by lack of a good Constitution. Due to human right practices in this country and a very powerful presidency, many marginalized communities were treated in

an inhumane manner and many lost their lives. It is because of them that I stand here to support a new Constitution that will treat all Kenyans equally.

Mr. Deputy Speaker, Sir, the Shifta Movement treated Kenyans - those people who were in the marginalized areas like in Isiolo – in a very indiscriminate manner! A lot of people were killed; a lot of property was destroyed and up to now, communities like the people in Isiolo, especially where I was born in GarbaTulla, there is still a place called “Manyatta Prison”. It was created by a Government that just indiscriminately gathered people in a concentration camp, killed them, destroyed their property and intentionally created poverty in those communities. These communities, up to now, have been left behind by the rest of Kenyans. I hope that through the passing of this draft and the making of a new Constitution, the voices of those who are in the graves because of poor governance and an unjust Government will be, at least, remembered.

Mr. Deputy Speaker, Sir, I think every community in Kenya will be able to benefit if a fair Government and a president whose powers can be checked by a powerful Senate, as it is in this document are in place. Every Kenyan will be able to have his or her rights protected. The more important thing is devolution. Regions have been left behind and I stand here to represent those regions that have been specifically targeted and resources diverted from them intentionally. This has happened in a calculated and organized manner, because they were not represented in the Government! They were left behind and resources were denied them; therefore, even up to now, they languish in poverty because of a very powerful presidency, which just shared resources according to his whims and wits.

Mr. Deputy Speaker, Sir, if we have a devolved Government, with devolved powers and resources, then the areas that I am talking about will have a chance to know specifically what will come their way; they will decide how those resources will be shared amongst themselves and how then they can develop faster.

Mr. Deputy Speaker, Sir, there are issues in this document; the issue of abortion, regions and whatever else. But I have realized that there are a lot of vested interests. If we put our vested interests into this document--- When the Parliamentary Select Committee sat, all Kenyans were watching and the results of the Naivasha talks brought a lot of hope amongst Kenyans. When we went to the Kenya Institute of Administration and started putting in a lot and coming out with a lot of amendments, a lot of despair, suspicion and mistrust set in. We need to maintain that spirit of Naivasha, when Kenyans and parliamentarians were united and spirits were high.

I think we should maintain that spirit. We need to withhold these amendments because they will divide us and create more suspicion amongst us. They will generate more tribalism and a platform where politicians will have an agenda for 2012. These amendments will be a tool for politicians to use to rally against each in 2012. To avoid all these, we should unite the way we were in Naivasha and pass this document. We will deal with whatever issues that will arise.

With those few remarks, I support.

Mr. Joho: Ninatoa shukrani, Bw. Naibu wa Spika, kwa kunipatia nafasi hii. Kwanza, ningependa kutoa shukrani za dhiti kwa Kamati ya Bunge (PSC) ambayo ilikuwa ikisimamia shughuli hii ikiongonzwa na Bw. Abdikadir na naibu wake, Bw. Ababu Namwamba, kwa kutupatia sifa kama Bunge la Kumi.

Kiu cha kutaka Katiba mpya kimesababishwa na sababu nyingi. Zipo sababu ambazo ni msingi katika shughuli hii. Sababu muhimu ni uwakilishaji na utenda kazi wa Serikali kwa wananchi. Wale waliopigania kuwepo kwa Katiba mpya walikuwa wanataka mabadiliko katika Katiba. Mimi nikiwa mwakilishi wa watu, ninasema kwamba tumeanza safari iwapokuwa kumekuwa na safari za kibinafsi awali. Sasa tumeanza safari ya utendeji haki kwa Mkenya yeyote mahali popote alipo. Wakati tunapoingia katika kumbukumbu za kihistoria kwa kuzaa mtoto anayeitwa “Katiba Mpya” kwa niaba ya Wakenya, ni lazima tuwe na uwezo wa kulea kizazi hiki kipya.

Bw. Naibu wa Spika, hii siyo Katiba ya karatasi. Ningependa tufahamiane na wenzangu na niwasihi vile vile. Uundaji Katiba si kuiandika. Tulipokuwa na uchaguzi mwaka wa 2007, tulikuwa na Katiba. Tulikuwa na sheria lakini bado maisha yalipotea. Kuwa na Katiba na kuiamini ni mambo mawili tofauti. Hii ndiyo maana tukasema kwamba kando na kazi nzuri ambayo imetendwa na Wakenya katika Kamati ya Wataalamu (CoE) na Kamati ya Bunge (PSC), ni muhimu Katiba hii ilete kielelezo ambacho kitakomboa maisha ya Wakenya na kuweka mipango pamoja na utendakazi kidete, hali ambayo itaweka dhuluma katika vitabu vya historia.

Wengi wamezungumza hapa kuhusu majimbo. Kuna wale ambao wamesema eti majimbo ina maana ya “kusafisha” makabila fulani kutoka katika maeneo yasiyokuwa yao. Ningependa kunukuu sheria za nchi jirani. Kwa mfano, nchi ya Ethiopia ina mikoa tisa. Nchi hiyo ina makabila 82 na serikali za mikoa. Sasa hivi, katika nchi zinazoendelea haraka kiuchumi, nchi ya Ethiopia haiwezi kuachwa inje. Hii ni kwa sababu ya kuwa na miundo-msingi mizuri, serikali za mikoa zinazoshindana, pamoja na kupanua nafasi za uwekezaji katika maeneo hayo.

Bw. Naibu Spika wa Muda, si haki kuwa katika Bunge na kukosa kusema kwamba shida ya Bunge hili, ama shida ya uendeshaji Serikali katika nchi hii, ni kukata mamlaka na kuwapelekea watu wajiamulie ni haki gani wangependa. Hatuwezi kupitisha katiba, kwa sababu Katiba Kielelezi hiki ni kitabu tu tunaandika ili iende mbele ya Wakenya. Sisi ni viongozi tuliioletwa hapa kuwakilisha Wakenya. Tumeletwa hapa kwa sababu ya matakwa ya watu wetu. Jambo moja la msingi la kuwaleta viongozi hapa ni kuweza kuzungumzia vitendo na mambo yanayoweza kunyoosha maisha ya mwananchi.

Katiba Kielelezi inazungumzia suala la kubuniwa kwa National Land Commission. Sisi tunaonelea kwamba huko ni kuongezea ama kuugawanya ule utaratibu ulioko sasa. Ikiwa tunazungumzia ugavi wa mamlaka na kupelekea uwezo wananchi, ni lazima tuwe na Serikali ya msingi wa majimbo itakayoangalia ni namna gani tunaweza kugawa rasilmali, na ni namna gani tunaweza kukuacha wewe ujimudu kwa rasilmali ya chini kabisa, ambayo ni ardhi, na nyinginezo.

Bw. Naibu wa Spika, ninataka nizungumzie juu ya Mahakama ya Kadhi kidogo, na niwasihi ndugu zangu wasiokuwa Waislamu kwamba, sisi katika Bunge hili la Kumi tuko katika mtihani mkubwa. Tusipelekwe na vitendo vidogo vidogo vya kando kando. Historia iko. Ninataka mkae mjiulize: Mahakama ya Kadhi iliingia vipi katika Katiba iliyoko sasa? Historia inasema nini kuhusu suala hili? Kulikuweco na mazungumzo gani? Je, hiyo ni demokrasia iliyopita?

Ukanda wa Pwani ulikuwa chini ya Ufalme wa Uanzibari. Mazungumzo yakafanyika, na ikakubalika kwamba Mahakama ya Kadhi yawekwe kwenye Katiba kulinda haki za ndoa na urithi wa Muislamu. Ninawasihi ndugu zangu, tusianguke

mtihani tukiwa katika Bunge la Kumi. Tusifuata mambo ya kando kando na kuacha yale mambo ya koo na kiini cha nchi hii.

Bw. Naibu wa Spika, ninataka kuwapa nafasi Wabunge wenzangu ili nao wachangie.

Kwa hayo machache, ninaiunga mkono Hoja hii.

Mr. Deputy Speaker: Yes, Mr. Fred Gumo!

The Minister for Regional Development Authorities (Mr. Gumo): Thank you, Mr. Deputy Speaker, Sir, for giving me an opportunity to also contribute to this Motion.

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

Mr. Deputy Speaker: Mr. Kutuny, if you are going to question the discretion of the Chair, it could be a very serious offence. You are a first timer, and you had better acquaint yourself with the provisions of the Standing Orders. The Chair is not just about to allow abuse of the traditions of the House. There is nobody who is a lesser Member of Parliament here.

Proceed, Mr. Gumo!

The Minister for Regional Development Authorities (Mr. Gumo): Thank you very much, Mr. Deputy Speaker, Sir, for giving me an opportunity to contribute to this important Motion.

A constitution is a very important item in any country. There are very few countries which do not have constitutions. In fact, any country that is managed properly must have a constitution. The people out there have always been yearning for a new constitution because they believe that with a new constitution in place, their lives will be better than they were yesterday. Majority of the people today want the Proposed Constitution passed nearly as it is.

Mr. Deputy Speaker, Sir, I am sure that there are certain items we would like to change, but *mwananchi* is not very keen on that because he knows that those items can be changed later. Even the Constitution that we had in 1963 was subsequently changed several times. I am sure that if we pass this Proposed Constitution today, in another two or three months, we should be able to know where the problems are, and it will take us a shorter time to change whatever sections we will want changed.

We have had a very good opportunity, where all Members of Parliament were gathered at the Kenya Institute of Administration (KIA) in Lower Kabete. We were all there and we would have changed whatever we wanted in that place. Unfortunately, because of personal interests, we never changed even one Section of the Draft Constitution. I am sure even here, even if we stayed for more than a month, we shall not be able to change much.

Mr. Deputy Speaker, Sir, if you look at the proposals that have been made for the last one week; if we were going to change section by section, it might take us almost a year for us to pass this Draft Constitution. We are not ready to sit here for one year because there is time limit for it. Every item that has been brought up by a Member of Parliament is important. Therefore, I urge this Parliament to pass this document as it is now and change it later on.

I am sure there are very many sections I would be interested in changing. But because I know to get two-thirds of Members at the moment to change any of these sections that we want will be almost impossible. I have talked to a number of Members of Parliament and the majority of them are not ready to change anything. I am sure none of

you who wants to change any section will get two-thirds. Two-thirds of Members is 145 Members. Getting this number is not easy but if you do, the better.

Mr. Deputy Speaker, Sir, as my colleagues have said, *wananchi* have always wanted a new Constitution. I am sure many of you have been talking about the past presidents. The Presidents who were there might have been powerful but the power sometimes lie in the personality. You might think you have removed some powers, but the moment some of you occupy that seat, the power will just come. The power will be there because the President is usually “placed” by God. Whatever he says is power. Therefore, it depends. Even the people we have thought would be weaker Presidents in this world have ended up being very powerful.

I am sure some of you might have not been there but I remember when President Moi was the Vice-President, majority of people used to think that he was weaker and if he was chosen the President he would not manage. They said that they would toss him around. However, when he got the seat, he became so powerful that most of you were crying at that time.

So, it does not matter who occupies that seat. It does not matter whether you remove all the powers. The power is in the person. Even the weakest person in this Parliament, given that opportunity to be the President and is threatened, you will know what it means to be the President.

Mr. Deputy Speaker, Sir, we should have a powerful Senate. This is because the Senate is the only House that can check on Parliament. If we do not have a powerful Senate, then there is no need for it to be there. We must have a powerful Senate because you do not expect somebody to be elected as Senator representing five to six constituencies to only check on the counties. He should be the one to check on what is passed in Parliament. Otherwise, why should he be there? This is somebody who will represent five or six constituencies. It will be very difficult for the majority of the people to be elected as Senators, if they are not supported by the Members of Parliament. You need to garner votes from almost every constituency. We should have a powerful Senate with respectable people. Whenever they make a decision, it should be respected by everybody.

Mr. Deputy Speaker, Sir, we should also have---

(Several Members stood in their places)

Mr. Deputy Speaker, Sir, I have not finished!

Mr. Deputy Speaker: Hon. Members, this is not an honourable way of behaving!

The Minister for Regional Development Authorities (Mr. Gumo): This idea of devolution is very sensitive and many Members of Parliament here have been fighting for regions. I am sure my party is very keen on having regions. Having regions is not a bad idea, but the problem we have had after last general elections has threatened many people. In fact, I live in the Rift Valley and yesterday I was in Kitale, Trans-Nzoia. Majority of the people in Trans-Nzoia, are so scared about this idea of regions because some of these people had their houses burnt and so they are not even ready to reason. The moment you say you want regions; they think they will be chased away. So until we make people cool down and know that it is not going to affect them, it can cause a lot of problems because if we just jump into it and say, we must have regions; it does not matter

whether there are eight or fifty or eighty, regions, people are a bit scared. So let us give them time and give ourselves time. Once we do this, even if we come back after one month, two months or three months after passing this Draft Constitution, we can discuss the issue of regionalism as an item and pass it. Maybe it will help us more. Thank you very much.

Mr. Deputy Speaker: Yes, hon. Obure!

(Several Members stand in their places)

Order hon. Members!

The Minister for Public Works (Mr. Obure): Thank you very much, Mr. Deputy Speaker, Sir, for giving me this opportunity to make my contribution on this Draft Constitution---

(Mr. K. Kilonzo stood in his place)

Mr. Deputy Speaker: What is your point of Order?

Mr. K. Kilonzo: On a point of Order Mr. Deputy Speaker, Sir. Mr. Deputy Speaker, Sir, you realise the anxiety of the Members of Parliament wanting to contribute to this historic debate. We have been painstakingly standing up and down to catch the eye of the Speaker. Would I be in order to request my colleagues that we confine ourselves to five minutes so that all Members can get an opportunity to contribute to this Motion?

Mr. Deputy Speaker: That could be a very honourable thing but then it is for every Member to regulate himself. Indeed, most of you have been here since the debate started. Indeed it would be a good idea that a good number of you get an opportunity.

Proceed, hon. Obure!

The Minister for Public Works (Mr. Obure): I want to say from the outset that I support the Draft Constitution as it is, because I believe that it meets the wishes and aspirations of the majority of the Kenyan people. I also believe that there are provisions in this Draft Constitution to address many of the major challenges that we have faced as a country.

Mr. Deputy Speaker, Sir, we have all travelled a very long, difficult and painful journey. Along this journey, people have lost their lives, others have been jailed, detained and others have been clobbered and maimed while others have fled this country in search of safer haven. Now that we see the light at the end of the tunnel, we must remember to pay tribute to some of the people who championed the cause of change and the demand for a new order.

Some of those are in this House while others are elsewhere but they deserve our tribute. I also want to thank all those who have been involved in the preparation of this Draft up to this point, especially the people of Kenya themselves for their persistence and input. The Parliamentary Select Committee (PSC), especially the Chairman and Vice-Chairman, both of whom have done a tremendous job and have shown great leadership. I also want to thank the Committee of Experts (CoE) who have worked tirelessly and professionally to produce this Draft and, of course, the Government of Kenya for facilitating.

Mr. Deputy Speaker, Sir, I support this Draft for the following specific reasons: That this Constitution has been written by the people of Kenya themselves; that it is a product of their collective views and it is an expression of their wishes and aspirations. It recognizes the sovereignty of the people themselves and the fact that power belongs to the people or otherwise, it is vested in the people themselves. The main characteristic of this Constitution is the dual citizenship. This Constitution brings welcome news to many Kenyans, especially our brothers, sisters, daughters and sons in the diaspora; the news that they no longer now have to relinquish the citizenship of their mother country once they obtain the citizenship of other countries. This new Constitution now places us in a position where we will be able to keep pace with the realities of modern life.

On the Bill of Rights, this is extremely detailed and very comprehensive leaving nothing completely to chance. I want to read Clause 19(2):-

“The purpose of the recognition and protection of human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and the realization of the potential of all human beings.”

This is sweet reading. After all, what is life about? To a community, life is about recognition, respect and social justice. To an individual, life is about the preservation of personal dignity and space to achieve one's full potential. You will recall two years ago when President Obama assumed the Presidency of the USA, he quickly made one declaration explaining why he loved his country, America. It is because his country's Constitution had given him the opportunity to develop his full potential and proceeded unhindered to become the President of his country. This Constitution gives Kenyans an equal opportunity and I see a situation few years away from now when young Kenyans today will be able to come and say exactly what Mr. Obama said, but this time about Kenya in praise of our Constitution and the fact that they have been given the opportunity to develop themselves and realize their ambitions in life.

The governance structures are right! A Parliament whose functions are defined; an Executive with technocrats and with the mandate to formulate and execute policies; an Executive with a powerful President and it is the Kenyans themselves who said it. They said that they want one *Jogoo* in the home who will crow at the right time. They said that if that *Jogoo* does not crow at the right time, they want the mandate to replace him and get one who will crow at the right time. I think they got it!

On the Judiciary, it has not worked in the past and we have criticized it a lot but we must remember that the performance of any institution is greatly influenced by the environment and the systems in place in that institution.

The provisions in this draft constitution regarding the manner of appointment of officers, financing operations, the independence guaranteed under it to the Judiciary, the establishment of the Supreme Court, all these are important and will improve the performance of the Judiciary.

Mr. Deputy Speaker, Sir, devolution is probably the greatest innovation in this draft constitution. We will succeed in improving our economic performance, because through devolution we will be able to harness the energies of every Kenyan to contribute to the national development of this nation.

Since there are many people who want to speak, let me come to the conclusion. I know that there are people in this country who want the status quo to continue. Kenyans want a new constitution and we should give them the opportunity to have it.

Finally, I appeal to hon. Members to rise to the occasion by sacrificing personal interests for the bigger national interests. We are not making a constitution for ourselves, our political parties or even our communities. We are making a constitution for Kenya and for posterity.

Mr. Deputy Speaker, Sir, I support.

Mr. Deputy Speaker: If you regulate yourselves and take five minutes, you will be very magnanimous.

Mrs. Noor.

Hon. Members: Ahh!

Mr. Deputy Speaker: Order, hon. Members. The gracious lady from North Eastern Province also deserves to get an opportunity to contribute.

Mrs. Noor: Thank you, Mr. Deputy Speaker, Sir. I wish to contribute to this very historical debate. I want to support the proposed constitution with amendments.

While listening to hon. Members of this House contributing to this debate, they have all agreed that what we are trying to put in place is a contract. They are telling us that this agreement that we are all about to support and pass has a problem. What is giving me a problem is that the contract has a problem, but they are telling me: "Just sign that contract now and tomorrow we will come together and solve those problems". That gives me a problem. If that is the case, let us shelve it and amend the Constitution we have, period.

Mr. Deputy Speaker, Sir, the reason why we are changing the current constitution, the reason why people went to the streets, the reason why killed each other was because of historical injustices, problems that existed in this country and unfair distribution of resources. That is why we want a constitutional change that is fair and can address those problems.

The Chair is my witness. On Wednesday last week when the Minister of State for Immigration and Registration of Persons was responding to a Question he was asked in this House, he told us that the people of North Eastern Province are enrolling in the refugee camps---

The Assistant Minister for Higher Education Science and Technology (Dr. Mwiria): On a point of order, Mr. Deputy Speaker, Sir. Is it fair for the hon. Member to mislead the House that people killed each other because of historical injustices when they killed each other because of politicians?

Mr. Deputy Speaker: Now what is your point of order?

Mrs. Noor: Mr. Deputy Speaker, Sir, you are my witness that last Wednesday when the Minister for Immigration and Registration of Persons was responding to a Question he was asked in this House, he said that people of North Eastern Province enrolled in the refugee camps because they wanted to go and get food. That is what we are talking about. That is injustice that is--- That is what we want this document to address.

I would not wish to lose my identity because I am not able to get food. Shame to the Kenya Government for allowing its own citizens to go and enroll in the refugee camps, because of the injustices that are taking place. The Government is not addressing

the injustices that are in this country. That is why we want to change our Constitution. All of you are saying that this Constitution has some problems, but you do not want to change it.

Mr. Deputy Speaker, Sir, it is unheard of for somebody to say:- “I can see a problem, but let us not deal with it”. This is the moment. This is a historical moment. Let us address those problems and let us face it. With regard to representation, it is not right for us to look at only one parameter, namely, population, and fail to consider the geographical conditions, community interest and means of communication.

(Loud consultations)

Please, protect me. Women of this House today want to contribute and I do not want to be interrupted.

Mr. Gabbow: On a point of order, Mr. Deputy Speaker, Sir. The Member who is contributing is a Member of the PSC on constitutional review. She sat in that Committee where they agreed on this document. I thought it was by consensus.

Mrs. Noor: Mr. Deputy Speaker, Sir, it is true that I am a Member of the PSC. It is also true that I have made several reservations. Go to the HANSARD and check clearly. These are things that I raised and I made my reservations. Representation is something that will give us a problem. If we look at the population and we do not look at the sparsely populated constituencies, it will be a problem.

With regard to the Chapter on Public Finances, we were talking about devolution. We were talking about resources being devolved to the people. We are saying: “Let us devolve only 15 per cent and leave 85 per cent at the national level”. This is peanuts. I will support 30 per cent and above, to be devolved to the regions.

Mr. Deputy Speaker: Hon. Ethuro! I presume you will take just five minutes! Proceed!

Mr. Ethuro: Thank you, Mr. Deputy Speaker, Sir. I am mindful of the time, but I am also mindful of my rights. I should get my full share.

First, I want to thank everybody who has really participated in this process. The road to a new Constitution has been long and winding. Even as I speak, I am not sure whether we have reached where we wanted to go. The Tenth Parliament has failed the leadership test. I stood here and pleaded with my colleagues that we go to Naivasha because I wanted us, as the political class, to come together and agree to adopt this document as it is, or whatever amendments to introduce, so that when we go to the referendum, we will be speaking with one voice as a political class. I am not sure whether we can now say that after we adopt this document, it will be that way.

What were we trying to address in the constitutional review process? Why did our people have to die? Why did we have *Saba Saba*? Why did we lose both lives and livelihoods? It is because we wanted, first, the imperial presidency to go away. We wanted Parliament and the Judiciary to have sufficient checks and balances. We wanted to have a country where inequality cannot be the defining character of a nation. All of them are back with all their ugly faces.

Hon. Members, elected to this House by the people of Kenya cannot pretend to come here and tell us that we cannot go through these amendments because they are too many. Give us another story! I cannot believe it! The tradition of this House is that we

have amendments, we carry the ones that find favour us and throw away the ones that we do not like. How can we come here, some of us flying flags and being paid extra money and even me as a Back Bencher, maybe some of the highest paid people in the whole world, and say that we cannot change anything?

I find that completely an act of cowardice. If you managed to watch Citizen Television yesterday, you would have seen that where I come from, when men disappear, even the women take their guns and go to war. I want Kenyans to be watching. Any Member who thinks he cannot bring an amendment, they need to be substituted in the next election.

Mr. Deputy Speaker, Sir, I have also reached a point where I think we need to give Kenyans a Constitution, but I am in a dilemma. Do we just give Kenyans a Constitution for the sake of it even when it is bad or do we actually want to give them a Constitution that we feel is good? We are an organ of the review process. In fact, we are more than an organ. We are not the Committee of Experts. We are the representatives of the people. Even an organism is composed of organs. If one organ is malfunctioning, the rest of the organism will definitely suffer. But because of a roadmap that we accepted as a House and the tendency for us to be shepherded and always be told to be in a hurry, we have accepted to pursue a path that is going to bring more bloodshed to this country.

Mr. Deputy Speaker, Sir, I do not believe in the regions for a single moment. I want to be very honest. I want that amendment to come here. Whoever believes in the regions should bring the amendments and we will either accept or defeat them. If that amendment is defeated, the better for me. If the ones who are proposing the regions have the majority, that will be the law of the land and we will carry it. I want those counties to be increased. There are minorities in this country who have been marginalized and neglected for a long time. For them the new dawn is the new Constitution. What are they going to tell their people? Will they tell them that they have been in the Tenth Parliament and they have not delivered on anything, just because we, the leadership of this country, cannot come together and even agree on that, perhaps, I am more privileged and you are not? God created everybody in His own image. He did not forsake anybody. It is our policies and marginalization that have made things bad.

(Several hon. Members stood up in their places)

Mr. Deputy Speaker, Sir, I still have time. I cannot be harassed by hon. Members standing.

Mr. Deputy Speaker: Order, hon. Members!

Mr. Ethuro: Mr. Deputy Speaker, Sir, let me proceed.

Article 10 of this Draft Constitution talks about national values and principles of governance, but it reflects more of those ones in power than the values that we should own even as ordinary citizens. That is something I would have wanted to change, but I am not allowed to do so.

Mr. Deputy Speaker, Sir, Article 43 talks about social and economic rights. These are aspirational rights. The moment we put them in this Constitution, I am going to demand that they are my rights and that is my position. There is no reason a child in northern Kenya should suffer from hunger and want in this day and age. I have to make

the Government responsible for the dignity of mankind. That is what the Constitution also provides in other sections.

Mr. Deputy Speaker, Sir, I want to support the Equalization Fund. It is a compromise position. We have put 0.5 per cent, but that should have been 5 per cent. For the benefit of Members of Parliament who somehow think they will become senators or governors, think of other people who will come to be Members of the National Assembly. The Constituencies Development Fund (CDF) is at stake and it is not protected here. It will be of no consequence in terms of developing this country.

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

Mr. Deputy Speaker: Hon. K. Kilonzo, you have exactly five minutes and then the Minister for Justice, National Cohesion and Constitutional Affairs will reply.

Mr. K. Kilonzo: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to contribute to this historic debate. I stand here, to support, in principle, a new constitution for this country. This new constitution comes with progressive laws which will open this country to better prospects. However, as I do that, there are issues which must be looked at. One of the issues is the one which has been raised by the church. The church has been very clear. It is saying that it is not opposed, in any way, to the Kadhis' Courts. The church wants - we must be clear on this - it wants all religions to be equal. When people say that there will be mayhem when one religion is put above others, people must take that very seriously. Issues of religion should not be trivialized.

Mr. Deputy Speaker, Sir, protect me, hon. Members are consulting loudly.

(Loud consultations)

Mr. Deputy Speaker: Order! Order hon. Members!

Mr. K. Kilonzo: Mr. Deputy Speaker, Sir, the other issue which needs to be amended is the issue of freedom or Bill of Rights, where we talk about freedom to access State information. As hon. Members of Parliament, where are we talking this country? Are we not exposing our own country? Where on earth has a State ever opened its secrets to outsiders? I want to agree with those who are saying that we need to amend this draft Constitution. It will be cowardice and myopic on our part to say that we cannot raise the 65 per cent threshold that we need to amend the document before it goes to the public as it is. We have a responsibility. We have been elected as leaders to look at the constitution and make sure that the draft constitution which will go to the referendum is acceptable to all.

When you look at the amendments which have been proposed, you will see that they show the mood, not only of the House, but also of the country. The country is saying that it needs a constitution, but it needs to have a right constitution. We need to have those amendments so that parties in this country can feel that they are on the same footing as far as their interests are concerned.

Since other Members want to contribute, I want to support with amendments.

Mr. Deputy Speaker: The hon. Minister for Justice, National Cohesion and Constitutional Affairs, I understand that you wish to donate some of your time to other hon. Members.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Deputy Speaker, Sir, allow me to begin in a slightly different way by

quoting the words of Robert Kennedy when he said: “Some men see things as they are and they say why. I dream things that never wear and I say why not.”

The time for this country to say “why not” is now. Allow me to quote Judge Shiva Krishna, formerly of the Supreme Court of India, in a poem which goes like this:

“Where the mind is without fear and the head is held high; where knowledge is free; where the world has not been broken into fragments by narrow domestic wars; where words come out from the depth of truth; where tireless striving stretches its arms towards perfection; where the clear stream of reason has not lost its way into the dreary desert sand of dead habit; where the mind is led forward by thee into the ever widening thought and action into that haven of freedom.”

Mr. Deputy Speaker, Sir, since 17th November last year, this country has engaged in one of the most amazing debates ever. I want to draw the attention of this country to the fact that a Constitution is not about providing answers. I notice the angle the debate is taking. The role of a Constitution is to provide a framework in which questions can continue to be debated. Again, I said that a Constitution enshrines an argumentative status in which no such thing as the last word will ever be uttered. Listening to many hon. Members in the country, the impression is created that we want to have the last word. The Constitution that we are giving is the one which is going to facilitate endless debate on even those issues that you are entrenching. I say without fear that let us empower our people and not marginalize them. The Draft that has been prepared empowers our people, from the minorities to the disabled and even the women. I know that you can do a few twists but that is something that can be done. Let us answer to the call of history and not to evade it. History is here with us. Since Independence, enormous reversals of traditional assumptions about power and illegitimacy have occurred. These reversals have created exhilarating new hopes and prospects. The work of this House is to address those expectations and prospects.

Mr. Deputy Speaker, Sir, let us embrace our responsibility and not avoid it. I welcome any hon. Member who can command 144 Members tomorrow for amendments, and Mr. M. Kilonzo as the line Minister will join in making sure that you get the 145th Member. But do not tie the country into your thinking just for purposes of thinking. With your permission, let me quote, for this country the late Mahatma Gandhi. On 24th September, 1926 he said:-

“The golden rule of conduct, therefore, is mutual toleration. Seeing that we never all think alike and we shall see truths in fragments and from different angles of vision, conscience is not the same thing for all. While, therefore, it is a good guide for individual conduct, imposition of that conduct upon all will be insufferable interfering with everybody’s freedom of conscience.

Mr. Deputy Speaker, Sir, I urge hon. Members, as you parade the wish list for the amendment of this Draft tomorrow and the day after, let us be tolerant and reach out across the political thinking. Let us find a formula that enables our country to do what Robert Kennedy said; “I dream of things and I say, why not”. Let us shape our future and not fear it. In this Draft, we have provisions under Chapter 5 on land. We have a President and the Deputy who are not Members of Parliament. For the first time, we have impeachment. We have Ministers not coming from Parliament. We have political parties expressly provided for in Chapter 7.

The time is fast approaching that we are either united people or we are not. If the former, let us, in all matters of general concern, act as a nation with a national object to promote and a national character to support. Let us give our country hope and not hopelessness. Listening to hon. Members discussing some of these areas that concern them, they create an impression that there is no hope but there is hope. For the first time in the history of this country, we have a Bill of Rights. I want to remind hon. Members, with respect, that the original American Constitution did not even have a Bill of Rights. In fact, it came two years later in 1791. I want to remind this country that the original American Constitution did not even allow women to vote. They did not get the vote until 1928 or thereabout. The original American Constitution deliberately refused to mention slavery because the famous people were all slave masters. Why should you be intimidated by the future?

Why should you be frightened by some clauses and feel that they are not addressing these issues? I want to remind hon. Members, the Vice-Chair, a brilliant lawyer in his right reminded us of the debate of the American Constitution. But he did not mention that Madison single handedly, during the ratification debate, personally promised Americans that their concerns would be addressed by amendments. After the first Constitution was passed, he single handedly promoted the first ten amendments of the American Constitution. They were adopted by the American people and now we quote that document as though it was perfect from the beginning. Therefore, we must understand that this document from 17th November has human imperfection and create room for addressing that human imperfection by not going to the Referendum divided, but going as one.

Finally, I want to donate some time, with your permission, to a few hon. Members here. I am the most popular person here now because they all want a little of my time. Let us reform our institutions and not erode them. For the first time in our country's history we will have a supreme court. If you block this Constitution, you are killing it. For the first time, we have a police force that is accountable, not only to the people, but also to Parliament. If you reject this Constitution, you will kill that.

For the first time we have a system of Government that nearly everybody accepts with a few amendments, subject to 145 Members. Do not kill it. We have a public service for the first time defined in Chapter 13. We have Commissions and Independent Offices under Chapter 13. We have a Legislature that is really the best that you can possibly imagine in Africa.

Therefore, I do beg, in supporting this very important Motion, to donate one minute each to my learned friend and my Assistant Minister, hon. Cheptumo.

(Several hon. Members stood up in their places)

Mr. Deputy Speaker: Order, hon. Members! The Chair uses his own discretion and hon. S. Abdalla will also have a few minutes.

The Assistant Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Cheptumo): Mr. Deputy Speaker, Sir, thank you for giving me attention to make my contributions on this very important and historic Motion.

The document before us now is a document that has undergone a process where the two organs of the review, that is the Committee of Experts and the Parliamentary

Select Committee, have been able to come up with this draft Constitution. I would like to quote Martin Luther King who said: "The full measure of man is not where he stands at the time of comfort. It is where he stands at the time of challenge and controversy". In our country today, we are faced with a challenge; the challenge to give Kenyans a new Constitution. This House should stand up to the occasion and be able to give our country a new Constitution. There is time to challenge. Kenyans have desired to have this Constitution for the last 20 years and even beyond. This is the challenge and we should give Kenyans a new Constitution. The full measure of this House, as I have said, is where do we stand? Do we stand on the way of the Constitution or we give the way? My submission is that we should, as House, help Kenyans to have a new Constitution.

There are a number of areas I would like to commend. One is the area of devolution. Devolution is the basis that we need to introduce in this Constitution; devolution of both power and economic resources for our people. I would like to call upon hon. Members to support devolution so that we have a three-tier Government; national, regional and counties, so that the system of Government should be able to run in that order.

With those few remarks, I beg to support, with amendments.

(Mr. Elmi stood up in his place)

Mr. Deputy Speaker: Mr. Minister, can you allow Ms. Shakila to have one minute before you give your contribution?

Ms. Shakila, please, proceed, provided all the contributions are done by exactly 8.00 p.m.!

Ms. Shakila: Asante, Bw. Naibu Spika. Nakushukuru kwa kunipa nafasi hii. Hakika, Katiba hii imechangiwa na watu wengi sana na hivi sasa, imefikia wakati wa kuchangiwa na Wabunge. Nawaomba wananchi wawapatie nafasi Wabunge wachangie Katiba hii na watoe maoni yao. Marekebisho ya Katiba ni lazima, na hakuna pahali pengine marekebisho haya yatafanyika isipokuwa katika Bunge hili. Ikiwa Bunge litafanya makosa na kupitisha Katiba hii bila ya marekebisho, itakuwa ni masikitiko makubwa.

Kitu kingine, Bw. Naibu Spika, kwa sababu ya wakati, nataka nigusie juu ya Kadhis' Courts. Mkenya yeyote, kabila au dini yoyote inahukumiwa na korti ya Kenya. Sababu ya hii korti kuitwa Kadhis' Court ni kwa sababu inasimamia mambo mawili ambayo Korti ya Kenya haiwezi kuhukumu kulingana na dini. Kwa hivyo, ikiwa kuna dini yoyote ambayo ina pingamizi kuhusu Waislamu--- Shughuli za kuoana, kuachana na urithi wa Waislamu ni lazima zisimamiwe na Kadhi. Kama kuna watu walio na pingamizi kuhusu jambo hili, wana uhuru wa kuleta malalamishi yao na marekebisho yafanywe katika Katiba. Lakini kusema kwamba Kadhis' Courts zitolewe itakuwa sio haki, na ni kama kuwanyima baadhi ya Wakenya haki zao za kibinadamu.

Bw. Naibu Spika, upande wa *abortion*---

Mr. Deputy Speaker: Order, Ms. Shakila!

Proceed, Mr. Elmi! I am guided by the contributions of the time that was made by hon---

The Minister for Development of Northern Kenya and Other Arid Lands (Mr. Elmi): Thank you, Mr. Deputy Speaker, Sir, for allowing the voice of the people of Wajir East to be heard.

Mr. Deputy Speaker, Sir, I want to support this Constitution with amendments. But even with that, I want to say if, as hon. Members, we marshal the 145 hon. Members needed for the amendment of the critical areas that we can agree on, then I fully support that. If we cannot do that, I want to beg one thing from the hon. Members of this Parliament, that this great country at this point in time is fragile, because of our institutions, politics, our history and our fears. So, what do I beg from hon. Members? Once this Constitution passes, we should not go out there in two groups of politicians with a “yes” and “no” campaign as was the case in 2005. I do not believe that our country can stand that. I do not believe it is responsible.

(Applause)

Let the public decide, but no group of politicians should go out there and tell Kenyans to vote this way or that way, and peddle things that are not in this Constitution! There are great things in this Constitution which are much better than what we have now.

Thank you, Mr. Deputy Speaker, Sir.

The Assistant Minister for Higher Education, Science and Technology (Mr. Kamama): Mr. Deputy Speaker, Sir, first, I want to start by quoting a federalist in the American Constitution, somebody called Madison, who said: “If men were angels, no Government would be necessary.”

Mr. Deputy Speaker, Sir, I will support this Draft Constitution with many, many amendments.

An hon. Member: Yes!

The Assistant Minister for Higher Education, Science and Technology (Mr. Kamama): First, Mr. Deputy Speaker, Sir, we have created a very powerful president in this Constitution. So, if we do not have provincial governments or regional governments and strong counties, we will actually introduce dictatorship from this Parliament. On the issue of devolution, I support that we should have more than 80 counties.

Lastly, on the issue of the Provincial Administration, we want the Provincial Administration to stay for at least for the next 20 or 30 years until we really have strong structures.

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

Mr. Deputy Speaker: Proceed, Hon. Mungaro! You have exactly one minute to contribute!

Mr. Mung'aro: Nashukuru, Bw. Naibu Spika. Mimi pia nataka kuchangia nikisema kwamba Bunge hili lina jukumu la kuwapatia Wakenya Katiba mpya, lakini sio jukumu la kuwapatia Wakenya Katiba yoyote. Nataka kuunga mkono wenzangu walioongea na kusema kwamba tunahitaji Serikali--- Mimi sitasema kuhusu Serikali ya Mikoa kwa vile hakuna haja ya kuogopa tunaposema tunataka Serikali za Majimbo; Marekani, Ujerumani, India na nchi nyingine ambazo zimeendelea wamekuwa na serikali za Majimbo. Tunataka utawala uwe mashinani ili wananchi waweze kuchangia katika uongozi wa taifa hili. Tumeona kwamba utoaji wa huduma kwa wananchi wa nchi hii kila mara umefikwa na pingamiza kwa sababu ya Serikali kuu.

Bw. Naibu Spika, nataka kusema jambo moja kuhusu swala la Ardhi, hasa katika Pwani. Ardhi imetumiwa miaka yote na waniasia kupeanwa kama zawadi ili wanaofaidika waunge mkono vyama vya wakuu Serikalini. Hilo ndilo jambo lililotuchosha na ndio maana tunataka Serikali za Majimbo.

Asante, Bw. Naibu Spika. Naunga mkono.

ADJOURNMENT

Mr. Deputy Speaker: Order, hon. Members. The House now stands adjourned until tomorrow, Wednesday, 31st March, 2010, at 9.00 a.m.

The House rose at 8.00 p.m.