

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 31st March, 2010

The House met at 2.30 p.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

ORAL ANSWERS TO QUESTIONS

Question No.022

DISAPPEARANCE OF MR. JAMES OCHIENG

Mr. Deputy Speaker: Hon. Olago not here? We will come back to that Question. Next Question by Dr. Otichilo!

Question No.032

DELAY IN RELEASE OF ECONOMIC STIMULUS PROGRAMMES MONEY

Dr. Otichilo asked the Deputy Prime Minister and Minister for Finance:-

(a) why money for most of the Economic Stimulus Programmes has not been released to date; and,

(b) when the money will be released to the respective constituencies.

Mr. Deputy Speaker, Sir, I have not received a written answer.

Mr. Deputy Speaker: Do you intend to proceed with the Question or you would rather first get a written answer?

Dr. Otichilo: Mr. Deputy Speaker, Sir, I prefer to proceed with the Question since it has been on the Order Paper for the last one month.

Mr. Deputy Speaker: Is the Deputy Prime Minister and Minister for Finance not here?

Next Question No.084 by hon. Gitau!

Question No.084

LIST OF ALLOTTEES OF SOUTH NGARIAMA SETTLEMENT SCHEME

Mr. Deputy Speaker: Hon. Gitau not here? We will revisit the Question later on. Next Question No.119 by hon. Ngugi!

Question No.119

STATUS OF KIRIMA-NDINDA/KIRIMA-ENGINEER ROADS

Mr. Ngugi asked the Minister for Roads:-

(a) what the status of improvement of the Kirima–Ndinda and Kirima–Engineer roads to bitumen standards is; and,

(b) whether the Government could consider awarding the contract to China Wu Yi Company, which is already on site on the Njabini–Ol Kalou– Ndundori Road.

Mr. Deputy Speaker, Sir, I have not received a written answer.

Mr. Deputy Speaker: Do you wish to proceed with the Question or you would rather get the written answer first?

Mr. Ngugi: Mr. Deputy Speaker, Sir, I would rather it be deferred until I get an answer so that we can interrogate it.

Mr. Deputy Speaker: Mr. Assistant Minister, I hope you understand the traditions in this Parliament.

The Assistant Minister for Roads (Dr. Machage): Mr. Deputy Speaker, Sir, I did not even have an answer for him this afternoon. I was to beg for the indulgence of the House that I answer this Question next week, because of the importance of part “b” of the Question that requires a little bit of research.

Mr. Deputy Speaker: The Chair directs that this Question be placed on the Order Paper as a priority on Tuesday next week.

(Question deferred)

Mr. K. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. Are you satisfied that the Assistant Minister, Dr. Machage, is properly dressed in the House?

The Assistant Minister for Roads (Dr. Machage): Mr. Deputy Speaker, Sir, I have had this attire in this House and it was passed by the Speaker. I am the most smartly dressed today in this House!

(Laughter)

Mr. Deputy Speaker: Indeed, Dr. Machage is dressed properly because he is in a traditional attire. I just do not understand what tradition it is; whether it is Kenyan or Nigerian tradition. Maybe, you will tell us what tradition it is.

The Assistant Minister for Roads (Dr. Machage): Mr. Deputy Speaker, Sir, this is an attire for only the noble ones. Small motels like the hon. Member cannot wear an attire like this one.

Mr. Deputy Speaker: Next Question No.022 again by hon. Olago!
Hon. Olago, first, apologize to the House for coming late.

Mr. Olago: Mr. Deputy Speaker, Sir, I apologize for coming late. It is not my habit.

Question No.022

DISAPPEARANCE OF MR. JAMES OCHIENG

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

(a) what the circumstances surrounding the disappearance of Mr. James Ochieng, the Nakuru District Accountant in October 2009 are;

(b) whether the police are treating the case as murder and, if so, what are the leads and depth of the investigations; and,

(c) whether any arrests have been made and, if so, under what circumstances, have the suspects been released.

Mr. Deputy Speaker, Sir, I have not received a written answer to this Question.

Mr. Deputy Speaker: Do you wish to proceed with the Question or you would rather first have an answer?

Mr. Olago: Mr. Deputy Speaker, Sir, yes, I would wish to do that. In that case, may I kindly ask that the Question be deferred to next week?

Mr. Deputy Speaker: Hon. Assistant Minister, why have you not made a written answer available to the hon. Questioner so that he can prosecute it properly?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Deputy Speaker, Sir, this Question had been answered last week and we dispatched the answer to the Clerk of the National Assembly. I would not know why he did not make an answer available to the hon. Questioner. But I would also want to undertake that I can give him a copy of the answer right now if he so wishes. I do not mind if he wants the Question to be deferred because I have a very good answer.

Mr. Deputy Speaker: Fair enough! Make the answer available to the hon. Questioner.

The Question is deferred to Wednesday morning next week.

(Question deferred)

Question No.032

DELAY IN RELEASE OF ECONOMIC STIMULUS
PROGRAMMES MONEY

Dr. Otichilo asked the Deputy Prime Minister and Minister for Finance:-

(a) why money for most of the Economic Stimulus Programmes has not been released to date; and,

(b) when the money will be released to the respective constituencies.

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Deputy Speaker, Sir, first, I apologize for coming late.

I beg to reply.

(a) The delay in the release of funds for the Economic Stimulus Programme was occasioned by the need for wider consultation with relevant stakeholders, including Members of Parliament, on the implementation framework which took longer than expected.

(b) Treasury intends to disburse the full amount by end of March, 2010 subject to all procurement procedures being fulfilled.

Dr. Otichilo: Mr. Deputy Speaker, Sir, you realize that we were supposed to have received this money by December but it is now March. Could the Deputy Prime Minister and Minister for Finance assure this House that when the money is released, it will be rolled into the next financial year and we shall not be expected to spend it by 30th June this financial year?

Mr. Kenyatta: Mr. Deputy Speaker, Sir, as I said, the delay was occasioned by the need for further consultations including the hon. Members, Constituencies Development Fund (CDF) Committee and other Committees of this House. I can, indeed, confirm that the funds will be rolled over into the next financial year because it is the intention of the Government to ensure that these projects are fully implemented as was stated in the Budget.

Eng. Rege: Mr. Deputy Speaker, Sir, could the Deputy Prime Minister and Minister for Finance tell this House whether he is withdrawing his earlier statement of rolling out this expenditure into the next financial year?

Mr. Deputy Speaker: Could you repeat your question?

Eng. Rege: Mr. Deputy Speaker, Sir, the Minister had said earlier that this money can be rolled out in the next financial year. Could he confirm?

Mr. Kenyatta: Mr. Deputy Speaker, Sir, I confirm that that is exactly what I said. If that money is not fully utilized this financial year, it will be reverted into the next financial year.

Mr. Linturi: Mr. Deputy Speaker, Sir, the whole idea behind the economic stimulus package was to stimulate the economy for faster growth. In view of that, I want the Deputy Prime Minister and Minister for Finance to tell us whether, in his view, the whole package has been able to achieve its intended purpose.

Mr. Kenyatta: Mr. Deputy Speaker, Sir, I do believe that the package will still deliver on its intended purpose, although not within the time-frame that we had intended. As you will recall, the programme was also intended to be rolled out in every part of this country to ensure that every part of Kenya actually benefits from the package. So, development of the fiscal framework was also as important as the roll-out.

Mr. Olago: On a point of order, Mr. Deputy Speaker, Sir. There is an answer that the hon. Minister has given to the House that the funds which are not utilized this financial year will be rolled over to the next financial year. It is not very clear whether he means that these funds will be available in addition to the funds for the next financial year. Could he make it clear?

Mr. Kenyatta: Mr. Deputy Speaker, Sir, I think that is quite clear. When I say “revoting”, that does not have any impact on the next Budget. It means that those

programmes which will not be complete within this financial year will be revoted so that they can continue into the next financial year.

Mr. Imanyara: Mr. Deputy Speaker, Sir, the last time this Question came to this House, there was a query regarding the disagreement between the Ministry of Public Health and Sanitation and that of Medical Services with regard to the projects that have to be funded, particularly the projects in Kisii and Meru. In my constituency, for example, the Committee determined that the funds should be utilized to improve the facilities at the newly created district hospital which, unfortunately, is not under the Ministry of Medical Services but Public Health and Sanitation. Have you resolved those issues or are we still going to rely on the Ministry of Public Health and Sanitation to send this money to health institutions?

Mr. Kenyatta: Mr. Deputy Speaker, Sir, the line Ministry for the health component is the Ministry of Public Health and Sanitation. Indeed, I am aware that there have been some issues in some constituencies where the line has not been quite clear as to the institution picked; whether it falls within the purview of the Ministry of Public Health and Sanitation or that of Medical Services. I am also aware that there are discussions going on between the two Ministries to resolve that particular issue. That is not a question that I can directly answer but I am, indeed, aware that there are consultations going on between them to resolve that particular issue which has arisen in a number of constituencies.

Mr. Deputy Speaker: Last question on that, Dr. Otichilo!

Dr. Otichilo: Mr. Deputy Speaker, Sir, I would like to know from the Deputy Prime Minister and Minister for Finance what measures he has put in place to ensure that when you release the money, hopefully, at the end of this month, the money would be released by the line Ministries very speedily to their respective projects.

Mr. Kenyatta: Mr. Deputy Speaker, Sir, as you may be aware, this Question was answered sometime back. So, I can confirm that monies have already been released. For example, I know that monies have been released to the Ministry of Public Health and Sanitation. I do know that the Ministry is rolling out half of the funds to 159 constituencies. It is approximately Kshs8 million for each. I am also aware that the Ministry of Education is also in the process of rolling out. We have already given them Kshs2 billion and a further Kshs2.4 billion will be released next week. I am aware that all the constituencies that have met the criteria are in the process of releasing Kshs8 million to each of the centres of excellence. I can confirm that the process is already ongoing.

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

Mr. Gitau: Mr. Deputy Speaker, Sir, I am sorry to have come late.

Mr. Deputy Speaker: Apologize to the House.

Mr. Gitau: I am apologizing, Sir.

Mr. Deputy Speaker: Talk loudly so that you can be heard.

Mr. Gitau: Mr. Deputy Speaker, Sir, I apologize to the House for coming late.

Question No.084

LIST OF ALLOTEES OF SOUTH NGARIAMA
SETTLEMENT SCHEME

Mr. Gitau asked the Deputy Prime Minister and Minister for Local Government:-

(a) to provide a list of the allottees who benefitted from the settlement in the South Ngariama Settlement Scheme, indicating their respective addresses, ID numbers, locations and the acreage allocated; and,

(b) whether he could also provide the approved maps from the Commissioner of Lands for the sub-divisions.

Ms. Karua: On a point of order, Mr. Deputy Speaker, Sir. Could the hon. Member who has just asked the Question declare his interest in the matter, noting that he was in court last week over matters related to that settlement?

Mr. Gitau: On a point of order, Mr. Deputy Speaker, Sir. I was directing the Question to the Deputy Prime Minister and not to Ms. Karua.

Mr. Deputy Speaker: Order, Mr. Gitau! You definitely have not acquainted yourself very much with the provisions of the Standing Order.

Mr. Gitau: Mr. Deputy Speaker, Sir, my interest is that I am the Member of Parliament for the area. Last Friday, I was arrested over issues of this land. That is why I have an interest. The allocations were done there illegally without having followed the normal procedures through the Ministry of Lands.

Dr. Khalwale: On a point of order, Mr. Deputy Speaker, Sir. If the hon. Member is confirming that he was arrested because of the issues he is raising, then I would request the Chair to defer the Question until the House confirms that the matter is not *sub judice* because obviously, it has that kind of weight.

Mr. Thuo: On a point of order, Mr. Deputy Speaker, Sir. With all due respect, there is definitely an attempt to stop the hon. Member from asking his Question which he is allowed to by law. If a matter is *sub judice* as it is being suggested here and from the rulings of the Chair, then they ought to bring to your attention that part. If not so, then you cannot defer the matter until they bring it to your attention. I think it is in order for him to ask his Question and you should allow him.

Mr. Olago: On a point of order, Mr. Deputy Speaker, Sir. The issue here is not *sub judice* but personal interest. Standing Order No.81 clearly states that Mr. Gitau should declare his interest first then we proceed.

Mr. Gitau: Mr. Deputy Speaker, Sir, I have already declared my interest over the land in question. I have declared that I am the Member of Parliament for that constituency. The land is within Mwea. Some hon. Members in this House are the ones settling people there illegally and forcefully evicting people who were legally settled there. They went to court to get court orders restraining the council and other people from settling people on that land.

Mr. Deputy Speaker: Fair enough! I think I am satisfied that you have declared your interest. Could the Deputy Prime Minister and Minister for Local Government respond? On matters of interest you just declare your interest then proceed.

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Mr. Deputy Speaker, Sir, I beg to reply.

I am unable to produce the list of the allottees who benefitted from the settlement in South Ngariama Settlement Scheme indicating their respective addresses, identity numbers, locations and the acreage allocated, because it will be prejudicial to the court

orders issued by the High Court of Kenya at Embu on 6th October, 2009, in a Civil Case No. 71 of 2006 involving Moses Mwea and others versus Kirinyaga County Council and South Ngariama Ranching Scheme, which orders have not been challenged and still stand. In view of the above, I am also unable to produce the approved maps from the Commissioner of Lands for the sub-division.

Mr. Deputy Speaker: Hon. Minister, as a solution, the Chair will have to go through the paper work on that court case to determine if it falls within the *sub judice* rule. My presumption is that you will be in a position to supply us with those papers; so, the Chair can defer this Question to another date and rule whether it is *sub judice* or not. Hon. Karua is offering you information; will you be willing to take the information?

Ms. Karua: Mr. Deputy Speaker, Sir, I want to inform the Minister that this land was allotted to the allottees following a resolution by the Kirinyaga County Council in 2004 in a meeting involving all the leaders in the district, including hon. Member of Parliament then. The records of the allottees should be available readily at Kirinyaga County Council. Even the Questioner, being an hon. Member of the area, should be able to walk into Kirinyaga County Council offices and get the records of all the allottees, as the process was done openly and transparently. The Minister should be able to get those records.

(Messrs. Gitau and K. Kilonzo stood up in their places)

Mr. Deputy Speaker: What is your point of order, Mr. Gitau?

Mr. K. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. I think, clearly, you can see---

Mr. Deputy Speaker: Order, Mr. K. Kilonzo! You do not have the Floor. The point of order is the Questioner's

Proceed, Mr. Gitau!

Mr. Gitau: On a point of order, Mr. Deputy Speaker, Sir. What the hon. Member for Gichugu is referring to as Lower Ngariama is, in itself, a forgery. The subject matter that is---

Mr. Deputy Speaker: Order! Order! Hon. Gitau, the Chair intends to defer the Question to be furnished with the court paperwork by the Minister for the Chair to see whether the matter actually falls under the *sub judice* rule; it is a very general provision here. So, if your Question strictly does not fall within the *sub judice* rule, then it will be reinstated on the Order Paper.

So, under the circumstances, the Question is deferred to---

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

Mr. Deputy Speaker: What is your point of order, Mr. K. Kilonzo?

Mr. K. Kilonzo: Thank you, Mr. Deputy Speaker, Sir. I was rising on a point of order just to be fair. When the Questioner asked the Question, Ms. Karua stood up and asked the Questioner to declare his interest. Clearly, it appears that Ms. Karua has some interest. Can she also declare her interest in this matter?

(Applause)

Ms. Karua: Mr. Deputy Speaker, Sir, I am not a Questioner and I have nothing to declare!

Mr. Deputy Speaker: Hon. Minister, this Question is deferred to the week after next week; it is to appear on the Order Paper on Wednesday morning.

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): That is okay, Mr. Deputy Speaker, Sir. I will also avail the papers that I have.

Mr. Deputy Speaker: Hon. Minister, you should avail the papers to the Chair as soon as possible!

(Question deferred)

Under the circumstances, we go to the next Order!

POINT OF ORDER

CRITERIA USED IN RECRUITMENT OF TEACHERS

Mr. Chanzu: Mr. Deputy Speaker, Sir, I am standing here to request a Ministerial Statement from the Minister for Education on the criteria used in the current exercise of recruiting teachers. I would like the Minister to clarify the following: Why the recruitment is not being done through the respective District Education Boards (DEBs).

(Applause)

Secondly, Mr. Deputy Speaker, Sir, how many slots are given per constituency. Number three, can the Minister confirm that the deadline for submitting the names to the Ministry Headquarters was Tuesday, 30th March, 2010? Number four, the Minister should consider suspending the exercise, so that the right procedure can be followed in the recruitment of those teachers.

(Applause)

Mr. Deputy Speaker, Sir, because of the urgency of the matter, I request that the Minister gives the Statement tomorrow in the afternoon.

Thank you, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Hon. Minister for Education, can you give an undertaking on when you will have the Ministerial Statement ready?

The Minister for Education (Prof. Ongeru): Mr. Deputy Speaker, Sir, I did not hear what he is requesting for. I will be too happy, if you do not mind, if he repeats his request and I will be able to respond.

Mr. Deputy Speaker: Indeed, it is fully carried in the HANSARD. All you need to do now is not to answer it, but to make an undertaking on when you will have the Statement. You can access this from the HANSARD. When will you have the Ministerial Statement? It is something that concerns the recruitment of teachers by your Ministry.

Hon. Members: Tomorrow afternoon!

The Minister for Education (Prof. Ongeru): Mr. Deputy Speaker, Sir, well, I can give it now!

Mr. Deputy Speaker: Order! Excepting today and tomorrow, when will you have the Ministerial Statement ready?

Hon. Members: Now!

Mr. Deputy Speaker: Order! Order! Order!

The Minister for Education (Prof. Ongeru): Mr. Deputy Speaker, Sir, it is a very short answer. It is in connection with the teachers involved in the Economic Stimulus Package (ESP) ---

Hon. Members: No! No! No!

The Minister for Education (Prof. Ongeru): If it is not that one, then I will give it in two weeks time.

Mr. Deputy Speaker: Order! Order! Order, hon. Minister! Hon. Members, I think you all understand the seriousness and the national interest that is in the draft Constitution that we have in the House as now, and we have only today and tomorrow. We are not entertaining any answers now. Can you just give an undertaking on when you can give it, excepting today and tomorrow? If you are so eager to give it, then it is directed that you give it on Tuesday afternoon, next week!

The Minister for Education (Prof. Ongeru): Mr. Deputy Speaker, Sir, Thursday next week and then we will be able---

Mr. Deputy Speaker: Order! You have just been too eager to give it, either way! So, under the circumstances, then, you give it---

The Minister for Education (Prof. Ongeru): Mr. Deputy Speaker, Sir, I was thinking it was about the ESP. If he is talking about recruitment, then it is only fair that we do it next week on Thursday.

Mr. Deputy Speaker: That is fair enough; it is so directed!

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

Mr. Deputy Speaker: Order! If it is on the same, it is so directed! We have disposed of this business.

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

Mr. Deputy Speaker: Order! Mr. C. Kilonzo, what is so urgent about this issue?

Mr. C. Kilonzo: Mr. Deputy Speaker, Sir, teachers' recruitment is something which is currently going on. It is not in order for the Minister to say that he needs more time, when he knows the procedure! I was asking the Chair to stand by its earlier ruling that he brings the statement to the House on Tuesday.

(Applause)

Mr. Deputy Speaker: Hon. Minister, I thought you were very eager to give your statement today.

The Minister for Education (Prof. Ongeru): Mr. Deputy Speaker, Sir, I indicated that if it was something related to the Economic Stimulus Package, I would have given that statement right now. I believe the hon. Members are referring to teachers who are currently being employed to replace those who have left the service through natural attrition, death, retirement or resignation. Currently, we are employing 2,743 teachers. However, I cannot know at what stage the process is at until I get reports from the field.

Mr. Deputy Speaker: Order hon. Members! The Chair is conscious of the interest this matter generates. However, the Chair is equally conscious of the very important substantive business that is before the House today. The Chair has directed that the statement be made on Thursday, next week.

BILL

First Reading

THE WITNESS PROTECTION (AMENDMENT) BILL

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

PROCEDURAL MOTIONS

EXTENSION OF SITTING TIME

Mr. Thuo: Thank you Mr. Deputy Speaker, Sir. I beg to move the following Procedural Motion:-

THAT, notwithstanding the provisions of Standing Order 20(2) this House resolves that the Sitting time of the House on Wednesday, 31st March and tomorrow Thursday, 1st April, 2010 be extended from 6.30 p.m. to 11.50 p.m.

I need not to give detailed reasons. The reason for this is because of the changes we want. I ask hon. Midiwo to second.

Mr. Midiwo: Mr. Deputy Speaker, Sir, I beg to second.

(Loud consultations)

Mr. Deputy Speaker: Order, hon. Members!

(Question proposed)

Mr. Mungatana: Mr. Deputy Speaker, Sir, I stand to oppose that Motion. I have two reasons. I will do it very briefly. First, it is uneconomical to do so. Every time a session of the House is held here, there is some economic hit on the purse of Parliament. This is a practical thing. Secondly, going by the record that has been set this morning, it is unlikely that this Motion would achieve the intended purpose which is to help people debate further. It seems as if no amendment will pass. Therefore, it makes no sense to extend the time.

Mr. Nyambati: Thank you, Mr. Deputy Speaker, Sir. I also stand here to oppose this Motion. What we have displayed in this House today shows that we are not willing, at all, to do the national duty charged on us.

Mr. Mbadi: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for hon. Nyambati to impute improper motive on Members of this House when we have been

discharging our national duty diligently by protecting the Draft Constitution as the people of Kenya want us to do?

Mr. Nyambati: Mr. Deputy Speaker, Sir, thank you for allowing me to continue. I want to say that walking out of the House does not mean that you are discharging the duties you are supposed to do. This morning, we were dealing with an amendment to do with national security. There is nothing as important as the national security of this country. It is worthless for us to continue to extend sitting time when we are not agreeing on the amendments in this House. Until and unless we do something which makes it necessary for us to sit in this House, I strongly oppose.

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaissery): Mr. Deputy Speaker, Sir, I stand to oppose this Motion. There is no point of extending the sitting hours of this House after we brought an Article touching on national security interest and majority of hon. Members went out. So, what is the point of extending the sitting hours of the House?

Dr. Nuh: On a point of order, Mr. Deputy Speaker, Sir. Since the extension sought is meant to allow us to finish the business on the Order Paper today, would I be in order to request that you call the House to vote on this matter rather than extend debate on it?

Mr. Deputy Speaker: Fair enough! Hon. Members, I hope that you are aware of exactly what this entails. If we are not able to finish the business of the amendments, all the remaining amendments which are not completed by a certain given time in tomorrow's sitting will be guillotined.

Fair enough!

(Question put and negatived)

(Loud consultations)

Order, hon. Members! We will not run the business of the House on the whims of hon. Members of Parliament who keep on changing their mind. The Motion is lost! The "nays" have it! "Nays" are the same as "noes"!

Next Order!

PROCEDURAL MOTION

RESOLUTION OF THE HOUSE TO SIT
THURSDAY MORNING

Mr. Midiwo: Mr. Deputy Speaker, Sir, I beg to move the following procedural Motion:-

THAT, pursuant to Standing Order No. 23, this House resolves to hold a sitting on Thursday, 1st, April, 2010, from 9.00 a.m to 12.30 p.m.

Mr. Deputy Speaker, Sir, we were of that opinion because of the voluminous amendments that we have to the proposed Draft Constitution and judging by the mood of the House, I am the next one to be rejected. I want to plead with hon. Members that, let us not do something that we will regret by the end of the day tomorrow by not being able

to finish the amendments. I want to ask the Deputy Prime Minister and Minister for Local Government to second.

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Mr. Deputy Speaker, Sir, I beg to second. It was clear that the amendments proposed by the Members are very serious and the quantity is substantial. So we wanted to provide, through the House Business Committee, sufficient time for them to deal with them.

I beg to second.

Hon. Members: Put the question!

Mr. Deputy Speaker: Order hon. Members!

(Question proposed)

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Mr. Deputy Speaker, Sir, I stand to support the Procedural Motion. We live at a very momentous time when this august House has the opportunity to debate a new Constitution for the Republic of Kenya. Members of this House have seen it fit to propose several amendments to the Draft Constitution. The debating of these amendments in this august House itself is a historic moment. The going on record as to why Members of Parliament proposed these amendments is also important for the history of this nation.

Mr. Deputy Speaker, Sir, this is just half-a-day in our life time, but half-a-day which is very important for posterity; and half-a-day which is very important for the lifetime of this nation. So even though we may be opposed to the amendments, I would beg the House to provide the opportunity to Kenyans and to our children's children to put on record the sentiments of the House and to ensure that history is properly recorded for the Republic of Kenya. I beg to support.

The Minister for Development of Northern Kenya and Other Arid Lands (Mr. I.E. Mohamed): Mr. Deputy Speaker, Sir, I stand to support the Motion. I think the principle of hearing everybody is a cardinal thing in this House. There are people who have made presentations to bring amendments and we need to hear them, and agree or disagree with them on their merit. As a House, we will be judged very harshly to say that we just closed shop because we have seen a few amendments have not been passed. Those amendments that have not been passed, it is for a reason and the record will be there for those who support them and those who did not support. I want to also say that it is very important---

(Mr. Shakeel stood in his place)

Mr. Deputy Speaker: What is your point of order, hon. Shakeel?

Mr. Shakeel: Mr. Deputy Speaker, Sir, I do not see why we are wasting time debating this amendment, when you can put the Question and we finish with it and then attend to more important issues.

Mr. Deputy Speaker: Order! Order! Hon. Members, I plead with the House not to abuse the principle of rising on a point of order. That is not a point of order, hon. Shakeel. That is a point of argument and you can always wait for your moment, catch the Speaker's eye and contribute. Proceed, hon. Elmi!

The Minister for Development of Northern Kenya and Other Arid Lands (Mr. I.E. Mohamed): I believe we are not wasting time. We are well paid to do what we are doing. This morning, we were told that all the amendments that are brought before this House must be debated and disposed of. If we do not do that, we will bring another hole in the process of making this Constitution.

So I support.

The Assistant Minister for Youth and Sports (Mr. Kabando wa Kabando): Thank you, Mr. Deputy Speaker, Sir. I rise to oppose this Motion. Based on what we have witnessed this morning and the fact that we have had time for retreats; the time and resources that we have expended is enough reason for us to bite the bullet. If by the end of the day, we will not have conclusively addressed issues listed here, if we are going to subject every amendment to minutes and hours of discussion, and then extend overnight, this is likely to precipitate the negative caucuses; the caucuses that have become “carcasses” which are likely to eat any patriotism or get a result that will generate additional value.

I strongly oppose.

The Assistant Minister for Energy (Mr. Keter): Thank you, Mr. Deputy Speaker, Sir, for giving me this chance. I want to oppose this Motion, going by what we have seen this morning where some amendments were withdrawn and some vital ones rejected. This has a bearing to the other amendments. In my view, even if we are going to adopt some, personally, I feel that once a vital amendment has been lost, this document should be subjected to the Whole House instead of us wasting a lot of time.

I beg to oppose.

The Minister for Foreign Affairs (Mr. Wetangula): Mr. Deputy Speaker, Sir, I see merit in the amendment, but I find it difficult to support it for the following reason. With the mood we have set the House in, where we are literary angling to strangle every amendment, then all we are trying to do is to extend time and run over the business before the House. In my view, we should stick to the time as set out in the Standing Orders. But I want to urge this House that we relook at the Constitution of Kenya Review (Amendment) Act 2008, and take time out, and retrace our steps to see whether we are headed the right direction or not. I fear that all the energy, all the brains we have put in this process is cascading down the drain, because of our mob behaviour.

Mr. Deputy Speaker, Sir, I urge that we do not sit tomorrow morning, but rather we restart looking at the act and see how best to put this back on the rails so that wherever we have gone wrong, we can correct and achieve a Constitution for this country.

Dr. Kones: Mr. Deputy Speaker, Sir, I oppose this Motion because we have lost it all. The intention was good, but the mood and the pace that was set this morning may not achieve what this Motion intended to achieve. I even propose that the amendments which lie ahead be guillotined now because we are wasting a lot of time.

Mr. Keynan: Mr. Deputy Speaker, Sir, Constitution-making is a political process. Yesterday, I participated in a decision of the House Business Committee (HBC) which came up with this programme. Today, I stand here to disown that particular decision and say that there is no need to extend the time for two reasons.

Mr. Deputy Speaker, Sir, what we went through in the morning is a reflection of what we are likely to go through, even if we extend time not only for the hours that have

been mentioned, but also even if we were to be here for the next one month. Decisions have been made in board rooms of parties. Instead of coming together to write a Constitution, all we are doing is political gerrymandering. I thought that one of the reasons we went to Kenya Institute of Administration (KIA) and Naivasha and why we are now seeking to extend time is to persuade each other. Right now, we are talking at each other. Positions have already been taken. I already know the way I am going to vote or advise and parties have made their minds. I believe it will be a futile exercise to – I do not want to use the word “waste” – subject hon. Members to tedious long working hours when we know what the end result will be.

Mr. Deputy Speaker, Sir, I plead with you to put the Question so that we resort to the time as stated in our Standing Orders. Sitting tomorrow morning means an additional sitting and, therefore, an expense because hon. Members will have to be paid. I believe that will be a waste of public money and we do not need to do that.

I oppose this Motion.

Dr. Nuh: On a point of order, Mr. Deputy Speaker, Sir. The HBC like any other Committee of this House has to follow the rules and regulations of this House. Is Mr. Keynan in order to disown his own decision without putting an objection to this report?

(Mr. Keynan spoke off-record)

Mr. K. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. Given the fact that this is a Procedural Motion and having heard both sides of the coin, would I be in order to call upon the Chair to put the Question?

(Applause)

Mr. Deputy Speaker: Proceed, Mr. Ogindo!

Mr. Ogindo: Mr. Deputy Speaker, Sir, I rise to support this Motion. I think it is very important for this House to demonstrate leadership. I know that we are lost in our emotions and any little time off will be time to sober up. Between now and tomorrow, I believe, most of us will have come back to their senses. It is possible, in the remotest sense, for us to salvage something. For that reason, we need time to debate whatever little we shall have salvaged. For that reason, I support this Motion.

The Attorney-General (Mr. Wako): Mr. Deputy Speaker, Sir, I thank you for giving me this opportunity to speak on this Procedural Motion. It would not have been my intention to intervene in this entire debate because as you know, I am a member of the Committee of Experts (CoE) whose draft you are now considering. However, because this is a Procedural Motion, I think I can speak on it. I rise to support the Motion on the following grounds.

There is a statutory responsibility bestowed upon this House under the Constitution of Kenya Review Act to ensure that the debate on this Motion is concluded within 30 days which end tomorrow. Consequently, it will be highly dangerous to proceed on the times already set which may enable us not conclude our work within the period of 30 days.

Whereas the earlier Procedural Motion was defeated, it was merely extending the time. All this Procedural Motion is asking for is simply this. That we be given the

opportunity to debate on this issue tomorrow morning to ensure that we do complete our work in time. I know that hon. Members are talking about the mood of the House as has already been displayed. Of course, I also know that there are those who think that the Draft Constitution be passed as it is. There are those who are of the view that it can also be amended. Because of the interest shown by hon. Members, we have received very many amendments. My plea now is for hon. Members to take into account what they see the mood of the House to be and for those who have moved many Motions to re-examine and see whether they cannot withdraw some of the Motions so that we are left with some very key amendments which can be debated exhaustively and enacted.

Mr. Deputy Speaker, Sir, I, therefore, support this Procedural Motion that we meet tomorrow morning. Even the Cabinet is not meeting tomorrow morning. So, we can meet tomorrow morning.

The Prime Minister (Mr. Raila): Mr. Deputy Speaker, Sir, I rise to appeal not to the emotions of hon. Members, but to the sense of patriotism. We are engaged in a process and not an event. Constitution-making is a process and not an event. It is very important for hon. Members who are representing the people of Kenya to go on record as to why they did a,b,c, and d.

If you go to the HANSARD, you will see what was said about the first Constitution that came out of the Lancaster House in 1961. You will also find what was said in 1963 when they were domesticating the Lancaster House Constitution. It is, therefore, important that the hon. Members who have submitted proposals for amendments be given an opportunity to say why they want those amendments so that it may go down on record. I know that some hon. Members could have brought amendments because I have also brought an amendment. Those Members will have the opportunity to withdraw those amendments so that we remain with the amendments whose proposals we would like to prosecute to the end. The House then has the opportunity to debate and dispose of those amendments. I know that some may have been dismissed because of very hard positions. However, there are amendments which might meet the approval of the House in total.

So, even if we do not approve those amendments, it is important for us to state here for posterity, why we opposed those amendments. I, therefore, urge the House not to shoot down this Procedural Motion so that we give hon. Members an opportunity, if they do not finish today, to revisit the matter tomorrow morning before we come back in the afternoon.

I support the Motion.

(Question put and agreed to)

Mr. Deputy Speaker: Hon. Members, we will now move to the Supplementary Order Paper.

Mr. Ruto: On a point of order, Mr. Deputy Speaker, Sir. Standing Order No.63 relates to what we did in the morning and, probably, what we are about to do – obligation to vote – and it partly reads as follows:-

“63(1). No Member shall be obliged to vote in a Division but those present but not voting shall record their abstention with the Clerk.

(2) It shall be disorderly conduct for a Member to fail to record his or her abstention in a Division.”

Mr. Deputy Speaker, Sir, in the morning, we had such a vote. The Members present were counted, and they were 150. Those who voted were 147. The Clerk has the record. Can we be told who the three Members who did not vote or record their abstention, contrary to this Standing Order, were? Can you also declare them disorderly and name them?

(Loud consultations)

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

Mr. Nyambati: On a point of order, Mr. Deputy Speaker, Sir. I know for sure that, under the Standing Orders, the *ex-officio* Members of this House are not supposed to vote. As I sat here, I saw the Attorney-General, who is an *ex-officio* Member, shout “Ayes?” Is it in order for him to do so?

(Loud consultations)

Mr. Deputy Speaker: Order! Order, hon. Members! Indeed, the Attorney-General is an *ex-officio* Member of the House, and is not allowed to vote. If you give me a record showing where he has voted, he would have breached the Standing Orders.

Mr. Ruto: He was smiling!

Mr. Deputy Speaker: Order, Mr. Isaac Ruto! Smiling is not voting!

The Attorney-General (Mr. Wako): On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member in order to misconstrue just a smile with shouting?

The Minister of State for Defence (Mr. Haji): On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member in order to say that the Attorney-General was saying “Ayes” when he was, indeed, yawning? Is the Attorney-General not allowed to yawn?

Mr. Deputy Speaker: Indeed, the hon. Attorney-General is allowed to yawn. Nonetheless, this matter is put to rest. As of the matter that was raised by hon. Ruto, which is, indeed, a serious matter, it is left to the Chair to reflect, go through the records and give a Communication from the Chair at an appropriate time.

An hon. Member: When?

Mr. Deputy Speaker: The Chair is going to look at the records and give a Communication on the same. An hon. Member is not allowed to fail to vote and fail to abstain at the same time. You either vote or abstain. You cannot sit in the House and fail to do either of the two.

Mr. Imanyara: Mr. Deputy Speaker, Sir, given that we are going to be voting this afternoon, and given clearly that there were three hon. Members who are in breach of the rules, would it be proper for them to continue sitting in this House to vote?

Mr. Deputy Speaker: Hon. Members, there is no sanction that can take away the right of a Member of Parliament to vote on any issue but if it, indeed, happened, once it is found out who these Members of Parliament were, there will be sanctions in accordance with the Standing Orders.

The Minister for Lands (Mr. Orengo): On a point of order, Mr. Deputy Speaker, Sir. When the Division Bell rings, and a division is being taken, all the entrances and

exits to the Chamber should be closed firmly. You may want to find out whether the exits and entrances behind you are closed firmly when a Division is going on. I think I saw one or two people walk in.

Mr. Deputy Speaker: Order! Order!
Next Order!

MOTION

APPROVAL OF DRAFT CONSTITUTION OF KENYA

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

(Mr. Abdikadir on 23.3.2010)

(Resumption of debate interrupted on 31.3.2010)

Mr. Deputy Speaker: Hon. Members, let us go to the substantive business of the House, which is the Motion. We are now going to the amendment by hon. Esther Murugi.

Hon. Nkaisserry, your amendment has been taken care of by the amendment that was proposed by hon. David Musila.

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry): On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Order, Maj-Gen. Nkaisserry! You cannot move your amendment because of our Legal Counsel's advice on this matter. Your amendment has been overtaken by the amendment that was sought by hon. David Musila.

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry): Mr. Deputy Speaker, Sir, for the sake of this country, first and foremost, I am not hon. David Musila. So, I have to move my amendment, which appears on the Order Paper. Hon. Musila's amendment is different from mine. My amendment seeks to amend Article 50 such that members of the disciplined forces may not be affected by that Article. So, the two amendments are not the same. So, allow me to move my amendment as it is.

Mr. Deputy Speaker: I understand that your amendment is in two parts. The first part is taken care of by the amendment by Mr. Musila. That was the import of the consolidation of these amendments. I understand that the second part, as you put it, has not been taken care of by that. So, now we will move to the second part which is (b); inserting a new paragraph immediately after paragraph "f" as follows: "g" Article 50 – fair hearing.

The Assistant Minister for Youth Affairs and Sports (Mr. Kabando wa Kabando): On a point of order, Mr. Deputy Speaker, Sir. I wish to seek the Chair's indulgence, notwithstanding the legal team's advice. If an amendment is actually inserted independently on the Order Paper, I am wondering what power, given by the Standing Order or by any other regulation in the House, can actually make an hon. Member's Motion, which is notified, to be withdrawn on the basis that another hon. Member,

representing a different constituency moved a Motion that is akin to the one that is before the House now.

Mr. Deputy Speaker, Sir, you need to give us direction because any judgment that is contrary to the right of an hon. Member to move such a Motion is likely to put this House to shame.

Mr. Deputy Speaker: Order, hon. Member. The Standing Orders are a product of the Members of Parliament.

Mr. Namwamba: Mr. Deputy Speaker, Sir, I just wanted to amplify that matter, and ask whether it will be in order for this House to appear to be questioning a decision of the House Business Committee, which, in its collective wisdom considered these two proposed amendments, and saw it fit and proper to lift them as separate amendments, side by side, on the Order Paper. Further, would we be in order to amend a Motion by an hon. Member in advance of the Motion being moved? That is what we are attempting to do by asking the hon. Member to move only one portion of his amendment and omit the other. That, in my very humble opinion, would amount to an attempt to amend the Motion prior to its being moved.

The Minister for Medical Services (Prof. Anyang'-Nyong'o): On a point of information, Mr. Deputy Speaker, Sir. I would like to support Mr. Namwamba and inform the House that the two amendments are different. Whereas the first amendment is about inserting the following New Clause immediately after Clause 5 and lists specifically the uniformed forces that are to be included, in Maj-Gen. Nkaisserry's amendment, he is leaving the window open and talking about: "and other uniformed services."

Those uniformed services may be here today or in future. For example, in future we may wish to have a traffic patrol unit, which is uniformed and comes under the armed forces line of authority. We may also have the Nairobi Metropolitan Police, which may be another uniformed force. So, logically Maj-Gen. Nkaisserry's amendment is broader and brings much more meaning to the word "uniformed services" rather than Mr. Musila's, which was specific to the existing so called "uniformed services".

I beg to support.

The Prime Minister (Mr. Raila): Mr. Deputy Speaker, Sir, I understand where Prof. Anyang'-Nyong'o is coming from. Maj-Gen. Nkaisserry, unlike Mr. Musila, is not very specific. His amendment talks about National Police Service and other uniformed services. Group Four is a uniformed service and Securicor is also a uniformed service. Maj-Gen. Nkaisserry should be more specific and tell us what other uniformed services he is referring to.

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Deputy Speaker, Sir, it is, indeed, true when you look at it here. What is being defined here is basically a kind of an exclusion of the armed forces, other than the ones which are defined in Mr. Musila's amendment. This Motion is different to the extent that it talks of any other uniformed services. I believe the key thing here is not to exclude the amendment. The key thing here is to allow the Members of Parliament to actually say whether they want to accept this proposition or not, in the form of an amendment.

Mr. Deputy Speaker, Sir, there is also another thing that I would like to add---

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. I would like to ask for your indulgence. I think Mr. Namwamba gave us the way forward. All these other points of order are debating the point. Let the amendment come to the Floor; let us argue about it, and approve it or defeat it. let us proceed.

Mr. Deputy Speaker: Hon. Members, upon further reflection and consultation, including interventions by Members of the House, I am persuaded, that, indeed, that Maj-Gen. Nkaisserry has a case. So, proceed and move your amendment in its totality.

Mr. Nyamweya: On a point of order, Mr. Deputy Speaker, Sir. We have spent a considerable amount of time saying we should sit longer for purposes of hearing all hon. Members who have proposed amendments. Therefore, rather than going through this Motion again, I ask you to rule that all those hon. Members who have amendments will be allowed to proceed the way Maj-Gen. Nkaisserry is proceeding; this is better than every time they come up, we say: "This is akin to the other one".

Article 24

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry):
Mr. Deputy Speaker, Sir, I stand to move the following amendment:-

THAT, pursuant to provisions of Section 33(4) of the Constitution of Kenya Review Act, 2008, this House approves the draft Constitution submitted by the Committee of Experts and laid on the Table of the House on Tuesday, 2nd March, 2010, subject to the amendment of article 24:-

(a) in the opening paragraph by deleting the word "Kenya Defence Forces" or "the National Police Service" and substituting therefor, the words "Kenya Defence Forces, National Police Service and other uniformed services".

(b) by inserting a new paragraph immediately after paragraph (f) as follows:-

(g) Article 50 – Fair hearing.

Mr. Deputy Speaker, Sir, in moving this amendment, first and foremost, I wanted to bring on board all the other uniformed services. In the article which gives limitation to the defence forces and the police service, other uniformed services were left out. Others are the National Youth Service, the correctional service and all others. I have grouped them together, so that this limitation, or exclusion, can apply to them.

Mr. Deputy Speaker, if we do not bring the uniformed services on board---

(Loud consultations)

Mr. Deputy Speaker, Sir, can I be heard? When you look at Article 24; limitation of rights, there are certain institutions which we need to exclude in these rights. Whoever wrote that Article does not know that you are putting this country's security on the line? If say that every person is entitled to certain rights, there are certain rights, uniformed or disciplined forces are not supposed to be subjected to.

On part "d", I want to bring it on board so that minor offences can be dealt with and disposed of by Commanding Officers.

With those few remarks, I beg to move. I will be seconded by hon. Kabando wa Kabando.

Mr. Ruto: On a point of order, Mr. Deputy Speaker, Sir. I am just wondering whether this particular amendment is properly before this House because we are grouping together the Kenya Defence Forces, National police services and other unknown uniformed services, which may also include cooks, nurses and others. Is the hon. Member talking about disciplined forces or what is he talking about? I do not know how we can put this into the Constitution even if we were to accept this amendment. What would it look like?

The Minister for Medical Services (Prof. Anyang-Nyongo): On a point of order, Mr. Deputy Speaker, Sir. Girl Guides and scouts are not services. Any uniform does not mean you are in a service. Uniformed service is a very specific technical term that cannot be reduced to common usage.

The Assistant Minister for Youth Affairs and Sports (Mr. Kabando Wa Kabando): Thank you, Mr. Deputy Speaker, Sir. I rise to second this Motion.

Mr. Deputy Speaker, Sir, for information, other uniformed services means other national services. Given what we have witnessed in this country, our potential to be ethnic, balkanised, violent or destructive, we need this important pillar. These are the armed forces, police services and other uniformed services, so that they can rein us in when we are trespassing or transgressing on the law. We need the armed forces, police services and other uniformed services to rein in the merchants of impunity, to be excluded from the vulnerability of being abused, contaminated by the behaviour and lack of ethics which we have witnessed. Therefore, in seconding, I urge my colleagues to vote for this amendment because it stands unique and distinct, to avail strength to the forces, so that they can rein us in, so that never, again, shall we have the impunity to destroy this country or balkanise this nation.

With those few remarks, I beg to second.

(Question proposed)

Dr. Eseli: Mr. Deputy Speaker, Sir, I wish to support this amendment and thank Maj-Gen. Nkaisery for being the soldier he has always been; always thinking for the second system to get things going.

Mr. Deputy Speaker, Sir, I urge the hon. Members of this House to rise above the things that we did this morning and do something for purposes of the security of this country. For a while now, when you read through the draft, security has not been---

(Loud consultations)

Mr. Deputy Speaker: Order! Order!

Dr. Eseli: Mr. Deputy Speaker, Sir, I beg the House to rise above what we did this morning. When you go through the draft, you find that security issues of this country have been put on the back banner. We cannot purport to make a good Constitution for this country, when we have not taken care of security issues. Without security, this country does not exist. We need to do something about that and I beg the hon. Members to support this amendment.

The Minister of State for Defence (Mr. M.Y. Haji): Mr. Deputy Speaker, Sir, I beg to support one more time.

This amendment is very important. It is unfortunate and it is a very dark day for this country that the question of national security is being trivialised. I want to urge hon. Members not to miss it by refusing to agree to amend things that would bring our army into disrepute. Our army is heralded as the only army in Africa which is disciplined and the best trained. If today we politicise them, then this country will regret tomorrow.

With those few remarks, I beg to support.

The Minister for Industrialization (Mr. Kosgey): Mr. Deputy Speaker, Sir, I rise to support this amendment.

But while I support this amendment, I want to raise my objection to hon. Members who think we should support this amendment and rise above what we did this morning. Why did they not rise up in the first place, this morning? That is a negative argument. The Constitution we are making is for the whole country. As it is, although I am supporting this amendment, it is already in the doldrums. It is already being derailed by our actions this morning. So, I do not know how that can be redressed. If you can find a way of redressing, do not then lecture us here and say we want to rise up and be nationalists. We are all tribalists around here. There is nobody who is prepared to be sat on and he is told: I want to sit on you and you must co-operate.

With those few remarks, I support the amendment.

Mr. Gabbow: Mr. Deputy Speaker, Sir, I rise to oppose this amendment.

I think it is hypocritical for some of us to keep on claiming that only security issues are paramount for this country. When issues of minorities come here, you shoot them down. When issues are sponsored by a given party, we shoot them down. But when Maj-Gen. Nkaissery and the Minister concerned with security rise up here, they tell us to support them. Issues affecting minorities are not being supported in this House. It is not only the issues of security that are paramount to this nation. There are huge issues which we need to talk about. Everything here has taken individual interest and partisan approach.

I am now discovering that this Constitution is serving the interest of the powerful people. Minorities have not been given a chance. The majority are ruling over the minority. The rich are trampling the poor. We need to be rational on every issue, but not just a single issue.

With those few remarks, I beg to oppose.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Deputy Speaker, Sir, allow me to plead with the hon. Members to reason together.

Anybody looking at the amendment on the table must remember that a Constitution is a framework for continuous debate. At some point, even if an issue is lost, you may have to introduce it later. The disciplined forces of this country are subordinate to civilian administration. Unlike all of us, and every other issue that is going to come on the Floor, the disciplined forces of this Republic cannot participate in this debate.

Again, the clause that is sought to be amended is on the Bill of Rights. To amend it later even after 100 years, you need a referendum. I would like to propose to hon. Members that this matter receives the seriousness it deserves.

Unlike Prof. Anyang'-Nyong'o, I would not use ordinary language with regard to the issue raised by the Rt. Hon. Prime Minister. Other uniformed services; the principle of interpretation of statutes has a principle called "*ejusdem generis law*". The Attorney-General will confirm this. It simply means that in interpreting those words, you can only interpret them in reference to the Kenya Defence Forces, National Police Service and not other bodyguards and so on. Therefore, I just want to plead that in this very exceptional circumstance, where we have people who will always be subordinate to civilian administration, let us give them the hearing that they deserve.

Mr. Deputy Speaker, Sir, they have requested this amendment. I speak with authority because the proposals for this amendment came through my office from the Disciplined Forces of this country. Let us give respect where it belongs and play politics where politics belongs.

I beg to support.

The Minister for Public Health (Mrs. Mugo): Thank you Mr. Deputy Speaker, Sir, for this opportunity to also contribute to the Motion on the Floor.

Security concerns all of us whether we are minority or majority, old or young. We all depend on security. Any country whose security is dubious can never have peace. We have been blessed, in this country, to have a very disciplined force. I feel sad if we equate security with anything else because there cannot even be development. Wherever women, children and the minority are, they depend on our security personnel. We should not demoralise them because of personal or regional issues. We all need them.

I support this amendment very strongly.

Mr. Pesa: Mr. Deputy Speaker, Sir, I rise to support this amendment because the security of this country is paramount. I plead with my fellow Members of Parliament to take this issue seriously. Kenyans have given us the responsibility to write for them a Constitution. It has been cited here that the amendment of this Article may not need simple majority in Parliament.

Mr. Deputy Speaker, Sir, I know that earlier on this morning, we talked about a similar Motion. While I support this Motion I also want to request that you put it to vote so that we can move on.

Thank you.

Mr. Deputy Speaker: Mr. James Orengo, do you want to move an amendment?

The Minister for Lands (Mr. Orengo): Mr. Deputy Speaker, Sir, if you look at the current Constitution, you will find that the word, "Disciplined Force" is defined. If you look at the earlier version that was brought by Mr. Musila, you will also find that it actually defined what a Disciplined Force is. Although I agree with Mr. Mutula Kilonzo that legal interpretation can be stretched to include the other forces as it were, I think to leave it out in the Constitution without a definition when we know that in the current Constitution there is a definition of what the Disciplined Forces are--- If you look at the Armed Forces Act, you will find that the Disciplined Forces are defined.

Mr. Deputy Speaker, Sir, I just want to be a little helpful if this may help us move forward by moving an amendment that I think will enhance the Motion. I also think that the two Motions by Mr. Musila and by Maj-Gen. Nkaissery are a little bit different.

I beg to move that the Motion be amended as follows:-

THAT, the Motion be amended by inserting a new paragraph immediately after paragraph (a) as follows:-

For purposes of Clause 5, uniformed services includes---

Mr. Deputy Speaker, Sir, I am using the word, "includes" so that the principal that Mr. Mutula Kilonzo prescribed earlier may apply.

"For purposes of Clause 5, uniformed services includes; the Kenya Defence Forces, the Kenya National Police Service, the National Intelligence Service, the Kenya Prisons Service, the Kenya Forest Service, the Kenya Wildlife or the National Youth Service"

The issue of what uniformed services are will be understood.

Secondly, if you look at the Public Order Act which talks about wearing of uniforms even by political parties and so on, it prohibits people attending meetings in uniforms and so on. This is so that disciplined forces or uniformed forces of any country should be defined. It is not something which should be left to interpretation. We will be on a dangerous road to leave it to interpretation.

My amendment, although Maj-Gen. Nkaissery has changed his mind a little bit, is to define what the uniformed services are.

I request Mr. Mutula Kilonzo to second my amendment.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Deputy Speaker, Sir, I beg to second.

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Deputy Speaker, Sir, I have also been asked to second this amendment.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): No! It is me! Prof. Saitoti can "third" the Motion, Mr. Deputy Speaker, Sir.

Dr. Khalwale: Mr. Deputy Speaker, Sir, I am waiting for your attention because you are supposed to rule on this point of order.

If you have listened to Mr. James Orengo, you will find that the amendment he has introduced takes us back to the same Motion on which we took a vote in the morning. The uniformed forces he has been listing are the same ones that were listed in the morning. The point of order is for you to give direction as to whether having lost the Motion this morning, it should again be put to the vote simply because Mr. Orengo has brought it back through the backdoor.

Mr. Deputy Speaker: Mr. Mutula Kilonzo, can you second that amendment?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Deputy Speaker, Sir, I beg to second---

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

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Deputy Speaker, Sir, can you protect me? I rarely speak and so I should not be interrupted.

The Minister for Industrialization (Mr. Kosgey): On a point of order, Mr. Deputy Speaker, Sir. I also rarely speak. If you look at the difference between the new amendment and the Motion that was lost this morning, you will find that there is substitution. This morning, we were talking about "disciplined forces" but now it has been changed to read "uniformed forces". The two words mean the same thing with respect to the forces. Therefore, whether it is a uniformed force or a disciplined force, to me, it is the same Motion.

Is it in order to introduce the Motion now a few hours after it was lost just because people want to rise when they could not rise in the morning?

Mrs. Odhiambo-Mabona: On a point of order, Mr. Deputy Speaker, Sir. Are we in order to be going back on your ruling when you have decided that these are very two different amendments? If you look at the amendment that was raised in the morning, I, personally abstained because of the addition of Articles 26, 29 and 30, which by implication in law, was excluding the Disciplined Forces from other rights that they should have, and yet there is no reason to exclude them from enjoying these rights. But if you look at this, there is no mention of those Articles, so this is a new one that I would support and they are very different.

Dr. Nuh: On a point of order, Mr. Deputy Speaker, Sir. I stand guided by your ruling, but I am a bit confused as to which section of this Article we are amending. If you go to the amendment proposed by Maj-Gen. Nkaisserry, it says at the end: "Subject to the amendment of Article 24" and then goes ahead and says (a). In Article 24, there are several (as); there is (a) in Part 1, Part 3 and Part 5. Which (a) are we amending? I stand guided because it is not on the Order Paper.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Deputy Speaker, Sir, I beg to second.

I wish to concur with my learned friend, Ms. Odhiambo, that this is a totally different Motion by a different hon. Member. I want to reiterate that Mr. Orengo is right. Of course, you could still make it better by saying that the other uniformed services would be subject, as Parliament may decide from time to time. But the fact of the matter is that I want to plead with this House to grasp its function in law as well as in history. You cannot abandon your armed forces and your disciplined forces for whom you must make law and who will never be ahead of or in charge of you.

God bless you!

(Several hon. Members stood up in their places)

Mr. Deputy Speaker: Order, hon. Members! When a Motion is seconded, the Question is proposed! This is a Motion to amend the amendment that is there.

(Question of the amendment to the amendment to Article 24 proposed)

The Minister of State of Provincial Administration and Internal Security (Prof. Saitoti): Mr. Deputy Speaker, Sir, I rise to support that amendment to the amendment because no doubt as has already been articulated by Mr. Orengo including Mr. M. Kilonzo, this has made it much more clear. But I think the core thing in this particular amendment is the recognition, first and foremost, of the very unique role that is played by the armed forces in terms of the defence of this country and we need to recognize it. However, the other thing that I want to say here is that virtually every democratic country recognizes that unique role of the armed forces and I hope that this particular time, we are going to redeem the mistake that we made much earlier.

Mr. Imanyara: On a point of order, Mr. Deputy Speaker, Sir. Dr. Khalwale raised a very significant point of order asking you to make a ruling on it and you have not ruled on it.

Mr. Deputy Speaker: Hon. Members, there is a fundamental difference between the Motion that was negated this morning and what was defeated by the House, and the amendment which was raised by Mr. Musila because that includes certain provisions that are very fundamental as Ms. Odhiambo has stated. So this, by no means, is the same as the Motion we had this morning because in that previous attempt for an amendment, it said:-

“(a) deleting clause (5) and substituting therefor the following new clause—

“(5) Despite clause (1) and (2), in relation to a person who is a member of the disciplined forces, nothing contained in or done under the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter other than Articles 26, 29 and 30.”

That in itself is a fundamental departure! So, basically that, in my opinion, is different and this is a valid amendment to the amendment.

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang): On a point of order, Mr. Deputy Speaker, Sir. I have a small matter: If you heard Prof. Saitoti support the amendment to the amendment, he said something like this: “That we may get a chance to correct the mistakes that we made earlier.” This House does not make mistakes because this House went to a very conscious and laborious Division and we took a vote. Each one of us was persuaded that that was the way they wanted to vote. To suggest that we made a mistake is to abuse the intelligence of this House. In fact, it is to suggest that we are bringing a Motion so that we can recreate what we have lost and that takes us back to where we should not go. Is Prof. Saitoti in order?

An hon. Member: He was not there!

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang): He was hiding outside!

(Laughter)

(Prof. Saitoti stood up in his place)

Mr. Deputy Speaker: Order, Prof. Saitoti!

The Assistant Minister, Ministry of State for Defence (Mr. Musila): Mr. Deputy Speaker, Sir, I stand to support the Motion as amended. In doing so, I want, again, to appeal to hon. Members of this august House to appreciate the role played by the military in securing their country and that by limiting these rights, you are only empowering the military, police and others who are in uniform to serve this country better. I appeal to hon. Members to support this Motion.

(Question of the amendment to the amendment to Article 24 put and agreed to)

Dr. Khalwale: On a point of order, Mr. Deputy Speaker, Sir. The amendment to the amendment is about a constitutional Motion and, therefore, the Chair should reconsider whether we can---

Mr. Deputy Speaker: Order, Dr. Khalwale! Whereas I appreciate the issue you are raising, the practice is that an amendment to an amendment on a constitutional Bill does not require a two-thirds majority. It is just a simple majority!

(Dr. Machage stood up in his place)

Mr. Deputy Speaker: Dr. Machage, you are now going to debate the Motion as amended!

The Assistant Minister for Roads (Dr. Machage): Mr. Deputy Speaker, Sir, I support the Motion as amended. I thank you for setting a precedent that a Motion that may be similar to one that was lost can still be discussed. I, therefore, would like to console the Members who lost Motions this morning, especially the Motion on regions, that we could still revisit those Motions. So, calm down and let us do the work of the House.

I beg to support.

Mr. Deputy Speaker: Order! The Chair now directs that the Division Bell be rung. We will proceed to Division on this amendment. Proceed!

(The Division Bell was rung)

Mr. Deputy Speaker: Order! Order, hon. Members! We have 116 Members of Parliament in the Chamber now. The required threshold is 145 Members. Consequently, the amendment is negated.

(Proposed amendment to Article 24 negated)

Hon. Murugi, can you move your amendment?

Article 26

The Minister for Gender, Children and Social Development (Ms. Mathenge): Mr. Deputy Speaker, Sir, I beg to move:-

THAT, pursuant to the provisions of section 33(4) of the Constitution of Kenya Review Act, 2008, this House approves the Draft Constitution submitted by the Committee of Experts and laid on the table of the House on Tuesday, 2nd March, 2010, subject to the amendment of Article 26 by deleting articles (2), (3) and (4).

Mr. Deputy Speaker, Sir, I wish to appeal to Members of Parliament and Kenyans at large, especially the clergy, that deleting articles 2, 3 and 4 is a must. Clause 1 of Article 26 clearly addresses the right to life of every person in Kenya. It reads: "Every person has the right to life."

That sums it all and all other issues should be addressed through Acts of Parliament for the following reasons. The Committee of Experts in their report indicated that the Christians, the Muslims, traditionalists and scientists were not in agreement on when life starts. But I want to state that the woman is very positive when life starts. She knows that life starts immediately the sperm of her partner joins her egg. That is when

conception starts. That is why women resort to the morning after pill. If we go ahead and include Article 2, we are saying that we cannot allow family planning in this Republic of Kenya. We have made a lot of headway in the mother and child healthcare in accordance with the Millennium Development Goals and also in regard to the Vision 2030. If we do not allow contraceptives to continue, we shall be going back into the back waters where we came from.

Mr. Deputy Speaker, Sir, I want to urge this House to endorse that we delete clauses 2, 3 and 4. I want to appeal to the clergy that---

Mr. Deputy Speaker: Order! Can you conclude because your time is up?

The Minister for Gender, Children and Social Development (Ms. Mathenge): Mr. Deputy Speaker, Sir, I am concluding.

Mr. Deputy Speaker, Sir, we are in no way advocating or legitimizing abortion. We need to enact Acts of Parliament that will take care of our women. I know that all of you are fathers. You owe a responsibility to your girls, wives, mothers and sisters.

Mr. Deputy Speaker, Sir, I beg to move. I will be seconded by Prof. Anyang'-Nyong'o.

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Mr. Deputy Speaker, Sir, I rise to second the amendment.

The import of deleting Clauses 2, 3 and 4 is to remove an unnecessary controversy in Constitution making and relegate the import of Articles 2, 3 and 4 to the realm of law making, so that this House can have the opportunity to make laws that are related to reproductive health. This nation started a family life options programme or family planning programme at Independence. Kenya has excelled internationally in terms of its record in what is now called family life options.

Mr. Deputy Speaker, Sir, it would be very unfortunate to include clauses 2, 3 and 4 knowing very well that they have introduced an extreme controversy in Constitution making. We want a phrase broad enough to include all Kenyans, but a clause that gives the opportunity and chance for lawmaking to deal with the issues that concern us in articles 2, 3 and 4. This Constitution promotes and defends Kenyans to believe in various religions. We know that clauses 2, 3 and 4 are very controversial among various religious beliefs. Rather than try and leave them in and, therefore, jeopardize the passing of this Draft Constitution, I would ask the House to err on the side of caution and leave these clauses out. It will give us a broad enough general provision that gives all Kenyans a right to life. That in no way legalizes abortion. If anything, it is a pro-life phrase because it gives all Kenyans a right to life.

I beg to second.

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang): On a point of order, Mr. Deputy Speaker, Sir. I am just seeking your direction because I notice that hon. Mbadi's amendment and Prof. Anyang'-Nyong'o's amendment and my own amendment that are coming after this amendment seem to be on the same subject matter. Maybe you could give direction that you give us a chance to make a contribution during the debate and then we collapse them on our sister's amendment and deal with it as one amendment.

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Mr. Deputy Speaker, Sir, I meant to say in my contribution that precisely because I have seconded hon. Murugi's amendment, I withdraw my amendment in (xiv) which, as hon. Kajwang

says, amounts to the same thing. So, I want to withdraw my amendment (xiv) on page 191.

The Minister of State for Immigration and Registration of Person (Mr. Kajwang): Mr. Deputy Speaker, Sir, I am inclined to withdraw, but if I do not say what I wanted to say, nobody will know what I intended to say. If you can give me one minute, then I will withdraw.

Mr. Deputy Speaker: Order! Let me propose the Question first.

(Question of the amendment proposed)

The Minister of State for Immigration and Registration of Person (Mr. Kajwang): Mr. Deputy Speaker, Sir, may I start by saying that I would wish to withdraw my amendment to that same article and maybe to use this opportunity---

Mr. Nyamweya: On a point of order, Mr. Deputy Speaker, Sir. Earlier on, you ruled that every amendment was going to be dealt with individually. That is the ruling that we had. Now we are dealing with a specific proposed amendment. Is it in order to deal with another amendment within a proposed amendment which is not on the Floor of the House? If he is going to contribute, he will do it on this amendment then he can bring his at an appropriate time.

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang): Mr. Deputy Speaker, Sir, I just wanted to say one thing. I want to agree with one of our very good journalists and a very brilliant scholar and philosopher who said that defining when life begins, especially the way it has been defined in this Article, is in itself wrong because life begins even before conception. So, for that reason, I would have wanted to delete Part 2. The second reason why I want to delete Part 4 is that, a Constitution does not begin by a negative. It does not begin by saying that abortion is not permitted. In fact, the word abortion itself is very complicated. It is open to too much definition. So, I am hesitant to accept that Clause because the way it has been written might give us problems of interpretation in future.

With those few remarks, I support.

Mr. Mbadi: Mr. Deputy Speaker, Sir, actually my amendment is the same as this one. So, the reason why I said there was need to remove these particular Clauses is: First, both the religious community and the medical practitioners are not comfortable with these provisions in the Constitution. So, there is need to remove them so that a legislation could come through an Act of Parliament which should be elaborate enough to take care of the interests of all the stakeholders, including women who have a direct take in the whole affair. The definition of where life begins is contentious. The religious community has their own definition and the medical practitioners have their own. That is why it is appropriate to avoid antagonism between the two forces but we remove the entire provision so that we are only left with Clause 1 which says that everyone has a right to life.

The Assistant Minister for Nairobi Metropolitan Development (Mrs. Ongoro): Mr. Deputy Speaker, Sir, I want to add my voice in support of this Motion because I was also listed. I want to make a statement that any Constitution that does not respect life, does not have any authority to be supported. Life begins at conception. In the Holy Book, it is stated in the book of Jeremiah that “before you were formed in your mother’s womb,

I knew you". So, any other statement contrary to that is a fallacy and cannot be supported. I have heard arguments from medical practitioners but I want to make a statement. No known medical conditions demand that one human being must die before another one lives. So, anybody who is presenting a contrary---

Mr. Outa: On a point of order, Mr. Deputy Speaker, Sir. I need a clarification. I am getting a quote from the hon. Members from the Holy Book of Jeremiah saying "I knew you before---" "The hon. Member is contradicting the amendment on the Floor.

The Assistant Minister for Nairobi Metropolitan Development (Mrs. Ongoro): Mr. Deputy Speaker, Sir, as I was saying, I support this amendment that we should delete Clause 2, 3 and 4 in its entirety because if it is passed the way it is, it gives a lot of room for medical practitioners---

Mr. Deputy Speaker: Order! Your time is up. Mr. Githae!

The Assistant Minister for Nairobi Metropolitan Development (Mrs. Ongoro): With those few remarks, I support.

The Minister for Nairobi Metropolitan Development (Mr. Githae): Mr. Deputy Speaker, Sir, this is a very emotional Article. It deals with when life starts and people have various views. The fear is that this is going to open the legalization of abortion. Since the church is one of our major stakeholders, we should not do anything that will make them unhappy about this Constitution. So, we need to bring the church on board. Personally, as a man, I do not think that I am competent to discuss this issue. As men, we are not competent to discuss this issue. It does not affect us. So, we should leave it to the people who are affected.

Dr. Laboso: Mr. Deputy Speaker, Sir, thank you for giving me this opportunity to support this Motion. I would like to strongly urge hon. Members to support this Motion. The three clauses are not necessary. Once we have stated it in the first Clause, I think those three are just additions that can be dealt with through legislation and it would reduce the controversies. This was not a controversial subject but it has become as a result of those three clauses. So, I do support that we delete those clauses and leave the first one only.

Mrs. Odhiambo-Mabona: Mr. Deputy Speaker, Sir, I wish to support, especially because of Clause 2, that life begins at conception. As a Christian first and as a child activist, my interest is first to protect life. However, as it has been said in the book of Jeremiah 1-5 the Bible says that before you were formed in the womb, I knew you. So, we cannot say that life begins at conception because it begins before. I would also want to support especially the issue of life beginning at conception and that we should not have it in the Constitution because it leads to very ridiculous legal situations. It means we have to amend the section on citizenship and provide for citizenship by conception and not by birth. We also need to provide that we will now be celebrating conception days and not birthdays.

With those few remarks, I beg to support.

The Assistant Minister for Co-operative Development and Marketing (Mrs. Kilimo): Mr. Deputy Speaker, Sir, I rise to support this amendment. However, the issue of termination was not brought about. The issue of abortion should not be permitted. As my sister, Mrs. Ongoro, has quoted, the Bible says that "cursed is the land that receives innocent blood." So, we should not allow a curse to come into our land by allowing abortion. The authors of this, I suspect, are people who want to do tissue culture of

people or cell culture of people. They want the foetuses which have been aborted so that they can use them for things they know themselves. It is not an issue that is Kenyan. It is not from our country. I think it is foreign.

Dr. Eseli: On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member in order to mislead this House that tissue culture necessarily comes from foetuses? Tissue culture does not necessarily come from foetuses and, usually, it does not come from foetuses.

The Assistant Minister for Co-operative Development and Marketing (Mrs. Kilimo): Mr. Deputy Speaker, Sir, I am not a scientist or a doctor but I know---

Mr. Deputy Speaker: Proceed! In any case, he said usually. Maybe under unusual circumstances, it may come from there.

The Assistant Minister for Co-operative Development and Marketing (Mrs. Kilimo): Mr. Deputy Speaker, Sir, we know that cloning is something that is happening around the world and as a woman from Kenya, I suspect that the authors of the legalization of abortion are people who are looking for foetuses so that they can do cloning. That is what I mean. I support this amendment, and that it should end at Clause 2; that every person has a right to life and that the life of a person begins at conception. We should delete the rest so that there shall be no abortion in this country and our soil shall not be receiving innocent blood which results into a curse.

I support.

Ms. Amina Abdalla: Thank you, Mr. Deputy Speaker, Sir. I beg to support this amendment. Without the deletion of Article 4, we will be denying persons with fertility problems a chance to have treatment such as in-vitro fertilization.

Mr. Deputy Speaker, Sir, having said that and since so many people have said a lot, I beg to support.

Mr. Deputy Speaker: In view of the fact---

An hon. Member: Mr. Deputy Speaker, Sir---

Mr. Deputy Speaker: Indeed, the Chair is looking for a woman and is unable to see one!

Nonetheless, hon. Orenge, proceed!

The Minister for Lands (Mr. Orenge): Mr. Deputy Speaker, Sir, I really want to be brief on this. I want to salute the gracious lady, Ms. Mathenge, because she has stood very firm on this issue. She has refused to be intimidated and I think those who stand for what is right should follow her example. I have seen fellow hon. Members who want to play to the galleries and be on the right side, not of the argument, but which they think is most popular. So, I am supporting this amendment not so much for what is in the amendment, but for how she has stood strong amidst many storms.

Secondly, Mr. Deputy Speaker, Sir, I am against the death penalty and this amendment actually gets rid of the death penalty.

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

Mr. Kutuny: Bw. Naibu Spika, nashukuru kwa kunipa fursa hii. Jambo la kwanza, ninaposikia kwamba Katiba hii imeweza kuleta sheria ya kuwezesha watu kuavya mimba, nasikitika. Sidhani kwamba haya ni maoni ya wengi wa Wakenya. Iwapo uavyaji wa mimba ukiidhinishwa na sheria, vijana wengi ambao kwa sasa wameweza kuoa na hali ya uchumi imekuwa ngumu, inamaanisha kwamba mke huyo anaweza

kuchukuwa hatua kwa sababu sheria inamruhusu na kwenda kuavya mimba. Lazima tukirekebishe kipengee husika au tuiondoe kutoka Katiba kielelezo.

Vile vile, Bw. Naibu Spika, maisha ya binadamu ni kitu muhimu, na ni lazima iheshimiwe. Naamini kwamba maisha yanaanza wakati mume na mke wanajamiana, ama wakati wanapokuwa na ile sherehe yao ya kuanza maisha au kutengeneza maisha ya mtu--

(Laughter)

Eng. Rege: On a point of order, Mr. Deputy Speaker, Sir. Would I be in order to ask if life can actually exist in ice?

Mr. Deputy Speaker: Who are you asking?

Eng. Rege: Mr. Deputy Speaker, Sir, I am asking any professional or doctor here who knows, because we do have--- The question is very technical.

Mr. Deputy Speaker: Order! Order! Order!

Mr. Kutuny: Bw. Naibu Spika, nafikiri kuwa mheshimiwa mwenzangu, ambaye yuko karibu nami, labda amechanganyikiwa. Jambo la nidhamu ingemaanisha kwamba labda mimi nina makosa na anataka kunirekebisha katika yale ambayo nachangia hapa kwenye ukumbi.

Vile vile, Bw. Naibu Spika, sisi ni wakristo, na vile vile kuna Sheria ya Waislamu katika taifa la Kenya.

Mr. Deputy Speaker: Order, Mr. Kutuny! You are out of time now!

Mr. Kutuny: Nashukuru, Bw. Naibu Spika. Hii tutaiondoa Katiba kielelezo na tuijike katika kaburi la sahai!

(Laughter)

Mr. Deputy Speaker: Order, Mr. Kosgey! The Chair is making a deliberate effort to allow all hon. Members who have amendments that are similar to this one to also participate in this debate.

The Minister for Industrialization (Mr. Kosgey): Thank you very much, Mr. Deputy Speaker, Sir. I have a similar amendment which I will withdraw, because it is exactly the same as hon. Murugi's amendment.

Mr. Deputy Speaker, Sir, I support this amendment. We do not really need to define when life begins because we know when it begins. Also, with respect to deprivation of life, we do not really need to define when life can be deprived. It suffices to say: "Everybody has a right to life."

Mr. Deputy Speaker, Sir, Sub-clause 4 about abortion, while it is right that abortion is not permitted, this article gives room, or opens a window, for abortion to occur, which is wrong. It says: "In the opinion of a trained health professional"; we know that the health professionals have various opinions. They include Dr. Khalwale; he is a trained professional. So, we do not want to have a situation, where we have legalized abortion just because we have opened a window for an opinion to be expressed.

So, Mr. Deputy Speaker, Sir, I really support the amendment that we delete Clauses 2, 3 and 4 and just leave this article to say: "Every person has a right to life."

Mr. Deputy Speaker: Order, hon. Members!

I instruct that the bar be drawn up and that the hon. Members who are here be counted so that we can proceed to a Division!

Ring the Division Bell!

(The Division Bell was rung)

Mr. Deputy Speaker: Order, Members! We have 101 Members of Parliament in the Chamber now. The amendment is, therefore, negatived. The threshold is 145. Under the circumstances, it is negatived and lost.

(Amendment Negatived)

We go on to the next amendment.

Article 26

The Minister for Public Health (Mrs. Mugo): Mr. Deputy Speaker, Sir, I beg to move:

THAT pursuant to the provisions of Section 33(4) of the Constitution of Kenya Review Act, 2008, this House approves the draft Constitution submitted by the Committee of Experts and laid on the table of the House on Tuesday, 2nd March, 2010, subject to the deletion of Clause (4) of Article 26 and the substitution thereof with the following new clause-

“(4) Termination of pregnancy is not permitted, but expectant mothers are entitled to emergency medical treatment in life threatening conditions.”

Mr. Deputy Speaker, Sir, I know how this issue is very emotive and we have seen many demonstrations and debates. I would like to bring to the attention of this House that the religious sector has consented to this amendment. We had a meeting with the Supreme Council of Kenya Muslims (SUPKEM) Secretary General, the moderator of the Presbyterian Church of East Africa, Rev. Timothy Ragi who is a member of the Anglican Church, Archbishop Wabukala, the Catholic Church and the Muslims. So, that is an agreed position. We also have supporting documents from the Kenya Parents Caucus and a memorandum which I believe has been given to all the Members of this House, with signatures supporting this amendment as one which has been agreed.

The word “abortion” seems to make the church and the religious sector, as a whole, very uncomfortable. That is why the word “termination” was agreed upon with the provisions that any mother is entitled to medical support in time of need. This rules out abortion at will which is what most of the people, especially the religious sector is against.

We all want this Constitution to pass, and we should know that Kenyans are waiting for this document. Regardless of our amendments in this House, I think we owe Kenyans a chance to vote on this new draft. I believe that if we do not give this window to the religious sector, they are bound to reject this Draft Constitution as they have said many times. I will ask Messrs. Wamalwa, Mwathi and Ngugi to second.

I beg to move.

Mr. Wamalwa: Mr. Deputy Speaker, Sir, I wish to second this Motion and congratulate hon. Beth Mugo on the leadership she has shown on this matter, trying to bring together the religious leaders as well as the medics to find a middle ground. We cannot ignore the religious sector and their input into this matter. Looking at the provisions that are there under Article 26, it is very important that we are clear at what point life begins. Though we say everyone has a right to life, we must also go out of our way to specify that this right includes both the right of the unborn child and the mother. The proposed amendments are good because they cover both the right to life of the unborn child and that of the mother. Indeed, when you look at the Irish Constitution, you will see that it covers both. It says that the State acknowledges the right to life of the unborn child and with due regard to equal right to life of the mother.

That is what we are trying to do in this amendment. I beg that all hon. Members support this amendment.

I beg to second.

(Question of the amendment proposed)

Mr. Ngugi: Thank you, Mr. Deputy Speaker, Sir, for giving me a chance to speak on this very important Motion and particularly on the amendment that is before us. I am glad that Mrs. Mugo had a session with the church leaders. If there is anything that would hinder the passage of this Constitution, it is the opposition by the churches, and yet it contains so much good for all of us in this country. We should look for every opportunity to remove any obstacle that will not make it pass. For that reason, I would appeal to hon. Members not to tie the Constitution to any other issue but to vote for it independently, so that at least we can have a constitution which will benefit everybody.

I support.

Mr. Kioni: Mr. Deputy Speaker, Sir, I want to support the proposed amendment for one or two reasons. One, the doctors have clearly told us that abortion is not a method of treatment. Two, we have statistics from the US that when they tampered with this kind of an amendment, the number of abortions in that country went up by about 1,500 percent. It is true we have had people who argue that you cannot carry a pregnancy out of a rape. I think in the event of a rape, we do not need to murder the child. We should punish the father instead of murdering the child. Finally, it is related to what hon. Ngugi has said, the Christians have had a lot to say about this issue. It is important to allay those fears. We need to have as many people on board as possible. Unfortunately, we do not have even the numbers in this House. It is important that we are seen to be sensitive to what others are saying because they also have a stake in this Constitution.

I beg to support.

The Assistant Minister, Ministry of State for Public Service (Maj. Sugow): Thank you Mr. Deputy Speaker, Sir. I stand to support this amendment and I would like to take this opportunity to congratulate the Minister for bringing together the relevant stakeholders in actually achieving this particular amendment which is acceptable to many of the key stakeholders. However, just like the rest of the amendments this morning and this afternoon, it is not likely to see the light of day. At this juncture, really, Kenyans require of us, as leaders, to take leadership in this process. But from the trend, I do not

think we are standing up to that. We do not even raise the necessary numbers to make a decision on crucial amendments which are being moved by our colleagues. If we pull up the House to have the numbers that are required, at least, Kenyans will see that we are really serious and that we are actually participating and taking leadership in this process. But now, Kenyans clearly see that parliamentarians actually are not interested in the Constitution.

The Minister for Education (Prof. Ongeru): Mr. Deputy Speaker, Sir, first and foremost we should remind ourselves of the binding declaration in this preamble of the proposed Constitution which acknowledges the supremacy of the Almighty God of all creation.

I support this amendment for one specific reason; if we allow abortion to be a method of daily function of a professional, of course, it will be an easier option given the decisions that are available to him whether to save the child or the mother.

You cannot ignore the religious sentiments. In this case, they cut across both the Christians and the Muslims. This is the meeting ground. If we, Parliamentarians, cannot take on board this aspect of life, then we will have failed miserably.

(Several hon. Members stood in their place)

I have not even finished my second statement.

Mr. Deputy Speaker, Sir, as a professional, I support this amendment the way it has been crafted. We will bring what we call the operative aspect of the Act which will stipulate to the doctors how they should deal with this problem.

Mr. Mwathi: Mr. Deputy Speaker, Sir, I also rise to support this amendment. I thank the Minister for doing a lot to bring all the stakeholders on board. Going by the defeat of the previous amendments, it behoves us to support this noble amendment which, in itself, will protect those who are in life threatening situations and require medical attention. If, in a blanket, we say that we are not for abortion, which I do not support, and we do not put that clause which the Minister has cleverly put, then we will put the lives of our daughters and mothers at risk.

I support.

The Minister of State for Special Programmes (Dr. Shaban): Mr. Deputy Speaker, Sir, I rise to move a further amendment to Mrs. Mugo's amendment on Clause 4---

Mr. Deputy Speaker: Order, Dr. Shaban! The procedure is that you bring the amendment to the Chair. I do not have a copy of your amendment. I need to see it before I can allow you to move it. Prepare because you still have time.

Ms. Mbarire: Mr. Deputy Speaker, Sir, I rise to support this Motion. I think it is a good compromise in view of the controversy around the issue. I think this is the way to go. Unfortunately, as others have said, we may not have the numbers to pass this important Motion.

I wish the same vigour with which the clergy has used to address the issue of abortion would be used to challenge the men who turn their backs on children they bear. They need to know that turning your back on a child who is born is as dangerous as aborting. I challenge them to use the same vigour because if that is done, we would never have orphans or children of single parents in this country. I hope they will do that.

Mr. Muthama: Ahsante, Bw. Naibu wa Spika. Ningependa kuchangia Hoja hii nikitambua kwamba sisi tunatoka dini mbali mbali. Hapa kuna orodha ambayo imejazwa na viongozi wote wa makanisa na dini zote katika nchi hii. Waislamu vile vile wako hapa. Wao wanasema kwamba ikiwa kweli sisi ni wacha Mungu, basi tuunge mkono na tupitisha mabadiliko haya yaliyoko hapa. Mimi ninaongea kama Mkristo ambaye anaamini kwamba Mungu baba alitoa uhai na mwanawe alikuja kutuokoa. Uhai tunaotembea nao ni roho mtakatifu. Tuunge mkono hoja hii. Yale ambayo mhe. Mbarire amesema ni kweli. Ikiwa tutazaa watoto na tukose kuwalinda, basi tusiwalaumu akina mama. Tualinde watoto wetu ili tusiwe na mayatima katika nchi yetu.

The Assistant Minister for Co-operative Development and Marketing (Mrs. Kilimo): Mr. Deputy Speaker, Sir, I rise to oppose this amendment. I think we are hoodwinking people. Termination of pregnancy is another way of aborting. Somebody said that Christians have put their names down in support of termination. Let it go the way it is so that people vote with their conscience in the referendum knowing that it is truly abortion. Other words for abortion are “termination of pregnancy.”

The Assistant Minister for Education (Prof. Olweny): Mr. Deputy Speaker, Sir, I rise to oppose this amendment. What is proposed here is not very different from what is in the document itself because termination is still abortion which this document does not allow.

This amendment was prepared in collaboration with the church leaders. The proposer did not even consult doctors. This proposal puts our doctors in a very dangerous situation.

Mr. Deputy Speaker, Sir, I oppose.

Mr. Deputy Speaker: Dr. Shaban, are you ready to move your amendment?

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

Mr. Deputy Speaker: Proceed!

The Minister of State for Special Programmes (Dr. Shaban): Mr. Deputy Speaker, Sir, I beg to move a further amendment to the amendment by Mrs. Mugo on Clause 4 in Article 26.

THAT, the words “but expectant mothers are entitled to emergency medical treatment in life threatening conditions” appearing after the word “permitted” be deleted and substituted thereof with the following words: “Unless in the opinion of a trained health professional there is a medical emergency or the life or the health of the mother is in danger.”

Mr. Deputy Speaker, Sir, the issues of obstetrics and gynaecology are very complicated. People are taking this matter lightly. Just to inform the House, termination of pregnancy is not equal to abortion. This is because the word “abortion” is too wide. It also encompasses spontaneous miscarriage and many other issues. We want to take it down to just termination which is where such treatment might be required. In this case, we have put it in black and white that there are cases where the mother’s life might be in danger during pregnancy. There are tumors which manifest and are quite terrible during pregnancy because of the changes of the hormones and that would require treatment. There is also in vitro fertilization. There is training of post graduate medical students which also requires them to be carried on board. So, it is important for us to move further

amendments to the amendments proposed by my colleague. They should read as follows:-

“Termination of pregnancy is not permitted unless in the opinion of a trained health professional, there is a medical emergency or the life or the health of the mother is in danger.”

I thank you and request Prof. Anyang’-Nyong’o to second my amendment.

The Minister for Medical Services (Prof. Anyang’-Nyong’o): Mr. Deputy Speaker, Sir, whereas I would like to second that further amendment, the reasons my friend Dr. Shaban has given are very important. We are dealing with an extremely complicated scientific issue that obstetricians and gynaecologists have said a lot about.

The Kenya Association of Obstetrics and Gynaecologists, the Kenya Association of Reproductive Health together with the International Plan Parenthood Federation whose officials were in my office this morning--- We should listen to this professional advice.

The best thing is to ensure that, in a constitution, things are stated in general terms which do not invite controversy. When you have a constitution inviting legal and professional controversy, you are entering in the realm of legislation. I would have preferred, as the hon. Minister said, to leave these matters to legislation. I am quite sure that if we sought the opinion of the Attorney-General, he would concur with us that Sub-Article 4 should be left out altogether precisely because of the kind of controversies that it invites. I would rather we are on the side of caution in this House by leaving out of the constitution matters that belong to the realm of law making and later on, bring these matters to this House, so that we can examine them carefully and make concrete regulations that will help the profession of medicine.

The Assistant Minister for Energy (Mr. Keter): On a point of order, Mr. Deputy Speaker, Sir. I do not wish to interrupt my “brother”, but is he in order to give a different opinion? I thought that the Mover of the Motion to further amend this Motion, Dr. Shaban, requested Prof. Anyang’-Nyong’o to second the Motion before the House. However, the professor is not seconding the Motion. He is giving a different opinion.

The Minister for Medical Services (Prof. Anyang’-Nyong’o): Mr. Deputy Speaker, Sir, seconding a Motion also includes giving the House the correct information from a professional point of law, and from a professional point of science. So, if the hon. Member is not prepared to listen to science, he should not call upon me to misguide him. I am here to guide the House, as the Minister for Medical Services, and as one who has listened to professionals on this issue, and who wishes to guide the House correctly. Therefore, my responsibility in seconding the Motion is to try and enlighten the House on the correct decision to make on this matter, which will go down in history and influence the lives of Kenyans.

Mr. Deputy Speaker: Hon. Members, I will now propose the question of this amendment to the amendment moved by Mrs. Mugo.

(Question of the amendment to the amendment proposed)

Mr. Ruto: Mr. Deputy Speaker, Sir, I stand to oppose the entire baptism of the word “abortion” into so many names. I think this particular aspect should not be brought into the Constitution. We should just expunge it. We are getting into arguments we

cannot sustain. As to when life starts, when it ends, and all that, that is metaphysics, and it should be left to angels to discuss when they are not singing.

(Laughter)

Mr. Deputy Speaker, Sir, it is not possible for us mortals to get into this field. I want to say that this House is not serious in sorting out this matter. I ask all the religious leaders and other religious people, to stick to the ethics of their religions and reject abortion in whatever name it is described. So, we should expunge it from the Draft Constitution.

The Assistant Minister for Livestock Development (Mr. Duale): Mr. Deputy Speaker, Sir, I stand to oppose this amendment. The so-called “gynaecologists” is---

Dr. Eseli: On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member contributing to this debate right to say “the so-called gynaecologists”?

The Assistant Minister for Livestock Development (Mr. Duale): Mr. Deputy Speaker, Sir, this is a matter of the humble medical profession *vis-a-vis* the moral standards of the faiths we believe in. I want to speak here for the millions of Muslims in this country; that, at any given time, in the history of our religion, we will not accept abortion. Whether you call it “emergency treatment” or talk about doing it under the professional advice of a medical doctor, “abortion” should not be anywhere in this document. I want to state categorically that the few churchmen, or the few leaders from the Supreme Council of Kenya Muslims (SUPKEM) do not represent the people who elected us to this House. I want to say here that if the worst comes to the worst, it will be upon the millions of Christians and Muslims to decide the fate of the Article on Abortion. It should be deleted. If not, the people of this country, who believe in good moral standards, will deal with it on the day of the referendum.

Thank you.

Mr. Mbadi: Mr. Deputy Speaker, Sir, even though I am not a Muslim, I would want the hon. Member to convince this House by giving the authority from the Quran that says exactly what he said about abortion – that is not acceptable.

The Assistant Minister for Livestock Development (Mr. Duale): Mr. Deputy Speaker, Sir, I want to say it here that I am a very good Muslim. I follow the Quran and the teachings of the Holly Prophet Muhammad *Swalallahu Alaihi Wasalam*. In our faith, as Paragraph (1) of Article 26 says, every person has a right to life. If we do not stop at that, and proceed to the rest of the paragraphs (2), (3) and (4), then the element of faith comes in. We are not here to, at any given time, compromise on the tenets of the faiths we believe in.

Mr. Deputy Speaker: Order! Order! Hon. Members, in engaging in this debate, we stand the risk of misinterpreting our own religions and faiths because of our own scanty knowledge. I have no intention of contributing on this debate from the Chair but, at a personal level, I think somebody who is more informed than me and hon. Duale about our religion should tackle that particular issue.

The honourable Attorney-General, you may want to give legal advice on the matter.

The Attorney-General (Mr. Wako): Mr. Deputy Speaker, Sir, I said earlier that I do not really want to speak on the merits of the Draft Constitution because I am a

Member of the Committee of Experts. However, this is a very serious issue, and I thought I could make some comments. If it makes sense, I can move a very simple amendment.

First of all, let me say that I agree with Paragraph (1). I can also live with Paragraph (2), which says that the life of a person begins at conception because: “Before conception I was, and after death I will be”, which means that, as Amos Wako, I was neither born nor will I die. My physical body will be left behind, but as Amos Wako, I will continue to live.

I can live with Paragraph (3) but, honestly, I feel that deleting Paragraph (4) takes care of everything because, under Paragraph 3, there is the provision “or other written law”. That “other written law” is in respect of depriving a person of his life, which can be taken care of under “any other written law”. That person will then include that which became a person at conception. Therefore, the fears about this not having been taken care of can be dealt with under legislation in sub-paragraph of Paragraph (3), which provides for “or other written law”.

So, I move that---

Mr. Deputy Speaker: Order, Mr. Attorney-General! I thought you were going to give legal advice to the House on the matter. The point of the matter is that there is an amendment to an amendment that has got to be disposed of. You either oppose it or support it and then we can proceed.

The Attorney-General (Mr. Wako): Mr. Deputy Speaker, Sir, what I have not done is giving notice to an intended amendment.

An hon. Member: On a point of information, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Order! To whom do you want to give the information? We cannot flout the rules of debate here.

(Question of the amendment to the amendment put and negatived)

(Debate on the original Amendment resumed)

Mr. Deputy Speaker: Now we can dispose of the original Amendment. The debate will go back to the original Amendment and then---

The Attorney-General (Mr. Wako): Mr. Deputy Speaker, Sir, now that, that has been---

Mr. Deputy Speaker: Order, Mr. Wako! Do you wish to bring another amendment?

The Attorney-General (Mr. Wako): Yes, Mr. Deputy Speaker, Sir. I want to bring the amendment as I had indicated.

Mr. Deputy Speaker: The rules are very simple when you want to bring an amendment. You put it in writing and bring it to the Chair.

Mr. Attorney-General, you are bringing this amendment as the legal adviser to the Government. Indeed, you are allowed to do so under the law. Proceed, I have the notice of your amendment here.

Proceed.

The Assistant Minister for Sports and Youth Affairs (Mr. Kabando wa Kabando): On a point of order, Mr. Deputy Speaker Sir. It is a matter of details. Perhaps,

you are confusing even those who are attempting to understand like me. The hon. Attorney-General, while being a Member of Parliament by virtue of his office, is a member of the Committee of Experts. If the Attorney-General is standing to tell this country that he has had no opportunity to instill intellectual legal wisdom at the stage of the Committee of Experts, I think his amendment on the Floor of the House is denying us, representatives of the people, elected and nominated for special interests a chance to contribute and add value. I think the Attorney-General should sit down and smile all the way to his silence.

The Attorney-General (Mr. Wako): Mr. Deputy Speaker, Sir, all I am trying to do---

(Mrs. Ngilu stood up in her place)

Mr. Deputy Speaker: Is it a point of order, Mrs. Ngilu?

The Minister for Water and Irrigation (Mrs. Ngilu): Mr. Deputy Speaker, Sir, it is not a point of order. I would like to contribute.

Mr. Deputy Speaker: Order, Mrs. Ngilu! Notwithstanding whether it was prudent and logical for him to give this in the previous CoE caucuses which he was a member of, or not, he is now in the House and he is the legal adviser to the Government. He is perfectly entitled to move an amendment to a Bill. The Government is here.

Proceed.

The Assistant Minister for Livestock Development (Mr. Duale): On a point of order, Mr. Deputy Speaker, Sir. We need your guidance. As we make this Constitution to be the law of this country, if you go through the Constitution of Kenya Review Act, at every stage, including in Parliament, which is an integral part of the review process, it gives the mandate to the representatives of the people of Kenya and nominated Members of Parliament, who represent special interests. It is very clearly stated in the Act that the Attorney-General is a member of the Committee of Experts. In his earlier submission, and it is in the HANSARD, he said: "I cannot talk of the merits and demerits of amendments in this House". Having said that, it is not in order for the Attorney-General to bring an amendment.

Mr. Deputy Speaker: Hon. Members, we need not belabour the point here.

Mr. Nyamweya: On a point of order, Mr. Deputy Speaker, Sir. We have been told by the President and the Prime Minister to pass this Constitution as it is. The people of Kenya say they are tired and that we should pass this Constitution as it is. The reason why the Attorney-General is generating some controversy is that he is a member of the CoE, which is saying that we should pass this Constitution as it is. Now he is telling us that there is something which needs to be amended. Therefore, this document did require some amendments. But you see how this has developed. Hon. Members are asking, if you did not really wish us to amend it, why put us through the trouble of going through it? Can you not see what is happening? When it comes to voting people are walking out to deny you that critical 145 so that it is passed as is desired. So, really it is quite improper for the Attorney-General to also take us through this.

Mr. Deputy Speaker: The Attorney-General in his position might be in the minority, but he has the right on the Floor of the House as the legal adviser to the Government.

Mr. Nyamweya: Mr. Deputy Speaker, Sir, are you ruling that the Attorney-General can actually vote in this House?

Mr. Deputy Speaker: Order! Hon. Members, acquaint yourselves with the practice and traditions of the House. The Attorney-General is perfectly in order to move an amendment to a Bill. All you need to do is to either agree with him or disagree with him. He has no voting rights in the House. He will not be able to vote. Could you move the amendment?

The Attorney-General (Mr. Wako): The amendment is a simple one. I propose to amend the proposed amendment by putting a full stop after Article 26, and then deleting the rest of the words. As moved by Mrs. Mugo, you go up to “subject to the deletion of Clause 4 of Article 26.” You delete the rest of the words. The effect of that would be to delete Article 26(4) from the main draft. You can safely delete that because under sub-paragraph 3, we have used the words “other written law”. That “other written law” will take care of situations where a person can be deprived of his life. That person, who can be deprived of his life, includes the time that person was conceived.

I am proposing this to facilitate the people’s representatives in addressing serious issues that have been raised outside this House. The objection outside this House has been the one of abortion appearing in the Draft Constitution; part of it has also been on the issue of conception. By deleting subsection (4) you have removed not only the word “abortion” but also all the contradictory text; you have removed it completely. You have given the opportunity to the Legislature to, under sub-paragraph (3), legislate more exhaustively on the subject.

I so move.

Mr. Deputy Speaker: Who is to second you, Attorney-General?

The Attorney-General (Mr. Wako): Dr. Khalwale is doctor and will second me.

Mr. Deputy Speaker: Hon. Dr. Khalwale, are you willing to second amendment to an amendment by the Attorney-General?

Dr. Khalwale: Yes, Mr. Deputy Speaker, Sir. I have listened to the Attorney-General very carefully.

I want to say that he has demonstrated brilliance over a legal argument that joins very well with the practice of medicine. Why? This particular Article has challenges to two groups of people. One, the pro-life and, two, the pro-choice. If you go by the amendment of the Attorney-General part two satisfies the pro-life. But if you remove Section 4, the pro-choice because she is not seeing the word “abortion” in the document, she feels that she has been left out. However, the pro-choice is saying that I want to have access to medical expertise. The Attorney-General is telling us if we stop at subsection 3, there is nothing that will stop us from doing legislation in an Act of Parliament to provide for how this pro-choice people will approach their doctors, how the doctor will form his opinion and how he will then go ahead and make a decision to treat or not treat.

Mr. Deputy Speaker, Sir, I would like to support the Attorney-General for those reasons. The word “abortion” appearing in this document will meet the wrath of the millions of Christians who will be participating in the Referendum. Let us wait as Members of Parliament for the time of legislation to then make the broad Act that will capture the interest of the pro-choice.

With those few remarks, I second.

(Question of the amendment to the amendment proposed)

Mr. Mututho: Mr. Deputy Speaker, Sir, we cannot continue burying our heads in the sand and not listen to millions of Muslims and Christians who are talking about abortion.

Mr. Deputy Speaker, Sir, we have to support the amendment as proposed by the Attorney-General because, at the end of the day, this Constitution is an agreement between the ruled and the rulers. As long as half of the population is bickering, we will still have major problems ahead.

With those few remarks, I beg to support.

Mr. Mwathi: Mr. Deputy Speaker, Sir, I beg to oppose.

I oppose for the simple reason that when I look at the amendment that was brought by the Minister, by deleting 4 and substituting it with further amendment to the amendment it changes the whole substance and meaning of that Article. So, the greatest thing that the Attorney-General would have done guided by his wisdom, would have been to bring an amendment to delete Article 4 instead of amending it because it changes the whole substance and meaning of that Article.

With those few remarks, I oppose.

The Assistant Minister for Nairobi Metropolitan Development (Mrs. Ongoro): Mr. Deputy Speaker, Sir, I stand to oppose the amendment and the suggested amendment to the amendment. I see a clear attempt to provide a legal window through which euthanasia, capital punishment, abortion in its various forms and words will be provided. I oppose this amendment and still stand by my support of the earlier amendment brought by hon. Murugi.

The Minister for Medical Services (Prof. Anyang'-Nyong'o): On a point of order, Mr. Deputy Speaker, Sir.

Article 26(1), which says every person has the right to life means that euthanasia will not be allowed. So, is hon. Ongoro right to mislead this House that euthanasia is allowed when it is quite clear that Article 26(1) says every person has the right to life.

The Minister for Water and Irrigation (Mrs. Ngilu): Mr. Deputy Speaker, Sir, I stand to support hon. Mugo's amendment as it is.

Mr. Deputy Speaker: Order! Now we are debating the amendment to an amendment.

The Minister for Water and Irrigation (Mrs. Ngilu): I want to oppose the Attorney-General's amendment.

I do so, because as doctors in this Chamber know what happens, my experience has been that any time a woman has a problem and gets to a hospital or doctor, they do not ask a question. They go straight to save the woman's life. This is the way it has got to be whether it is in law or not. That is what happens.

So, I want to oppose the Attorney-General's amendment and support what hon. Mugo has proposed.

*(Question of the amendment to the amendment
put and agreed to)*

(Several hon. Members stood up in their places)

Mr. Deputy Speaker: Order, hon. Members! This is an amendment to the amendment. The Question was put and carried.

(Several hon. Members stood up in their places)

Order, hon. Members! The Chair has the discretion. Under normal circumstances, if you are dissatisfied with the Chair's ability of the Chair's eyes and ears in determining whether the voice was louder than the other, then you rise up where you are. If you are 15 of you, then you go for a division. You did not do that. You cannot keep on rising on a point of order after that. The Ayes have it. Now the Motion will be debated as amended.

The Minister for Public Health and Sanitation (Mrs. Mugo): On a point of order, Mr. Deputy Speaker, Sir. I believe having owned the Motion, I should have been given time to speak on the amendment. But I did not get chance to do so.

Mr. Deputy Speaker, Sir, I believe the rules are that any amendment that changes the spirit of the Motion is never allowed, unless we have completely gone against the Standing Orders. I feel aggrieved because I brought the amendment, but I was not given the opportunity to say anything about the amendment to the amendment. I believe that it has completely changed the spirit of my amendment.

Mr. Deputy Speaker: Order, hon. Members! We are guided by our own rules. Our own rules are explicit. The rules do not have to make everybody happy. It does not give you an express authority that because you had moved a previous amendment and there is an amendment to the amendment, that you must catch the Speaker's eye. At the personal level, the Chair would have really wanted to listen to what hon. Mugo had to say about the amendment to the amendment, given the opportunity. But nonetheless, she never caught the Speaker's eye. For now, the Motion can be debated as amended.

The Minister for Nairobi Metropolitan Development (Mr. Githae): Mr. Deputy Speaker, Sir, I rise to support the Attorney-General's amendment to the amendment.

Indeed, if the earlier amendment had gone through we would have, by a stroke of the pen, outlawed all capital punishment. You know very clearly that this country has some insecurity problems. Therefore, without making a conscious decision, we cannot just outlaw capital punishment. Those who murder must receive the same punishment.

Secondly, whereas the church may not be very happy with the Attorney-General's amendment, it is still does not allow abortion. We are saying we do not want abortion whether that pregnancy results from rape or incest, except where the health of the mother is in danger.

That has been the general agreement. So, we can still convince the church that this is a good compromise and, therefore, they should continue supporting the Constitution. There was a bigger danger of that amendment which would have disallowed capital punishment. As of now, this Parliament has not made that decision so capital punishment is still in our books.

I beg to support.

The Minister for Public Health and Sanitation (Mrs. Mugo): On a point of information, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: You want to inform who?

You have to wait until a Member is on the Floor and then you seek a point of information.

Yes, Dr. Khalwale!

Dr. Khalwale: Mr. Deputy Speaker, Sir, I am now contributing to the Motion as amended. I would like to support this Motion as amended because I can see from the point of view of the Minister for Public Health, with all due respect, you might be becoming emotional.

Let me just talk to you as a doctor of medicine. The amendment you have made---

(Loud consultations)

Mr. Deputy Speaker, Sir, I am talking through the Chair. This is important.

The Minister for Lands (Mr. Orengo): On a point of order, Mr. Deputy Speaker, Sir. The hon. Member cannot talk directly to the gracious lady from Dagoretti.

Mr. Deputy Speaker: Order, Dr. Khalwale! Address the Chair.

Dr. Khalwale: Most obliged.

Mr. Deputy Speaker, Sir, when you say termination of pregnancy is not permitted but expectant mothers are entitled to emergency medical treatment in life threatening conditions, that is a very dangerous statement. This is because it does not tell you in whose opinion the life becomes threatened. Therefore, the amendment the Minister was making was actually opening the door for even quacks to form the opinion that life is threatened.

Now that the Attorney-General has created this window of opportunity we will come back. When we will do the relevant legislation, we will close the windows for quacks, pretenders, mortuary attendants and laboratory technologists who normally pretend that they are trained medical professionals.

Mr. Deputy Speaker, Sir, I believe that the church which would have shot down this document, now that the word, "abortion" has been completely removed by the Attorney-General's amendment, will find it very acceptable.

Finally, the women who feel that their children or themselves will have their lives at stake and to marry with Mrs. Ngilu's fear that doctors will be indecisive; doctors will face emergencies knowing that there exists secondary legislation that protects them.

I support.

Eng. Rege: Mr. Deputy Speaker, Sir, I support the amendment with the following reasons:

Mr. Deputy Speaker, Sir, the Motion as it stands will not help any portion of Kenyans. It does not mean that if we pass amendments the churches will be angry and will not support the Draft Constitution.

With the advent and the development of technology, nobody can tell what the word, "abortion" or "termination" means. We are making a Constitution for this country which will last for years. I believe we are wasting a lot of time at this point in time, if we insert an item which may not make much sense.

I support the amendment and it would not hurt if we remove that section.

The Assistant Minister for Forestry and Wildlife (Mr. Nanok): Mr. Deputy Speaker, Sir, while we debate an amendment to an amended Article brought to this House by a Member who is not only a Member of this House but also a Member of the

Committee of Experts (CoE), we should note that it is creating more controversies. This matter has been very controversial outside. We know one of our biggest constituencies are the religious organizations which have taken a stand on this matter. Changing language on this matter makes it even worse.

I believe even if we say we support this amendment, we may not get the requisite number to change it. The best thing is for us to say that Kenyans and even us in this House have taken the “No” and “Yes” position over the Draft Constitution. Let us not lie!

I request that we go into the division and dispose of this matter.

Mr. Deputy Speaker: Order, Mr. Nanok! The word, “Lie” is not a Parliamentary word.

Nonetheless, Mrs. Mugo, do you wish to contribute to this?

The Assistant Minister for Energy (Mr. Keter): On a point of order, Mr. Deputy Speaker, Sir. Why do you not give some of us a chance to contribute so that you can hear our opinion? Are we here just to sit and not to talk?

Mr. Deputy Speaker: Order! Mr. Keter, the Members who have been contributing all this time are not strangers from outside or from my Lagdera Constituency!

The Assistant Minister for Energy (Mr. Keter): But they are the same ones who have contributed!

Mr. Deputy Speaker: Order! You are no more equal than the ones who have contributed!

The Minister for Public Health and Sanitation (Mrs. Mugo): Mr. Deputy Speaker, Sir, I thought this information will settle some of these issues. The meeting was not just for religious leaders. We also had doctors, including our own doctors here and gynecologists. It has been insinuated that it was only the church leaders.

Dr. Eseli: On a point of order, Mr. Deputy Speaker, Sir. Is the Minister in order to say that there were doctors in attendance in that meeting and yet the Kenya Medical Association (KMA) and the Medical and Dental Professionals Board (MDPB) were not involved? Which association of doctors is she talking about?

Mr. Deputy Speaker: Order! The Chair will not entertain a situation in which there will be altercations among Members of Parliament.

(Mr. Keter stood up in his place)

Mr. Keter, you have a very burning contribution to make. Can we hear you?

The Assistant Minister for Energy (Mr. Keter): Mr. Deputy Speaker, Sir, I want to say from the outset that today’s debate reminds me of the year 2005. We debated until midnight. It was such small things which made the whole Constitution to be thrown out.

The right to life is something which is controversial. The Attorney-General has tried to remove part (4) of Article 26. However, I have a problem. If it says every person has a right to life, the other things which should have come should have been put under subsidiary legislation. If we try to justify what the Attorney-General is trying to do, we are going the wrong way. The Attorney-General is remaining with part (2) of Article 26 which says that the life of a person begins at conception. Now, if it begins at conception, where does it end? Why should we have such things in the Constitution? I thought we can describe this under other legislations.

I oppose the amendment by the Attorney-General.

Mr. Deputy Speaker: Could the Minister for Medical Services make a contribution?

The Minister for Medical Services (Prof. Anyang' Nyong'o): Mr. Deputy Speaker, Sir, I just want to make a very small contribution. In this House, we talk about religious leaders supporting this but we seem only to be referring to religious leaders who are in the "high churches". If you consult the Legio Maria Church, The Church of Jesus Christ around the World, Dini ya Msambwa and the Akorino, these people support the fact that "every person has the right to life". That seems to be the common view of most Kenyans at that level. So whereas, I would definitely appreciate the opinion of the "high church" and I belong to a "high church" myself, I would not like the minority opinion to be taken as representative of the popular masses. The popular masses will easily live with Article 26(1) which says every person has a right to life and since the Attorney-General told us that he can live with 2 and tolerate 3, we shall grant in that concession. What is surely necessary in this amendment as I had earlier said, is every person has a right to life and I am quite sure that if Steadman or whatever organization took an opinion poll, they would find that most Christians would go along with that.

With those few remarks, I beg to support the amendment.

(Question of the amendment put and the House Divided)

(The Division Bell was rung)

[Mr. Deputy Speaker left the Chair]

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

The Temporary Deputy Speaker (Prof. Kamar): Order, hon. Members! The head count for purposes of this vote has given us 62 Members, which has not met the threshold of 145. So, it means the amendment is negatived and we move on to the next one.

(Proposed amendment to Article 26 negatived)

The Minister for Nairobi Metropolitan Development (Mr. Githae): On a point of order, Mr. Speaker, Sir. It is quite clear that we are actually engaging ourselves in an exercise in futility. At this rate, I do not see any amendment, whether good or bad, that will go through. Under the Constitution of Kenya Review Act, even the Committee of Experts (CoE) is not even bound by our resolutions in this House. This has put off the Members. I am requesting if we can now withdraw our amendments. I have withdrawn mine, hon. Bifwoli and hon. Kajwang have withdrawn theirs, so that we can move.

The Temporary Deputy Speaker (Prof. Kamar): Hon. Githae, you cannot rule on behalf of the other Members.

The Assistant Minister for Lands (Mr. Bifwoli): On a point of order, Madam Temporary Deputy Speaker. As hon. Githae has said, it is true that the mood of the

Members indicates that no amendment will pass. I, therefore, concur with him that we need to withdraw our amendments. I also wish to give notice to terminate the debate on my amendments.

The Temporary Deputy Speaker (Prof. Kamar): Thank you, hon. Bifwoli, when you have given notice on your own, please, allow other Members to do so on their own.

Mrs. Odhiambo-Mabona: Thank you, Madam Temporary Deputy Speaker. I cannot withdraw mine, because I have none. But there are some of us who really wanted to speak to this historic moment and we were not given the opportunity. The only time we have is through these amendments. For instance, the next one I want to hit it thoroughly. Could we, please, move on?

The Temporary Deputy Speaker (Prof. Kamar): That is not a point of order!

Mr. Ethuro: On a point of order, Madam Temporary Deputy Speaker. I just wanted to thank you for your ruling. I also want to welcome the Members who wish to withdraw their amendments. I am not one of them. The rules of the House are very clear that amendments will be disposed of because they have already been prepared.

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

Mr. Ethuro: Mr. Temporary Deputy Speaker, Sir, my point of order is that you should not entertain these other frivolous points of order. Mine is the only genuine one.

Mr. Jamleck Irungu Kamau: On a point of order, Madam Temporary Deputy Speaker. I just want to seek the guidance of the Chair. Looking at what we have done today and it is ten minutes to 6.30. p.m., we have only done ten amendments out of about 150 amendments. We have one more day remaining. I am seeking the guidance of the Chair on the way forward because if we move at that speed, we will not finish with these amendments. I propose that we guillotine the amendments, so that we can do away with them, once and for all.

The Temporary Deputy Speaker (Prof. Kamar): We only have five minutes. Can you allow M'Mithiaru to proceed and tomorrow there will be a ruling on that.

Article 27

Mr. M'Mithiaru: Thank you, Madam Temporary Deputy Speaker. I wish to move:-

THAT, pursuant to the provisions of Section 33(4) of the Constitution of Kenya Review Act of 2008, this House approves the Draft Constitution submitted by the Committee of Experts and laid on the table of the House on Tuesday, 2nd March, 2010, subject to the deletion of Clause 8 of Article 27.

This is on the Bill of Rights and 27(1) talks of how every person has equal rights before the law. Clause 3 talks about how women and men have the right to equal treatment, including in political, economic, cultural and social spheres. So, the clause is adequately covering equality and giving everybody a right.

Clause 6 says that the full effect of the realization of those rights should be guaranteed under this Article and the State should make legislative and other measures, including affirmative action.

Clause 8 in this Constitution goes on to kind of legislate. Clause 8 is superfluous in that, in the first place, an affirmative action is not a principle of Constitution making.

We are trying to court trouble here in the sense that in the event of an elective position and you do not garner the two thirds required, then it may crystallize to a constitutional crisis. I believe in affirmative action, but it should be provided properly where it should be. This should be provided in an Act of Parliament. Here, the CoE has allowed each and every small detail into the Constitution. That is the problem we are having right now. Once you bring all these details in the Constitution, then we will not agree.

I call upon hon. Jamleck Kamau to second.

Mr. Jamleck Irungu Kamau: Madam Temporary Deputy Speaker, I beg to second.

(Question of the amendment proposed)

Mrs. Odhiambo-Mabona: Madam Temporary Deputy Speaker, I cannot let this amendment to pass especially because I have not had an opportunity to speak. If you actually look at this Constitution, one of the excellent things about it is that it has provided excellent provisions for women. Even though when I presented this map in Kabete, it was a source of amusement, I present it again. Kenya is No.105 out of 140 countries in terms of women's representation. It is a shame to us, as a country. The countries we are competing with are countries like Nauru, Palau and Tuvalu. The countries that have beaten us include---

An hon. Member: Which countries are those?

Mrs. Odhiambo-Mabona: Exactly! You are asking me which countries are those. That is where we are competing. Hon. Members have never heard of them and Kenya is very comfortable with countries that we have never heard of in terms of women's representation. That is why I am saying: Shame on us as a country!

If you look at Rwanda that has just come from a difficult situation, it is the best in the world. We have been beaten by countries like South Africa, Afghanistan, Burundi and Uganda. Because we do not have time I will not give statistics. If I am allowed, I want to table this document before the House.

Madam Temporary Deputy Speaker, I wish to oppose the amendment because it is retrogressive. I do not even have the words to explain it.

Ms. Shakila Abdalla: Madam Temporary Deputy Speaker, I want to oppose this amendment.

We are not in an island in this country or a vacuum. We relate to each other and the outside world. We are signatories to many international conventions in the world. We have an obligation as a country to implement those international conventions. Those obligations tell us that we must empower our women. The people who forget their women are a lost society.

Madam Temporary Deputy Speaker, for us to develop this country, we cannot leave the majority who are in this country not empowered. That is why we are saying that we need a one-third principle in this Constitution.

Madam Temporary Deputy Speaker, I beg to oppose this amendment.

Ms. Karua: On a point of order, Madam Temporary Deputy Speaker, now that the mood is evident, would I be in order to ask you to put the Question?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Lesrima): On a point of order, Madam Temporary Deputy Speaker. Men have not spoken!

The Temporary Deputy Speaker (Prof. Kamar): Proceed, hon. Lesrima!

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Lesrima): Madam Temporary Deputy Speaker, I stand to oppose this amendment. This is not about women. It is about women now because they are disadvantaged, but it will be about men 20 years down the line when the women will have overtaken us.

Madam Temporary Deputy Speaker, various executive orders have been issued on the one-third gender balance in the Public Service, but it has not worked. If we remove this clause, women will continue to be disadvantaged. We know that many societies in Kenya will not accept women chiefs and councillors. It is about time we changed that.

I beg to oppose.

The Assistant Minister for Tourism (Ms. Mbarire): Thank you, Madam Temporary Deputy Speaker. I just want to say that any man married to a wife, father to a daughter, grandfather to a grandchild or son of a mother cannot be this retrogressive to bring such an amendment.

I oppose it, Madam Temporary Deputy Speaker.

ADJOURNMENT

The Temporary Deputy Speaker (Prof. Kamar): Hon. Members, it now time for the interruption of business. This House is, therefore, adjourned until tomorrow, Thursday, 1st April, 2010, at 9.00 a.m.

The House rose at 6.30 p.m.