

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

**Tuesday, 16th December, 2008**

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

PRAYERS

### PAPERS LAID

The following Papers were laid on the Table:-

The Report of the Kenyan Delegation to the Federal Republic of Germany at the invitation of the Germany East Africa Parliamentary Friendship Group

*(By Mr. Chanzu)*

The Report of the Kenyan Delegation to the 119th Assembly of the Inter-Parliament Union (IPU) held in Geneva Switzerland between 13th and 15th October, 2008

*(By Mr. Wambugu)*

### NOTICE OF MOTION

ADOPTION OF REPORT OF 119TH  
ASSEMBLY OF IPU

**Mr. Wambugu:** Mr. Speaker, Sir, I beg to give notice of the following Motion:- THAT, this House adopts the Report of the IPU by the Kenyan Delegation to the 119th Assembly of the Inter-Parliamentary Union held in Geneva, Switzerland, between 13th and 15th October, 2008 laid on the Table of the House on Tuesday, 16th December, 2008.

### QUESTIONS BY PRIVATE NOTICE

SHARING OF WARD BY MALE/  
FEMALE PATIENTS AT KITISE  
HEALTH CENTRE

**Mr. Speaker:** The first Question by Private Notice is by Mr. Kiilu!

**(Mr. Kiilu)** to ask the Minister for Public Health and Sanitation:-

(a) Could the Minister explain why male and female patients share a ward at Kitise

Health Centre?

(b) What urgent steps is the Minister taking to address the anomaly?

Is Mr. Kiilu not here? The Question is then dropped!

*(Question dropped)*

INVASION OF RIOKI SUB-LOCATION  
BY HIPPOS

**Mr. Baiya:** Mr. Speaker, Sir, I beg to ask the Minister for Forestry and Wildlife the following Question by Private Notice.

(a) What urgent steps is the Minister taking to avert the current insecurity in [**Mr. Baiya**] Rioki Sub-Location in Githunguri Constituency caused by invasion by a herd of hippos and compensate farmers whose crop has been destroyed by the animals?

(b) Considering that, in a similar invasion on 3rd January, 2008 hippos killed a resident, one Mr. Kiriga Kiuna, when will the Government compensate the family of the deceased?

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

(a) The Kenya Wildlife Service (KWS) has control rangers based at Limuru and Ngong who are deployed to the area to deal with problematic animals. Under the current Wildlife Conservation and Management Act, Cap.376, there is no compensation for crop and property damaged or destroyed by wildlife. However, my Ministry has undertaken a comprehensive review of Cap.376 with a view to exploring sustainable options available for compensation. The draft wildlife policy and legislation is pending discussion and subsequent approval by this Parliament.

(b) The claim for one Mr. Kiriga Kiuna has been approved by the District Compensation Committee and is awaiting approval by the Ministerial Compensation Committee.

**Mr. Baiya:** Mr. Speaker, Sir, I thank the Assistant Minister for the attempt to respond to that Question. However, as stated, we have had the problem of hippos regularly attacking people in that sub-location. The Assistant Minister has not addressed the question of what measures the officers are going to take to ensure that the menace of the wild animals is removed, considering that the region is a densely populated rural area.

**Mr. Nanok:** Mr. Speaker, Sir, I want to ask the hon. Member for Githunguri to pay a visit to my office, so that we can sit down with the relevant officers from the KWS and relook at all the critical things and, if possible, pay a visit to the site and make sure that all the measures are put in place. As I have mentioned, we have a KWS office within his constituency. If he is not satisfied with that, that office is able to provide security to the people, then let us discuss it in the office and we sort it out.

**Mr. Twaha:** Mr. Speaker, Sir, in Nahindi Division, Lamu, we lost two people last month, one to a hippo and the other one to a lion. Could the Assistant Minister advise this House as to how much is the scale of compensation for a lost life due to a wildlife attack?

**Mr. Nanok:** Mr. Speaker, Sir, as per the current law, compensation for loss of life is Kshs200,000. In the new Bill that we will be bringing to this House, and I hope that we will bring it when we resume again, the amount is going to be increased.

**Mr. Olago:** Mr. Speaker, Sir, the KWS is gaining from the animals under its jurisdiction, and Cap.376 needs to be overhauled. What is the Ministry doing to fast-track the overhaul of that Act which is an impediment?

**Mr. Nanok:** Mr. Speaker, Sir, I have said that the Bill is ready for presentation to

Parliament and I believe that, very soon, we will bring it to the House.

**Mr. Speaker:** Last question by Mr. Baiya!

**Mr. Baiya:** Mr. Speaker, Sir, considering that these animals are causing destruction of crops and the Ministry seems to be quite happy with the situation because it does not offer any compensation, when will this policy be presented for discussion to this House?

**Mr. Nanok:** Mr. Speaker, Sir, the Ministry, together with the stakeholders, finalised looking at the policy. What is left is a matter of presenting it to this House for discussion. I hope that when we bring it here, we will get the support of every hon. Member.

**Mr. Speaker:** Hon. Members, the Chair noticed that the hon. Member for Makueni walked in immediately after his Question was ordered dropped. Could he explain to the House what could have befallen him?

**Mr. Kiilu:** Mr. Speaker, Sir, after the *Kamukunji*, I went to the Ministry of Youth Affairs and Sports Headquarters to consult with the Minister. However, when I was coming back, I got delayed in traffic jam. I am sorry that my Question was called out when I was not here.

**Mr. Speaker:** In those circumstances, we will allow that rare exemption because the Minister for Nairobi Metropolitan Development comes from your neighbourhood. I hope that he has heard your cry and that he will decongest the city faster than he is doing. You may proceed and ask your Question!

SHARING OF WARD BY MALE/  
FEMALE PATIENTS AT KITISE  
HEALTH CENTRE

**Mr. Kiilu:** Mr. Speaker, Sir, I beg to ask the Minister for Public Health and Sanitation the following Question by Private Notice.

(a) Could the Minister explain why male and female patients share a ward at Kitise Health Centre?

(b) What urgent steps is the Minister taking to address the anomaly?

**The Assistant Minister for Public Health and Sanitation (Dr. Gesami):** Mr. Speaker, Sir, I beg to reply as follows.

(a) The male and female patients cannot share a ward as indicated by the hon. Member for Makueni. Kitise Health Centre has two wards. The male patients use one ward which is smaller while the female patients and children use the bigger one which is enough for the two groups to share.

(b) The big ward will be sub-divided to create a third one and my Ministry has instructed the District Medical Officer of Health, Makueni District, to forward the cost estimate for this sub-division.

**Mr. Kiilu:** Thank you, Mr. Speaker, Sir. I want to thank the Assistant Minister for the reply he has given. What he has said is true. What is not true is the statement that there are two wards. There is only one ward. The partitioning he is talking about is temporary. They have hung a curtain to separate the two wards. It is not a permanent partition. However, I am happy he has promised to put up a permanent partition, so that males and females can have separate wards.

**Mr. Speaker:** Very well! Mr. Kiilu, given your level of satisfaction, I would like to move on to Ordinary Questions.

ORAL ANSWERS TO QUESTIONS

*Question No.532*

PAYMENT OF HARDSHIP ALLOWANCE TO  
PUBLIC SERVANTS IN NYATIKE

**Mr. Anyanga** asked the Minister of State for Public Service:-

(a) whether he could confirm that Nyatike, Karungu and Mihuru Divisions in Nyatike Constituency are classified as Arid and Semi-Arid Lands (ASALs);

(b) whether he could further confirm that public servants in the constituency are not paid hardship allowance; and,

(c) what the Ministry is doing to urgently implement payment of hardship allowance to public servants in Nyatike Constituency.

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

(a) No, Nyatike, Karungu and Mihuru Division in Nyatike Constituency are not classified as ASALs. Such classification would be handled by the Ministry of Agriculture, in consultation with the Kenya Agricultural Research Institute, the Meteorological Department and the Ministry of State for Development of Northern Kenya and other Arid Lands.

(b) Public servants in Nyatike Constituency are not paid hardship allowances because it is not so gazetted as a hardship area. Hardship allowance is only paid to public servants working in areas gazetted as hardship. "Hardship" is not equivalent to ASAL.

(c) My Ministry has carried out a survey to review the areas designated as "hardship" throughout the country. Nyatike Constituency was one of the areas so surveyed during the national survey. The results of the survey will be made public after I obtain the necessary approval within the Government.

**Mr. Anyanga:** Mr. Speaker, Sir, I thank the Minister for the answer he has given. However, there are some areas which he did not confirm whether they are ASALs or not. Could he tell this House when the results of the survey will be made public?

**Mr. Otieno:** Mr. Speaker, Sir, I just said that I have to get the necessary approval within the Government. Indeed, one of the approvals is through the Cabinet.

The hon. Member is aware that it is the prerogative of the President to convene a Cabinet meeting. Therefore, let him be patient. He should be satisfied that Nyatike is included in the survey.

**Mr. Lekuton:** Thank you, Mr. Speaker, Sir. Considering that there are different kinds of hardships in different parts of this country, for example, in North Eastern Province and in parts of Laisamis Constituency, what is the Minister doing to make sure that those areas that are hard hit by lack of infrastructure and famine, civil servants are given more money as opposed to people working in moderately hardship regions?

**Mr. Otieno:** Mr. Speaker, Sir, the survey conducted also includes recommendations that classified areas as moderately hardship areas and others as seriously hardship areas. I can confirm that Laisamis Constituency has been taken into account.

**Mr. Olago:** Mr. Speaker, Sir, the hon. Minister said that he wants Cabinet approval for this. However, as far as I know, the code of regulations provides for hardship allowance to be paid to workers in certain areas. This is governed, specifically, by Regulation J7(i), which says that a hardship area will from time to time be designated. Does he really have to get Cabinet approval for this?

**Mr. Otieno:** Mr. Speaker, Sir, there are financial implications which would require Cabinet clearance before the Ministry of Finance can take action. That makes it a collective responsibility for the entire Government.

**Mr. Mbadi:** Mr. Speaker, Sir, could the Minister be a little bit more clear because we know that the Cabinet sits every week? This issue of survey was done more than one year ago.

Suba was one of the districts surveyed. Could he tell us when this approval will be given because he is part of the Government?

**Mr. Otieno:** Mr. Speaker, Sir, I can only confirm that the Cabinet Paper from my Ministry is ready. The day the Cabinet will handle it, goes by a different calendar.

**Mr. Anyanga:** Mr. Speaker, Sir, the Minister has confirmed that Nyatike is also included in the survey plan. I, therefore, do not have any further questions to ask the Minister.

*Question No.597*

RESETTLEMENT OF LAMU RESIDENTS  
EVICTED BY *SHIFTA* BANDITS

**Ms. S. Abdalla** asked the Minister of State for Special Programmes:-

(a) why the Government to date has not resettled the Internally Displaced Persons (IDPs) who were evicted from their ancestral homes by *shifta* bandits in Lamu; and,

(b) what steps she is taking to resettle these people and compensate them for their lost land.

**Mr. Speaker:** Where is the Minister of State for Special Programmes? Yes, Leader of Government Business!

**The Vice-President and Minister for Home Affairs** (Mr. Musyoka): The Minister has just walked in!

**Mr. Speaker:** So as to give the Minister time to settle down, we will take Dr. Khalwale's Question.

*Question No.307*

AMOUNT REALISED FROM PETROLEUM  
LEVY SINCE 2003

**Dr. Khalwale** asked the Minister for Energy:-

(a) how much money has been realized from collection of the Petroleum Development Levy since 2003; and,

(b) whether he could explain how this money has been appropriated.

**The Assistant Minister for Energy** (Mr. Keter): Mr. Speaker, Sir, I beg to reply as follows:-

(a) A total of Kshs6.33 billion has been realized from the collection of Petroleum Development Levy (PDL) since the year 2003.

(b) The money realized has, over the years, been appropriated by this Parliament to finance development activities in the Ministry of Energy, namely:-

(i) The Government contribution to the ongoing multi-donor funded Energy Sector Recovery Project which has been ongoing since 2005 and is scheduled for completion by June 2011;

(ii) Projects Monitoring and Evaluation;

(iii) Renewable Energy Development, for example, installation of solar electricity in ASAL areas and Rural Electrification, Geo-thermal Resources assessment and coal and petroleum exploration.

**Dr. Khalwale:** Mr. Speaker, Sir, the Assistant Minister has said that we have a whooping

Kshs6.33 billion. My interest is in the money that was appropriated for coal and petroleum exploration. I understand, from an authority, that in 2005, Kshs35.6 million was paid to a company by the name of TANO Metal Engineering Firm for drilling wells to get coal.

Up to today, not a single well has been drilled. The company is still on site and continues to be paid. Could he explain why this company, which has not drilled a single well, is still receiving funding from the Government?

**Mr. Keter:** Mr. Speaker, Sir, I wish to tell the hon. Member that I do not have that information. If, indeed, this company was paid Kshs35 million, yet nothing has happened on the ground, we will take appropriate action and report to the House.

**Dr. Khalwale:** Mr. Speaker, Sir, before I ask my last question, I want the House to be aware that the Controller and Auditor-General stumbled over this information, wrote to the Treasury through the usual system and the Treasury communicated to this Ministry.

Up to this time, the Ministry does not know that it is paying a company that is not drilling any well. Be that as it may, let me ask my last question. Could the Assistant Minister confirm that part of this money was not used to invest into the purchase of the Somken Company that was running the former Shell petrol stations and that this money was paid without the approval of Parliament, to the tune of Kshs1.4 billion?

**Mr. Keter:** Mr. Speaker, Sir, I am not doubting my colleague, hon. Dr. Khalwale, because he is the Chairman of the Public Accounts Committee. From there, he can access the Controller and Auditor-General's Report. That is why I said that I will find out and report back to this House.

On the question whether this money was used to finance the National Oil Corporation of Kenya (NOCK) to purchase the Somken Company which was running the Shell petroleum stations, I would like to say no. Somken and Shell petrol stations were purchased at a cost of Kshs1.3 million through direct investments from the Treasury hence, the Ministry did not have any say at all. The money was paid directly by the Treasury to the respective company.

**Dr. Khalwale:** On a point of order, Mr. Speaker Sir. If, indeed, this money was paid directly from the Treasury, could the Assistant Minister tell us why he did not find it necessary to seek approval from the Cabinet and bring it to this House for approval too?

**Mr. Speaker:** That is a pure question! Nothing to do with a point of order there! Mr. Assistant Minister, you do not need to respond!

*Question No.597*

RESETTLEMENT OF LAMU RESIDENTS  
EVICTED BY *SHIFTA* BANDITS

**Ms. S. Abdalla** asked the Minister of State for Special Programmes:-

(a) why the Government to date has not resettled the Internally Displaced Persons (IDPs) who were evicted from their ancestral homes by *shifta* bandits in Lamu; and,

(b) what steps she is taking to resettle these people and compensate them for their lost land.

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

(a) The Ministry of State for Special Programmes is not aware of the supposed Internally Displaced Persons (IDPs) who were evicted from their ancestral homes by *shifta* bandits in Lamu to necessitate their resettlement.

(b) There are no steps being taken to resettle the Lamu IDPs evicted by *shifta* bandits and compensate them for their lost land since the current mandate of the Ministry of State for Special

Programmes is to resettle the internally displaced persons of the 2007 post-election crisis.

**Mrs. S. Abdalla:** Mr Speaker, Sir, I am shocked by the reply given by the Minister. I would like to lay on the Table the report which shows the problems the people of Lamu have gone through as a result of the *shifita* menace. There are about 98,000 people who have suffered. As a result, two months ago, in Mada Island, 60 families were evicted. These are the same victims of the *shifita* menace. I went to resettle them and now I have a case in court as a result of that.

Mr. Speaker, Sir, I am shocked that the Minister is saying she is not aware of that issue. There is a report on this issue. I want to lay it on the Table for the Minister to go through so that she may get the useful information that can assist her resettle the people in Lamu.

**Dr. Shaban:** Mr. Speaker, Sir, I am saddened by the fact that my colleague is in court because of the issues concerning these people who were displaced. However, apart from that, we only have the mandate to resettle the 2007 post-election violence IDPs. I have not been given any other mandate.

Mr. Speaker, Sir, once she lays on the Table the report, it would be easy for us to compile a list of any other persons who were affected prior to the 2007 General Elections.

**Mr. Letimalo:** Mr. Speaker, Sir, we have three categories of IDPs: Those who were displaced through the post-election violence, those displaced through tribal politics and those displaced through the *shifita* menace.

It appears that the Minister has been concentrating on the resettlement of those displaced through the post-election violence. Why is the Minister discriminating against these other Kenyans who are equally needy and need to be resettled?

**Dr. Shaban:** Mr. Speaker, Sir, the IDP Resettlement Department and the National Humanitarian Fund were established through a Legal Notice in January, 2008, following the violence we had after the general elections. In that particular Legal Notice, nobody mentioned anything to do with pre-election or any other problem. The list goes on and on and on. However, what I know is that what we are doing right now is carrying out the mandate that we were given through that Legal Notice.

**Mr. Speaker:** Ask your last question, Ms. S. Abdalla!

**Ms. S. Abdalla:** Mr. Speaker, Sir, may be the Minister can tell us if her Ministry is there only to resettle those displaced by the post-election violence. If I lay the report on the Table, what plans does she have for the IDPs from Lamu?

**Mr. Speaker:** As a matter of fact, the Minister has already responded to that! She has said - and the HANSARD will bear me out - that she only has mandate to resettle IDPs emanating from the post-election violence, as at where we are! Ms. S. Abdalla, the Minister has responded adequately! The matter has to rest there!

Next Question by Mr. Chanzu!

*Question No.270*

COST OF NDUNG'U COMMISSION  
TO EXCHEQUER

**Mr. Chanzu** asked the Minister for Lands:-

(a) whether he could indicate how much "Ndung'u Commission" on land cost the Exchequer; and,

(b) what the status of the implementation of the recommendations of the report is.

**The Minister for Lands** (Mr. Orengo): Mr. Speaker, Sir, I have had some discussions with

the hon. Questioner, Mr. Chanzu. This is a very important Question. I was given the answers at the end of last week. I am not happy with them. This is a make-or-break Question for me. Therefore, with your permission and with the Members concurrence, could the Question be deferred? I know probably that means it would not be asked until next year but I beg that I be given more time.

**Mr. Speaker:** Mr. Chanzu, do I have your concurrence?

**Mr. Chanzu:** Mr. Speaker, Sir, the issue of the Ndung'u Report has raised a lot of anxiety among all Kenyans. I wish the Minister goes by what he has promised and we will have an answer when we resume from recess early next year.

**Mr. Speaker:** Very well! This Minister normally keeps his word!

*(Question deferred)*

*Question No.426*

NON-ISSUANCE OF TITLE DEEDS TO  
TURKANA CENTRAL RESIDENTS

**Mr. Speaker:** Mr. Ethuro not here? Therefore, the Question is dropped!

*(Question dropped)*

*Question No.296*

NON-COMPLETION OF LAND DEMARCATION  
IN MUTITO CONSTITUENCY

**Mr. K. Kilonzo** asked the Minister for Lands:-

(a) whether he is aware that the land surveying (demarcation) in Kyamatu, Endau and Malalani locations has not been undertaken and that surveying in Mutito, Zombe, Kaliku, Thua and Mwitika locations has been partly done; and

(b) whether he could explain when the survey work will be completed to enable the residents to have their title deeds.

**The Minister for Lands** (Mr. Orengo): Mr. Speaker, Sir, I beg to reply.

(a) Yes, I am aware that the land surveying or demarcation in Kyamatu, Endau, and Malalani locations has not been undertaken and that survey in Mutito, Zombe, Kaliku, Thua and Mwitika locations has been partly done.

(b) It is envisaged that the Ngungi/Zombe and Kilaa adjudication sections will be registered this financial year. The other sections which are at various stages of land adjudication process will be registered upon the completion of the said process.

**Mr. K. Kilonzo:** Mr. Speaker, Sir, could the Minister tell this House when Kyamatu, Endau and Malalani locations survey was undertaken and when this survey will be completed in these other areas?

**Mr. Orengo:** Mr. Speaker, Sir, for Endau Location, the area has not been declared adjudication sections. Therefore, it cannot be completed. However, work is in progress to ensure that the area is declared an adjudication section. At Malalani, the area will be declared an adjudication area in the new year.

**Mr. K. Kilonzo:** On a point of order, Mr. Speaker, Sir. I have asked about the duration it will take and when exactly these other areas were surveyed. I know this process has taken more



than three years. That is why I am asking, specifically, when the survey will begin.

**Mr. Orenge:** Mr. Speaker, Sir, I have a very long answer to this and if I was to read through, the House would not bear with me. If the hon. Member is prepared to have this two-page response, I can lay it on the Table of the House.

**Mr. Speaker:** Mr. K. Kilonzo, would you agree that this is laid on the Table of House for you to peruse and raise more issues later?

**Mr. K. Kilonzo:** Yes, Mr. Speaker, Sir.

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

**Mr. Lekuton:** Mr. Speaker, Sir, the issue of land is an extremely important factor. The fact that you have a title deed, gives you economic power. In my district of Laisamis, we do not have a single person with a title deed. This is putting us in the extreme poverty index. Could the Minister take affirmative action to speed up the issuance of title deeds to the poor areas in northern Kenya?

**Mr. Orenge:** Mr. Speaker, Sir, I think that is a very important question. But the hon. Member should bear with me that, in fact, less than 30 per cent of the country has been adjudicated fully and title deeds issued. So, land adjudication in nearly 70 per cent of the country has not been completed. The people do not have title deeds. We had a certain legislation changed with regard to land adjudication. If there is any piece of land that stands in the way of issuing titles to other lands which have no disputes, those kinds of objections cannot delay the process. But I must emphasise to the House that the work can only proceed as fast as hon. Members would wish if sufficient funds are given to us. That would enable us to expedite the process. But I know that the question of land ownership is a source of conflict. If communities and Kenyans cannot make a determination as to who is the owner of the land, that, in itself, is a source of conflict. So, coming from where I come from, I would have wanted that to be done within the next five years. But that depends on the funds that are available.

**Mr. Njuguna:** Mr. Speaker, Sir, could the Minister tell us what he is doing concerning the fake title deeds that are being circulated by unscrupulous people and which, at times, have been taken to banks to secure loans? That is an issue that is causing a lot of problems. What is the Minister doing about those fake title deeds?

**Mr. Orenge:** Mr. Speaker, Sir, I think that is different Question, but since he has demanded an answer--- One, there are fake title deeds which are being generated outside the system. They are not generated within the Ministry of Lands. The best I can do is to notify members of the public that, before they enter into any transactions involving land, they should do proper searches and ensure that the documents they are presented with are authentic. That is not to say that a lot of problems that we are facing today are internally created within the Ministry. I am trying to deal with that and, in fact, I hope hon. Members will bear with me. In two or three months, you will see quite a difference with regard to fake title deeds. I want them to be a thing of the past.

**Mr. Twaha:** Mr. Speaker, Sir, when the Anglo Leasing issue was being investigated, some people who were mentioned in the inquiry were given a chance to defend themselves before the Public Accounts Committee (PAC). In the Goldenberg Inquiry, the people who had been mentioned in the inquiry were also given a chance to defend themselves. Is the Minister aware that the Ndung'u Commission never gave the people mentioned in the Ndung'u Report a chance to give their side of the story?

**Mr. Orenge:** Mr. Speaker, Sir, having looked at the Report, by and large, what is contained in that report is truly authentic. The hon. Member should declare his interest. If you have

some land going your way, just come to me and I will help you out. But the Ndung'u Report, largely, is an authentic document and it should be acted upon!

**Mr. Speaker:** Last question, Mr. K. Kilonzo!

**Mr. K. Kilonzo:** Thank you, Mr. Speaker, Sir. I want to thank the Minister for attempting to answer this Question. However, I want to request the Minister to visit that area early next year, so that he can see the problems that our people are going through. I know the Minister has good intentions to complete that work.

**Mr. Orenge:** Mr. Speaker, Sir, I promise you that, early in the year, your constituency will be the first one that I will go to. There is a lot of red tape and bureaucracy that has stopped those processes from being completed. In Trans Nzoia, where I was to visit today, the problems are bureaucratic. I think, by visiting some of those areas, we can get rid of some of the problems. But, Mr. K. Kilonzo, you must give me some *nguku* and then I will come!

**Mr. Speaker:** Very well. Mr. Yinda!

*Question No.570*

TARMACKING OF LUANDA-SIAYA-  
NADORERA-SIO PORT ROAD

**Mr. Yinda** asked the Minister for Roads what immediate measures he is taking to tarmack Luanda-Siaya-Nadorera-Sio Port Road (C29), an important road linking four constituencies of Emuhaya, Gem, Alego/Usonga and Budalangi, which is in a deplorable condition.

**The Assistant Minister for Roads** (Dr. Machage): Mr. Speaker, Sir, I beg to reply.

(a) I am not aware that the Luanda-Siaya-Nadorera-Sio Port Road (C29) is in a deplorable condition. The road is in a maintainable condition, fair and motorable. The Luanda-Siaya Section, which is 36 kilometres long and tarmacked, has isolated potholes which are being attended to through routine maintenance. A sum of Kshs9 million has been allocated for routine maintenance works this financial year. Routine maintenance is being done to ensure that passage throughout the year is possible.

(b) The Siaya-Nadorera-Ruambwa Section is 24 kilometres long. It is of gravel standard. It has been designed for construction to bitumen standard. The construction work has been included in the Medium-Term Expenditure Framework (MTEF) Budget and is expected to commence in the next Financial Year 2009/2010. A sum of Kshs500 million has been planned for in the Budget for 2009/2010. In the meantime, Kshs4.9 million has been allocated for maintenance works during this financial year.

Thank you, Mr. Speaker, Sir.

**Mr. Yinda:** Mr. Speaker, Sir, I want to thank the Assistant Minister for answering the Question to my satisfaction. I request hon. Members to leave him in peace! That is because I am satisfied.

**Mr. Speaker:** Very well. Mr. Peter Mwathi!

*Question No.475*

NON-PAYMENT OF COMPENSATION  
TO MERCY WANJIRU

**Mr. Mwathi** asked the Minister for Forestry and Wildlife:-

(a) whether he is aware that five-year-old Mercy Wanjiru was attacked by stray elephants in Bibirioni Village on 22nd August, 2004 and sustained serious injuries, but no compensation has been paid;

(b) whether he could explain the failure to pay compensation and state when the same will be paid; and,

(c) what measures the Ministry has put in place to generally ensure timely compensation to victims of human/wildlife conflict.

**The Assistant Minister for Forestry and Wildlife** (Mr. Nanok): Mr. Speaker, Sir, I urge that this Question be deferred because I do not have a sufficient answer. I will give an answer in the next sitting of the House.

**Mr. Speaker:** Mr. Mwathi, do I have your concurrence that this Question be deferred?

**Mr. Mwathi:** Mr. Speaker, Sir, while I accept that, I wish to inform the Assistant Minister that, that case has been pending since August, 2004. I know that he gave me an insufficient answer. I have told him as much and he has agreed with me. I beg that this Question be put on the priority list when we resume.

**Mr. Speaker:** Very well. Mr. Assistant Minister, could you put this Question on your priority list?

**The Assistant Minister for Forestry and Wildlife** (Mr. Nanok): Mr. Speaker, Sir, it is very well noted. We will prioritise it.

**Mr. Speaker:** Very well. The Question is deferred to the next Session!

*(Question deferred)*

*Question No.324*

SHORTAGE OF GIRLS' SECONDARY  
SCHOOLS IN MARAKWET

**Mr. Kaino** asked the Minister for Education:-

(a) whether he is aware of the shortage of girls' secondary schools in Marakwet District; and,

(b) when he will register and post teachers to Kapkoros, Hossen, Chebara, Kondabalit, Litein and Yemit girls secondary schools.

**The Assistant Minister for Education** (Prof. Olweny): Mr. Speaker, Sir, I beg to reply.

(a) I am not aware that there is a shortage of girls' secondary schools in Marakwet District. I am, however, aware that most of the girls' schools in the district are under-enroled. They include Litein, St. Teresa, St. Benedict Aror, Kimnai and Kapkoror girls secondary schools.

(b) The Ministry has registered Kapkoros, Chebara, Kondagilet and Yemit and posted teachers to those schools. Registration of Hossen and Litein secondary schools will be ready once the Ministry receives the District Education Board's recommendations.

Thank you, Mr. Speaker, Sir.

**Mr. Kaino:** Mr. Speaker, Sir, education cannot be education without teachers. The Assistant Minister is correct to say that there is low enrolment of students. Why should students go to schools when there are no teachers? There is a serious shortage of teachers in Marakwet, especially in the girls' schools. The Ministry has completely neglected the girls' schools in Marakwet! That is why girls flee from their schools---

**Mr. Speaker:** Order, hon. Kaino! It is Question Time! You will have an opportunity to debate later on! Could you ask a question if you have one?

**Mr. Kaino:** Mr. Speaker, Sir, I am asking the Minister when he will post teachers to those schools, where children have run away from school because of lack of teachers.

**Prof. Olweny:** Mr. Speaker, Sir, the shortage of teachers is a national problem. The Ministry will post teachers to schools when resources and funds are available to the Ministry. Those schools in Marakwet, and are registered, will get teachers when we have the opportunity to hire more teachers.

*(Mr. Ruto stood up  
in his place)*

*(Loud consultations)*

**Mr. Speaker:** Mr. Ruto, you have caught the Speaker's eye; so, you may ask a question.

**Mr. Ruto:** On a point of order, Mr. Speaker, Sir. I am not asking any question! Hon. Members are consulting too loudly, but that is not to say they are making noise!

**Mr. Speaker:** Order, hon. Members! Can we lower the level of our consultations? I know there is excitement in the air, but keep it low!

**Mr. Lekuton:** Mr. Speaker, Sir, the inherent shortage of girls' secondary institutions in our country is the basis upon which we have inequality between men and women in this country and that is what we want to get rid of.

Could the Minister tell this House the current criteria used in determining the number of girls' and boys' secondary schools in each district?

**Prof. Olweny:** Mr. Speaker, Sir, setting up of secondary schools is demand-driven. Usually the demand comes from the communities.

**Mr. Kaino:** Mr. Speaker, Sir, I just want the Assistant Minister to tell this House when he will visit Marakwet District [**Mr. Kaino**] during the coming recess to see for himself the shortage of teachers, especially in girls' secondary schools.

**Prof. Olweny:** Mr. Speaker, Sir, I will be excited to visit his constituency, but he should invite me in writing officially. Let it be when the schools are on so that I can see the number of students versus the number of teachers.

*Question No.509*

NON-COMPLETION OF PRISON  
OFFICERS' HOUSES BY BIC

**Prof. Kamar** asked the Vice-President and Minister for Foreign Affairs:-

(a) whether he could explain why Burrel International Company which was contracted by the Prisons Department on 13th September, 2006 to construct residential blocks for Prisons officers has failed to complete the project after foundation trenches were excavated and foundation footing partially laid;

(b) what the total amount paid to the contractor was; and,

(c) what measures the Government has put in place to ensure that the houses are completed.

**The Vice-President and Minister for Home Affairs** (Mr. Musyoka): Mr. Speaker, Sir, I have just been consulting with the hon. Member for Eldoret East and, in view of the fact that I am not satisfied with the answer that we gave earlier to this Question, we agreed that we will work at

it, because there seems to be a clear case of corruption in this matter and the Ministry would like to get to the bottom of it.

**Mr. Speaker:** Do I have your concurrence, Prof. Kamar?

**Prof. Kamar:** Yes, Mr. Speaker, Sir. I would only like to encourage the Vice-President to either visit the site or send somebody reliable there, so that the answer can reflect what is on the ground.

**Mr. Speaker:** The Question is deferred to the next Session! Mr. Vice-President, can you give it some priority, please?

**The Vice-President and Minister for Home Affairs (Mr. Musyoka):** Yes, Mr. Speaker, Sir.

*(Question deferred)*

*Question No.266*

NUMBER OF COMMISSIONS OF INQUIRY  
APPOINTED IN LAST SEVEN YEARS

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

(a) whether he could list all the public commissions of inquiry that have been established in the last seven years;

(b) whether he could also provide a breakdown of expenditures of the "Kriegler" and "Waki" Commissions; and,

(c) when he will table in the House all pending reports of public commissions of inquiry.

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

(a) The commissions of inquiry which have been established in the last seven years are six, namely the Judicial Commission of Inquiry into the Goldenberg Affair, the Commission of Inquiry into Illegal/Irregular Allocation of Public Land, the Commission of Inquiry into the various Wrongful Criminal or Unlawful Acts and Omissions of Artur Magaryan, Artur Sagarsian and others, the Independent Review Commission on the 2007 General Election, the Kriegler Commission, the Commission of Inquiry into the Post-Election Violence, the Waki Commission, and the Commission of Inquiry into the Grand Regency Hotel Sale.

(b) The expenditure incurred by the Kriegler and Waki Commissions is Kshs49,448,459 and Kshs7,635,694 respectively. The breakdown of expenditures which indicates contributions by both the Government of Kenya and donors is as follows:-

The Government of Kenya contribution amounted to Kshs48,136,789 on the Kriegler Commission and for Waki Commission it was Kshs5,951,930. The donor contribution amounted to Kshs1,311,470 for the Kriegler Commission and Kshs1,683,764 for the Waki Commission.

(c) The Government is studying the recommendations and the way forward in respect of the reports. Once it is through, the appointing authority will choose an appropriate time to make each of them public.

**Mr. Lekuton:** Mr. Speaker, Sir, I thank the Assistant Minister for a very elaborate answer. However, I would like him to also tell, and I think that being a very sharp man he should have these figures, us the cost of Goldenberg, Ndung'u, Artur Brothers and the Grand Regency Hotel Sale Reports.

**Mr. Ojode:** Mr. Speaker, Sir, you will realise that, that is different Question all together. However, the Judicial Commission of Inquiry into the Goldenberg Affair was appointed and gazetted on 24th February, 2003 under Gazette Notice No.1278. It presented its report on 3rd February, 2006. The total expenditure which was incurred on the Goldenberg affair alone was Kshs511,569,409.90. The Commission of Inquiry into Illegal/Irregular Allocation of Public Lands was also appointed and gazetted on 4th July, 2003, under Gazette Notice No.4559. Its report was presented on 2nd August, 2004. The total amount used on it was Kshs77,812,169.10.

The other Commission of Inquiry into various Wrongful, Criminal or Unlawful Acts and Omissions by Artur Margaryan and others was gazetted through a Gazette Notice No.4308 of 13th June, 2006, and presented its report on 28th August, 2006. The total expenditure on it was Kshs19,738,834.40.

The last one on the Grand Regency Hotel was appointed and gazetted on 11th July, 2008 and presented its report on 24th November, 2008. The total expenditure incurred by it was Kshs51,224,990.

**Mr. Lekuton:** Mr. Speaker, Sir, considering the huge amounts of money spent on these commissions, which is close to half a billion shillings, what is the Ministry doing to make sure that these reports that are not presented to the public are shared with them as soon as possible so that we can go forward?

**Mr. Ojode:** Mr. Speaker, Sir, I want to assure my colleagues that those reports that have not been made public will be made public very soon.

**Mr. Speaker:** Next Question, Mr. Nyamai!

*Question No.588*

COMPLETION OF KANGALA/KWA  
TABITHA EARTH DAM

**Mr. Nyamai** asked the Minister for Water and Irrigation:-

(a) when she will complete and improve the Kangala/Kwa Tabitha Earth Dam in Kiseuni Location in Kitui West Constituency;

(b) whether she could state how much funds were allocated for the construction of the dam and indicate how much has been spent so far; and,

(c) what steps she is taking to ensure that the dam is completed to the tender specifications.

**Mr. Speaker:** Minister for Water and Irrigation! Leader of Government Business, this is appearing to happen too often with this Ministry.

**The Vice-President and Minister for Home Affairs** (Mr. Musyoka): Mr. Speaker, Sir, I think the hon. Kiunjuri is here. I happen to know that the Minister herself is out of the country. Hon. Kiunjuri is right here.

**The Assistant Minister for Water and Irrigation** (Mr. Kiunjuri): Mr. Speaker, Sir, I beg to reply.

(a) The Kangala/Kwa Tabitha Earth Dam was completed in August 2008. Normally, when such works are completed, the contractor is required to maintain the earth dam for a period of six months, which is referred to as "defect maintenance period." The period has not elapsed and, therefore, the contractor is currently undertaking these improvements.

(b) This project was allocated Kshs3,517,300 and the amount spent so far, is Kshs3,272,300. The balance will be allocated to another water pan within the same area.

(c) My Ministry through the National Water Conservation and Pipeline Corporation

supervised the works. This, therefore, ensured that the dam was completed to the tender specifications.

**Mr. Nyamai:** Mr. Speaker, Sir, let me thank the Assistant Minister for the attempt that he has made to answer the Question. However, I am not satisfied with the answer because the information that he is giving is different from the one I have from the National Water Conservation and Pipeline Corporation, who were actually undertaking the works.

What I would like to request him is to probably appoint an independent audit team which can go and verify the works which are on the ground. This is because there is nothing on the ground. More so, when he is appointing that team, could he also include Kasue which is in Kivaani, Kathikini and Kasikini which are in Katutu? They were done by the same contractor with the same workmanship. So, the dams are not complete.

**Mr. Speaker:** Mr. Assistant Minister, you should deal with that easily by giving an indication to visit that place, including some other areas.

**Mr. Kiunjuri:** Mr. Speaker, Sir, first of all, I got this information from the National Water and Conservation and Pipeline Corporation. But if the hon. Member is not satisfied, and he requests that we do an audit, we will be very happy to do exactly that.

**Mr. Speaker:** Mr. Assistant Minister, could you confirm simply that you will visit this area?

**Mr. Kiunjuri:** Mr. Speaker, Sir, I confirm that we shall visit this area before 15th January.

**Mr. Speaker:** Very well! That kind of answer is clear and simple.

Next Question by Mr. Ombui!

*Question No.403*

INADEQUATE INFRASTRUCTURAL CAPACITY  
AT EKERENYO SUB-DISTRICT HOSPITAL

**Mr. Ombui** asked the Minister for Medical Services:-

(a) whether he is aware that a vehicle allocated to Ekerenyo Sub-District Hospital was involved in an accident and has never been repaired;

(b) whether he is further aware that the Sub-District Hospital lacks adequate infrastructural capacity to serve residents; and,

(c) what steps the Ministry will take to provide a vehicle to the hospital and improve its infrastructural capacity.

**Mr. Speaker:** Minister for Medical Services! I thought that he was here a little while ago.

**The Assistant Minister for Medical Services (Mr. Mungatana):** Mr. Speaker, Sir, I was almost sure that the hon. Minister was here.

I beg to reply.

(a) I am aware that an ambulance stationed at Ekerenyo Sub-District Hospital was involved in an accident on 15th July, 2007, just one year after procurement.

(b) I am also aware that Ekerenyo Sub-District Hospital lacks adequate infrastructural capacity to serve residents.

(c) Ekerenyo Sub-District Hospital was elevated to that status only in August 2008. The Ministry, therefore, plans to replace the ambulance for the hospital and improve its infrastructure within the Medium-Term Expenditure Framework for 2009 to 2012.

**Mr. Ombui:** Mr. Speaker, Sir, I thank the Assistant Minister for the answer that he has given. However, it is not very specific due to the fact that this is a place which is densely populated and, at the same time, has a high rate of malaria. I would like the Assistant Minister to state clearly

the date when the Ministry is going to replace the ambulance for this sub-district hospital.

**Mr. Mungatana:** Mr. Speaker, Sir, I beg to apologise; because I was trying to get his words, but he was far from the microphone. If he could just be kind enough to repeat the question!

**Mr. Speaker:** Mr. Ombui, could you, please, repeat your Question?

**Mr. Ombui:** Mr. Speaker, Sir, I would like the Assistant Minister to state clearly when he is going to replace the ambulance in the sub-district hospital.

**Mr. Mungatana:** Mr. Speaker, Sir, as I have explained to the hon. Member, we have, within the Medium-Term Expenditure Framework for 2009 to 2012, ordered several ambulances, including those for this specific sub-district hospital. This is a three-year cycle. I want to assure the hon. Member that I will give him priority as far as the procurement of this ambulance is concerned.

**Mr. Kamau:** Mr. Speaker, Sir, I would like the Assistant Minister to tell this House what they are doing, because every time we ask such Questions, we are only given promises and nothing happens. An example is a case in Kandara where we were promised, sometime in February, that they will put up X-ray facilities, but to date, nothing has been done. Could he just tell us what they are exactly doing rather than taking us round all the time?

**Mr. Mungatana:** Mr. Speaker, Sir, with a lot of respect to the hon. Member, I beg to disagree. We follow a specific pattern in terms of addressing specific needs for specific district hospitals. So, I--

**Mr. Chanzu:** On a point of order, Mr. Speaker, Sir. I think that the issue raised by the hon. Member over there is very relevant. This is because the Assistant Minister keeps on talking in circles. What we are talking about is treatment of people, which must be undertaken all the time when they need it. It is not the issue of saying, "three-year cycles." Is he in order?

**Mr. Mungatana:** Mr. Speaker, Sir, I am perfectly in order! In fact, the issue of addressing specific things is very relevant. But we are not fire-fighting. As a policy direction in this Ministry, we have agreed to tackle the problem in accordance with the plan that we have. We do not want to fire-fight. So, if it is an ambulance, we are procuring it in a defined structure. That is what we are doing.

**Mr. Speaker:** Last question, Mr. Ombui!

**Mr. Ombui:** Mr. Speaker, Sir, I think that the Assistant Minister is not very specific in his answer. He has given us a three-year term. Could he state clearly what activities he is going to carry out during the first, second and third years?

**Mr. Mungatana:** Mr. Speaker, Sir, the period is 2009 to 2012. The year 2009 is the first year. We follow the financial year cycle, but I will give you priority, hon. Ombui. I undertake to do that.

**Mr. Speaker:** Hon. Members, that brings us to the end of Question Time!

## POINTS OF ORDER

### CONSTITUTION OF TRANS MARA COUNTY COUNCIL

**Mr. Konchella:** Mr. Speaker, Sir, I rise on a point of order to seek your indulgence on a matter that concerns my constituency, and which has gone beyond the tolerance level of the people of Trans Mara.

I asked the Deputy Prime Minister and Minister for Local Government to issue a Ministerial Statement on the constitution of the County Council of Trans Mara. It has not been constituted for the last one year. This is because of corruption, which is being perpetrated by two



people who pay the courts, the Ministry officials and everybody else, so that the council does not manage the affairs of the people of Trans Mara. They collect money from Maasai Game Reserve and use it against the wishes of the people.

Mr. Speaker, Sir, the Local Authorities Transfer Fund (LATF) money is not being spent in the---

**Mr. Speaker:** Order, Mr. Konchella! What do you want the Deputy Prime Minister and Minister for Local Government to clarify in the Ministerial Statement?

**Mr. Konchella:** Mr. Speaker, Sir, I want him to issue the Ministerial Statement to stop this corruption and prosecute the people who are taking this money. More than Kshs400 million has been taken by only two people. They are using it to corrupt everybody in this country.

**Mr. Speaker:** The Deputy Prime Minister and Minister for Local Government, when can you avail the Ministerial Statement that is sought?

**The Vice-President and Minister for Home Affairs** (Mr. Musyoka): Mr. Speaker, Sir, I do not wish to anticipate debate, but it looks like in the event that this House adjourns today, this can only happen during the next Session.

*(Mr. Konchella stood up  
in his place)*

**Mr. Speaker:** What is it, Mr. Konchella?

**Mr. Konchella:** Mr. Speaker, Sir, I talked to the Minister when we were in *Kamukunji* this morning, and he promised to issue a Ministerial Statement any time. So, let him tell us whether he is part of that corruption! Probably, that is why he is not here! My people are fed up. A council cannot stay for one year without being constituted!

**Mr. Speaker:** Mr. Konchella, I can understand your disappointment.

Leader of Government Business, could this be prioritised by the Deputy Prime Minister and Minister for Local Government?

**The Vice-President and Minister for Home Affairs** (Mr. Musyoka): Mr. Speaker, Sir, obviously, I was not privy to the discussion between Mr. Konchella and the Minister responsible. I can only try to convey the very serious look I have seen on Mr. Konchella's face this afternoon, and hope that something will happen to ameliorate the situation.

**Mr. Speaker:** Very well!

**Mr. Wamalwa:** On a point of order, Mr. Speaker, Sir. I had requested for Ministerial Statement from the Minister of State for Special Programmes with regard to the flood victims. She indicated that she was ready.

**Mr. Speaker:** Madam Minister, could you try and do that in three minutes' time. I know that you are very well-trained, but do it in three minutes' time.

## MINISTERIAL STATEMENT

### FLOODING SITUATION IN THE COUNTRY

**The Minister of State for Special Programmes** (Dr. Shaban): Mr. Speaker, Sir, this is a Ministerial Statement on the flood situation that was there some time last month.

The country experienced a sudden onset of flooding in late October and early November as a result of the sudden and heavy rainfall that spread to different parts of the country. Over 100,000 people were displaced, and there was destruction of crops and property and the unfortunate deaths

of 20 people. The heavy flooding was unusual and may be because of the climate change. Unfortunately, the frequency and intensity of the flooding has been on the increase as evidenced by the recent flooding that happened during the short rainy season. The areas which were affected included the Western Province, Rift Valley, Nyanza, Central, Eastern and North Eastern Provinces. Some of the worst affected areas were the Budalangi area, where severe flooding occurred after the water burst the dykes along River Nzoia on 10th November, 2008. Approximately, 5,000 people were marooned by water and had to be evacuated to safer grounds.

Other areas affected included Namanjalala in Trans Nzoia District, Usonga in Siaya District, Mwala, Machakos, Central Pokot, Turkana, Mandera, Wajir, Garissa and Tana River districts. In Pokot Central, 11 people died due to mudslides from flash flooding, and another eight people were reported to have died in Mwala and Machakos districts.

Mr. Speaker, Sir, the Government responded to the disaster through timely evacuation and provision of basic necessities, which included food and non-food items, to the affected people. A sensitisation of communities on disasters exercise was also carried out to warn people living around river banks and mudslide-prone areas about the possible dangers. The Government's interventions were closely co-ordinated with humanitarian actors.

As part of the long-term measures to address the recurrence of disasters, the Government has established early warning systems to predict the occurrence of disasters and, therefore, put in place contingency measures to minimise risks. For drought, which is the most common disaster, a monthly bulletin on the situation on 22 ASAL districts is released. Similarly, for the chronic flooding problem in Budalangi, a daily and monthly flood water bulletin is issued to notify all stakeholders and the community on the water levels of the river.

Mr. Speaker, Sir, on 28th October, 2008, for example, the Government released a warning to all relevant line Ministries and humanitarian development partners on the flood threat in the River Nzoia plain in order to prepare everyone for impending floods. When the flooding occurred, it was well anticipated and necessary arrangements had been put in place, including pre-positioning of food and non-food items and boats to evacuate marooned persons.

For the Budalangi flooding, the Government has also received World Bank funding for the Western Kenya Community-Driven Development and Flood Mitigation Project.

Mr. Speaker, Sir, overall, the broad objective of the Government is to develop a sustainable, dynamic and capable disaster management system and enhance coping mechanisms in order to make the Kenyan society more resilient to disasters.

Thank you, Mr. Speaker, Sir.

**Mr. Speaker:** Do you wish to seek any clarification, Mr. Wamalwa?

**Mr. Wamalwa:** Mr. Speaker, Sir, the Minister has, in her response, indicated that the floods were due to unusual climate change in the country.

Madam Minister, you will recall that there are areas such as Budalangi and Namanjalala in Trans Nzoia, where floods are more than usual. Floods in those areas are perennial. What plans do you have, in terms of permanent or long-term solution, to deal with this situation? Would you consider re-settling of the residents in Namanjalala and other areas which are flood-prone?

**Mr. Speaker:** Is there anybody else who wishes to seek clarification on the matter? Please, hold your horses, Madam Minister!

Yes, Mr. Namwamba!

**Mr. Namwamba:** Mr. Speaker, Sir, I thank you. Definitely, I have an interest in this matter. While I want to appreciate the efforts that the Minister and her Ministry have made when it last flooded, the starting of the Western Kenya Community-Driven and Flood Mitigation Project has been a little delayed. I just want to urge her to expedite this process, so that we get a lasting solution as quickly as possible. I would also like her to give us definite time lines for some of the

activities that are earmarked in this project.

Thank you.

**Mr. Speaker:** Yes, Madam Minister!

**The Minister of State for Special Programmes (Dr. Shaban):** Mr. Speaker, Sir, we have been very much in touch with the Members of Parliament whose areas are badly affected, especially the Member of Parliament for Budalangi. We are trying to see the best way that these funds can be used to expeditiously assist the people. The first phase is construction of the dykes.

There is also a phase during which we are supposed to construct dams and for the people to be sensitised to move to higher grounds. However, on that one, we need to work together with Members of Parliament in the affected areas, so that we can sensitize the people on the importance of moving to higher grounds. We will talk to them, because it is not easy for people to just move away from where they have been living.

Mr. Speaker, Sir, I am also very happy because the Member of Parliament for Budalangi has actually been able to even raise funds to help the affected people. So, we will work together to make sure that the affected people are comfortable, so that every time they see rain, they do not get scared, but rather feel comfortable, because they will be on a higher ground.

Thank you, Mr. Speaker, Sir.

*(Mr. Mungatana stood up  
in his place)*

**Mr. Speaker:** What is it, Mr. Mungatana?

BASHING OF PARLIAMENT  
BY THE MEDIA

**The Assistant Minister for Medical Services (Mr. Mungatana):** Mr. Speaker, Sir, I rise on a point of order to raise a matter of great concern to me and to this Parliament. There has been a serious media campaign against the integrity and stand of this Parliament not only in the country, but also internationally. This has been the case because of the Kenya Communication (Amendment) Bill which has now been converted to be "the Media Bill" when, in fact, it had more things than just that.

This Parliament hosted the Inter-Parliamentary Union (IPU) Conference in 2006. It also passed Standing Orders here and as a result, other countries have been asked to emulate what we did in this House. This Parliament has won the right to host the Commonwealth Parliamentary Association (CPA) Conference in 2010. Internationally, the Kenyan Parliament stands out as a respected Parliament. However, the media campaign, which has been going on and which is not limited to Kenya because it is on the internet and everywhere, is bringing down the integrity and standing of this House.

Mr. Speaker, Sir, I, therefore, stand to seek clarification on a few matters which I want to divide into three categories. After hon. Members here passed the Kenya Communications (Amendment) Bill, I would like to invite the Speaker's ruling as to what is the position of an hon. Member who is not here during debate or does not show his opposition here, but goes out there to influence the decision of the President on a public podium.

Secondly, still on hon. Members, what is the position and ruling of the Speaker in a matter where a Minister of this Government who happens to sit on the House Business Committee (HBC) to prioritise business there, goes outside Parliament, after we have passed a Bill, to disown the decision of a fellow Government Minister who has brought a Bill before this House? I invite your

ruling on that.

*(Applause)*

Mr. Speaker, Sir, under the second category, I would like to talk about the foreign envoys. This is a sovereign State. We also have a sovereign Parliament. What is the position, ruling and direction of this House, in as far as foreign envoys who attack the sovereignty of this Parliament and its sovereign decisions outside this House?

*(Applause)*

Finally, with regard to the media, what is the position and ruling of this House in a case where we have a media that deliberately distorts the information and decisions of this Parliament?

The media has sought to minimise this House's decision and mix it with the question of taxation of Members of Parliament when, in fact, the Parliamentary Service Commission (PSC) has already made a decision to appoint a tribunal. The matter of taxation has nothing to do with the Kenya Communications (Amendment) Bill.

Mr. Speaker, Sir, what is your ruling? What do we do with a media that is deliberately campaigning to malign the integrity of this House? What action would you direct that this House takes against a media that misrepresents the decisions and proceedings of this House?

In your ruling, please, clarify whether the relevant Departmental Committee moved, at least, nine amendments that were not contested by the Minister. Did he or did he not? This is because in my recollection, that was the case.

Mr. Speaker, Sir, you should also clarify in your ruling, whether Section 88 of the Kenya Communications Bill was part of the Kenya Communications (Amendment) Bill or not. As far as I am concerned, this House is being vilified for something that was not even before this House. It was not there!

*(Applause)*

The question that then arises is, whether it is Parliament which is being gagged by the media or the media being gagged by Parliament. It appears that for as long as we disagree on these matters, we will be misrepresented, misquoted and told all manner of things. Personally, I said that we must have, like what happens in all other administrative organs of the Government, control, distribution of power and so on.

Mr. Speaker, Sir, this Parliament is controlled by the Judiciary which is controlled by the Executive, which is controlled by Parliament. There must be checks and balances. I said this in Mombasa, but somebody in the print media reported that I urged the President not to sign the Bill. The President must assent to this Bill. He should! Why?

*(Applause)*

Mr. Speaker, Sir, I would like to quote what happened to President Bush in Iraq. All the media people in that house were good people, but there was one who threw shoes at a sitting Head of State. In fact, hon. Members, no person from the media stood up to correct the situation, if you really looked at the clip. It is the security detail that came in to control the situation. It was all because of that one person who was not behaving in accordance with the journalistic standards that the security detail had to be there. Because of that one rogue media house that says that one

community should rise against another one, we need checks and balances in this House.

Mr. Speaker, Sir, if I speak for myself and other Kenyans who believe this, people are afraid - they say that you cannot fight the media, you will lose. So, what are we supposed to do? Are we not supposed to legislate?

Mr. Speaker, Sir, every morning when you come to work, all you hear over our FM radio stations is sex talk.

*(Applause)*

The media, even right now when our children are at home on holiday, is showing people who are not properly clothed, dancing. If we say we should regulate such content, say, it be brought on air at night, are we saying something bad?

Mr. Speaker, Sir, I invite your ruling on this matter because it is of great concern. We need to work together, but this Parliament should not be gagged by the media. We must be given a chance to do our work.

**The Assistant Minister, Ministry of State for Defence** (Mr. Musila): Mr. Speaker, Sir, I stand here to support the sentiments expressed by Mr. Mungatana. The media purports to fight for the freedom of expression. If you are aware, last week, hon. Members here freely expressed themselves on matters of the Kenya Communications (Amendment) Bill which was rightly before the House. However, some sections of the media have taken it upon themselves to record the proceedings of the House that day and play it around labelling hon. Members "the enemies of the media".

Mr. Speaker, Sir, last night, the NTV labelled Mr. Poghiso as number one enemy of the media for the work that he did here last Thursday. They labelled Mr. Thuo number two enemy of the media and Mr. Musila number three enemy of the media. This amounts to intimidation of hon. Members by the media. I want to tell them for one that I cannot be intimidated myself.

*(Applause)*

However, Mr. Speaker, Sir, one of your cardinal duties is to protect the dignity and integrity of this House. Therefore, by the actions that have been mentioned by Mr. Mungatana and the ones I have mentioned, these actions undermine the integrity of the Members of Parliament.

Therefore, in your ruling, would you protect the hon. Members and the House from intimidation by the media.

Mr. Speaker, Sir, secondly and finally, Mr. Mungatana alluded to the meddling in the affairs of this country by foreign envoys and in particular, the United States (US) and German ambassadors. The US Ambassador has the audacity to question why this House passed the Kenya Communications (Amendment) Bill before the Constitution of Kenya (Amendment) Bill.

We have ambassadors in Washington and Berlin and they have never questioned the proceedings of the US Congress or the Parliament in Germany. Even if the Executive has allowed foreign envoys to meddle in the affairs of the State, would I be in order to ask you to stop the US Ambassador from meddling in the affairs of this House, which you so effectively preside over?

*(Applause)*

Mr. Speaker, Sir, this is because we can never claim to be a free nation when ambassadors representing foreign countries meddle in every aspect of this nation. If they are meddling, please do not allow them to meddle in the affairs of the House.

Thank you..

**The Assistant Minister for Lands** (Mr. Bifwoli): Mr. Speaker, Sir, in your ruling, I would want a further clarification with regard to Members of Parliament. I am meant to understand that we are elected to sit here and make laws, whether they are bad or good. We must be here.

In your ruling, tell us about those of us who sit outside instead of here. We sit here from morning up to midnight making laws, while others are drinking and walking outside and then they vilify us. What action are you going to take on some of us who instead of sitting here and making laws, want to play to the gallery outside there?

*(Applause)*

Mr. Speaker, Sir, furthermore, some of them are even the leaders of this country. We need to respect them. They want to lead us tomorrow and yet, they behave as if they are sycophants of other people in this world.

**Mr. Imanyara:** Mr. Speaker, Sir, the House Business Committee (HBC) passed the last amendments while I was on instructions to represent this House in Zimbabwe on the proposed amendments to the Standing Orders because of the work that this Parliament has done on the revision of its Standing Orders. So, I did not get a chance to read what was in the media. However, I have been informed just this morning on arrival from Zimbabwe that one of the issues raised is the conduct of a Member of the Speaker's Panel when chairing the proceedings of this House.

Is it in order for the Chair, that is yourself or any Member of this House while presiding over the proceedings of this House, to take into account the feelings of the media houses in order to please external actors? In your ruling, I wish you look at that aspect.

*(Applause)*

**The Prime Minister** (Mr. Raila): Thank you, Mr. Speaker, Sir. Parliament is the supreme authority of the land. Parliament is elected by the people to represent them in the House. Therefore, the decisions of Parliament need to be respected.

Mr. Speaker, Sir, having said that, the Fourth Estate is equally important in a democratic society. The media is a very important institution in a democratic society. We have come a long way in fighting for the freedom of expression, worship and assembly. There were times when it was impossible in this country, if you were a Member of the Opposition, to address a press conference in any of the major hotels in this city. I know it for a fact. We have come from very dark days of serious dictatorship when the media was not even allowed to talk about the torture that was taking place in Nyayo House.

Mr. Speaker, Sir, because of the very strong struggle of the people of Kenya and their sacrifice, they managed to open up the democratic space so that we have a free media. It did not just come like manna from heaven to earth. Therefore, any attempt to gag the media in this country needs to be resisted by the people of this country. This is because if we go back to where we came from, it will be a very sad day for this country.

I want to say that during the last general elections, as the counting was going on at the Kenyatta International Conference Centre (KICC), there was live broadcast as the results were coming in from the polling stations and constituencies. All of a sudden, that was stopped. It was not just stopped. The owners of the media houses have confirmed to me that they were summoned to a meeting and told: "KTN, KBC, NTV, Citizen, must immediately stop live broadcast". They asked under which law that was possible and some section of the Kenya Communications Act was quoted. They attempted to resist but letters followed which were delivered to their newsrooms that,

that must be stopped immediately.

Mr. Speaker, Sir, some of the clauses that we used were in this Kenya Communications (Amendment) Bill. I want it to also be known that this Bill did not come through a Coalition Cabinet. The Bill that has come to this House was never brought through a Coalition Cabinet. It was the time the Coalition Government was formed---

**The Assistant Minister for Medical Services** (Mr. Mungatana): On a point of Order, Mr. Speaker, Sir.

**Mr. Speaker:** Order, Mr. Mungatana! I know that you are on a point of order. However, Prime Minister, it is possible that there is something that you have said which needs to be clarified. If you look at our Standing Orders, the Speaker has the discretion where found necessary, to allow for a point of order.

**The Assistant Minister for Medical Services** (Mr. Mungatana): Mr. Speaker, Sir, it is a very sad day for this House that nearly all the Ministers sit in the HBC which we all know. Is the Prime Minister in order to try and disown a decision passed by the Cabinet, HBC and brought here?

**Mr. Speaker:** Very well! Prime Minister, you may proceed with your point of order but please, also make a response to Mr. Mungatana's point of order.

**The Prime Minister** (Mr. Raila): Mr. Speaker, Sir, I know that Members of the Cabinet sit in the HBC and I have not questioned the decision of the HBC. So, I am perfectly in order.

Mr. Speaker, Sir, all I was trying to say is that we now have a Coalition Cabinet.

**Mr. Abdirahman:** On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** Order, Mr. Abdirahman! We would like this matter to come to rest as quickly as possible. We have serious business to deliberate on this afternoon and we do not want to take time on this matter.

*(Several hon. Members stood  
up in their places)*

**Mr. Speaker:** Order, hon. Members! The Prime Minister will be heard and the rest of you will have an opportunity where you have matters that are pertinent to this matter.

**The Prime Minister** (Mr. Raila): Mr. Speaker, Sir, this Bill did not come before the Coalition Cabinet. It had been passed by the time the Coalition Cabinet was formed.

**Hon. Members:** No! Aah!

**Mr. Speaker:** Order, hon. Members! The Prime Minister will be heard! Prime Minister, please proceed!

**The Prime Minister** (Mr. Raila): Mr. Speaker, Sir, I chair all Cabinet Committees that clear business before it goes to the plenary of the Cabinet. This Bill did not come. While the media sufficiently--- I invited the ---

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

*(Several hon. Members stood  
up in their places)*

**Mr. Speaker:** Order, Mr. K. Kilonzo! The Prime Minister will be heard! Mr. Prime Minister, could you, please, conclude?

**The Prime Minister** (Mr. Raila): Mr. Speaker, Sir, we are very conscious of collective responsibility as Members of the Cabinet. But I have said that this matter did not come before the

Coalition Cabinet. The matter came before the House---

*(Several hon. Members stood  
up in their places)*

**Mr. Speaker:** Order, Mr. Prime Minister! You have said that three times now. Will you, please, now avoid to be repetitive and conclude in the next one minute?

**The Prime Minister** (Mr. Raila): Mr. Speaker, Sir, all I am saying is that, after consultations with the members of the media fraternity, I discussed with the Minister concerned and asked him to defer the business to allow for more extensive consultations with the media fraternity.

*(Loud consultations)*

**Mr. Speaker:** Order, Mr. Prime Minister! The hon. Mungatana stood on a point of order to seek a ruling from the Chair to give directions on various matters. I would expect, Mr. Prime Minister, that your contribution would be relevant to the point of order that hon. Mungatana raised. Could you now move to conclude and restrict yourself to the parameters of relevance to the point of order raised by hon. Mungatana?

**The Prime Minister** (Mr. Raila): Mr. Speaker, Sir, the point is that the Bill has been passed by the House. It has now gone to the President. The President is seized of the matter and the media has petitioned the President. Therefore, my position is that, I would like to request you to defer your ruling on this matter until the President has got an opportunity to look at the Bill and either assent to it or refer it back to the House.

*(The Deputy Prime Minister and  
Minister for Trade (Mr. Kenyatta)  
stood up in his place)*

**Hon. Members:** Uhuru! Uhuru!

**Mr. Speaker:** Order, hon. Members! You will not direct the Chair on who catches the Chair's eye!

Ms. Karua!

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua): Mr. Speaker, Sir, I am just seeking further clarification on the issue of collective responsibility, which was also raised by hon. Mungatana. Even if a matter did or did not go to the Cabinet, the House, once seized of the matter, acts as the House.

*(Applause)*

You never asked for the Ayes from a political party. It is Ayes from Parliament and Noes from Parliament. So, there is also the collective sense in the House.

Mr. Speaker, Sir, it is also important to clarify that, as the Deputy Leader of Government Business, on Thursday, the previous week when the Bill should have come before, we consulted and asked the Chair to defer it to enable consultations with the media. The Chair of the Departmental Committee on Energy, Communications and Public Works is a Member from the Right Honourable Prime Minister's party. The person I asked to consult was hon. Imanyara and the Minister for Information and Communications. There is sense in which if we give information to



the public, it would look like we have lost the collectivity in the Government and in the House.

Mr. Speaker, Sir, you need to give us direction. When something is passed by the House, irrespective of whether we all contributed or were all present, it is a decision of the House.

*(Applause)*

If we want to rescind from that decision, we must rescind from it, again, collectively as the House, and not to try to score any political mileage for either ourselves or our political parties in a matter that is as grave as this one. I would urge that you give us direction. Even though the Executive is now seized of the matter, the issues being asked are not whether it is assented to or not. It is the conduct of us, as hon. Members of this August House.

Mr. Speaker, Sir, kindly give us that direction.

**Hon. Members:** Uhuru! Uhuru!

**Mr. Speaker:** Very well. Mr. Uhuru Kenyatta!

*(Applause)*

**The Deputy Prime Minister and Minister for Trade** (Mr. Kenyatta): Thank you, Mr. Speaker, Sir. As has been stated by the hon. Prime Minister, this House is a supreme House in the land we call Kenya.

Mr. Speaker, Sir, all Bills brought before this House are Government Bills and we have a collective responsibility as Ministers of Government to either make or comment as Cabinet, or make those known through the House Business Committee to this House.

Mr. Speaker, Sir, is it in order that we use this House and that camera standing directly in front of me right now, to appeal to the general public and the media and make other hon. Members of Parliament look as if they are non-caring to Kenyans, when this Order Paper is available to every single Member of Parliament, including Cabinet Ministers, Deputy Prime Ministers, Prime Minister and President? If anybody had a comment on the particular Bill before us, nobody locked those doors and prevented them to come here and air their views.

*(Applause)*

Mr. Speaker, Sir, we seek your ruling and guidance. What is at stake here is the manner in which this Government and country will be ruled. Are we going to agree that it is the rule of the mob or will it be that we will accept that there is a Parliament--

*(Applause)*

A Parliament and Government that the Prime Minister and His Excellency the President helped to form? Are we going to come and disown that Government and play to the public media because of our own personal agenda for the future?

*(Applause)*

Mr. Speaker, Sir, there will be an Eleventh Parliament. There will be a President after Kibaki. But that does not mean that we jump the rule of law in this country for the sake of personal ambition.

*(Applause)*

Mr. Speaker, Sir, we request your guidance! We request that you restore the rule of law in this country, and supremacy of this House in the governance of this land.

Thank you, Mr. Speaker, Sir.

*(Applause)*

**Mr. Speaker:** Order, hon. Members! We will just take three more points of order on this matter, and that will be it. What is your point of order, Dr. Eseli?

**Dr. Eseli:** Thank you, Mr. Speaker, Sir. This House is being called upon by Kenyans to actually do something good for this country. After the elections of last year, we have come up with several commissions of inquiry. They have told us clearly that all those problems were brought about by four groups of people; the political class on one side, the Electoral Commission of Kenya on the other side, the arms of security on one side and the media.

*(Applause)*

Right now, we are dealing with the Electoral Commission of Kenya. The political class will be dealt with by the tribunal we will set up on the Waki Report. On the arms of security, I am sure we will be able to reform them. But what do we do about the media?

*(Applause)*

Mr. Speaker, Sir, we have to keep those issues clearly in mind before we play to the galleries. As we seek to reform the media, let us also keep in mind that we should not gag them completely, because they are also the mouth-piece of politicians. So, let us be careful about that, but give us guidance as to what we should do with this Fourth Estate that contributed to the chaos; that is the media.

**The Minister for Medical Services** (Prof. Anyang'-Nyong'o): I rise to contribute to this very important point of order. I would like to agree with hon. Members that this House is the supreme law-making body in the Republic of Kenya. As Wole Soyinka once said, "A tiger does not need to shout about its tigritude; it pounces".

I do believe that we do not need to shout about our tigritude, but we should pounce on the problem. The problem before us is not really that we want to gag the Press, nor is it that the Press wants to muzzle the House. The problem is a misunderstanding over what happened in Parliament on that day that I was not here myself, because I was on official duty in Sweden, but now I am here.

*(Loud consultations)*

Mr. Speaker, Sir, could I be given my chance?

My appeal to the House is as follows: If we know that there has been a misunderstanding, let us isolate it from the other issues that are attendant to the Kenyan politics. If a misunderstanding is about certain Clauses in the Bill that was passed, I would rather we isolate that issue and deal with it, rather than either hang the Press or condemn ourselves. What is emerging is that we may be driving ourselves towards hubris when it is not necessary for us to do so. Indeed, as Dr. Eseli has said, the Press is also a mouthpiece for hon. Members of Parliament. I have also been mistreated by the Press at times, but I am the same person who has said that the freedom of the Press is necessary

for building a democracy. The Rt. Hon. Prime Minister has referred to a time when we were tortured in Nyayo House; there was not a single brave Press channel that could say what we were going through. It is through that torture that we restored democracy in this country. After we have restored democracy in this country, I would not like any temptation, however attractive it is, for us to travel any one step backwards. I would rather we travel two steps forward.

Thank you

**Mr. Ethuro:** Mr. Speaker, Sir, in supporting Mr. Mungatana in seeking clarification, I would also want to seek clarification of your ruling on this matter; how does the Press classify the humble servant of Turkana Central as an enemy of the Press number two. I want to know what kind of ranking was used. I am a Member of the Energy, Communications and Public Works Committee. That is the Committee that sponsored the clause that was attempting to delete Section 88 of the Principal Act and brought it to the House as any Committee would do, having been petitioned by the media owners and media houses, but it was defeated on the Floor of the House.

As responsible Parliamentarians, we must abide by the decisions of the House. I sat here with my Chairman trying to convince hon. Members. When the Minister of the Government and another Member put sense to us, we quickly realised that we were about to commit a very dangerous crime. Subsequently, when I sat on the Chair, where you are, I had to uphold the decision of the majority, and we had given the minority their say. That is democracy and the way this House works.

Mr. Speaker, Sir, the Press is arguing as if the Tenth Parliament added a new Clause to a law that never existed. That is not true. We would wish that as you give your clarification, you show that the Bill was passed by the Ninth Parliament and the President rejected it. In the Tenth Parliament we have worked extremely hard to ensure that the new amendments came to the Floor and the decision of the House must be respected.

**Mr. Speaker:** We will finish with Mr. M. Kilonzo!

**Eng. Rege:** Mr. Speaker, I am the Chairman!

**Mr. Speaker:** Order, Mr. Rege! You do not catch the Speaker's eye because you are a Chair of a House Committee!

**The Minister for Nairobi Metropolitan Development** (Mr. M. Kilonzo): Mr. Speaker, Sir, I want us to recollect that what is happening in the country is not unusual. Allow me to remind the country that during the just ended elections when President-elect Obama was elected, California conducted a referendum on the issue of gay marriages, and the citizens of the United States of America (USA) in California voted against gay marriages. As I speak to you, the campaign to reverse that decision is on and the media has taken sides on the issue.

I would like to remind this honourable House, and the country, that the Kriegler Commission Report, that we adopted barely two weeks ago, had a very stinging attack and criticism of institutions in the country, particularly the media; that is, FM stations and the print Press. Therefore, when they come to this issue, they should not appear to be preaching to politicians and claiming that they are holier than thou, because that is not correct. I would also like to remind the House, and the country, that the legislative authority of Kenya is vested in Parliament by Section 33 of the Constitution of Kenya. I want to raise those issues, so that in your considered opinion, look at them with the strength of character that has emerged whenever you open your mouth to talk to the country, so that it is understood once and for all that the legislative authority of the country is vested in Parliament.

Mr. Speaker, Sir, regarding the issue of this Kenya Communications (Amendment) Bill, the legislative authority has not yet expired. It will only expire if the President refuses to sign that Bill into law, or if he signs it into law. Therefore, that process is in hand and it is very important for all of us. I share the views of those who have been attacked. Personally, I have been a subject of the

media many times, but I want to remind the country, and the media itself, that when human beings stumble, they do not stumble on mountains. They stumble on small stones. There are signs that we are on a course to stumble on stones.

The process of legislation on the media law is not complete. Therefore, that is very important. As you consider this very important issue, please, be guided by the principles that have brought this country so far. Those are the principles of tolerance and the principle that we are engaged in a very serious exercise, and when Parliament exercise its authority under Section 33, that authority is subject to audit by the country and the world. We cannot escape from that, notwithstanding passing of a law, however beautiful that law is. The right of political audit by the country will continue and that is what brings in the media.

Mr. Speaker, Sir, therefore, as Parliament or media, we should not stumble on a stone. I have looked at the HANSARD, and the Order Paper of that day had an amendment proposed on the Floor of this House. For some reason, because I was not in this country, I cannot tell whether that amendment was either executed, advocated or put across. But the media must accept that Parliament exercised its authority on that law. Therefore, as they criticise, they should not tumble on stones.

**Mr. Speaker:** Order, hon. Members! I had given directions that I would allow, finally, Mr. M. Kilonzo! I am not about to reverse that direction!

Hon. Members, the matters canvassed in the point of order by Mr. Mungatana and supplemented by many other Members, including the Prime Minister, are of a grave nature. Indeed, they have a bearing on the constitutionality and even the very existence of this county as a nation. There is clear indication that the matters addressed threaten to shake the primary foundation of this nation, unless checked and checked quickly.

*(Applause)*

Hon. Members, in those circumstances, I will make a ruling that will cover all the matters that have been addressed at the earliest opportune time! At the earliest opportune time!

Hon. Members, please, take my word for it. I believe the Chair has always risen to the occasion.

*(Applause)*

Hon. Members and indeed Kenyans, I undertake that I will take this challenge very seriously and will give appropriate directions. However, as an interim measure, hon. Members and members of the Fourth Estate, I want to plead with you that you have a duty to demonstrate, actively, your nationality and patriotism for this country in a true sense. It will not help for the Fourth Estate to tear into Parliament nor will the converse help. So, both parties must exercise restraint in the interest of this nation. We have a duty to keep this country together! Even when we talk about people power, which may be legitimate, let us be conscious as to where people power gets any nation if it is allowed to prevail. It is important that we are all conscious of that.

Hon. Members, I will urge you to refrain from making your contributions to legislative business outside this House.

*(Applause)*

I will urge the media, in the meantime - at least as an interim measure and perhaps a gesture of goodwill - to stop their fire power for the moment, until such time that this matter will have been

addressed in an exhaustive ruling. I want the media also to bear in mind that they are an integral part of the socio-economic set up of this country and even more so, the political economy of this nation. Let us exercise responsibility.

Hon. Members, I want you to note that the business of the House, the Order Paper, is now beautifully and carefully posted on the website. Therefore, you have no excuse to allude to a situation where you are contending that you were not aware any business was coming before the House.

*(Applause)*

Let us embrace modern technology. We are doing this at great expense because we want to reform and improve the way this Parliament transacts its business.

Therefore, I urge you to be patient and I assure you that I will deliver a ruling that is responsible; a ruling that will bind us and posterity.

Thank you!

*(Applause)*

Hon. Members, please, note that we will now proceed with business as per the Supplementary Order Paper! May we all now turn to the Supplementary Order Paper.

Next Order!

**The Vice-President and Minister for Home Affairs** (Mr. Musyoka): Mr. Speaker, Sir, even before moving business under Order No.7, as discussed with you, I beg that Order No.8 comes at the tail end of the Supplementary Order Paper.

Mr. Speaker, Sir, the reason for this is to allow for fuller consultation on this very interesting list. I think we live in days of absolute transparency. If that meets with the Chair's approval, I want to move that Order No.8 comes after Order No.12

### CONSIDERED RULING

#### CHANGE OF ORDER OF BUSINESS

**Mr. Speaker:** Order, hon. Members! As the Leader of Government Business had indicated, it is true that the Chair's attention has been drawn to the fact that there have been consultations among the various Members of Parliament as represented in different constituencies, and that there is a general feeling that the Order Paper should be transacted such that Order No.8 comes after Order No.12.

Hon. Members, this is permissible in accordance with the provisions of the Standing Orders. As your Chair, I have considered the merits of the matter and I am persuaded that I can invoke the provisions of Standing Order No.31 and have this matter disposed of in the manner proposed.

Hon. Members, in particular, I want to draw your attention to Standing Order No.31(2) which provides that:-

"Business shall be disposed of in the sequence in which it stands upon the Order Paper or in such other sequence as Mr. Speaker may for the convenience of the House direct."

I hold that this is for the convenience of the House and so direct!

(Applause)

Next Order!

## PROCEDURAL MOTIONS

### EXTENSION OF SITTING TIME

**The Vice-President and Minister for Home Affairs** (Mr. Musyoka): Mr. Speaker, Sir, I beg to move:-

THAT, notwithstanding the provisions of Standing Order No.17(2), this House orders that the time of interruption of business today Tuesday, 16th December, 2008 be extended from 6.30 p.m. until the conclusion of business appearing on the Order Paper.

Mr. Speaker, Sir, the business, even as re-ordered before this House, is of a serious nature. In the next Orders, we are dealing with the amendments to the Constitution, which is the supreme law of this land. Indeed, I think in Section 2 of the same Constitution, it says that any other law that is not consistent with the Constitution is void to the extent of such inconsistency - and I can see the hon. Member for Budalangi, being a learned friend, agreeing expeditiously with that matter.

Mr. Speaker, Sir, I, therefore, think that in order to get the numbers - and I want to thank hon. Members because we had a very successful *kamukunji*--- I had an occasion to congratulate both the President and the Prime Minister for their leadership over the matter of gaining consensus over these constitutional amendments.

Mr. Speaker, Sir, I, therefore, would like to urge colleagues that we try and burn the midnight oil tonight, in order to give this country the Christmas gift that it deserves by way of passing, unanimously, the Constitutional Amendment Bill.

Mr. Speaker, Sir, we can only do that because the very process, itself, will involve divisions. I can see that we have drinking water available this afternoon because hon. Members are already feeling a little thirsty.

Mr. Speaker, Sir, but we will wait until we start to do the division process. Even from the point of view of the media, now that we have live broadcast, it will be interesting for the country to see the process of division. That is how we make our laws.

Therefore, Mr. Speaker, Sir, for that reason, I, therefore, want to move that this House agrees with the Mover of this Motion, so that we actually continue, even if it is up to midnight tonight. After all, this House has once sat up to 2.30 in the morning - if you remember, during the election of the Speaker and the swearing in of hon. Members on 15th January, 2008; it was very historic!

This House, at moments of crisis, has been able to stand very tall and stand together. That is why I request hon. Karua to second this Motion.

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

(Question proposed)

**Dr. Khalwale:** Mr. Speaker, Sir, this being purely a Procedural Motion, we find no reason why we should oppose it. However, in view of how the Chair had re-arranged the Orders, we would like to urge hon. Members that, after we have passed the Constitutional Amendment Bill, which requires this heavy presence, to stay on so that we ensure that the Parliamentary Select

Committee shall be truly representative of the people of Kenya.

Mr. Speaker, Sir, I beg to support.

*(Applause)*

**Mr. Speaker:** Very well. Hon. Members, that sentiment is well intended and good for all of us. So, hon. Members, begin taking the corrective measures by ensuring that you stay in the House until the end.

*(Question put and agreed to)*

REDUCTION OF PUBLICATION PERIOD:  
CONSTITUTION OF KENYA  
(AMENDMENT) BILL

**The Vice-President and Minister for Home Affairs** (Mr. Musyoka): Mr. Speaker, Sir, I beg to move the following Procedural Motion:-

THAT, pursuant to the provisions of Standing Order No.98, this House orders that the publication period of the Constitution of Kenya (Amendment) Bill (Bill No.24) be reduced from fourteen (14) days to five (5) days.

Mr. Speaker, Sir, following the consensus that has been painstakingly put in place over the last few days, it is now possible to move this Constitution (Amendment) Bill. We can only move this because a Constitutional Bill requires that the publication period be 14 days, and if we were to go strictly by that provision, we will require an extra five days.

This is why, in the spirit of togetherness that this House has demonstrated over the last few days, I would like to urge that we agree to reduce the number required for publication from 14 days to five days.

Mr. Speaker, Sir, I beg to move.

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

*(Question proposed)*

*(Question put and agreed to)*

**BILL**

*First Reading*

THE CONSTITUTION OF KENYA  
(AMENDMENT) BILL

*(Order for First Reading read - Read  
the First Time - Ordered to be read  
the Second Time today by leave of the House)*

**Mr. Speaker:** Order, hon. Members! Those hon. Members at the Bar who want to come in may do so.

*(Hon. Members walked  
into the Chamber)*

Order, hon. Members! Before we proceed with this Order, I wish to make the following communication.

**COMMUNICATION FROM  
THE CHAIR**

REQUIREMENTS FOR A CONSTITUTIONAL  
AMENDMENT

Hon. Members, as we proceed, I wish to notify hon. Members as follows:-  
May I, before the commencement of debate on Orders No.10, 11 and 12 on the Constitution of Kenya (Amendment) Bill, Bill No.24, provide the following procedural guidance.

CONSIDERATION OF A BILL

Amending the Constitution of Kenya is guided by both the Standing Orders and the Constitution, in particular Section 47 Sub-section 2 of the Constitution. Standing Order No.61 paragraphs "a" and "b" provide that before a vote is taken on a Constitution Amendment Bill, both at the Second and Third Readings, the prerequisite number, namely 65 per cent of 224 hon. Members, must be present in the House. Specifically, Standing Order No.61 paragraph "a" states:-

"The House shall not proceed to a division on that question (of a constitutional amendment) unless and until a number of Members equivalent to such fixed majority is present at the time for directing the division;"

The rules of Division are clearly set out under Part II of the Standing Orders. Therefore, hon. Members, as you debate Order No.11, bear in mind that the Second Reading will only be taken if the requisite number prescribed both by the Standing Orders and the Constitution are ascertained to be present in the House.

In terms of numbers, 65 per cent of 222 works out to 144.3 hon. Members, which is rounded up to 145 hon. Members. Since the words used are "not less than 65 per cent of all hon. Members of the Assembly excluding *ex-officio* members", the nearest figure to 0.3 of a human being, therefore, is a complete person, which is one. This House will accordingly not proceed to Division unless there are, at least, 145 hon. Members present in the House at the time of directing the Division.

Thank you.

**BILL**

*Second Reading*

THE CONSTITUTION OF KENYA  
(AMENDMENT) BILL

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua):  
Mr. Speaker, Sir, I beg to move that The Constitution of Kenya (Amendment) Bill, 2008, Bill



No.24, be read a Second Time.

At the outset, let me say that this Bill supersedes the Bill published on 3rd December, 2008, bearing the same title and the other two previous Bills published before that date, also bearing the same title.

I would like to say that my task is very easy today, because this is a product of a very consultative process; this Bill has been moulded by hon. Members themselves. I need not explain too much about this Bill. However, for the record, this Bill is going to help us do two major things. One of them is to entrench the Constitution review process in the Constitution, noting that we passed the Constitution of Kenya Review Bill on 4th November, 2008 and the same has already been assented to.

This Bill will also seek to introduce an interim electoral body, an interim boundaries body and an interim constitutional court to deal purely with the issues that may arise during the Constitution review process.

Mr. Speaker, Sir, Clause 2 introduces amendments to Section 41, which introduces an interim independent electoral commission to be the successor of the current electoral commission. This is in line with the Kriegler Report, which this Parliament passed only a week ago. Following the disputed general election, and following the National Accord, we, as a Parliament, in passing the constitutional amendments at that time, agreed that we need to undergo a process of renewing our institutions in order to restore public confidence in them. One of the institutions that we agreed to renew is the electoral body, so that we can all have confidence in our electoral process.

Many people have been asking why the Electoral Commission of Kenya (ECK) when the Kriegler Report indicated that everybody, including the political class, contributed to the chaos that this nation experienced in January. It is important for Kenyans to know that we are proposing to replace the ECK, not on the basis of fault, but because there is an urgent need for reforms in the electoral area. It is, therefore, important that this body gives way to a credible body that can help us renew leadership. If at the moment for any reason we needed a general election, we do not have a mechanism, which Kenyans believe in, for ushering in new leadership, hence the urgency of this matter.

*[Mr. Speaker left the Chair]*

*[Mr. Deputy Speaker took the Chair]*

Mr. Deputy Speaker, Sir, hon. Members had raised the issue of the number of the members of the Interim Independent Electoral Commission, and the Bill now contains eight members plus a chairman, and the method of recruitment is through the Select Committee on Constitutional Review, and will be through competitive bidding. The entire National Assembly will be able to ratify or cause corrections of the same. It will then be forwarded over to the President for consideration and appointment in consultation with the Prime Minister. The same goes for the interim independent review commission introduced by the proposed Section 41B, which, again, will be for assisting and making recommendations in the matter of, not only administrative boundaries, but also parliamentary and civic areas.

I need not go through each and every provision but I need to say that for the Independent Interim Constitutional Court brought in by the proposed Section 68, this court will merely deal with the issues arising from Constitutional review, so that it will exclusively handle those issues and ensure that we stick to the calendar, as opposed to asking litigants to go before our courts, where they are likely to be delayed.

So, for those who thought that introducing a constitutional court for purposes of the review process only is interference with the Judiciary, it is not. We have specialised courts for various

issues. Under the Water Act, we have the Water Appeals Tribunal. Under the Environmental Management Act, we have the Environment Tribunal. So, this is a procedure that is allowed in law, and it is one that will help us speed up the review process.

Mr. Deputy Speaker, Sir, I would like to conclude by paying tribute to hon. Members of the Departmental Committee on Administration of Justice and Legal Affairs, the Whips and other hon. Members who contributed to making the Bill that is before the House today.

With those few remarks, I beg to move.

**The Minister for Lands** (Mr. Orenge): Mr. Deputy Speaker, Sir, I beg to second the Second Reading of this Bill. Much has been said about this Bill, and I need not go into the Bill itself, because I think hon. Members have gone through it clause by clause.

I just wanted to commend hon. Members in many ways when I look back. When Kenya became a one-party state, if there had been as much consultation as I have seen this time round with the hon. Members, I think Kenya would never have become a *de jure* one-party state. I am also sure that in respect of the detention laws that saw many hon. Members, who were party to an Act which made it legal for Kenyans to be detained without trial--- If there had been as much consultation as we have seen during this process, I think that law would not have been in the Statute books of this country.

Therefore, I want to commend hon. Members in insisting that they do not become a rubberstamp in so far as this Bill is concerned. Let me also join my colleague, Ms. Karua, and commend the Departmental Committee on Administration of Justice and Legal Affairs, led by its able Chairman, who came up with very useful suggestions and amendments to the original Bill; also, during the *Kamukunjis*, suggestions and discussions came up in relation to this Bill.

I am very happy because it has been a very long journey. For the first time, we are having a Constitution-making process, where in many ways, the mechanism for that process is in a constitutional enactment, if this Bill becomes law. It is going to be anchored and secured in the Constitution of Kenya.

The other important point which has been critical over the years is the issue of the creation of new constituencies and boundaries in relation to constituencies. Now, at least, this Parliament has decided that we are going to have a Boundaries Commission, although on an interim basis, which is going to make recommendations for the approval of Parliament, to ensure that the representative form of Government that we have in place is not only truly democratic, but respects all the conditionalities of representation, including the area and the principle of one man one vote. I think that all these are well covered in this Bill.

Mr. Deputy Speaker, Sir, with the passage of this Bill, Kenya is starting on a new journey. I think that Parliament is going to stamp its authority in the process, as it has done, and ensure that Kenya rises up from the ashes, to become truly a democratic country.

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

*(Question proposed)*

**Mr. Abdikadir:** Mr. Deputy Speaker, Sir, I rise to support this Bill. From the outset, I wish to thank Members of the Committee on Administration of Justice and Legal Affairs for the support that they gave to this process. This time, they had agreed from the word "go" that they would work as a team to support the Constitution review process, because we found it as the only one and core function of the Committee on Administration of Justice and Legal Affairs. In that function, we are most glad to have the support, encouragement and leadership of the Minister for Justice, National Cohesion and Constitutional Affairs.

Mr. Deputy Speaker, Sir, I believe that this House can be proud of the record that it has so

far in terms of moving this process forward, in a very consultative way. The House has so far passed the road-map to the Constitutional amendment, officially called the Kenya Constitution Review Act so far. I think it was assented to by the President recently. Thereafter, the House went through a very elaborate consultative process to come to the point where, earlier in the day, Members agreed that they will move forward with this process.

This process has been on-going for more than a decade and a half. During that time, this country has felt pressure and shed tears over this process. We are happy that this time, the process is being anchored on the Constitution. We are also happy that other than just anchoring this process in the Constitution, this Parliament has agreed to piggy bank on that anchoring, reforms that are necessary to allow this process to move forward.

Mr. Deputy Speaker, Sir, the reforms as far as the Electoral Commission of Kenya (ECK) is concerned, are not merely to disband it. They are essentially to bring a new institution. But more crucial, is the cause of the critical role that, that institution will play in the Constitution-making process itself when we go to the referendum. So, by the time that we have the referendum, we will have an institution that meets international standards and has the full support and confidence of the people of Kenya.

Mr. Deputy Speaker, Sir, in the same vein, we have piggy banked on this Constitution, an amendment that creates a special court to deal with issues arising out of the Constitution-making process. We are aware of the ruling of Njoya and six others, and the issues raised by Justice Ringera as far as the Constitution-making process is concerned.

We are aware that the Judiciary will have vested interests as far as the Constitution-making process is concerned. To guard against this process being derailed by any other institution, Parliament has seen it fit that a special tribunal or court to deal with this, that has limited jurisdiction, yet has seniority in jurisdiction to be able to solve issues on this matter, has been set up.

Finally, there is the issue of the Boundaries Commission. This country has a dilemma in the sense that we have on the one side, large populated areas that need more representation and on the other hand, we have sparsely, yet, large areas that require adequate representation. One constituency in the northern region will be the same size as Central Province, Western Province and Nyanza Province combined. They provide special problems for representation. On the other hand, we have constituencies in Nairobi that have remained eight from 1963 to date. So, we have large populations that give specific problems for representation.

Mr. Deputy Speaker, Sir, the work that this Commission will do is to help Parliament, so that we can on the one hand, help representation for those seriously populated areas, so that the issue of "one man one vote" has relevance, while on the other hand, look at the special interests required and situations that face most Members of Parliament from sparsely populated areas. These are areas that really need representation, because they are the least developed, most marginalised and the largest. They essentially require as much representation as the other areas.

For example, a typical constituency in Nairobi is about ten square kilometres. One can walk from one end to the other in a couple of minutes. A typical constituency, in the northern region, is more than 10,000 square kilometres. Some of them are up to 40,000 square kilometres. An average constituency, if we are to look at an area, would be about 2,000 square kilometres. Essentially, the idea then would be to balance, so that you have people who live in largely populated areas not feeling that they are dis-enfranchised because their votes do not count for as much as those who live in lowly populated areas, yet the converse is not also true.

In other countries, this essentially is solved by having a bi-cameral chamber, so that you have two chambers; one dealing specifically on a "one man one vote" proportion, and the other will completely have nothing to do with population. The US Congress, for example, has the Senate

which has 100 Members; two from every State irrespective of population.

The State of Wyoming that has about 500,000 people has two Senators, while the State of California that has about 35 million people also has two Senators. On the other side, we have the House of Congress that is based on "one man one vote." So, the same State of Wyoming has only one representative in the House of Representatives, while the State of California has more than 55 in its representation in the Lower House.

On our side, those two chambers were brought together in 1966. At that time, we had about 41 Senators and 176 of the Lower House. When they were brought together, this House then went through the process of reviewing those boundaries every ten years. In 1966, North Eastern and Coast Province were seen as one, while the rest of the regions were the way they are right now. In 1966, Coast Province and North Eastern Province had 17 Members of Parliament, while Central Province had 15 Members of Parliament. Today, Coast Province and North Eastern Province have 32 Members of Parliament when they are combined, even though they are different regions right now, while Central Province has 29 Members of Parliament.

So, the perception that the North Eastern Province, for example, has extremely benefitted from continuous constituency boundary reviews may not be correct. I would wish that this House knows that we really need to represent the largely populated areas. However, that does not mean that we do not look at the special circumstances, because we are a one chamber Parliament. Having said that, it is up to the people of Kenya to decide on which type of representation they wish to have. The Constitution review process will give direction in that matter.

I will be more than happy to support this Bill.

Thank you very much.

**The Minister for Foreign Affairs** (Mr. Wetangula): Thank you very much, Mr. Deputy Speaker, Sir. I will be equally brief.

It is very exciting and refreshing to see that we have collectively come to a consensus to move this country to the next level of reforms. If you may recall, I was one of those who resisted attempts to flush out the Electoral Commission of Kenya (ECK) in the manner that many Kenyans wanted. I did so, for the simple reason that I wanted us to follow the law. I wanted us to follow the Constitution. I wanted us to be orderly in the manner in which we carry out our reforms.

Mr. Deputy Speaker, Sir, today, with the passage of this Bill, the curtain will come down on the ECK. I hope that as we pass this Bill, the new men and women who will be given the opportunity and the privilege to serve this country as Interim Commissioners will discharge their responsibilities with dignity, decorum and with the interest of this country at heart. If you look at the Commission Reports that we have, the indictments that are levelled against the ECK, go very far and very deep. We hope that these changes will herald a new era in the management of our electoral process in this country.

Equally important, is the first innovative move for this Parliament to create an independent boundaries Commission. We all know how unequal our representation areas are in this country. We have some constituencies with as few as 14,000 voters. We have others with as many as 200,000-300,000 voters.

I hope that the boundaries Commission will not fall into the trap of political manipulation, but rather do the work diligently, honestly, and in the interest of this country, taking into account population trends as set out, the areas where there is heavy population, sparse population and vast areas.

Mr. Deputy Speaker, Sir, just as there is no justification for one Member of Parliament to represent an area as vast as North Horr, there is equally no justification to have one Member of Parliament representing a population as dense as that of Embakasi Constituency, *et cetera*. I hope that the passage of this Bill, again, will move us to the next level where we will not engage in what

we did at the end of the last Parliament, where a Bill that was so important to create new constituencies in the country---

We know that the disbursement of national resources in this country is now focused on constituencies. The disbursement of Constituencies Development Fund (CDF) resources and other Government resources, are going to electoral areas. So, we must have the representation of people who benefit from resources from the centre.

Mr. Deputy Speaker, Sir, equally important is the creation of the court that will deal with issues in the process of creating a new constitution. Again, this will unfetter the country from the process of going through the normal routine courts, where cases take a little too long to come to an end. These kinds of special tribunals are not new in jurisdiction. I have no doubt that we may even finish the process without that tribunal ever sitting. However, it is important for it to be there to give us an assurance that when we have a problem, we will be able to move forward.

As I end my contribution, I want to urge this House to rise to the occasion and put aside partisan interests. After the passage of this Bill, we must move quickly and deliver a new constitution to this country. I dare say that if we go beyond mid-2010, other interests will take over. People will start focusing on who to elect and who not to elect. People will start focusing on which party they belong to. They will lose sight and focus of the process of constitutional review, and we may not have a new constitution.

Mr. Deputy Speaker, Sir, I hope and pray that after the passage of this Bill, we will start counting the 12 months that we promised the people of Kenya. By the end of next year, we must go to a referendum to deliver a new constitution to this country, so that the remainder of the term of this Parliament can be spent on the usual politics that Kenyans are so fond of, as we effect the new constitution. Once we pass a new constitution, we will have a lot of attendant legislations that will have to give effect to that constitution. We need time to do so.

Let me appeal to those hon. Members who may find their ways to the Select Committee to dedicate their time and put in everything to make sure that they use the privilege bestowed upon them to serve this country without any blinkers of ethnicity, party feelings, party affiliation or religion. We want a new constitution for this country. The constitution we are going to give must be able to serve this country for posterity. Everybody must benefit from it.

With those remarks, I beg to support.

**Mr. Imanyara:** Mr. Deputy Speaker, Sir, let me join my colleagues in supporting this very important constitutional amendment Bill. There were times when a Bill like this one would never have seen the Floor of the House. I am glad that the Mover and the Seconder of the Bill are people with a history of reform in this country.

We remember very well those days when this process of reform was continuing. There were some people in this House who claimed that we were cutting a *Mugumo* tree with a razor blade.

I am glad that the Mover and the Seconder are not among those who thought that this day would never come. So, today is a great day. The consultations that have taken place to bring us to this day are as historic as the Bill itself.

Mr. Deputy Speaker, Sir, I wish that His Excellency the President could have joined us in this historic day, when we are beginning the true process of constitution-making in this country. Some of the consultations that have been taking place in the so-called "Speaker's *Kamukunji*" would never have been necessary, had we been consulting in the full glare of the Kenyan public, on the Floor of this House. So, we did not have to have Speaker's *Kamukunji* to debate on issues that are so critical. Kenyans would want to know what Members of Parliament are discussing.

Nevertheless, now that we have come to this occasion, I look forward to a new constitution that does not please individuals, but which is geared to posterity, and which is meant for the good

of this country. I am grateful that the Chair itself has seen the need to re-arrange the Order Paper, so that Order No.8 came at the end. Had it come before this Bill, these amendments would not have been carried, because there are very serious misgivings about the composition of that Bill.

Mr. Deputy Speaker, Sir, as we move towards the passage of this law, so that we can appoint a Select Committee, let us remember that we are not making it for a select group of people. We are not making a new constitution to satisfy a small section of the Kenyan population, but the Kenyan population of over 40 million people of this generation and another generation to come. Therefore, there must be as wide consultation, even in agreeing on the list of the membership of the Select Committee, as there have been in getting this amendment Bill to come to the House.

Mr. Deputy Speaker, Sir, I conclude my remarks by congratulating those who have brought us this far and, particularly the Chairman of the Departmental Committee on Administration of Justice and Legal Affairs. This is because some of the unsung heroes in this constitution-making process are the Members of that Committee. If you look at the list of names that have been proposed, we are leaving out names of key Members of the Departmental Committee on Administration of Justice and Legal Affairs that has brought us this far.

*(Applause)*

Mr. Deputy Speaker, Sir, I rise to support this Bill in the hope that it will give us a new Constitution.

I beg to support.

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Deputy Speaker, Sir, I stand to support this Bill and commend all those who have participated in enabling it to come before this House in this format.

I think this is a very innovative process because under normal circumstances, the current Constitution that we have would have called for the appointment of a tribunal to look at the conduct of the various commissioners. But it is quite clear that we are reaching a new realm of legislation because it is also apparent that in matters where a tribunal would be required, this would require the Executive to appoint it so that the individual commissioners would have to go through a due process where they would defend themselves and speak clearly on whether they committed a crime or not, or whether there was an omission or a commission.

Under normal circumstances, that is the procedure that should have been followed. What is coming out - and it is a reality that we must now live with - is that the whole principle of our legislation and even when you look at the Constitution, this Bill brings in a new approach in an area where, maybe, the Executive, for a reason or another, is unable to have a tribunal in place to look at the personal accountability of these commissioners.

Mr. Deputy Speaker, Sir, as Parliament passes this Bill and it makes a decision on the ECK, it means that, at a personal level, we may never know, though it may not be necessary now, the individual account of those commissioners on how they conducted the electoral process that we went through. So, this is a very important step at this point in time. It deals with the entire ECK, but what we may have to look at in future is that if we put in place a law that calls upon the Executive to appoint a tribunal and it fails to do so, should this now be the format that should be adopted in future where Parliament can then override the process of having to appoint a tribunal in order to get certain corrective measures in place? So, this is a very fundamental issue which should inform the constitutional debate that will ensure when the actual constitutional process will have started in earnest.

Mr. Deputy Speaker, Sir, this process we have taken is a very painful one because as hon. Members rightly put it, there may have been members of staff who could have been innocent in

this process. However, at the same time, we also know that, indeed, if there was a fault, the commissioners sitting in Nairobi could not have operated on their own. They must have had accomplices in those acts of omissions and commissions. So, this also sends the message that within our institutions, it is also becoming apparent that the issue of personal accountability on matters of this nature, especially matters as grave as the democratic rights of Kenyans, cannot, in any way, be taken for granted.

In the future, institutions that we create, be it the ECK or what electoral management system we shall put in place under the new Constitution, we must make sure the issue of personal accountability is just as heavy as the collective accountability of that particular institution.

Lastly, as I support this, I would like to urge hon. Members to appreciate that as we go through the next steps, it will be important to bear in mind that as we constitute our institutions, it is important that merit becomes a very important criteria in getting people in place. This is because we are definitely suffering because of some of these issues. Some people may have gone home as victims of a process. In certain instances, without casting any aspersions on any individual, the truth of the matter is that some people who may have held the office of manning the electoral process were not up to the challenge and they have brought the country to a very difficult situation where very difficult decisions have to be made. Nevertheless, those decisions have to be made. I urge hon. Members to really deal with this matter because it is the beginning of that process. We have to deal with the Kriegler Report and the Waki Report. This is a process of starting to show that we are of age and ready to tackle the more contentious issues in this country.

I beg to support.

**The Minister for Medical Services** (Prof. Anyang'-Nyong'o): Mr. Deputy Speaker, Sir, I rise to support this Bill. I would like to point out one or two things for a very short period of time in support of the Bill.

One of the things I would like to point out regards the fears of certain members of staff in the ECK. They expressed fears that if this Bill is passed, then they would lose their jobs. I would like to point it out to the Fourth Estate to spell it out very clearly because we do not want any misunderstanding with ordinary Kenyans serving in the ECK as ordinary staff. If you look at Clause 41(14) at the bottom of page 1477, it states very clearly:

"Notwithstanding the provisions of subsection (2), a person who immediately before the commencement of this Section served as a commissioner or was a member of staff of the Electoral Commission of Kenya established by Section 41 now repealed, shall cease to be a commissioner or member of staff at the commencement of this section".

There is then a proviso:

"Provided that a member of staff affected by this subsection shall be eligible for redeployment in the public service".

That proviso should reassure the ordinary members of staff in the ECK that there will be a process of redeployment to the Public Service and they will not lose their jobs all together.

Nonetheless, it must be pointed out that the roles that the ECK played during the recent General Election raised a lot of concern not only to Kenyans, but also to the world as a whole. Not only were the commissioners complicit in the process of subverting the process of free and fair elections, but there are certain members of staff who were used as hirelings of these errant commissioners in subverting the process.

It will, therefore, be necessary that in the process of redeployment a very careful assessment is done to ensure that those who are responsible in subverting the democratic process do answer to their transgressions.

Mr. Deputy Speaker, Sir, this Bill is also very important in the sense that as we establish the

interim independent ECK, we bear in mind that an independent ECK is extremely important to our democratic process - A Commission that will not be intimidated by the Executive; a Commission whose work will not be undermined by the security forces; a Commission that will be filial in defending the democratic process and ensuring that those elected by the people carry the mandate of the people to serve the Republic.

The current ECK was intimidated by the Executive and subverted by the security forces. We know, for certain, that it was least independent in that process.

Mr. Deputy Speaker, Sir, we know for certain that when all is said and done, those members of the security forces and in the Executive that forced the Electoral Commission of Kenya (ECK) to perform these transgressions should, indeed, stand ashamed as Kenyans are passing this Bill today. We also hope that in future, the balance of power in a democratic Government; the fact that there should be autonomy of functions among the Legislative, Judiciary and Executive will, indeed, be maintained. That the new ECK will be a true referee in the process of elections and will ensure that their members of staff are not misused either by the Commissioners or by any other person to subvert the democratic process.

Mr. Deputy Speaker, Sir, as the Commissioners take their leave and go into normal life, let them understand that Parliament is doing this today for the welfare of society and the just governance of people, a motto that is inscribed at the entrance of this august Assembly and one that should, in future, be defended by an independent electoral commission.

I beg to support.

**The Minister for Nairobi Metropolitan Development (Mr. M. Kilonzo):** Thank you, Mr. Deputy Speaker Sir. I will be very brief.

Mr. Deputy Speaker, Sir, it is my impression that and as the saying goes, "there is a silver lining in every cloud." Kenya has had a cloud for the last 15 to nearly 20 years discussing a new Constitution. Kenya had a cloud in December through March through the post-election violence. The silver lining now appears under Clause 5 of this Bill which says:-

"Subject to this section, this Constitution may be replaced."

That is perhaps the single most important aspect of the Bill that is on the Floor of the House this morning.

Mr. Deputy Speaker, Sir, during the Bomas debate, we, as a country, were subjected to enormous difficulties, a lot of them arising from litigation in our courts because everybody and a lot of people argued that Parliament did not have the power to create a new Constitution.

Therefore, I want to salute this House for the consultative process that it has undertaken in securing and accepting this Clause, because as I have no hesitation in saying, I notice that during the debate that has taken place, Clause 5 which deals with amending and creating Section 47(A) did not become contentious because the country is in agreement that we seek for a new way of taking advantage of the silver lining that is in the cloud for a new Constitution.

Mr. Deputy Speaker, Sir, allow me to say something that may also be quite unpopular. The saying at that door is that "For the welfare of society and the just Government of men". I agree as hon. Prof. Anyang'-Nyong'o has said that we have taken care of the ordinary members of staff but this Bill is silent on the Commissioners themselves. These Commissioners enjoyed constitutional protection during the period they were in office.

At some point, this country must accept that subject to coming up with a process for its determining those who were at fault and those who were not at fault, for the realisation of the just Government of men, we cannot remain silent on the consequences of the remaining term of office that these Commissioners enjoyed. I personally will engage in debate to fight for a formula so that we do not appear to be sweeping that issue under the carpet but I nevertheless welcome the enormous contributions that Members have made.



Mr. Deputy Speaker, Sir, the other thing I would like to say is about the Judiciary. The Judiciary has put this country in a corner because whenever we make decisions, it trashes them. Even recently, a court issued an injunction against Parliament from performing its function as required by the Constitution which is legislation. I believe there are methods of ensuring that Parliament carries out that responsibility in a proper manner without the Judiciary seeking to think that it is superior to Parliament. I saw the Chief Justice saying that the Judiciary is superior to this honourable Parliament. That is not the case.

For purposes of legislation, this institution will always be supreme. After we pass this law, it may be subjected to criticism, legal or even political audit. It may be criticised and even come back here for review but the fact of the matter is that, in an orderly society, we have no way other than accepting that Parliament is supreme in legislation.

Mr. Deputy Speaker, Sir, I will never forget and I suggest to hon. Members to never forget that at the end of last year's General Election, a huge segment of this country refused to take the judicial process of filing a petition in court and the reason advanced was sometimes called an excuse. I have come to the conclusion that we cannot continue regarding it as an excuse. The reason advanced was that, that huge segment that cast ballot and felt that an unfair result had been announced, refused to go to court on the belief that the Judiciary would either take too long to decide those cases or alternatively, the result would not be what they expected.

I think that is the reason, even as a Senior Counsel of this country, I agree with the proposals in this Bill for establishing a special court that is not a division of the High Court and whose purpose is to determine any disputes that arise during the process - only to that extent. I hope that when we create the new Constitution we will consider not only the idea of establishing a Supreme Court that enjoys the confidence of the entire country but better still, a constitutional court that can enjoy confidence. This is because there will always be disputes particularly in elections, so that when those disputes arise, everybody knows that they can be resolved by a Judiciary to which we pay respect and accept their decisions.

Mr. Deputy Speaker, Sir, I am reminded of the enormous disputes of elections that took place before President Bush and his competitor. If you remember, that process received the Supreme Court ruling. At the end of it, Al Gore said: "I will respect the decision of the court much as I may not agree with it". That is the sort of Judiciary we are looking for and I hope that those who are supporting this Bill have the same intention that I do, that we create a new Judiciary in the new Constitution that can be respected by all.

I beg to support.

**Mr. Ruto:** Thank you, Mr. Deputy Speaker, Sir. I rise to support the Bill but I wish to make a few comments. One is that Kenyans yearn for a new Constitution. Kenyans have expected this for a long time. It is, indeed, a pleasant moment to realise that we are all united in ensuring that this actually comes into reality. I only wish to indicate that in this particular Bill, there have been serious consultations and it is, indeed, demonstrated that it is possible through consultations to get a process that is acceptable to all.

Mr. Deputy Speaker, Sir, we noted once in a while that at times the Executive still remains reluctant to move on. We want to see an Executive demonstrating that it is willing to deliver to Kenyans a new Constitution. We have had problems counting days and months. I hope the counting of 12 months will be for real and that we should really be able to provide Kenyans with a new Constitution.

Mr. Deputy Speaker, Sir, I do not wish to take long but I want to point out that there were serious concerns about the question of the employees of the ECK and we have made a provision for them to be redeployed in Government. We are taking it in good faith that the Directorate of Personnel Management (DPM) will interpret that in the spirit Parliament expects it to interpret; that

no employee of the ECK who is not and was not, in fact, involved in any subversion of the democratic rights of Kenyans will be punished for something that they did not commit.

We expect the Government to take cognisance of the intention of Parliament, but we also want to make it very clear that this House will watch the way that particular section is implemented. If indeed, it comes to our attention that certain employees are being victimised for reasons that cannot be explained, then this Parliament will, once again, take note of that. We want to ask the Minister to watch over that because we may censor him if, indeed, he fails to interpret the spirits of this House.

Mr. Deputy Speaker, Sir, we have indicated that Parliament wants to play a major role in midwiving this process. That does not mean that we intend to exclude the rest of Kenyans. We have made arrangements for consultations. We want to ask the Government to sincerely accept that the Committee of 27 hon. Members is meant to allow a competitive process for the recruitment of the Commissioners, the judges of the Court and those ones who will also be in the Boundaries Commission. We do not expect the Government to inundate the Committee with people who have a fixed mind. We want it to be an open Committee that will ensure that Kenyans are given an opportunity. That competitive process of recruitment will not be interfered with. We shall get Commissioners who will minute the process without being beholden to any individual, the Executive or anything else other than the need to ensure that they lead a process of elections during the interim period.

Mr. Deputy Speaker, Sir, I also expect that the judges will be fair and all the issues that will arise during the process will be addressed properly. There will be no undue interference.

Lastly, I want to indicate that the question of boundary review--- We are moving towards ensuring that almost every constituency becomes a district. We expect the proposed Boundaries Review Commission to give suggestions on how to manage the creation of districts. We now have about 160 districts.

At the moment, we do not know the criteria that is used. Some areas are, therefore, benefiting more than others. We expect those issues to be harmonised with due respect to wide consultations. The issues that have been raised by the Departmental Committee on Administration of Justice and Legal Affairs headed by hon. Abdikadir will definitely be the guiding issues.

With those few remarks, I beg to support.

**Mr. Kimunya:** Mr. Deputy Speaker, Sir, I rise to support this Bill, which is a milestone in the change process. My support is predicated on the wider need for change as we move this country from where it was, to where we want it to be.

Mr. Deputy Speaker, Sir, while supporting the Bill, I just want to make it very clear that I am supporting this Bill on very clear understanding that by appointing the Independent Electoral Commission, we are not passing a vote of wholesale condemnation on ECK.

I think it is important to recognise members of staff and the Commissioners. There are professionals who were recruited from their jobs. They have families who are being condemned every day for things that, perhaps, they never did or do not know. At some point, we will actually need to identify who was guilty and who was innocent. Those who are guilty should be punished accordingly. Those who are innocent should be cleared accordingly. Through this Bill, we could be saying that the careers of all those Commissioners and staff have been doomed. For anyone looking at their CVs, they could say: "You served in the ECK. You are one of the people who stole an election in Kenya."

Mr. Deputy Speaker, Sir, I think it is important that, as Parliament, we owe this duty for the welfare of society and just government of men. They are men and women who are part of this society. So, it is important that we look at that because even as we look at the ECK, it is being remodified. In 1992, through the IPPG, it was modified with more names being added. Did the

elections become freer or fairer? We saw by-elections after that.

I think there was one in Machakos. We saw fights on television. Nothing was happening. No actions were being taken. We are part of the problem and I think it is important that we, as the leaders, also identify that, apart from cleaning up the ECK, unless we clean our acts together, unless everyone cleans their acts, it does not matter whether we put angels in the new Independent Electoral Commission or human beings.

We will be back here when we do not get the outcome that we deserve. We will be back here saying that the elections have been rigged. I saw the propaganda and misinformation that was rolling in the airwaves before the December, 2007 general elections. Everyone and the whole world was convinced that the elections were going to be rigged even before the election day. So, what did you expect even if you had angels in the ECK? So, the point I am making here is that it does not matter who we put in that Independent Electoral Commission, if we do not give them the respect and trust, space, independence and stop interfering with them. The interference should not come from the Government, Opposition or people who are aspiring. If we do not have that, we will never have a credible institution that we would say has delivered at the next level.

I think that also comes to the Boundaries Commission. Already, issues are being raised about what we are doing with the districts. There are already murmurs here about who will be in the 27 members list. I am sure if we start our suspicions from even the formation of the Committee that is going to appoint those eight or nine Commissioners, then we have got it wrong from the word go. We have to get a sense of trust in the institutions that we create and the people who will offer those responsibilities will be held to account on specific issues rather than wholesale condemnation.

Mr. Deputy Speaker, Sir, I really do not want to say much. I just wanted to have that put on record and really say: I know that out there, among the hundreds of members of staff and Commissioners, there are some decent members of society who would not have agreed to be used. We owe them their professionalism. They have done a good job. Even as the Commissioners go home, I believe we are all here because they did their job.

If we really thought that they were so bad, perhaps, we should be walking out with them. But because we trust them to the extent that they brought us here, then it is only fair that we all support the creation of a mechanism that would identify who among them did things wrongly or rightly. Those who did right, let us uphold their names and dignity. Those who did wrong, let us know what punishment should await them, so that it sends a signal even to the new ones that would be coming.

Mr. Deputy Speaker, Sir, in the meantime, as I wind up, I would really want to record the thanks of the people of Kipipiri to all the good people who served in the ECK as Commissioners or staff for taking us this far.

Thank you, Mr. Deputy Speaker, Sir.

**Mrs. Odhiambo-Mabona:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity. In supporting, I want to say that, in the last month or so, Parliament has been subjected to many attacks on a number of issues. There is the issue of the perceived reluctance to pay tax. I call it "perceived" because if we chose to look at the HANSARD, our views are very clearly indicated there. Therefore, there is no need for us to go to the media to indicate what our views are.

Mr. Deputy Speaker, Sir, more recently, we have seen the issue of Kenya Communications (Amendment) Bill and all that. My view is that despite the attacks, Kenya would be a better place if, as Parliamentarians, we would be focused on the reform agenda. That is why today is an important day. We have actually commenced a process that will ensure that we have a Constitution within the shortest time possible.

We have seen what we have gone through as a country. God forbid that we go to the next

election with the same law as we had in 2007! I would also want to urge that as soon as we are done with reforming the Electoral Commission of Kenya (ECK) we should quickly move into reforming the police. I may disagree with a number of people about different issues, but they have absolute right to express their views unhindered. It is, therefore, wrong for the police to arrest members of the public who are expressing their views over things that seem to them not to be correct for them. As Members of Parliament, if we finish the reforms of the ECK, we should immediately embark on the reform of the police.

Mr. Deputy Speaker, Sir, I would also want to say that the provisions of the Bill on the boundary review are very progressive, as they take into account the diversity of this country both in terms of the population and geographical features. For example, it talks about means of communication and in constituencies such as those in northern Kenya, where the means of communication is a challenge. In places of Nairobi, where we are talking about population, it takes that into account. In places like Mbita, where you have to hop from one island to the other with a canoe, it will also take that into account.

Therefore, I support it.

*(Several hon. Members stood up  
in their places)*

I have not finished!

**Mr. Deputy Speaker:** Order! When you conclude with "I support" the tradition is that you have concluded your presentation. Nonetheless, take one more minute.

**Mrs. Odhiambo-Mabona:** Mr. Deputy Speaker, Sir, thank you for the guidance. I just thought that the House was not attentive; so, I wanted them to be awake.

I wanted also to say that even though you notice in the Bill that we are setting up different bodies, we have not made reference to equal gender representation. Even though I sit in the Departmental Committee on Administration of Justice and Legal Affairs, I am not criticising, we had tacit understanding that the House is now alert to the past, that in every appointment there must be adequate gender and regional representation.

I also want to note that the Bill takes into account the fact that the Kenyan people still have supremacy in terms of overhauling the Constitution, which is in tandem with the decision of Justice Ringera.

With those few remarks, I beg to support.

**Dr. Khalwale:** On a point of order, Mr. Deputy Speaker, Sir. I do not wish to disappoint hon. Members, but considering that we had reached a consensus on this matter through two *Kamukunjis*, and given that some of the issues hon. Members want to raise will have an opportunity to raise them during the Motion for Adjournment, could I request you that we end debate and ask the Mover to respond.

**Mr. Deputy Speaker:** Mr. Mungatana, do you wish to contribute or you want to support that the Mover be called upon to reply?

**The Assistant Minister for Medical Services** (Mr. Mungatana): I wish to contribute.

**Mr. Deputy Speaker:** Order, then go on! It is a very important Bill, and it is fair that a sizeable number of hon. Members should contribute to it.

Proceed, Mr. Mungatana.

**The Assistant Minister for Medical Services** (Mr. Mungatana): Mr. Deputy Speaker, Sir, thank you for giving me this opportunity to also make my contribution. We have to learn from the previous process that did not yield a new Constitution. I am going to make three points.

First, Clause 2, the Commission that we are going to constitute is supposed to operate

without any control whatsoever from any other person or authority. The last Commission had the problem of availability of money and quick access to it. The secretary then, Dr. P.L.O Lumumba, did not make secret the fact that the Constitution of Kenya Review Commission (CKRC) had problems with accessing money, because the Executive was impeding its way. The point that I want to make, and I hope that the Minister for Finance is listening, the Commission must be properly facilitated; funds must be available without delay and at the right time.

Secondly, we have to agree about the issue of gender, which has been mentioned by Mrs. Odhiambo-Mabona. Let me emphasize the question of regions. We have nine Commissioners and eight provinces. So, we expect provincial representation in this matter. It does not matter how the process is arrived at.

Thirdly, the Departmental Committee on Administration of Justice and Legal Affairs has done a commendable job, under the Chairmanship of Mr. Abdikadir. I am disappointed at the names that have been produced and Mr. Abdikadir has been left out. I hope that we shall correct that mistake.

With those few remarks, I support.

**The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government** (Mr. Githae): On a point of order, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Are you on a serious point of order!

Proceed then, hon. Member!

**The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government** (Mr. Githae): Yes, Mr. Deputy Speaker, Sir.

In view of the fact that quite a number of hon. Members want to contribute, could I be in order to ask if we all speak for two minutes so that we can give each person a chance.

**Mr. Deputy Speaker:** That is not a point of order, but it is a good point of information.

Hon. Members, regulate yourselves!

**Prof. Kamar:** Mr. Deputy Speaker, Sir, I rise to support this Bill, which I believe is going to open the door to the process of the Constitutional review. Kenyans have waited for this Constitution. We gave them 100 days, months and at times we talked of fewer than 100 days. I believe that the process is very important, and is going to be a very important gift to our people for Christmas.

As we discuss this, we need to look back: Why did the process fail in 2005? Was it because of the content or the process? I would like to say that both contributed. Even as we discuss this Bill, we must make sure that the process does not let us down, even when the content is good. Kenyans voted against both the content and process of constitution-making in 2005. I want to applaud the wide consultations that took place as we prepared this Bill. Kenyans should learn to consult. Those were landmark three days of consultations.

I only want to talk on what we mean by the word "independence", because that is one of the problems that have let us down in this country. We have said that we are going to have an interim Independent Electoral Commission. If we tamper with it, the process could be flawed and Kenyans will reject it in the next referendum.

The same thing applies to the boundaries review. If that group will not be independent enough to look at what we have given as parameters and decide where a boundary should be, their work will be thrown out again. As we think through what we want, we must consider the process. It was not just the content that was rejected in 2005, but the process was flawed and suspect.

Mr. Deputy Speaker, Sir, under Clause 41(c)(i), the Independent Boundaries Review Commission is supposed to consider using population density in urban areas *versus* the sparsely populated rural areas. I wish we would be talking about the vastness of the areas so that we come out clearly. There are constituencies in this country that are larger than provinces.

(Applause)

Mr. Deputy Speaker, Sir, we are talking of Nairobi which has a high population but is taken care of by the Ministry of Nairobi Metropolitan Development, the Nairobi City Council and so many other organisations. There are people who have to travel for several kilometers to reach their constituents. It is no wonder we have a high turn-over of Members of Parliaments from these places. It is because they cannot visit all their constituents within the five-year term. I hope that, that is clear.

Mr. Deputy Speaker, Sir, when I read this Bill, it is talking of population but not the vastness of the area. This is the total square kilometers that we wanted to be considered.

With those few remarks, I beg to support.

**Mr. Wamalwa:** Mr. Deputy Speaker, Sir, we are coming to the end of a very difficult year and the greatest thing we can give Kenyans for Christmas is a gift of hope for a new Constitution.

Mr. Deputy Speaker, Sir, we recall the way this year started. It was a very difficult year when we met here. However, there was that spirit that makes this nation great. It brought us together in spite of the differences that we had to put our country first. It is that spirit of consensus and compromise that led us to pass the National Accord into law.

Mr. Deputy Speaker, Sir, it is that spirit that I saw this afternoon. In the third *Kamukunji*, hon. Members were able to consult and agree on a very vital Bill. It is the same spirit of consensus and compromise that we are going to need in days ahead of us. This is because there are many challenges ahead of us! Today, we are dealing with only a few sections of our Constitution. However, if we can summon that spirit into the new year, I see ourselves delivering a new Constitution to this country.

Mr. Deputy Speaker, Sir, this is something that we must be proud of as Members of the Tenth Parliament. Already, we have shown that this is a very pro-active Parliament. As I speak, we have passed Motions in this House touching on Sections 16 and 59 of the Constitution. We have actually wished to determine the calendar of this House and sought to limit the number of Ministers.

Mr. Deputy Speaker, Sir, just seeing the differences that have been shown in the process through the year, we have noticed them. This reminds us of the great American Booker T. Washington who said that we might be as different as the fingers on our hands, but on matters of essential to the progress of the nation, we are one as the hand. We must always thrive for that.

Mr. Deputy Speaker, Sir, we have seen the effects of what we call a bloated Government. We have seen the differences displayed this afternoon. Indeed, it is a priority that we move forward to bring reforms to this Government through a constitutional review.

Mr. Deputy Speaker, Sir, it is very vital that we take into account the words of the Kriegler Commission. Indeed, the Kriegler Commission passed a verdict that condemned almost all institutions. Whether it was the media, the leadership of the country, the Judiciary or Parliament, we were all convicted. So, many people have asked, why is it that only one institution has to be dealt with at this time? Why is it that it is only the Electoral Commission of Kenya (ECK)?

Mr. Deputy Speaker, Sir, when you look at the provisions of the Constitution of Kenya Review Act, you realise that under Sections 37, 38, 39 and 43, the ECK has a very important role to play in conducting the referendum through which Kenyans will ratify the end result of the constitutional review process. Therefore, we must have an ECK that will command the respect and trust of Kenyans so that the end product that will be the new Constitution that Kenyans have been waiting for two decades would be acceptable to all Kenyans. That is why we must deal with the ECK now.

I must thank my colleagues who were very sensitive to the plight of the ECK staff many of whom are worried as I speak. They do not know whether they will have Christmas this year. They do not know what will happen to their careers and their families.

This Bill has been sensitive to that tea girl and driver who, perhaps, served tea this afternoon. As we make decisions in this House, that tea girl is out there innocent serving tea. We are very touched that, indeed, as we speak, we give hope to those subordinate staff who will not go home as a result of what we have passed in this House.

Mr. Deputy Speaker, Sir, on the issue of the review of constituency boundaries, I heard the Member of Parliament of Lamu East speaking of a population of 30,000 registered voters. In Saboti Constituency, the figure is 120,000. This is so yet when you look at the amount of Constituencies Development Funds (CDF) allocated to Saboti and Lamu East, you realise that the time for review of these boundaries is overdue. You will realise that some constituencies in Kenya are being shortchanged in terms of resources.

With those few remarks, I beg to support.

**The Minister for Agriculture** (Mr. Samoei): On a point of order, Mr. Deputy Speaker, Sir. I would have really wanted to speak on this Motion. However, taking into account that we have the Committee Stage of this Bill, the Motion for Adjournment and the Motion on names for the Parliamentary Select Committee on Review of the Constitution, would I be in order to ask that the Mover be called upon to reply?

*(Applause)*

**The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government** (Mr. Githae): Mr. Deputy Speaker, Sir, I support. We have already had consensus and it is not possible for everybody to speak. We are also going to have time to speak on these issues during the Motion of Adjournment.

I beg to second.

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

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua): Mr. Deputy Speaker, Sir, may I once again thank the Members of this House. The Bill before this House is a product of a consensus of the membership of this House. It has been greatly enriched and improved. This spells the way forward for the constitutional review process.

I beg to move.

**Mr. Deputy Speaker:** Hon. Members, this is a constitutional amendment Bill and we have to have a minimum of 145 Members in the House. Thereafter, there will be a division.

I, therefore, order that the Division Bell be rung!

*(The Division Bell was rung)*

**DIVISION**

*(Question put and House divided)*

*(Question carried by 169 votes to nil)*

**AYES:** Ms. Abdalla A, Ms. Abdalla S, Messrs. Abdikadir, Affey, Ali M.H, Ali M.M, Prof. Anyang'-Nyong'o, Messrs. Anyanga, Baiya, Balala, Bett, Bifwoli, Chachu, Chanzu, Ms. Chepchumba, Messrs. Chepkitony, Cheruiyot, Dr. Eseli, Messrs. Ethuro, Farah, Gaichuhie, Dr. Gesami, Messrs. Gitau, Githae, Githunguri, Godhana, Eng. Gumbo, Messrs. Gumo, Haji, Imanyara, Joho, Kabando wa Kabando, Kaino, Kajembe, Kajwang, Kamama, Prof. Kamar, Messrs. Kamau J.I, Kamau J.M, Kambi, Kariuki, Ms. Karua, Messrs. Kenneth, Kenyatta, Keter, Keya, Keynan, Dr. Khalwale, Messrs. Khang'ati, Khaniri, Kigen, Kiilu, Kilonzo, J.K, Kilonzo M, Kimunya, Kioni, Kiptanui, Kipkorir, Kiuna, Kiunjuri, Koech, Kombo and Konchela, Mrs. Kones, Dr. Kosgei, Messrs. Kosgey, Kutuny, Dr. Laboso, Messrs. Lankas, Langat, Lekuton, Ms. Leshomo, Messrs. Lessonet, Letimalo, Litole, M'Mithiaru, Magerer, Magwanga, Eng. Maina, Mr. Mbadi, Ms. Mbarire, Messrs. Mbau, Michuki, Midiwo, Mohamed A.C., Mohamed I.E. Mudavadi, Mung'aro, Mungatana, Munya, Dr. Munyaka, Messrs. D.M. Muoki, Mureithi, Muriithi, Murungi, Musila, Musyimi, Musyoka, Mwadeghu, Mwaita, Dr. Mwiria, Messrs. Mwakulegwa, Mwakwere, Mwangi, Mwatela, Mwathi, Mwau, Mwiru, Messrs. Namwamba, Nanok, Ms. Ndeti, Messrs. Ngugi, Nguyai, Njuguna, Maj-Gen. Nkaisserry, ole Ntimama, Dr. Nuh, Mrs. Noor, Messrs. Nyagah, Nyamai, Nyambati, Nyammo, Nyamweya, Obure, Ochieng, Odhiambo, Mrs. Odhiambo-Mabona, Messrs. Odinga, Ogindo, Ojaamong, Okemo, Prof. Olweny, Messrs. Olago, Ombui, Omingo, Prof. Onger, Mrs. Ongoro, Messrs. Onyancha, J, Onyonka, Orengo, Dr. Otichilo, Messrs. Otieno, Outa, Pesa, Poghisio, Rai, Eng. Rege, Messrs. Ruteere, Ruto, Prof. Sambili, Messrs. Sambu, Samoei, Sasura, Dr. Shaban, Mrs. Shabesh, Messrs. Shakeel, Sirma, Sugow, Thuo, Waibara, Waititu, Wamalwa, Wambugu, Washiali, Were, Wetangula, Yakub, Yinda and Zonga.

Tellers of the Ayes: Messrs. Hon. Dr. Nuh and Wamalwa

**NOES:** Nil.

Tellers of the Noes: Messrs. Chanzu and Mwaita.

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

**COMMITTEE OF THE  
WHOLE HOUSE**

*(Order for Committee read)*

*[Mr. Deputy Speaker left the Chair]*

**IN THE COMMITTEE**

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

**THE CONSTITUTION OF KENYA  
(AMENDMENT) BILL**

*(By Leave of the House)*

**The Temporary Deputy Chairman** (Mr. Imanyara) Order, Members! We are now in the Committee of the whole House on The Constitution of Kenya (Amendment) Bill.



*(Clauses 2, 3, 4, 5, 6, 7  
and 8 agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of The Constitution of Kenya (Amendment) Bill and its approval thereof without amendment.

*(Question proposed)*

*(Question put and agreed to)*

**The Temporary Deputy Chairman** (Mr. Imanyara): Hon. Members, we now move to the next Order, that is, the Criminal Procedure Code (Amendment) Bill.

THE CRIMINAL PROCEDURE  
CODE (AMENDMENT) BILL

*Clause 2*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 2 be amended by inserting the following new definition in its proper alphabetical sequence-

"prosecutor" means a public prosecutor or a person permitted by the court to conduct a prosecution under Section 88 of the Act".

*(Question of the amendment proposed)*

*(Question, that words to  
be inserted be inserted,  
put and agreed to)*

*(Clause 2 as amended agreed to)*

*Clause 3*

*Section 137L*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 3 of the Bill be amended-

(a) in the proposed Section 137L -

- (i) by deleting Subsection (2) and substituting therefor the following new Subsection -  
 "(2) Notwithstanding Subsection (1), the Attorney-General, in the public interest and the orderly administration of justice, or the accused person, may apply to the court which passed the sentence to have the conviction and sentence procured pursuant to a plea agreement set aside on the grounds of fraud or misrepresentation."  
 (ii) by inserting the following new Subsection immediately after Subsection (2) -  
 "(3) Where a conviction or sentence has been set aside, under Subsection (2), the provisions of Section 137J shall apply *mutatis mutandis*."  
 (c) in the proposed Section 137O by inserting the words "and such rules shall apply *mutatis mutandis* to prosecutions conducted under Section 88 of the Act" immediately after the word "Part".

*(Question of the amendment proposed)*

*(Question, that the words to  
be left out be left out,  
put and agreed to)*

*(Question, that the words to be  
inserted in place thereof be  
inserted, put and agreed to)*

*(Section 137L as amended agreed to)*

#### *Section 137A*

**Mr. Abdikadir:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Section 137A(1) be amended by

(a) Deleting the word "public" before prosecutor

(b) Inserting the word "and" after the word "person"

Section 137A(1)(a) be amended by deleting the word "include" and substituting thereof the word "related"

Section 137A be further amended by inserting a new subsection (4) to read as follows:-

(4) Where a prosecution is undertaken privately no plea agreement shall be concluded without the written consent of the Attorney-General.

*(Question of the amendment proposed)*

*(Question, that the words to be left  
out be left out put and agreed to)*

*(Question, that the words to be inserted  
in place thereof be inserted,  
put and agreed to)*

*(Section 137A as amended agreed to)*

*Section 137B*

**Mr. Abdikadir:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, Section 137B be amended by inserting the words "and any other person authorized by any written law to prosecute" after the word "Constitution".

That is essentially to increase the prosecutor from public prosecutor to any prosecutor, including a private prosecutor.

*(Question of the amendment proposed)*

*(Question, that the words to  
be inserted be inserted,  
put and agreed to)*

*(Section 137B as amended agreed to)*

*Section 137C(1)*

**Mr. Abdikadir:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Section 137C subclause (1)(a) be amended by

(a) deleting the word "public" before the word "prosecutor";

(b) Section 137C subclause (1)(b) be amended by adding the word "person"

*(Question of the amendment proposed)*

*(Question, that the word to be left  
out be left out, put and agreed to)*

*(Question, that word to be added  
be added, put and agreed to)*

*(Clause 137C(1) as amended  
agreed to)*

*Section 137C(1)*

**Mr. Abdikadir:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Section 137C be amended by inserting a new Clause before subsection (2) to read- "The court shall be notified by the parties of their intention to negotiate a plea agreement"

That is essentially for the court to be notified by the parties of their intention to negotiate a plea bargaining agreement.

*(Question of the amendment proposed)*

*(Question that the words to be  
inserted be inserted,*

*put and agreed to)*

*(Section 137C(1) as amended agreed to)*

*Section 137D*

**Mr. Abdikadir:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Section 137D be amended by

- (a) deleting the word "public" before the word "prosecutor"
- (b) deleting the word "may" after the word "prosecutor" and substituting thereof with "shall only"
- (c) deleting the words "whenever practicable" before the word "enter"

Section 137D subclause (c) be amended by

- (a) deleting the words "if any circumstances permit" and substituting thereof the words "unless the circumstances do not permit"
- (b) deleting the word "public" before the word "prosecutor".

*(Question of the amendment proposed)*

*(Question, that the words to be  
left out be left out,  
put and agreed to)*

*(Question, that words to be inserted  
in place thereof be inserted,  
put and agreed to)*

*(Section 137D as amended agreed to)*

*Section 137E*

**Mr. Abdikadir:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT Section 137E subclause (b) be amended by

- (a) deleting the word "public" before the word "prosecutor"
- (b) inserting the words "the interpreter is proficient in that language and" after the word "effect"

Subsection 137E subclause (d) be amended by

- (a) deleting the word "public" before "prosecutor"
- (b) adding the word "and" after the word "person".

*(Question of the amendment proposed)*

*(Question, that the words to  
be left out be left out,  
put and agreed to)*

*(Question, that words to be inserted  
be inserted, put and agreed to)*

*(Section 137E as amended  
agreed to)*

*Section 137F(1)(a)*

**Mr. Abdikadir:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, Section 137(F)(1)(a) subclause (vii) be amended by inserting the word "witnesses" in place of witness after the words "applying to"  
Section 137F (1)(d) be amended by inserting the words "or unconditional" after the word "conditional"  
Section 137F(2) be amended by deleting the word "public" before the word "prosecutor"  
I would like to say that the Attorney-General has accepted all these amendments.

*(Question proposed)*

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Question, that the words to  
be inserted be inserted,  
put and agreed to)*

*(Section 137F as amended agreed to)*

*Section 137H*

**Mr. Abdikadir:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, Section 137H(1)(b) be amended by deleting the word "public" before the word "prosecutor"  
Section 137H(1)(c) be amended by deleting the words "court record" and substituting thereof the words "record of the court".

*(Question of the amendment proposed)*

*(Question, that the words to be  
left out be left out,  
put and agreed to)*

*(Question, that words to be inserted  
in place thereof be inserted,  
put and agreed to)*

*(Section 137H as amended  
agreed to)*

*Section 137I*

**Mr. Abdikadir:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT Section 137I be amended by inserting a new subsection (3) to read:  
"where necessary and desirable, the court may consider a probation officer's report"

*(Question of the amendment proposed)*

*(Question, that words to be inserted  
be inserted, put and agreed to)*

*(Section 137I as amended agreed to)*

*Section 137L*

**The Attorney-General** (Mr. Wako): First of all, I just want to confirm that I have agreed to all the amendments. As a result of that, there were consequential amendments. That is why I should move this one first because it includes what they have proposed but now, in a better phraseology.

I beg to move:-

THAT, Section 137L (2) be amended by inserting the words "and the accused person" after the word  
"Attorney-General"

*(Question of the amendment proposed)*

*(Question, that words to be inserted,  
be inserted, put and agreed to)*

*(Section 137L as amended agreed to)*

**The Temporary Deputy Chairman** (Mr. Imanyara): In view of that, the Chairman of the Committee on Administration of Justice and Legal Affairs, you will abandon your proposals to amend.

**Mr. Abdikadir:** Not really!

**The Attorney-General** (Mr. Wako): In view of that, there is no need for him to move the proposal.

**The Temporary Deputy Chairman** (Mr. Imanyara): You can concur with that.

**Mr. Abdikadir:** Agreed!

**The Temporary Deputy Chairman** (Mr. Imanyara): So, shall we go to Section 137N? Chairman, that is your Committee's amendment.

*Section 137N*

**Mr. Abdikadir:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT Section 137N be amended by deleting the  
whole of clause (b) and substituting thereof:

(b) the offences of genocide, war crimes and crimes against humanity.

This is essentially to exempt oppression of genocide, war crimes and crimes against humanity out of plea agreement.

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out, put and agreed to)*

*(Question, that words to be inserted in place thereof be inserted, put and agreed to)*

*(Section 137N as amended agreed to)*

*Section 137O*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, in view of what we have already passed, it becomes necessary to have the *mutatis mutandis* rule.

So, I beg to move:-

THAT, the proposed Section 137O be amended by inserting the words "and such rules shall apply *mutatis mutandis* to prosecutions conducted under Section 88 of the Act" immediately after the word "Part".

*(Question of the amendment proposed)*

*(Question, that the words to be inserted be inserted, put and agreed to)*

*(Section 137O as amended agreed to)*

*(Clause 3 as amended agreed to)*

*(Clauses 4 and 5 agreed to)*

*New Clause 3A*

**Ms. A. Abdalla:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT the Bill be amended by inserting a new clause immediately after clause 3 as follows-

3A. The Principal Act is amended in section 205 by inserting the following new subsection immediately after subsection (1)

(1A) where during the hearing of a case the accused

person applies for adjournment, the court may order that he or she pays for witness costs and any related costs which are normally borne by the State, in such circumstances.

This is essentially intended to ensure that the backlog of cases in our judicial system is reduced by charging the fees that are paid to witnesses as a result of adjournment by accused persons, so that we can deal with excessive backlog of court cases.

*(Question of the New Clause Proposed)*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I have talked to the hon. Member and expressed my dissatisfaction. The intention might be good or in the right direction, but the Clause requires a bit of proper redrafting. Left as it is, it can be used to the disadvantage of the accused persons. We should always have the liberty to have a fair trial. This Clause is saying that during the hearing of a case, where an accused person applies for an adjournment, the court may order the accused person to pay witness costs and any related costs. Most of the accused persons may not necessarily be in a position to pay those costs. Where you talk about "may" you are giving an unnecessary wide discretion to the court, which can be misused. I suggested to the hon. Member that we can sit down together restrict, considerably, the discretion that the court may have in this particular issue, because I know that in any Act you can restrict it in an appropriate manner, so that it cannot be misused by the courts. I indicated to her that I was prepared to include this amendment, but after it is redrafted.

As you have noticed, most of the amendments under the Criminal Procedure Code relate to the plea bargaining process. This is the whole thrust of the Criminal Procedure Code (Amendment) Bill that this House is now passing. This Section does not quite fall in that category of plea bargaining process. I reluctantly have to say that I oppose. If hon. Members vote against it, I can assure the hon. Member that I will sit down and discuss it with her thereafter. So, I am urging hon. Members to vote against it.

**The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government** (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I stand to oppose this amendment for three good reasons. First, put yourself in a situation where somebody is in remand, or prison, and when you say the accused person will have to pay costs, where will that person in remand have earned money to pay costs?

Secondly, in our Constitution, it is a requirement that an accused person must get a fair trial. I am foreseeing a case where somebody will not get a fair trial; if his or her witnesses are not ready and he does not have the money he or she will be forced not to ask for an adjournment. So, this is punitive to the accused, and it is our duty, as a House, to protect the accused persons.

**Ms. A. Abdalla:** Mr. Temporary Deputy Chairman, Sir, this system is already in place for civil cases and the issue here is that if the Attorney-General is opposed to it, then it means he has no confidence in his judicial officers. This Clause is discretionary and it is left to the judicial officer to determine whether an adjournment is unnecessary or is an abuse of the court process. Whereas the Attorney-General has urged me to wait for the Miscellaneous (Amendment) Bill, I would urge him to let this pass and amend it later.

**The Temporary Deputy Chairman** (Mr. Imanyara): I did not get you right. Are you withdrawing the proposed amendment?

**The Temporary Deputy Chairman** (Mr. Imanyara): I did not get you right, Ms. A. Abdalla. Are you withdrawing the proposed amendment?

**Ms. A. Abdalla:** Mr. Temporary Chairman, Sir, I wish to retain the amendment. I would like it to be put to vote.

**The Minister for Foreign Affairs** (Mr. Wetangula): Mr. Temporary Deputy Chairman, Sir, I would like to support the argument by the Attorney-General. Assuming the amendment makes sense, it does not go far enough. What happens if an accused person is unable to pay those costs? This is not provided for.

Mr. Temporary Deputy Chairman, Sir, in criminal cases, at least up to 90 per cent of accused persons are gravely disadvantaged in terms of resources and other things. We should not create any situation where people are forced to pay for justice in criminal proceedings. I agree with the Attorney-General and oppose the amendment.

If a direction of this nature is to be taken, I think it needs careful thought. We can assist our



colleague, Ms. A. Abdalla, to come up with a better frame to achieve what she wants.

**Mr. Olago:** Mr. Temporary Deputy Chairman, Sir, I have no doubt at all that the intention to amend the Bill by inserting Section 3A is brought in good faith. However, I think by allowing this amendment, we would create even more problems. In criminal trials and criminal jurisprudence throughout the Commonwealth, accused persons whether indiligent or not, do not pay for adjournment. However, the court retains the last option. Where an adjournment is not called for, the court will refuse the adjournment and ask to proceed. That is good enough.

Mr. Temporary Deputy Chairman, Sir, may I suggest that Ms. A. Abdalla withdraws this amendment.

**The Minister for Nairobi Metropolitan Development** (Mr. M. Kilonzo): Mr. Temporary Deputy Chairman, Sir, I want to join the voices of those trial lawyers who have spoken before this Chamber. This is an extremely dangerous amendment.

Mr. Temporary Deputy Chairman, Sir, I want to persuade the hon. Member to consider withdrawing it and accept the recommendations of the Attorney-General.

Mr. Temporary Deputy Chairman, Sir, the principles of fair trial have sufficient protection should an accused person delay the trial himself. In fact, in this country, most of the adjournments arise from problems emanating from the prosecutors themselves. Therefore, it is unfair to place an additional burden where the Judiciary is slow in disposing of criminal cases and start transferring the burden to the accused.

Mr. Temporary Deputy Chairman, Sir, I sincerely want to persuade my very good friend, Ms. A. Abdalla, to consider the recommendations of the Attorney-General. We can sit down with the able Chair of the Committee on Administration of Justice and Legal Affairs and Members to find a formula. If it is just to speed up criminal justice system, there are methods we can use but not this.

I beg to oppose.

**The Temporary Deputy Chairman** (Mr. Imanyara): Ms. A. Abdalla wanted to face the vote and I will now put the question---

**Ms. A. Abdalla:** Mr. Temporary Deputy Chairman, Sir, now that the senior counsel, who is the former lawyer to the party which I am the Vice Chairperson, has given his advice, I wish to withdraw the amendment.

*(Laughter)*

*(Ms. A. Abdalla's proposed  
was amendment withdrawn)*

*(Applause)*

**The Temporary Deputy Chairman** (Mr. Imanyara): Very well, the record will show that the proposal has been withdrawn.

*(Title agreed to)*

*(Clause 1 agreed to)*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of the Criminal Procedure Code (Amendment) Bill and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

*[Mr. Speaker in the Chair]*

**REPORTS, CONSIDERATION  
OF REPORTS AND  
THIRD READINGS**

THE CONSTITUTION OF KENYA  
(AMENDMENT) BILL

**Mr. Imanyara:** Mr. Speaker, Sir, I beg to report that a Committee of the whole House has considered the Constitution of Kenya (Amendment) Bill and approved the same without amendments.

**The Minister for Justice, National Cohesion and Constitutional Affairs (Ms. Karua):** Mr. Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

**The Minister of Lands (Mr. Orengo):** Seconded.

*(Question proposed)*

*(Question put and agreed to)*

**The Minister for Justice, National Cohesion and Constitutional Affairs (Ms. Karua):** Mr. Speaker, Sir, I beg to move that the Constitution of Kenya (Amendment) Bill be now read the Third Time.

**The Minister for Lands (Mr. Orengo):** Mr. Speaker, Sir, I beg to second the Motion that the Bill be now read the Third Time.

This is truly a historical moment. I would like to say that never again should we amend the Constitution! The next time that we sit here, we should sit on the basis that we have a new Constitution for Kenya. This should really be the last amendment.

Mr. Speaker, Sir, I beg to second.

*(Applause)*

*(Question proposed)*

**Mr. Speaker:** Hon. Members, I now call for a division. Ring the Division Bell!

*(The Division Bell was rung)*

**DIVISION**

*(Question put and the House divided)*

*(Question carried by 174 votes to 0)*

**AYES:** Ms. Abdalla A., Ms. Abdalla S., Messrs. Abdikadir, Abdirahman, Affey, Ali M.H. Ali M.M., Prof. Anyang'-Nyong'o, Messrs. Baiya, Balala, Bett, Bifwoli, Chachu, Chanzu, Ms. Chepchumba, Messrs. Chepkitony, Cheruiyot, Mr. Ethuro, Dr. Eseli, Messrs. Farah, Gaichuhie, Dr. Gesami, Messrs. Gitau, Githae, Githunguri, Gumbo, Gumo, Haji, Imanyara, Joho, Kabando wa Kabando, Kaino, Kajembe, Kajwang', Prof. Kaloki, Mr. Kamama, Prof. Kamar, Messrs. Kamau J.I., Kamau J.M., Kambi, Ms. Karua, Messrs. Kathuri, Kenneth, Kenyatta, Keter, Keya, Keynan, Dr. Khalwale, Messrs. Khang'ati, Khaniri, Kigen, Kiilu, Mrs. Kilimo, Messrs. Kilonzo C., Kilonzo J.K., Kilonzo M., Kimunya, Kioni, Kipkorir, Kiptanui, Kiuna, Kiunjuri, Kivuti, Koech, Kombo, Mr. Konchella, Mrs. Kones, Dr. Kosgei, Messrs. Kosgey, Kutuny, Dr. Laboso, Messrs. Lagat, ole Lankas, Langat, Lekuton, Ms. Leshoomo, Messrs. Lessonet, Letimalo, Magerer, Magwanga, Eng. Maina, Ms. Mbarire, Messrs. Michuki, Midiwo, M'Mithiaru, Mohamed I.E., Mudavadi, Mrs. Mugo, Messrs. Mung'aro, Mungatana, Munya, Dr. Munyaka, Messrs. Muoki D.M., Mureithi, Muriithi, Murungi, Musila, Musyimi, Musyoka, Muthama, Mwadeghu, Mwaita, Mwakulegwa, Mwakwere, Dr. Mwiria, Messrs. Mwatela, Mwathi, Mwau, Njuguna, Mwiru, Namwamba, Nanok, Ndambuki, Ms. Ndeti, Messrs. Nguyai, Ngugi, Dr. Nuh, Maj-Gen. Nkaisserry, Mr. ole Ntimama, Mrs. Noor, Messrs. Nyagah, Nyamai, Nyambati, Nyammo, Nyamweya, Obure, Ochieng', Odhiambo, Ms. Odhiambo, Messrs. Ogindo, Ojaamong, Okemo, Olago, Prof. Olweny, Messrs. Onyancha J.O., Ombui, Omollo, Omingo, Prof. Ongeru, Ms. Ongoro, Dr. Onyonka, Mr. Orengo, Dr. Otichilo, Mr. Otieno, Dr. Otuoma, Messrs. Outa, Pesa, Rai, Raila, Ruteere, Ruto, Samoei, Prof. Saitoti, Dr. Sambili, Messrs. Sambu, Sasura, Dr. Shaban, Mrs. Shabesh, Messrs. Shakeel, Sirma, Maj. Sugow, Messrs. Thuo, Waibara, Waititu, Wamalwa, Wambugu, Bishop Wanjiru, Messrs. Washiali, Wathika, Dr. Wekesa, Messrs. Were, Wetangula, Yakub, Yinda, and Zonga.

**Tellers for the Ayes:** Messrs. Wamalwa and Chanzu.

**NOES:** Nil

**Tellers for the Noes:** Dr. Nuh and Mr. Mwaita.

*(The Bill was accordingly  
read the Third  
Time and passed)*

THE CRIMINAL PROCEDURE CODE  
(AMENDMENT) BILL

**Mr. Imanyara:** Mr. Speaker, Sir, I beg to report that a Committee of the whole House has considered The Criminal Procedure Code (Amendment) Bill and approved the same with amendments.

**The Attorney-General (Mr. Wako):** Mr. Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

**The Minister for Lands (Mr. Orengo)** seconded.

*(Question proposed)*

*(Question put and agreed to)*

**The Attorney-General** (Mr. Wako): Mr. Speaker, Sir, I beg to move that The Criminal Procedure Code (Amendment) Bill be now read the Third Time.

**The Minister for Lands** (Mr. Orengo) seconded.

*(Question proposed)*

*(Question put and agreed to)*

*(The Bill was accordingly read  
the Third Time and passed)*

### MOTION

#### APPOINTMENT OF SELECT COMMITTEE ON REVIEW OF CONSTITUTION

**The Vice-President and Minister for Home Affairs** (Mr. Musyoka): Mr. Speaker, Sir, I beg to move the following Motion:-

THAT, pursuant to the provisions of the Constitution of Kenya Review Act, the following be appointed Members of the Parliamentary Select Committee on the Review of the Constitution:-

Hon. Martha Karua, MP  
Hon. Mutula Kilonzo, MP  
Hon. Kiraitu Murungi, MP  
Hon. Prof. Sam Ogeri, MP  
Hon. David Musila, MP  
Hon. Moses Wetangula, MP  
Hon. Danson Mungatana, MP  
Hon. Beth Mugo, MP  
Hon. Kambi Kazungu, MP  
Hon. Joseph Kiuna, MP  
Hon. Ekwere Ethuro, MP  
Hon. Keynan Adan, MP  
Hon. Jeremiah Kioni, MP  
Hon. George Thuo, MP  
Hon. Franklin Bett, MP  
Hon. Musalia Mudavadi, MP  
Hon. Hon. Ababu Namwamba, MP  
Hon. Jeffa Kingi, MP  
Hon. Najib Balala, MP  
Hon. Omingo Magara, MP  
Hon. Sally Kosgey, MP  
Hon. William Samoei, MP  
Hon. James Orengo, MP  
Hon. Milly Odhiambo, MP  
Hon. Sophia Abdi, MP  
Hon. Joseph Nkaisserry, MP  
Hon. Jakoyo Midiwo, MP

**Hon. Members:** No!

*(Laughter)*

Mr. Speaker, Sir, while appreciating that great assistance in reading this list, I sincerely hoped that the House can agree, in the spirit that has been demonstrated the whole of this afternoon. I know that all the 222 of us can make able Members of any Parliamentary Select Committee. I know that the fact that we have now put in place the new Standing Orders, you may have Communication to make in that regard, but what we have done this afternoon will not take off unless we put in place this Parliamentary Select Committee.

Hon. Members will appreciate that this is actually a tremendous success on their part. The two Speaker's *Kamukunjis* that took place were able to bring out the sincere feelings of hon. Members of this House.

I hope hon. Members have realised that this is in accordance with the Constitution of Kenya Review Act, which was passed earlier, and which received Presidential assent. Otherwise, it would not have been technically possible to move this Motion and the Amendment Bill that has gone through, because it would require Presidential assent.

Mr. Speaker, Sir, the House Business Committee met this morning, at 11.30 a.m. The Whips have done the best they can. It is also the wish of the party leaders. It is important for me to point out that the party leaders have been consulted over this matter, and we think it is possible for us to agree, because this is now a purely Parliamentary Select Committee. I think all of us will be able to relate to each of those hon. Members.

With those remarks, I beg to move.

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Speaker, Sir, I second.

*(Question of the amendment  
proposed)*

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua): Mr. Speaker, Sir, I rise to support the Motion with amendments. It is not correct to say that all party leaders were consulted.

*(Applause)*

Mr. Speaker, Sir, in the House Business Committee, we did indicate that the so-called "small parties" had no representation. It is also quite odd that we do not even recognise the work done by the Departmental Committee on Administration of Justice and Legal Affairs. When we had a stalemate on the contents of the Constitution of Kenya (Amendment) Bill that we have just passed, it was that Committee which worked round the clock and assisted us to get a breakthrough.

It is also the same Committee that assisted in re-moulding the Bill, which we have passed, and which originated from the Mediation Team. It is proper that there be some consultations that include all sheds of opinion in this House.

Therefore, I would support the Motion with amendments as proposed by hon. Members.

**The Assistant Minister for East African Community** (Mr. Munya): Thank you, Mr. Speaker, Sir, for giving me this opportunity to contribute to this Motion. I also want to support it with amendments.

We are embarking on a very important national exercise and it is important that we learn from the past mistakes. We have not been able to deliver a new Constitution for this country because most times, we do not take time to engage in consulting and building consensus. Now, we should not repeat the same mistake. If we want to succeed this time, we should follow the example of what we did in the amendment that we have just passed by building consensus in advance so that we can carry all the people with us.

Mr. Speaker, Sir, it is important to know that if there is consensus in this House, then it will also be easy in the referendum that will follow when we have a new Constitution. If there is no consensus in this House, because these are the same leaders who carry the people outside there, it will be very difficult to deliver a new Constitution. In that light, it was wrong for these names to be picked by whatever caucus that picked them without proper consultations amongst the Members of this House. In that light, we need to pass it with appropriate amendments.

In any case, it is wrong also to pack a Select Committee of Parliament with the Cabinet.

*(Applause)*

Looking at the past, the Kenya National Assembly, which is the representative body of Kenya, must lead in the Constitution-making process. If we let the Executive, of which I am a Member, to be overly represented in the Select Committee, then we will see the Executive driving the constitutional review process. Looking at the proposed names, you will see 12 Cabinet Ministers, four Assistant Ministers and two whips. That makes them 18, which makes them the majority in the Committee. That gives room for the Executive to manipulate the constitutional review process again. We will then be unable to reach the destination we want to reach. Let us have proper representation.

Let us also have the Back Bench properly represented so that the suspicions that come--- The Executive may be having good intentions, but there is always that suspicion that some agenda is being set. That is why when we were debating on the Bill that we have just passed, we said that we did not want to see the process being controlled and manipulated from outside. That is why proper consultations should have taken place so that everybody is on board in arriving at the composition of this very important Select Committee.

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

**Mr. Speaker:** I would like to hear an opposite view. Yes, Dr. Eseli!

**Dr. Eseli:** Mr. Speaker, Sir, I wish to oppose this Motion. First, for almost three days, the Executive has come with us in a Kamukunji patiently showing us the way of consensus building. Luckily, today, they succeeded. The Serena Group should not feel that we discredit what they have achieved for this country. They have done this country proud by what they have achieved for us. We believe that they will achieve much more for us.

The Departmental Committee on Administration of Justice and Legal Affairs, led by Mr. Abdikadir, worked very hard for this consensus to be reached. However, for some reason, we want to throw that consensus out of the window with this list of names.

Mr. Speaker, Sir, without repeating, that list is packed with the Executive; actually this is a Cabinet Sub-committee. It is not a Select Committee of the House. Some Members here are even declared presidential candidates. How then are they going to be in charge of actually shepherding the formation of the Constitution? We need to make sure that the people sitting on this Committee do not already have those declared self-interests that, therefore, whatever they do here might not be respected by the rest of the wananchi. Even if they do the right thing, we will have allowed a chance for wananchi to doubt that they are actually being genuine. We have come a long way and I

thank people who have fought continuously to get a new Constitution in place. Let us not shoot it down again.

Mr. Speaker, Sir, I oppose.

**The Assistant Minister for Water and Irrigation** (Mr. Kiunjuri): Mr. Speaker, Sir, I stand to oppose this Motion.

First of all, this House is guided by rules, traditions and precedents set through this House. When we came here and passed the National Accord Bill which gave us a Grand Coalition Government, we accepted that at any given time, there must be consultations, mutual respect and consensus on issues that we want to push through this House for the country.

Mr. Speaker, Sir, the issue of constitution making is very important for us. It is a national issue that cannot be rushed at any given time because the House wants to adjourn today and we suspend issues that are of utmost importance to us. We have political parties and also a coalition of parties in this House. If you look at both the big parties; the Orange Democratic Movement (ODM) and the Party of National Unity (PNU), there are small parties. When the Leader of Government Business says that leaders were consulted, then I fail to understand which leaders were consulted. We are leaders of political parties. Whether we are recognized or not, in our own small way, we are leaders of political parties.

Mr. Speaker, Sir, in the coalition of PNU, we have 26 Members of Parliament from small parties and we have only 109 Members of Parliament. You cannot ignore 26 Members of Parliament and go ahead and table here a list of Members of Parliament and say that there was consultation. There was no consultation and we are asking that whenever we want to pass any important Bill in this House, Members must be consulted. You cannot just come to this Parliament to rubber-stamp decisions of a few people.

Mr. Speaker, Sir, we are fighting for this country today so that the new constitutional order will have no social class, the same way we must fight even within the Government to ensure that people are properly consulted. All animals must be equal. But we cannot talk of all animals being equal and others being more equal than others. We must respect the rule of the majority but the minority should have their say. I propose that the way forward is that, we should not be in a hurry to adjourn. Even if it means adjourning, we can do it tomorrow. We can do that. This is not a constitutional Bill. We can wait until tomorrow. All of us can be here again. Parties can have a chance tomorrow morning to meet and consult.

The Constitution of Kenya (Amendment) Bill that we passed here today was as result of three *Kamukunjis* that were held and Members were very patient. Why do I say that we should go and consult? This is because at the end of the day, I have a lot of respect for those names that have been read here. I know that anyone of us can serve in any capacity and in any committee of this House or in the land. However, what we are talking about here today is not about whose name is here but the issue of consultation. So, it is important for us to suspend this matter until tomorrow afternoon when we shall have done enough consultations.

With those few remarks, I beg to oppose this Motion.

**Mr. Ruto:** Mr. Speaker, Sir, I am shocked to hear His Excellency the Vice-President and Minister for Home Affairs stand up and move the same list that he promised, hardly two hours ago, that he was withdrawing. He told us that he was rearranging the Order Paper so that we can consult.

There is absolutely no evidence of consultations in between and up to this point. We have been saddled with the same list. There were no consultations even after the promise of consultations at 3.00 p.m.

Mr. Speaker, Sir, Constitution making is a very important exercise. It is not an exercise we are willing to cede to the Executive to determine what they want Kenyans to have. We have

travelled that road before. We are not willing to go that road again. We want consensus. We want leadership through consultations. Any attempt to bulldoze the way forward will definitely not go down well with this Parliament. I want to insist that proper consultations be done. We may have to retreat, consult and agree on the way forward. Members of the Cabinet should be willing to listen and consult with the wider majority of representation in this Parliament. That is the only way we are going to have respect for this process.

If we do not have consultations, then this process will reach a gridlock from the word go. We cannot move on with the constitutional review process if that is the attitude of the Executive.

Thank you, Mr. Speaker, Sir.

**The Assistant Minister for Higher Education, Science and Technology** (Dr. Mwiria): Thank you, Mr. Speaker, Sir, for giving me this opportunity to support this Motion with amendments.

First, let me complain--- I think Members are saying that they are used to the people that compile lists coming with more or less the same list of people for whatever function in this Parliament.

The issue is: To what extent have they made any effort to ensure that they include many more Members in many of the Committees that are formed from time to time? Secondly, there is the issue of the Cabinet. I think there is nothing wrong with members of the Cabinet being in this kind of Committee. But the question is: Are members of the Cabinet too busy with other responsibilities? Are they? Are members of the Cabinet not the main reason that we have no quorum in this House? That is because they hardly come to this House because of other responsibilities such as official functions and Cabinet meetings. So, the point is that it is better to give the job to the people who are available to do it.

Finally, looking at this list--- We remember we could not go through the Constitution making process in the last Parliament. If you look at the list, some of the people who are being suggested--- I think ten of them are the people who took very extreme positions either for or against. Is it right to have the same people in this kind of Committee? I think it is important to look beyond and ask questions about how we can come up with people who have been a little bit more neutral in terms of the way they have seen this position. We should not include people who were in the same Committees that were unable to move the process forward.

So, I would like to propose that we consult more and get people that would have the time to do it, and people who were not associated with extreme positions that have made any business in this country very difficult.

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

**Dr. Khalwale:** Thank you, Mr. Speaker, Sir, for allowing me to speak on this particular Motion. Allow me, at the beginning, to say that to support this Motion is to lose. To oppose this Motion is also to lose. This House should take a study in the humility that has been demonstrated over the recent past by the President, the Prime Minister and hon. Karua who, in the past, has been extremely combative and non-accommodative. But she has been fairly humble.

*(Applause)*

Mr. Speaker, Sir, the humility of the Chairman of the Departmental Committee on Administration of Justice and Legal Affairs, Mr. Abdikadir, and the intense interest that Members of the House have demonstrated in making sure that this process goes ahead is remarkable. Having said that, I, therefore, would like to suggest that instead of some of us fighting for either a position which is supporting so as to lose or opposing so as to lose as well, let us have a win-win situation where we support this Motion



with a firm amendment. That way, we would have created a way forward.

Mr. Speaker, Sir, I have given notice of an amendment to this Motion, on the names on this list. When I gave that notice, I was informed by more or less the same reasons that have been advanced by the remarks by Mr. M. Kilonzo when we were in a Kamukunji. He said that he was tired and he had served this country so faithfully.

I said that probably he was speaking on behalf of his eight colleagues. Why can we not thank them and tell them that they can now rest and we get another able team of Kenyans, who can lead the process in this House? When I look at the list proposed by the Leader of Government Business, I also am informed by the fact that we find that there are Members of the House Business Committee (HBC) and the expanded Cabinet.

Having been informed by that, I want to inform the hon. Members that the proposals that I have made here--- I am particularly disappointed by the remarks made by the Leader of Government Business, His Excellency, the Vice-President. I was informed by Mr. Midiwo and Mr. Thuo, when we were looking at this list so that we could amend it at around 3.00 p.m., that the Vice-President had allowed the three of us to sit down and make an improvement, and the list would carry the day. Allow me to, therefore, read out the amended list as a result of consultations by the two Chief Whips and myself.

**Mr. Speaker:** Order, Dr. Khalwale! If you are going to be moving an amendment, then you will read the amendment and not necessarily a list. You will read out the text incorporating the proposed amendment.

**Dr. Khalwale:** Thank you, Mr. Speaker. Most obliged.

Mr. Speaker, Sir, I beg to move the following amendment:-

THAT, the list of names of Members of Parliament intended for the Parliamentary Select Committee laid on the Table this afternoon on 16th December, 2008 be amended by deleting the following names:-

Hon. Kiraitu Murungi, MP

Hon. Prof. Ongeru, MP

Hon. Beth Mugo, MP

Hon. David Musila, MP

Hon. J. Kiuna, MP

Hon. Musalia Mudavadi, MP

Hon. Sally Kosgey, MP

Hon. Jeffa Kingi, MP

Hon. Mutula Kilonzo, MP

Hon. Aden Keynan, MP

Hon. Franklin Bett, MP

Hon. Najib Balala, MP

Hon. James Orengo, MP

Hon. Moses Wetangula, MP

Hon. Wiliam Samoei, MP

Hon. J. Kioni, MP; and replacing them with the following names:-

Hon. Abdikadir, MP

Hon. K. Kilonzo, MP

Hon. Mutava Musyimi, MP

Hon. Isaac Ruto, MP

Hon. Hassan Joho, MP

Hon. Olago Aluoch, MP

Hon. Eugene Wamalwa, MP

Hon. Hassan Abdirahman, MP  
Hon. Walter Nyambati, MP  
Hon. Joseph Lekuton, MP  
Hon. G. Imanyara, MP  
Hon. Chris Okemo, MP  
Hon. Prof. Kamar, MP  
Hon. Gideon Mung'aro, MP  
Hon. C. Kilonzo, MP  
Hon. David Koech, MP

Mr. Speaker, Sir, you will notice that this replacement has had an effect of affecting some Members on the original list who are not Cabinet Ministers and also those who are not members of the so-called "Serena Team". The reason we made this arrangement as a proposal is that we wanted to take care of special interests that include party affiliation and regional balancing.

I beg to move the amendment and request Mr. K. Kilonzo to second.

**Mr. K. Kilonzo:** Mr. Speaker, Sir, I rise to second this amendment. I support this amendment on the following reasons.

One, the Serena Team has done a good job. We want to agree for the first time in this Parliament to distribute responsibilities. We are a total of 222 Members and those appointed in any position must also realise that they are just first among equals. All hon. Members can do the job they are asked to do in this august House and to the nation.

Secondly, Mr. Speaker, Sir, out in the public domain, the perception is that a majority of Members of Parliament do not know what they are doing in this House. They are just sleeping. It is time to appreciate---

**The Assistant Minister for Foreign Affairs** (Mr. Onyonka): On a point of order, Mr. Speaker, Sir. I need your guidance. Since Mr. K. Kilonzo has been named as one of the interested parties, is it in order for him to second the amendment?

*(Applause)*

**Mr. Speaker:** Mr. Onyonka, it is in order for Mr. K. Kilonzo to contribute to the Motion of amendment!

Mr. K. Kilonzo, please, proceed!

**Mr. K. Kilonzo:** Thank you, Mr. Speaker, Sir, for informing the hon. Member---

**Mr. Chepkitony:** On a point of order, Mr. Speaker, Sir. Is it in order for the hon. Member to say that a majority of Members in this House are sleeping?

**Mr. Speaker:** I did not hear him say that!

**Mr. K. Kilonzo:** Mr. Speaker, Sir, I mentioned that it is the perception of the public. The hon. Member did not understand what I said.

**Mr. Speaker:** Mr. K. Kilonzo, I heard you correctly!

**Mr. K. Kilonzo:** Thank you, Mr. Speaker, Sir. Finally, as I sit down, I would like to ask my colleagues to appreciate that we have come a long way, as a House, and we want leaders of political parties to remember that they need to consult with other Members. Back Benchers are here as party Members and we believe we love this country as much as they do.

Mr. Speaker, Sir, with those few remarks, I beg to second.

*(Question of the amendment  
proposed)*

**Mr. Speaker:** Mr. Murungi, please, proceed!

**The Minister of State for National Heritage and Culture** (Mr. ole Ntimama): Thank you, Mr. Speaker, Sir---

**Mr. Speaker:** Order, Mr. ole Ntimama! Mr. Murungi stood up ahead of you. So, he caught the Speaker's eye earlier than you did. I know that I ought to respect age but the rules of this House and the practice of it say that whoever catches the Speaker's eyes first, has the Floor first.

Proceed, Mr. Murungi!

**The Assistant Minister for Higher Education, Science and Technology** (Dr. Mwiria): On a point of order, Mr. Speaker, Sir. It depends on who stands first. But is it possible that you can discriminate against the aged, because they cannot stand up as fast as the younger ones?

*(Laughter)*

**Mr. Speaker:** Order, Dr. Mwiria! You are out of order! I have not discriminated against hon. ole Ntimama!

I have only followed the practice and rules of this House that whoever catches the Speaker's eye first, has the floor First! If hon. Murungi wishes to respect age because hon. ole Ntimama was competing with him and could not get to his feet as fast, he may do so!

**Dr. Nuh:** On a point of information, Mr. Speaker, Sir.

**Mr. Speaker:** You are out of order, Dr. Nuh!

**The Minister for Energy** (Mr. Murungi): Mr. Speaker, Sir, in our traditions, we really respect the *wazees*. If the Speaker could recognize me after *Mzee* ole Ntimama, I would give---

**Mr. Speaker:** Order, hon. Murungi! You do not give any conditions to the Chair, nor directions on how he should conduct the business of the House!

*(Laughter)*

Proceed, Mr. ole Ntimama!

**The Minister of State for National Heritage and Culture** (Mr. ole Ntimama): Thank you very much, Mr. Speaker, Sir. I want to reiterate the importance of Constitution making. We have said that it is a serious matter. We have said that it is an important matter. The country cannot move at all without the principle law.

Mr. Speaker, Sir, before I go on, I want to thank hon. Murungi and my Professor here. Maybe, they have a reason for allowing me to speak-- A much more closer reason.

Mr. Speaker, Sir, I agree that not so many Cabinet Ministers should actually be in the Committee. But I think that some of them should be in it to balance and help hon. Karua to start up this process and get it sailing! I do not think any group should be left out. Cabinet Ministers, hon. Members, the group that the young cardinal instituted---

But, Mr. Speaker, Sir, I have got one important thing, and I hope hon. Members will listen to me. The Bomas Draft was actually destroyed by the Executive. It is Cabinet Ministers, led by the then Vice-President and Minister for Home Affairs who came through the door of Bomas of Kenya and ordered everybody out! That was the end of Constitution making and the Bomas Draft. It is actually the Executive who killed it! So, we must be cautious which Members of the Cabinet go in there. But we need a group of Members of Parliament here who are reasonable, and who will be able to put things together, without really being out of control.

One other thing, Mr. Speaker, Sir, is that, during the colonial advent when the white men came to this country, it is my community - the Maasai - that suffered most!

*(Applause)*

We lost a million acres! We never got an inch or an acre back, when the white men left this country! That is discrimination extra-ordinary! That is marginalisation extra-ordinary! That is being put in the periphery extra-ordinary!

Mr. Speaker, Sir, we are still asking for justice up to today. We have never got anything back; not even an acre! It was given to other people! The land of the Maasai is still disappearing and diminishing even today!

**An hon. Member:** Mau!

**The Minister of State for National Heritage and Culture** (Mr. ole Ntimama): You can say that again.

*(Laughter)*

Of course, the Mau belongs to the Maasai because they protected it. But many people are now suffering down below, because they have no water. Their livestock are dying. That is the basis of their economy! Can you imagine that some people say: "We are going to be here forever!"

Mr. Speaker, Sir, I must say that the Maasai, not necessarily Mr. ole Ntimama, must be included in this Constitution Review Committee!

*(Applause)*

I must say that the Maasai, and not necessarily Mr. Ole Ntimama, must be seen in this constitutional committee. This is not tribal or regional, but I think it is right that they be represented here if, indeed, we are going to talk about land. If we want to stop all these things, then people must get fairness. If you want to stop problems, then people must get justice. We are the most mistreated people in this country by the black man. It is true that the black man is the worst colonialist. When he sits on you, he does not even let you breath. He kills you forever! Now we have no teachers or education. I think somebody should be there to claim justice.

*(Applause)*

Mr. Speaker, Sir, when you remove Maj-Gen. Nkaiserry just because---

**An hon. Member:** He is there!

**The Minister of State for National Heritage and Culture** (Mr. ole Ntimama): Is he still there?

*(Laughter)*

**An hon. Member:** A Maasai is still there! There is a list he was not deleted from!

**The Minister of State for National Heritage and Culture** (Mr. ole Ntimama): Mr. Speaker, Sir, if Maj-Gen. Nkaiserry is there--- But I did not hear my friend, Dr. Khalwale, mentioning his name! When we come to discuss matters in this House concerning the marginalised groups like us, then you must be considerate, because this country can never be one if other people are discriminated against and not given their rights.

**Mr. Speaker:** Order, hon. Members! Before we take further contributions, I think it is appropriate that the Chair helps to clarify the matter that is now before the House.

The Motion of amendment has been properly, lawfully and legitimately moved by Dr.

Khalwale, but there are issues that hon. Members need to note. These are issues that pertain to the practice and traditions of the House. What has previously happened, and is on record, is that in business of this nature, where a Select Committee, or any Committee at all, of the House is established, the membership thereof is generated by the House Business Committee (HBC).

There is a presumption that the HBC would have taken into account presentations by various parliamentary political parties, as exist in Parliament. The HBC would also have taken into account presentations made on behalf of those political parties by the respective Party Whips. That is then presumed to be the position as at where we are. But note, hon. Members, that if an amendment is proposed, then that amendment must comply with the practice which I have set out and, indeed, the spirit and principle embraced by the Standing Orders in as much as those amendments must be such that they still reflect the relative strengths of the various political parties that constitute Parliament. We have evaluated the proposed amendment and it falls within that principle, save for the fact that the Chair is not certain as to whether or not this has been brought to the attention of the HBC and the Whips of the respective parties. So, please, bear that in mind!

**Dr. Khalwale:** On a point of order, Mr. Speaker, Sir. The House will remember when I was moving this Motion of Amendment, I said that before we settled on those names, the two Government Whips actually informed me that they had a session with the Leader of Government Business, who had confirmed at around 3.00 p.m., that if we settled on a list that will reflect the party strengths in this House, then they would have no problem with it. So, I am just wondering, does this, therefore, amount to the fact that we consulted the Chief Whips and involved them and the House Business Committee, in view of the position of the Leader of Government Business?

**Mr. Midiwo:** On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** Order, Mr. Midiwo! From the directions that I have given if, indeed, Dr. Khalwale you complied with those broad guidelines, then the proposed amendment is lawful and legitimate.

*(Applause)*

**Mr. Midiwo:** On a point of order, Mr. Speaker, Sir. I wish I had spoken before you made the ruling that you have just made. I want to clarify the point being made by Dr. Khalwale, that we participated in the making of the list of his amendment. We are Members of the House Business Committee. I am the Whip for ODM and the list before you for ODM is mine. I do not know if hon. Thuo could have done it differently. All we know is that Dr. Khalwale informed us of his intention to amend the list, but he did not consult us. That is very important because this is going on record and it is a very important matter.

*(Mr. Speaker consulted with  
the Clerk-at-the-Table)*

**Mr. Speaker:** Hon. Midiwo is on a point of order. Will you proceed!

**Mr. Midiwo:** Mr. Speaker, Sir, the point that I am raising is that, I have no idea about the list as read by Dr. Khalwale. It is not my list and I do not want to be part of it, because I disagree with it.

*(Applause)*

**Mr. Thuo:** On a point of order, Mr. Speaker, Sir. I rise to clarify and associate myself with the remarks made by hon. Midiwo. It is true that we did have a meeting with Dr. Khalwale, at

which he explained to us his intentions.

It is our role to know what he may be proposing to do. We are not party to the writing of those particular names. However, going beyond that, even if we were, we cannot constitute ourselves into the House Business Committee. So, to the extent that you ruled that there is a requirement for the House Business Committee to have been consulted, then clearly, it fails on that score.

**The Minister for Lands** (Mr. Orengo): On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** Order, Mr. Orengo! What is it, Mr. Bifwoli?

**Mr. Bifwoli:** On a point of order, Mr. Speaker, Sir. Would I be in order to suggest that this Motion be withdrawn, given the fact that the Cabinet in which I belong, the House Business Committee and even the Members of Parliament are divided? We are handling a very sensitive matter. Constitution making is not something that should be rushed through. During the Ninth Parliament, we were rushed through and we never got a new Constitution. I would plead that we withdraw this Motion and come back tomorrow.

*(Applause)*

**Mr. Speaker:** Order, Mr. Bifwoli! You would be out of order if you make that proposal, because our rules do not permit it.

**The Minister for Lands** (Mr. Orengo): On a point of order, Mr. Speaker, Sir. The Chair or the House should not be seen to be dragged into a situation which has no business with the Business which is before the House. An amendment has been moved, and you have already proposed the Question of that amendment. Would I be in order to ask the Chair that we take a vote on that amendment, so that we can move forward?

**Mr. Speaker:** Yes, it is my wish to make progress.

*(Mr. Kiunjuri stood up  
in his place)*

**Mr. Speaker:** What is it, Mr. Kiunjuri? Is it a point of order? You have already made a contribution on this matter.

**The Assistant Minister for Water and Irrigation** (Mr. Kiunjuri): Mr. Speaker, Sir, I rise on a point of order.

Is it in order for us to continue with this debate, having read the mood of hon. Members? Standing Order No.21(1) provides as follows:-

"A Member who wishes to postpone to some future occasion the further discussion of a question which has been proposed from the Chair may claim to move "That, the debate be now adjourned," or, in the Committee of the Whole House "That, the Chairman do report the progress."

Mr. Speaker, Sir, this is at your discretion, but we can still use our Standing Orders to enable us go and consult, as we did with the Constitution of Kenya (Amendment) Bill that we passed this afternoon, because this is a weighty matter. It is about the Constitution of this country. We really want to do it without doubt that the Committee is properly constituted.

I would beg that we agree that this matter is important and adjourn this debate up to tomorrow, so that we can have ample time to consult and pass this Motion unanimously, without anybody feeling that his or her wish was not respected.

**Mr. Speaker:** Order! Are you moving a Motion of adjournment? If you are, under what Standing Order?

**MOTION FOR ADJOURNMENT  
OF DEBATE**ADJOURNMENT OF DEBATE ON  
PARLIAMENTARY SELECT  
COMMITTEE ON REVIEW  
OF THE CONSTITUTION

**The Assistant Minister for Water and Irrigation** (Mr. Kiunjuri): Mr. Speaker, Sir, I beg to move a Motion for adjournment of debate under Standing Order No.21(1). Standing Order No.21(1) says:-

"A Member who wishes to postpone to some future occasion the further discussion of a question which has been proposed from the Chair may claim to move "That, the debate be now adjourned," or, in the Committee of the Whole House "That, the Chairman do report the progress."

Mr. Speaker, Sir, having said that, I beg to move:-  
THAT, debate on the Motion be adjourned.

**The Minister for Lands** (Mr. Orengo): On a point of order, Mr. Speaker, Sir. We are getting a log jam. We have three Motions before the House. Even Mr. Kiunjuri has not moved a Motion amending any Motion. Now, if we continue on that road, then we are trying to create what in the United States of America is called "filibuster", but it should be on a substantive Motion before the House.

The main Motion before the House is the one that was moved by the Leader of Government Business. There is an amendment to that Motion. The practice is that a Motion of that nature should be dealt with expeditiously, so that Parliament can get on with the Business that is before it. If the original Motion is not acceptable to the House, then we can move forward.

Mr. Speaker, Sir, I do not think the amendment Motion is a matter which should be adjourned until tomorrow. We can move a vote on the Motion of the amendment and then move a Motion to adjourn the substantive Motion. So, I think we are moving ourselves into a log jam. In my history in this House, I have never seen Business being conducted in such a fashion.

**Mr. Speaker:** Order, hon. Members! Hon. Orengo, your concern has some merit in it. To this extent, that as at where we are, we have three Motions, if you like. There is a Motion which was moved by the Leader of Government Business, which is Order No.8 on the Order Paper. Lawfully and rightfully so, there is a Motion for amendment which, again, is within the provisions of the Standing Orders. Similarly, the Motion which has now been moved by Mr. Kiunjuri is legitimate and within the provisions of the Standing Orders, and in particular Standing Order No.21 which Mr. Kiunjuri has cited. It provides that "a Member who wishes to postpone to some future occasion the further discussion of a question which has been proposed from the Chair may claim to move that the debate be now adjourned", which is what Mr. Kiunjuri is doing. I have proposed the Motion for amendment and Mr. Kiunjuri is within the law and indeed, within the practice of this House and within the Standing Orders to move that Motion. So, I will take a seconder, if there is any.

**The Assistant Minister for Lands** (Mr. Bifwoli): Mr. Speaker, Sir, I stand to second the Motion moved by Mr. Kiunjuri on the basis that we appear divided. We appear as if we have not even made up our minds. There was no proper consultation before the original list was drawn up. We are setting up a Select Committee which will be in charge of constitution making in this country. If we are going to start that job and yet we are not agreeing, we will end up the way the

Ninth Parliament ended.

With those few remarks, I beg to second because we want to have a new Constitution.

*(Question proposed)*

**The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government** (Mr. Githae): Mr. Speaker, Sir, because of what is happening in this House, it is clear that when Dr. Khalwale was moving his amendment---

**The Vice-President and Minister for Home Affairs** (Mr. Musyoka): On a point of order, Mr. Speaker, Sir. I really did not wish to interrupt Mr. Githae. However, this Motion of Adjournment should have certainty with it. Normally, we adjourn after a certain time or *sine die* as I was, hopefully, going to move tonight. Now, in the absence of clarity, are we adjourning for 30 minutes or another day? Perhaps, Mr. Kiunjuri would wish to specify so that we have a definite time period. Probably, he needs to amend his own amendment!

*(Loud consultations)*

**Mr. Speaker:** Order, hon. Members! The Vice-President and Leader of Government Business has a concern that on the face of it appears to be legitimate. However, as things stand now, the next sitting day for this House, before the Motion of Adjournment which is on the Order Paper is disposed of, is that this House will sit on the next day, which is tomorrow. That is how it is. That is what the Standing Orders say and it is what we do every day.

*(Applause)*

Hon. Members, if you look at Standing Order No.21, it provides that the Motion would be that the debate be now adjourned. That is what

Mr. Kiunjuri has done. So, it is the next sitting day. For the avoidance of all doubt, I will allow Mr. Kiunjuri to indicate to when.

**The Assistant Minister for Water and Irrigation** (Mr. Kiunjuri): Mr. Speaker, Sir, you have said it. Already I know in the Supplementary Order Paper there is a Motion of Adjournment of the House where we will go for recess.

Mr. Speaker, Sir, however, the adjournment I am seeking now does not recognise that Motion that is already before this House. So, any adjournment to be done is to the next sitting which you have ably clarified is tomorrow morning.

**Mr. Speaker:** Order, hon. Members! It is the opinion of the Chair that this matter is sufficiently ventilated and I will now put the Question.

*(Question, that the debate be adjourned put and agreed to)*

**The Vice-President and Minister for Home Affairs** (Mr. Musyoka): Mr. Speaker, Sir, in view of that decision by the House which I sincerely respect, it obviously then means that we have to continue with these consultations. Therefore, the House Business Committee (HBC) will sit immediately upon the rise of the House so that we can begin to ventilate. Mr. Speaker, Sir, any hon. Member with any interest in this matter, I am sure will want to be part of the consultation process. But first of all, the HBC naturally needs to meet so that we can hopefully then move the next Adjournment Motion tomorrow morning.



**ADJOURNMENT**

**Mr. Speaker:** Order, hon. Members! That then brings us to the end of business for today.  
Hon. Members, I, therefore, adjourn the House until tomorrow morning, Wednesday, 17th  
December, 2008 at 9.00 a.m.

The House rose at 9.23 p.m.