

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 26th April, 2001

The House met at 2.30 p.m.

*[Mr. Deputy Speaker in the Chair]*

## PRAYERS

## PAPER LAID

The following Paper was laid on the Table:-

The Report of the Departmental Committee on Energy, Communications and Public Works on the operations of the Kenya Roads Board.

*(By Mr. Mbela)*

## NOTICES OF MOTIONS

### CONSTRUCTION OF DAMS IN ASAL AREAS

**Mr. Munyao:** Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion:-  
THAT, in view of the changing patterns of rainfall in the country, being aware of the famine which affects Kenyans time and again, taking into consideration the recent rationing of water in major towns and some urban areas; this House calls upon the Government to construct at least, two dams in each constituency in the arid and semi-arid areas, and also areas in which the Tana and Athi rivers flow, in order to provide constant water supply for domestic and irrigation purposes.

### AMENDMENT TO THE IMMIGRATION ACT

**Mr. Shidiye:** Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion:-  
THAT, in view of the fact that the world is slowly becoming a global village, realising the need to facilitate travel for Kenyans to seek employment and business opportunities in foreign countries, noting that certain countries have strict labour and economic laws against migrants, this House urges the Government to introduce an amendment to the Immigration Act to provide for dual citizenship.

### ESTABLISHMENT OF HEROES FUND

**Dr. Ochuodho:** Mr. Deputy Speaker, Sir, I beg to give notice of the following Motions:-  
THAT, in view of the continued suffering of the country's founding fathers; this House urges the Government to establish a Heroes Fund to cater for the basic needs and well-being of the heroes and heroines and their immediate families.

### LEAVE TO INTRODUCE A BILL TO AMEND SECTION 5 OF THE CONSTITUTION

THAT, this House do grant leave for the introduction of a Bill for an Act of Parliament, entitled the Constitution of Kenya (Amendment) Bill, to amend Section 5 of the Constitution to require the winner of a presidential election in the first run to attain an overall majority of at least 50 per cent of the total valid votes cast, in addition to the 25 per cent vote in at least five provinces, and to facilitate the candidate with a higher number of votes during a run-off to be declared the winner.

ADOPTION OF KENYA ROADS  
BOARD OPERATIONS REPORT

**Mr. Mbela:** Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion:-  
THAT, this House adopts the Report of the Departmental Committee on Energy, Communications and Public Works on the operations of the Kenya Roads Board.

**ORAL ANSWERS TO QUESTIONS**

*Question No.109*

SUPPLY OF LIGHTNING ARRESTORS TO SCHOOLS

**Dr. Kulundu** asked the Minister for Education why the Ministry has failed to supply lightning arrestors to six schools in Navakholo Division, Kakamega District, as promised in 1998.

**The Assistant Minister for Education, Science and Technology** (Mr. Awori): Mr. Deputy Speaker, Sir, I beg to reply.

We have not failed to supply lightning arrestors to the six schools in Navakholo Division. In fact, we have supplied.

**Dr. Kulundu:** Mr. Deputy Speaker, Sir, I have a lot of respect for this Assistant Minister, but there is a worrying trend where Ministries give answers which are very reassuring, only for them not to follow them up until they are repeatedly prompted.

Since the Assistant Minister says that he supplied lightning arrestors to these schools is he aware that, in one of the schools, a woman was struck dead by lightning on 17th March, this year? If, indeed, he supplied the arrestors, when was this done? Is he sure that those arrestors have been installed in the schools?

**Mr. Awori:** Mr. Deputy Speaker, Sir, I do not know in which of the six schools a woman was killed by lightning. But I know that we supplied lightning arrestors to Kochwa Primary School in December, 1999, and the headmaster was so happy that he wrote to us, thanking us for having done so and sent a copy of the letter to the hon. Member.

**Mr. Sifuna:** Mr. Deputy Speaker, Sir, arising from the Assistant Minister's reply, where he has indicated that they have supplied six arrestors to schools in Navakholo Division, could he detail the names of the schools they provided with the lightning arrestors, on what date, month and year?

**Mr. Awori:** Mr. Deputy Speaker, Sir, with great pleasure. We did first supply these items on 7th December, 1999 to Kochwa Primary School. As I said, I happen to have a letter here, from the headmaster, thanking us very much. He sent a copy of this letter to the hon. Member.

On the 14th of December, 2000, we sent lightning arrestors to the following schools:-

Navakholo Primary School, Namndhura Primary School, Ukhavalo Primary School, Ivakale Primary School and Ileho Primary School. These were sent and received by the officials of the Ministry of Roads and Public Works who are responsible for installing them.

**Mr. Murathe:** Mr. Deputy Speaker, Sir, last March, more than 22 school children in Amagoro Constituency, Teso District were killed by lightning. Could the Assistant Minister tell the House what proactive action he is going to take to identify the lightning prone areas and take corrective action before tragedy strikes in the same circumstances?

**Mr. Awori:** Mr. Deputy Speaker, Sir, headmasters and education administrators know the areas which are susceptible to lightning and they take the initiative to come and request for the supply.

**Mr. Anyona:** Mr. Deputy Speaker, Sir, the issue of lightning is a horrifying experience that hangs over the heads of our children, parents and everybody else. Such a serious matter cannot be handled in a casual manner by the Government and the Ministry of Education in particular. I brought a similar Question here, and the Assistant Minister promised to supply some lightning arrestors to Kitutu-Masaba, but has not done so.

Could the Assistant Minister tell us whether there is a policy in place that deals with the issue and, if there is not, could he also ensure that a policy is put in place, where the initiative is by the Government and not children, parents or teachers?

**Mr. Awori:** Mr. Deputy Speaker, Sir, the lightning arrestors come under the same policy that we have in this country, where education is a co-operative effort between the parents, the community and the Government. In the same way, we supply lightning arrestors under that arrangement. I admit that there is no written down policy on supply of lightning arrestors. But we are conscious of the welfare of the children, and we do co-operate with the parents to supply. I will have to check on the promise that I gave my friend Mr. Anyona about schools in his constituency. If this has not

been done, I will follow it up.

**Dr. Kulundu:** Mr. Deputy Speaker, Sir, the Assistant Minister seems to have been misled by his officers on the ground. Three of the names of the schools he has read are not even in Navakholo Division. Ileho Primary School is in Shinyalu. A woman was killed at Kharanda Primary School on 17th March, and Kharanda School is one of the schools that I had requested the Ministry to assist. What action is the Assistant Minister going to take against the officers on the ground who have misled him? They seem to have misused lightning arrestors that were meant for Navakholo Division.

**Mr. Awori:** Mr. Deputy Speaker, Sir, if the officers have, indeed, misled me, I will have to be guided by the policy as to what disciplinary measures to take against them. I cannot say what disciplinary action it will be, but there will be some action taken. I will ensure that we honour the promise we gave the hon. Member, so that if one or two lightning arrestors went to Shinyalu, I will ensure that they go to Navakholo Division.

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

**Dr. Ochuodho:** Mr. Deputy Speaker, Sir, I have not received a written reply.

*Question No.214*

SESSIONAL PAPER ON BROADCASTING POLICY

**Dr. Ochuodho** asked the Minister for Information, Transport and Communications:-

(a) what the current status of applications for nationwide broadcast licences by Nation, KTN and Citizen media houses is; and,

(b) when he intends to present to the House a Sessional Paper on broadcasting policy.

**The Minister for Information, Transport and Communications** (Mr. Mudavadi): Mr. Deputy Speaker, Sir, I would like to apologise to the House and Dr. Ochuodho, but I signed copies of the written replies so that they can get here. I apologise if it has not got to him on time.

I beg to reply.

(a) The Government has presently put a temporary hold on the assignment of frequencies for already licensed broadcasters such as the Nation, KTN and Citizen for nationwide coverage, and the issuance of new television and radio licences until the proposed policy on television and radio broadcasting is in place. I am happy to report that this is close to being finalised.

(b) The Sessional Paper on Broadcasting Policy is under preparation and will be presented to the House for debate after we have done the necessary consultations with media stakeholders so that we can take and consider their input. We hope to finalise this within the next three months.

**Dr. Ochuodho:** Mr. Deputy Speaker, Sir, I am very surprised to hear almost the same answer the Minister gave during the last Session; that they had put on hold the issuing of licences. But since the Minister made that commitment, at least two stations, *BBC* and *Reuters* have been issued with licences. Could the Minister tell us on what basis he is continuing to give licences on the one hand and denying, on the other, licences to other operators?

**Mr. Mudavadi:** Mr. Deputy Speaker, Sir, as regards the issue of *Reuters* and *BBC*, as a matter of fact, they had been given the licences much earlier. What I did was simply to extend what had been granted earlier. However, I maintain the position, and I am very clear that no new licences have been granted. We are very close to broadening the discussions both with the media stakeholders and, indeed, to be able to present a Sessional Paper in this House so that we can now have a very clear and transparent policy for everybody to understand in so far as the media is concerned.

**Mr. Wamae:** Mr. Deputy Speaker, Sir, could the Assistant Minister explain why a new radio station called *Coro* owned by KBC has been established in Nyeri since you made the statement, to compete against *KAMEME F.M.* radio station?

**Mr. Mudavadi:** Mr. Deputy Speaker, Sir, *Coro* is still part of the Kenya Broadcasting Corporation which has a lot of frequencies which they had blocked over the years. They simply activated part of that frequency under the trade name *Coro*.

**Mr. Imanyara:** Mr. Deputy Speaker, Sir, yesterday we saw on television and this morning read in the newspapers, about a horrifying state where police officers and other security officers raided the offices of an existing media house and used the most brutal method; attacking the owners and subjecting them to the most inhuman and cruel punishment before they were even taken to court. This is a situation where *Citizen* radio and television have been granted a licence. Is the Minister satisfied that Mr. Macharia and *Citizen* media were properly treated in accordance with the laws of Kenya in relation to the withholding of the licence of *Citizen* media yesterday? Could he satisfy the House that all the requirements relating to cancellation of licences have been followed in respect of the closure of the station?

**Mr. Deputy Speaker:** Order, Mr. Imanyara! You will appreciate the fact that Mr. N. Nyagah had asked the Minister to make a comprehensive Statement on that matter. But if the Minister is prepared to answer your Question now and deal with Mr. N. Nyagah's Question later, it is up to him.

**Mr. Mudavadi:** Mr. Deputy Speaker, Sir, I would rather deal with that Question when responding to Mr. N. Nyagah's request. He has demanded a comprehensive Statement on that matter and I intend to give it this evening during Zero-Hour, in response to that particular query.

**Mr. Munyao:** Mr. Deputy Speaker, Sir, we would like the Minister to take this House seriously. He should know how much this House respects him as the Deputy Leader of Government Business. We are now engaged in constitutional reforms and we will require the country to know what is going to be done. We will require civic education all over Kenya and this will not be done by KBC. I am happy to hear the Minister refer to it as "Kenya Broadcasting Corporation". In my place, we call it "Kenya Bila Chakula." Could the Minister allow these other media houses to get licences to broadcast in other parts of the country, because they will be required to do so when we will be conducting civic education throughout the country?

**Mr. Mudavadi:** Mr. Deputy Speaker, Sir, the issue of ensuring that we have a vibrant media, with a broad outreach, is absolutely essential, not only during the constitutional review process but throughout our lives and operations as a nation. As I said, I will endeavour to speed up this process so that we can regularise and sort out the issues that have been an impediment to having proper broadcasts across the board and throughout the country.

**Dr. Ochuodho:** Mr. Deputy Speaker, Sir, it is very unfortunate that the Government is treating frequencies like their personal property. It has forgotten that these frequencies do not even belong to Kenya! By law, they belong to the International Telecommunications Union. The Government holds them at the behest of the International Telecommunications Union. Could the Minister tell this House why KBC should be given frequencies "to keep" while there are people who need those frequencies and they are not being given to them immediately? Why is it that KTN, Nation and Citizen broadcasting stations are not given those corresponding frequencies to operate in other towns of this country?

**Mr. Mudavadi:** Mr. Deputy Speaker, Sir, as I said, there are discrepancies in this matter and I would like the House to understand that we have just come from the era of one broadcasting station in the Republic and the aspect of liberalising without the proper legal framework--- When I will be presenting a Sessional Paper here, I will be seeking the input of the House and other Kenyans on how we can clearly define a mechanism through which we can allocate frequencies in a fairer manner.

**Mr. Deputy Speaker:** Next Question, by Mr. Omamba!

*Question No.216*

ACREAGE OF GOVERNMENT LAND AT OYANI FARM

**Mr. Omamba** asked the Minister for Agriculture:-

- (a) what the acreage of Government land at Oyani Agricultural Farm in Kanyamkago, Uriri Constituency is; and,
- (b) whether he could provide statistical breakdown of the number of dairy cattle reared on the farm from 1991 to the year 2000.

**The Assistant Minister for Agriculture, Livestock and Rural Development (Mr. J.D. Lotodo):** Mr. Deputy Speaker, Sir, I beg to reply.

(a) Oyani Agricultural Farm in Kanyamkago, in Uriri Constituency, covers an area of 92 hectares.

(b) The following is a statistical breakdown of the number of dairy cattle reared on the farm from 1991 to the year 2000: 1991-83; 1992-53; 1993-51; 1994-48; 1996-31; 1997-33; 1998-25; 1999-12; 2000-20. That gives a total of 258 Ayrshire cows.

**Mr. Omamba:** Mr. Deputy Speaker, Sir, that big land has been dormant for quite some time. There are many individual plots of maize and beans located there. Who are the owners of those plots?

**Mr. J.D. Lotodo:** Mr. Deputy Speaker, Sir, this is Government land under the Agricultural Development Corporation (ADC). There was a time when the Ministry decided that some of the huge tracts of land under ADC should be cleared. But since there was no manpower, they allowed the ADC staff to grow their crops in some of these farms.

**Mr. Deputy Speaker:** So, your answer is that those little farms belong to the staff of ADC?

**Mr. J.D. Lotodo:** Yes, but that was on a temporary basis. The Ministry used that method to clear that farm for other purposes.

**Mr. Omamba:** Mr. Deputy Speaker, Sir, for all those years, this farm was being cleared. If they cannot make use of it, should they not surrender it to its original owners who gave it free of charge?

**Mr. J.D. Lotodo:** Mr. Deputy Speaker, Sir, we could not surrender it because it is Government land. Part of that land was given to Maseno University and I am sure the students are benefiting from it.

**Mr. Omamba:** Mr. Deputy Speaker, Sir, could the Assistant Minister tell us what happened to the animals which were in this farm? We suspect that these animals have been grabbed by Government officers!

**Mr. J.D. Lotodo:** Mr. Deputy Speaker, Sir, I would like to assure the hon. Member that nobody has grabbed those animals. There are about 258 hybrid animals of Friesian breed which were transferred there from Oyoni Farm. Out of this number, 61 were sold between 1991 to date. We had to translocate about 35 animals from that farm to Oyoni so that the piece of land left is given to the University for research purposes.

**Mr. Deputy Speaker:** Next Question, Mr. Mwakiringo!

*Question No.131*

HARVESTING OF MANGROVE TREES

**Mr. Mwakiringo** asked the Minister for Environment:-

- (a) why the residents of Lamu are denied permission to harvest mangrove trees for export; and,
- (b) what urgent measures he is taking to ensure that harvesting of the same is allowed.

**Mr. Deputy Speaker:** Anybody here from Ministry of Environment? We will come back to the Question later.

**Hon. Members:** But the Minister was here! How could he disappear?

**Mr. Deputy Speaker:** I think I also saw Mr. Nyenze here.

**Mr. Wamae:** On a point of order, Mr. Deputy Speaker, Sir. Was it in order for the hon. Minister for Environment to walk out when he knew that this Question was coming up? What action are you going to take against him?

**Mr. Deputy Speaker:** Order, Mr. Wamae! If you are asking me what action I am going to take, then you are not rising on a point of order. You are now beginning to instruct the Chair!

*(Laughter)*

**Mr. Kombo:** On a point of order, Mr. Deputy Speaker, Sir. Since the Chair also saw the Minister seated there and walk away while his Question was about to come up, does that not amount to gross misconduct? Should he not be named? I now invite you to name him!

*(Applause)*

**Mr. Deputy Speaker:** Order, hon. Members! When the hon. Minister returns, I will ask him why he left without answering a Question related to his Ministry. At that point in time, you can move that he be named. But for the time being---

**An hon. Member:** There he comes!

*(The Minister for Environment (Mr. Nyenze)  
entered the Chamber escorted by Mr. Mkalla)*

*(Applause)*

**The Minister for Environment (Mr. Nyenze):** Mr. Deputy Speaker, Sir, I apologise for walking out---

**Mr. Deputy Speaker:** Order, Mr. Minister! Really, the Chair cannot emphasize too strongly that both Backbenchers and Ministers should take the business of the House seriously. Mr. Nyenze, you were here in the full knowledge that the Question directed to your Ministry was number three on the Order Paper. No matter what it is that you went to do, it cannot be more important than sitting here to answer that Question. So, you have escaped punishment by the skin of your teeth. Next time, you will pay for it!

**Mr. Anyona:** On a point of order, Mr. Deputy Speaker, Sir. Yesterday, you made a ruling on the issue of Ministers not being able to answer Questions or not being in the House. You directed that the Leader of Government Business should take responsibility for this. It appears that, that has not sunk. Can it be drummed in?

**Mr. Deputy Speaker:** Well, the Leader of Government Business came into the House when we were even into more serious business. When he shows up today, I will ask him to account for this disturbing behaviour.

Proceed, Mr. Nyenze!

*(Applause)*

**The Minister for Environment (Mr. Nyenze):** Thank you, Mr. Deputy Speaker, Sir. I was answering a call of nature; I was in the toilets!

*(Laughter)*

**Mr. Deputy Speaker:** Order, hon. Members! Mr. Nyenze, if that call was so urgent, it only makes sense that you should go to the nearest one which is on the right-hand side!

Proceed!

**The Minister for Environment** (Mr. Nyenze): Mr. Deputy Speaker, Sir, I beg to reply.

(a) The people of Lamu are not harvesting mangrove trees for export because the quantities available can only meet the local demands.

**Mr. Twaha:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the hon. Minister to deceive the House that there are not enough mangrove trees when have abundant amounts in Lamu?

**Mr. Deputy Speaker:** Order, Mr. Twaha! That is not a point of order! You are asking a question! You will get an opportunity to ask a question.

Proceed, Mr. Minister!

**The Minister for Environment** (Mr. Nyenze): Thank you very much, Mr. Deputy Speaker, Sir, for protecting me. You can see how these Members can behave.

(b) The Forest Department of the Ministry of Environment and Natural Resources has designed a plan for the management of mangrove trees for sustainable production of wood and non-wood products. This will result in increased supply of mangrove trees. The export of mangrove trees will resume after the resources are found to be in excess of the local demand.

**Mr. Mwakiringo:** Mr. Deputy Speaker, Sir, Lamu people have been living with these mangrove trees for years. They know how to manage the mangrove trees during times of scarcity and times of plenty. We would like to know what these plans are, which the Government has for management of these mangrove trees. The Coast people in Kwale, Kilifi, Malindi and Lamu use mangrove poles for building their houses. Could we know what these management plans the Government has which the Lamu people have not been applying for years?

**Mr. Nyenze:** Mr. Deputy Speaker, Sir, over the years, the population of mangrove trees has been decreasing and, for them to be harvested at a rate lower than their growth, the Government has to place some ban and some controlled harvesting. That is why harvesting of mangrove trees for domestic use was allowed. But we do not have sufficient mangrove trees for export. That is why the Government banned the export of mangrove poles.

**Mr. Twaha:** Mr. Deputy Speaker, Sir, mangrove trees grow under the sea so the issues of soil erosion, water catchment areas and the usual rainfall patterns being affected do not arise. Could the Minister confirm or deny to this House that all this conservation nonsense is just a way to get money from donors at the expense of the people at the grassroot level? These trees have been harvested from time immemorial and it has actually been proven scientifically that the more you cut them, the better they grow.

**Mr. Nyenze:** Mr. Deputy Speaker, Sir, while not denying the fact that the people of Lamu and Coast Province know how to manage the mangrove, the number of trees have decreased considerably because the population has also been increasing. The Government has to regulate the harvesting so that there is sustainable management and supply of the mangroves.

**Mr. Kamolleh:** Mr. Deputy Speaker, Sir, having been misled by his officers, the Minister is now misleading this House. I would not say that the Minister is ignorant, but I would place the blame on those officers who misled him. We know for sure, as Mr. Mwakiringo says, that right from Lunga Lunga to Kiunga we all use mangrove poles for building. We ensure that they do not get reduced otherwise we will not be able to build houses. We have been doing this for a long time. It is only recently that we were prevented from cutting those mangroves and exporting them to Yemen when we would have been able to get some money, not only for our own use, but also for Kenya's foreign exchange. Could the Minister, once again, confirm or deny whether he really knows the statistics of the mangrove before he says that the Ministry cannot allow people to export?

**Mr. Nyenze:** The Government knows whenever there is a shortage or excess of mangroves. It is the duty of the Government to ensure that people do not, for commercial purposes or otherwise, cut down all the mangroves so that there are no more for domestic use. Mangroves are used for building houses, for firewood and for export. However, unless we control the cutting, there will be a desert.

**Mr. Deputy Speaker:** Mr. Minister, when did you last carry out an inventory of the mangrove forests?

**Mr. Nyenze:** We have the Kenya Forest Masterplan---

*(Loud consultations)*

Mr. Deputy Speaker, Sir, if you protect me from them, I will answer that question.

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

**Mr. Nyenze:** I cannot say exactly when, but we carry out inventories from time to time. If the current diminishing trend continues, there will be no mangroves even for domestic use.

**Dr. Kituyi:** Mr. Deputy Speaker, Sir, if there is a shortage, with diminishing resuscitation of the mangrove forest, the Government can ban harvesting of these trees. Since you have not banned the harvesting of mangroves and there is no national emergency to say that this is a national asset and you cannot export it, in a liberalised market, under what law are you telling people that they can harvest and sell locally, but they cannot harvest and sell abroad?

**Mr. Nyenze:** Mr. Deputy Speaker, Sir, all Government forests are managed by the Ministry and it is its duty to regulate the harvesting so that there will be some for future generations. In this case the mangroves were disappearing at a very high rate because some people decided to cut them. The Government had to impose a ban to prevent further exploitation so that there would be some left for the future generations.

**Mr. Mwakiringo:** Mr. Deputy Speaker, Sir, the ban was imposed on mangrove harvesting by two individuals. One of them was a senior Government officer and the other one a businessman in Lamu. They imposed that ban so that they can monopolise the sale of the mangrove trees. Unfortunately, when that senior civil servant left, he forgot to lift the ban.

**Hon. Member:** Name him!

**Mr. Mwakiringo:** I do not need to name him. This is a KANU Government ploy to impoverish the people of Lamu so that when elections are near you lift the ban, the cutting is done and then you get the votes. When there was a by-election for a councillor, the President came there, lifted the ban and KANU got the votes. Last month the ban was imposed again and people are not harvesting the mangroves. What are you doing about this?

**Hon. Members:** Shame! Shame!

**Mr. Nyenze:** Mr. Deputy Speaker, Sir, I beg to deny what Mr. Mwakiringo is saying because KANU is very popular at the Coast. It does not need to impose or lift a ban to get votes. On the issue of mangroves, there was that ban in order to help the Coast people sustainably harvest the mangroves for a long time to come. This was done with very good intentions, to preserve the mangroves for future generations. If we let this situation go on like that, nothing will be left for future generations. This was done with a good intention and not for political reasons. To my knowledge, there is no civil servant who is involved in this. In case you have the name, I would be happy to get that information to investigate further. I do not know of any civil servant or politician who did that to punish the Coast people.

**Mr. Deputy Speaker:** We will now move on to Questions by Private Notice.

### QUESTIONS BY PRIVATE NOTICE

#### VEHICLE FOR MUTHA POLICE POST

**Mr. Kiminza:** Mr. Deputy Speaker, Sir, I beg to ask the Minister of State, Office of the President the following Question by Private Notice.

(a) Is the Minister aware that Mutha Division of Kitui South is a banditry-prone area and that Mutha Police Post has no vehicle?

(b) When will the Minister avail a vehicle for Mutha Police Post to help in combating banditry activities in this area?

**The Assistant Minister, Office of the President (Mr. Samoei):** Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am aware that Mutha Division is a banditry-prone area and has a motor vehicle registration No. GK F694 which is serviceable. The area is also served by the vehicle attached to Mutomo Police Station and Mutomo District Officer's office. I am also aware that this vehicle has not been in operation for quite some time, but we have since made it serviceable.

(b) Arising from my reply to "a" above, there are no immediate plans to provide an extra vehicle to Mutha Division. However, I have plans to provide the District Officer with a motor vehicle so that the Administration Police personnel can use it to combat this menace.

**Mr. Kiminza:** Mr. Deputy Speaker, Sir, first of all, the Assistant Minister is reading an answer of a copy of which he has not given to me. Secondly, I think the Assistant Minister is telling this House falsehoods. The vehicle Reg. No. GK F694 which was originally for Mutha Police Post was moved to Mutomo Police Station over eight months ago. Therefore, Mutha Police Post which is in the banditry-prone area was left without a police vehicle. What the Assistant Minister is telling me is not factual. The DOs for Mutomo and Mutha have no vehicles. Therefore, it is not possible that the police in Mutha are using those vehicles. Could the Assistant Minister own up and promise to give me a proper answer because this reply is not factual?

**Mr. Samoei:** Mr. Deputy Speaker, Sir, the vehicle mentioned by the hon. Member, which is the same one I mentioned, was not transferred to Mutomo as he claims. The vehicle had been taken for repairs and has since been returned to its station of origin which is Mutha Police Post. I have plans to provide the District Officer, Mutha Division,

with an additional vehicle so that we can assist the police personnel at Mutha Police Post with our Administration Police officers.

**Mr. Kiminza:** Mr. Deputy Speaker, Sir, I think we are not communicating with the Assistant Minister since he may be talking on a different wavelength. When was the vehicle returned to Mutha Police Post?

**Mr. Samoei:** Mr. Deputy Speaker, Sir, this vehicle has been out of Mutha Police Post for the last eight months. The personnel concerned did avail the vehicle to Mutha Police Post last week.

**Mr. Kaindi:** Mr. Deputy Speaker, Sir, areas of Mwingi, and parts of Kitui which neighbour North Eastern Province, are prone to banditry all the time. Could the Assistant Minister consider making special provisions for extra vehicles because these are expansive areas and when you talk about one vehicle, it will not be sufficient to cater for the menace that we are talking about?

**Mr. Samoei:** Mr. Deputy Speaker, Sir, I quite agree with the hon. Member that this is an area that requires more than one vehicle and we are working with that view in mind and with the constraints of the budget also on the other side. So, within the constraints of the budget we have, we will try to provide the number of vehicles we can.

**Mr. Kiminza:** Mr. Deputy Speaker, Sir, the Assistant Minister has owned up and admitted that the DOs, for Mutha and Mutomo respectively, lack vehicles. What immediate steps will he take to make sure that the DOs for Mutomo and Mutha respectively have vehicles immediately because he is not giving a timeframe? When will he provide these vehicles?

**Mr. Samoei:** Mr. Deputy Speaker, Sir, I cannot give a specific timeframe because we are working on a national strategy on how to combat this menace of banditry. I have promised that it is well within my plans to provide the DOs for Mutha and Mutomo respectively with motor vehicles.

**Mr. Deputy Speaker:** Next Question, Mr. Sifuna!

#### CLOSURE OF BUSINESSES IN NAIROBI WEST

**Mr. Sifuna:** Mr. Deputy Speaker, Sir, I beg to ask the Minister of State, Office of the President, the following Question by Private Notice.

(a) Is the Minister aware that Nairobi Provincial Administration ordered the closure of all bars and beer, wines and spirits distributors in Nairobi West on 2nd April, 2001?

(b) Why did the closure of these businesses apply to Nairobi West only?

(c) What are the reasons for the closure of the following business premises:-

(i) Carina Beer Distributors;

(ii) Tarma Beer Distributors;

(iii) B.Q. Services - Wines and Spirits Wholesalers; and

(iv) Masai Land - Wines and Spirits Wholesalers?

**The Assistant Minister, Office of the President (Mr. Samoei):** Mr. Deputy Speaker, Sir, I beg to reply.

(a) Yes, I am aware that Nairobi Provincial Administration ordered the closure of some bars, beer, wine and spirits distributors in Nairobi West on 2nd April, 2001.

(b) The closure of these business premises is not restricted to Nairobi West only. The Task Force on Hygiene and Sanitation of Liquor and Food Handling Facilities constantly undertakes inspection of these premises and businesses in any region of Nairobi found not complying with regulations. Those found not complying with regulations have their premises closed.

(c) The reasons for the closure of the premises are as follows:

(i) Carina Beer Distributors: This proprietor had not changed use of the premises from a residential to a commercial use. This proprietor was using a residential building to run commercial business. He was also operating a bar on the ground floor of the residential flat hence disturbing the tenants and their families.

(ii) Tarma Beer Distributors: The proprietor was found to be operating without a liquor licence and hence it was closed.

(iii) B.Q. Services - Wines and Spirits Wholesalers - The proprietor was operating a bar as witnessed by the presence of seats and crates of beer contrary to the approved plans for a shop. The licence this operator had was for a shop. He had also contravened public health requirements by converting an open space into a bar without approval by the Nairobi City Council.

(iv) Masai Land Wines and Spirits Wholesalers. The proprietor had not changed use of the premises from residential to that of a commercial user. He was also operating a bar on the ground floor of a residential flat, hence disturbing tenants and their families living on the flat.

**Mr. Sifuna:** Mr. Deputy Speaker, Sir, arising from the Assistant Minister's reply, I can assure this House that Nairobi West is one of the most peaceful residential areas in Nairobi. On this material day, the PC, DO and fully-armed regular police went to Nairobi West closing all the bars and yet these people have licences.



**Mr. Deputy Speaker:** Ask your question!

**Mr. Sifuna:** Mr. Deputy Speaker, Sir, I am building it up since he was not there! In Nairobi City Council we have City Council askaris, Judicial officers and also the Public Health officers. Could the Assistant Minister tell us why the PC and a nominated councillor called Jamila, went round closing all the shops irrespective of the kind of business they were running and they were demanding some bribes from the bar owners and from the business community? Could he tell us why the PC himself and the DO went round with regular police and not with City Council askaris?

**Mr. Samoei:** Mr. Deputy Speaker, Sir, I quite agree with the hon. Member that Nairobi West now is a very quiet area since we closed down most of these premises which was not the case before. There is a joint task force between the Provincial Administration and the City Council that was appointed and chaired by the PC himself. This task force has been charged with the mandate of ensuring that all liquor and food handling facilities, that is bars, restaurants, lodgings, butcheries, kiosks, *et cetera* always observe public health regulations among other things. The PC was well within the mandate of that task force in closing down these facilities. Other leaders were there because this task force took this step in response to an outcry from leaders from Nairobi West that the situation of the liquor and bar facilities in that area was running out of hand. It was well within good intentions that this exercise took place.

**Mr. Ojode:** Mr. Deputy Speaker, Sir, we have a Liquor Licensing Board in this country. When you want to operate a bar you have to apply for a licence from this board. Could the Assistant Minister confirm or deny that the closure of those premises was as a result of non-payment of a "protection fee" of Kshs1,000 per bar owner, per day?

**Mr. Samoei:** Mr. Deputy Speaker, Sir, I am not aware of any protection fee or otherwise, levied by anybody within the Provincial Administration or Nairobi City Council. Therefore, I deny.

**Mr. M. Galgalo:** Mr. Deputy Speaker, Sir, while I congratulate the Provincial Commissioner for having closed down bars in the residential areas, what action will the Government take against the officers who had licensed the operation of bars in the residential areas before they were converted into commercial premises?

**Mr. Samoei:** Mr. Deputy Speaker, Sir, occasionally, licences are issued to premises which would otherwise have not been licensed because those applying for licences provide incorrect information. It is during operations like the one that took place in Nairobi West that this is discovered, and immediately, those licences are cancelled.

**Mr. Deputy Speaker:** Order, Mr. Samoei! All those licences are only issued after inspection. I happen to have been a DO1. So, why are those people being issued with licences to operate bars before their premises are inspected?

**Mr. Samoei:** Mr. Deputy Speaker, Sir, sometimes when these persons apply for licences, they do not show the correct premises. What happens is that when such an operation takes place, the licence and the LR. number are compared with the actual places where these bars are found. It is during such times, that we discover the anomalies and we cancel the licences.

**Mr. Sifuna:** Mr. Deputy Speaker, Sir, the Assistant Minister is misleading this House. He is trying to turn Nairobi West into a "Muslim State." As we speak now, the few bars that have already given out Kshs10,000 as a protection fee to Councillor Jamillah Omar to take to the PC are now operating without any changes at all. Could the Assistant Minister tell this House why those premises were given the licences in the first place? Even beer distributors and wines and spirits premises were closed down because they were unable to pay Kshs10,000 as the protection fee to Councillor Jamillah Omar to take it to the PC?

**An hon. Member:** Who is this Jamillah Omar?

**Mr. Sifuna:** Mr. Deputy Speaker, Sir, Councillor Jamillah Omar is a nominated councillor and a girlfriend of the Nairobi PC!

**Mr. Samoei:** Mr. Deputy Speaker, Sir, the PC, Nairobi area, is a very honest man. Besides that, we pay him well. He does not need to collect any fees other than the money we pay him.

**Mr. Werah:** On a point of order, Mr. Deputy Speaker, Sir. Mr. Sifuna has alleged that Councillor Jamillah Omar is a girlfriend of the PC. Could he substantiate or withdraw?

**Mr. Deputy Speaker:** Proceed, Mr. Samoei.

**Mr. Samoei:** Mr. Deputy Speaker, Sir, I would like to say that we do not have a "Muslim State" anywhere in this country, leave alone Nairobi West. Therefore, we will stop at nothing in this exercise. The beer distributors were closed down because they had overstepped their licences and gone ahead to operate bars in that area. They will stay closed.

**Mr. Werah:** Mr. Deputy Speaker, Sir, I raised a point of order. I wanted Mr. Sifuna to substantiate his allegation against the PC.

**Mr. Deputy Speaker:** Order! You do not want to raise an issue that will increase the number of accusations. Some issues are better left where they are.

Next Question!

**Mr. Muiruri:** Mr. Deputy Speaker, Sir, I beg to ask the Minister of State, Office of the President the following Question by Private Notice.

(a) Is the Minister aware that on 10th February, 2001 at Kirache, Kieni Forest of Gatundu North, five policemen assaulted Mr. Peter Nyamu Mbugua and beat him to death?

(b) Is he further aware that on 27th February, 2001, the same policemen robbed Mr. Austin Karanja at gun point of his bicycle, Kshs900 cash and his farm produce of potatoes?

(c) Is he also aware that on 4th March, 2001 along Kieni/Gakoe Road, the said officers robbed Mr. Ngure Maina of two bags of potatoes, three bags of vegetables, Kshs2,000 cash and other personal properties?

(d) What action has the Minister taken to arrest and prosecute these officers?

**The Assistant Minister, Office of the President (Mr. Samoei):** Mr. Deputy Speaker, Sir, this Question had been answered by the Minister and there were outstanding issues we were to investigate. Our investigations reveal that this report has since not been made to the police station or post in that area. Therefore, our answer still remains the same.

**Mr. Muiruri:** Mr. Deputy Speaker, Sir, the murder and robbery occurred inside the forest and not in the reserve. I have already furnished the Minister with names of the officers involved. The officers involved are Corporal Omondi, Corporal Kinyua, P.C. Chege and P.C. Haji. All these officers are attached to the Forest Inspection Protection Unit. I, personally, went to the forest when I got this report. I was not alone, but accompanied by the Provincial Forest Officer, a Mr. Mugo. These officers were actually interviewed about the murder and other crimes they have committed inside the forest. They are armed, roaming around, raping, killing and robbing people. The Provincial Forest Officer contacted the Nyeri Provincial CID, Officer, who sent a very senior police officer to investigate this matter that had already been reported to Uplands Police Station. So, I do not know what the Assistant Minister is talking about. Either he wants to cover it up or he has been misled. Could he go and investigate further because these officers are known? I have met them myself! There should be no cover-up in a case where somebody was killed. Those officers have committed a lot of crimes in that area. They have maimed people and there is no way the Assistant Minister can cover it up. I am not a crazy man! I know what I am talking about! They moved from Kendu to Kamae forests. They are armed and have become terrorists. We should not cover up this matter.

**Mr. Samoei:** Mr. Deputy Speaker, Sir, our position is that for us to be able to take action, the hon. Member could do us a lot of favour if some report was made to a police station. My investigations reveal that the Uplands Police Station report the hon. Member is talking about is no where in the OB of Uplands Police Station. Therefore, it becomes very difficult for us to take up this matter. I would appreciate if the hon. Member could go and make that report. I will be able to take action.

**Mr. Gitonga:** Mr. Deputy Speaker, Sir, I would like to inform the Assistant Minister that these same officers have beaten up people and damaged five bicycles in Kamae area. The victims reported the matter to the Uplands Police Station.

**Mr. Omingo:** Mr. Deputy Speaker, Sir, police brutality is really an issue of concern. It is true people do not make reports to police stations because of fear. We know for a fact that sometimes when you report, the police officers do not even record it in the OB deliberately. The police cannot take action. Is the Assistant Minister aware that the police officers are quite indisciplined? If only they were told to arrest *chang'aa* brewers, they will run very fast. But for a man who has been killed and robbed of Kshs900, they do not bother. This tells you the kind of state we are in. Could the Assistant Minister deny or confirm that the police officers are poorly paid and that is why they can stoop this low to get Kshs900 from a poor man?

**Mr. Samoei:** Mr. Deputy Speaker, Sir, the members of our Kenya Police Force are well trained and disciplined. However, we are looking at their remuneration packages and shortly, we shall be dealing with the issue the hon. Member has raised.

**Mr. Anyona:** On a point of order, Mr. Deputy Speaker, Sir. This is a matter which is likely to recur in the House for a long time to come and we might as well deal with it now. A matter comes before the National Assembly and then the Assistant Minister, as a form of defence, asks the Member to go and get people to make a statement when he has been given names. I thought this was a higher authority than a police station which has been set up under law by Parliament. Is it right that we should allow Ministers to get away with serious issues like this one by circumventing the process?

**Mr. Samoei:** Mr. Deputy Speaker, Sir, I do agree with Mr. Anyona that this is the National Assembly. We are not going to reduce the National Assembly into a police station. We are not going to make reports here which the law stipulates very well that they should be made at the police station. We are not going to reduce this House into a police station. Reports should not be made in Parliament, but at the police station.

**Mr. Muiruri:** Mr. Deputy Speaker, Sir, I am very angry with the Assistant Minister for asking me to go and record a statement in the Occurrence Book. That is not my business. My business is to report a crime once it has been committed. Is he asking me to go and record a statement at Parklands Police Station? I have furnished the Assistant

Minister with the names of the police officers. They are not dead; they are live. But he seems to be telling me that, in the absence of our statement in the Occurrence Book, they cannot do anything about it. Would the Assistant Minister come out clean and investigate this matter? I know what I am talking about. Somebody is already dead. I do not think he is right to say that there is nothing in the Occurrence Book.

**Mr. Samoei:** Mr. Deputy Speaker, Sir, my position still remains the same. However, in the interest of justice and for the benefit of the people who have been listed here as attacked and robbed, I will look at the case using the information from the Member. However, I wish to state that as lawmakers, we should be the very first people to facilitate the operation of the law by following the laid down procedures.

**Mr. Deputy Speaker:** Order! Order! Matters relating to security and injuries to persons come here from time to time. What is our position? Our Standing Orders allow Members to ask of

**[Mr. Deputy Speaker]**

Ministers any matter that is within their administrative jurisdiction. So, a Member is not committing any crime by raising these matters here. Once a matter has been raised here, we do expect that the Minister will cause the necessary machinery to investigate the issue. There is no place in Kenya higher than Parliament.

Next Question, Eng. Muriuki!

#### REVENUE ALLOCATION TO CONSTITUENCY-BASED PROJECTS

**Eng. Muriuki:** Mr. Deputy Speaker, Sir, I beg to ask the Minister for Finance the following Question by Private Notice.

(a) Is the Minister aware that on Wednesday, 29th November 2000, the House resolved that before the next Budget Statement, the Minister should table proposals for appropriate mechanisms to ensure that 2.5 per cent of the Government revenue is allocated to constituency-based projects?

(b) Could the Minister table the proposals before the presentation of the 2001/2002 Budget?

**The Assistant Minister for Finance and Planning (Mr. Arap-Kirui):** Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am aware that on Wednesday, 29th November 2000, through a Private Members' Motion, the House resolved that the Minister for Finance tables before the House proposals for an appropriate mechanism to ensure that 2.5 per cent of the annual Government revenue is allocated to constituency-based development projects.

(b) The proposals to implement the above mentioned Motion are being worked out. Through the Medium Term Expenditure Framework (MTEF), the Government has instituted a three-year integrated budgeting process. As part of this framework, we have put in place a poverty consultative process through which we have involved all stakeholders in our planning and resource allocation up to the grassroots level. The results of the operationalization of the MTEF and the subsequent consultative PRSP process is that we have agreed on the following:-

First, due to the overall pending obligations of Government under both the Recurrent and Development budget we cannot, at the moment, adopt a zero-based budgeting system. We have, therefore, to initially formulate strategies to clear the existing obligations which are over Kshs6.8 billion under the Development budget and over Kshs5 billion under the Recurrent budget, while ensuring that no new obligations which can be postponed are entered into. After discharging these obligations, we shall then institute practical measures and finalize arrangements aimed at achieving an equitable allocation of 2.5 per cent of the available Government revenue to the constituency level.

**Mr. Sambu:** Mr. Deputy Speaker, Sir, in his lengthy statement, the Assistant Minister does not admit that they will include 2.5 per cent of the annual Government revenue in the 2001/2002 Budget. Will he confirm that in effect the 2001/2002 Budget will include the 2.5 per cent for constituency-based projects? Could he confirm that the Departmental Committee on Finance, Planning and Trade will be involved in the budgetary process for this financial year?

**Mr. Deputy Speaker:** That is not a question. You are now giving the Assistant Minister instructions! Ask a question!

**Mr. Sambu:** Mr. Deputy Speaker, Sir, will the Assistant Minister confirm or deny that he is going to involve the Committee on Finance, Planning and Trade in the process of making the Budget?

**Mr. Arap-Kirui:** Mr. Deputy Speaker, Sir, I think that is a slightly different question. The issue of involving the Departmental Committee on Finance, Planning and Trade in the budgeting process is a separate matter. But I know, in the past, there have been consultations with the Committee on the budget-making process.

**Mr. Deputy Speaker:** Mr. Assistant Minister, it is not a different question. It is very pertinent. He is asking you whether you are going to involve the Departmental Committee on Finance, Planning and Trade. If you are working out modalities, that should be part of those modalities. So, he is quite right. Answer his question.

**Mr. Arap-Kirui:** Mr. Deputy Speaker, Sir, I think I answered the question by saying that in the past, we have consulted the Department Committee on Finance, Planning and Trade. I am sure we will do the same.

**Eng. Muriuki:** Thank you, Mr. Deputy Speaker, Sir. First, I wish to seek your guidance. The answer I have

here is three pages long. The Assistant Minister appears to have read only the first page and there are some pertinent issues which are raised here, which he has not read. I do not know whether he has given up on part of the answer.

**Mr. Deputy Speaker:** Really, the Question cannot be answered in three pages because you are asking if he is aware and, secondly, for him to table the proposals for the presentation of 2001/2002 Budget.

**Eng. Muriuki:** Mr. Deputy Speaker, Sir, he has given a long narrative on how he has spent the 2.5 per cent. We do need to know from the Assistant Minister whether he has given up on the written reply that he has given to me.

**Mr. Deputy Speaker:** Well, let him respond to it! It is interesting if the Assistant Minister has excluded some information from the written reply served to the hon. Member.

**Mr. Arap-Kirui:** Mr. Deputy Speaker, Sir, I found the answer highly repetitive and I thought that I would give hon. Members a brief response based on the Question asked. In my view, some of the information in the written reply is rather superfluous, although the hon. Member has been given a small background on the MTEF.

**Mr. Anyona:** Mr. Deputy Speaker, Sir, the Standing Orders require that the Assistant Minister supplies a written reply to the Clerk of the National Assembly, so that it can be conveyed to the hon. Member. That is deemed to be the basic answer, before you get to a supplementary question. What is going to go into the HANSARD is what he has read out here, which is different from the written reply that was required to be read out here. That record is totally upside down. Could he read out the written reply and then, we can ask him supplementary questions?

**Mr. Arap-Kirui:** Mr. Deputy Speaker, Sir, if that is the wish, and the regulations of the House, I, certainly, will read out all the information on the three pages, but in my view---

**Mr. Deputy Speaker:** Order! This Question cannot elicit an answer of three pages. Now, given that fact, quite clearly, we do not have the time to listen to a three-page answer. So, I am going to rule that the Question be deferred and answered more appropriately. The Question is deferred to Wednesday afternoon.

*(Question deferred)*

#### TRANSFER OF THIKA TOWN CLERK

**(Mr. Ndicho)** to ask the Minister for Local Government:-

- (a) Is the Minister aware that the former Thika Town Clerk, Mr. Franklin Maganju, has refused to vacate the official residence at Thika despite having been transferred?
- (b) Is he further aware that the current Town Clerk spends Kshs50,000/= per week on travelling allowances to and from Nairobi to the detriment of Thika residents?
- (c) What urgent measures is the Minister taking to facilitate the transfer to save the meagre resources of the Council?

**Mr. Murathe:** Mr. Deputy Speaker, Sir, Mr. Ndicho had already called Parliament and informed the authorities of his absence. He is indisposed.

**Mr. Deputy Speaker:** Mr. Ndicho, has not called Parliament. He got somebody from the bus stand, who called me, but I did not recognise his voice. So, how do I know that, that person is Mr. Ndicho's agent?

**Mr. Murathe:** Did you recognise my voice?

**Mr. Deputy Speaker:** No! I can only recognise your face!

*(Laughter)*

Mr. Ndicho's Question is deferred to Thursday next week.

*(Question deferred)*

#### POINTS OF ORDER

##### DEATH AT MAKUYU DAM

**Mr. P.K. Mwangi:** Mr. Deputy Speaker, Sir, last week on 18th, April, 2001, I sought a Ministerial Statement concerning a young man who died at Makuyu Dam after being frightened by police. Up to date, I have not received any Ministerial Statement explaining that incident or any request from the Government to defer that matter.

**Mr. Obwocha:** On a point of order, Mr. Deputy Speaker, Sir. A Ministerial Statement was issued here concerning that incident, but Mr. P.K. Mwangi was absent.

**Mr. Deputy Speaker:** Order, Mr. Obwocha! You have no mandate to answer the hon. Member. Mr. P.K. Mwangi, now, I will answer you. The Minister responsible for internal security did give a Ministerial Statement in the

House in response to your query.

#### CANCELLATION OF RALLY IN MERU

**Mr. N. Nyagah:** Mr. Deputy Speaker, Sir, my point of order is directed to the Minister of State, Office of the President in charge of internal security. I would like the Minister to explain the circumstances leading to cancellation of a rally that was going to be convened by Mr. Murungi in Meru for all hon. Members from that part of the world on Saturday, the 28th. It has since been cancelled by the OCPD, and the OCS who gave an okay to the notification of the meeting to Mr. Mwiraria has been sent on leave. Also, bearing in mind that Mr. Kamotho has been going round in Chuka and Karatina holding similar meetings, why are we having double standards? While requesting the Minister to intervene, he will remember that on the 7th of this month, we had called another meeting of nearly 50 hon. Members, but because Mr. Imanyara called his meeting, we then gave up going to hold our meeting in good faith. We do not want any confrontations, neither do we want any bloodshed on Saturday because the meeting will continue on that particular day. I think that they better be warned, and also realising---

*(Applause)*

**Mr. Deputy Speaker:** Order, hon. Members! If you stand up to request for a Ministerial Statement, that is hardly the time nor is this the place to start issuing threats. Mr. N. Nyagah, you have asked the Minister to explain to you why that meeting was cancelled. That is sufficient. Mr. Assistant Minister, do you want to respond?

**The Assistant, Office of the President (Mr. Samoei):** Mr. Deputy Speaker, Sir, I will make a Ministerial Statement on the circumstances surrounding the cancellation of that meeting. However, I wish to state that we will not take the threats by the hon. Member lightly.

**Hon. Members:** On a point of order, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Order! Yes, Mr. Anyona.

**Hon. Members:** No!

**Mr. Deputy Speaker:** Order! Mr. Anyona is also rising on a point of order.

**Mr. Murathe:** Mr. Deputy Speaker, Sir, he wants to raise another issue.

**Mr. Deputy Speaker:** Order, Mr. Murathe! I do not know what you are going to talk about. Proceed, Mr. Anyona!

#### POLICY ON FEES AND PRIVATE TUITION

**Mr. Anyona:** Mr. Deputy Speaker, Sir, I rise to seek a Ministerial Statement from the Minister for Education on an equally important national matter. There are two issues that the House and the country are very concerned about, with regard to education. They are fees and the cost of education. We have been assured by the Ministry that there are fees guidelines in place, but they are not being adhered to. I will put a separate Question. Now, the second part of that is that, in an intention to defeat that purpose, schools organise what they call coaching sessions. Right now, schools were closed for one week and children were called back for coaching right down to the primary level - Standard Four and Eight - and secondary schools. I believe that the same thing happens in private schools and parents are being charged money for the coaching, and the children are not allowed the opportunity to rest. But that is what the holidays are there for.

I would like the Minister to make a Ministerial Statement with regard to coaching. Is there coaching or no coaching? If there is, is it free, or do we pay for it in primary schools? Similarly, is there coaching or is there no coaching in secondary schools? Is there coaching or no coaching during the holidays? Because private schools are part of the education system of this country, they cannot be allowed to run amok. Is there coaching for which parents and children are charged fees? Could the Minister make a comprehensive Statement, so that this matter is put to rest once and for all?

**The Assistant Minister for Education, Science and Technology (Dr. Wamukoya):** Mr. Deputy Speaker, Sir, we shall make a Ministerial Statement on Thursday next week.

#### SHOOTING OF MESSRS. NDIRANGU AND MAINA

**Mr. Muchiri:** Mr. Deputy Speaker, Sir, I beg to request the Minister of State, Office of the President to make a Ministerial Statement regarding the shooting of Messrs. Ndirangu and Benson Maina and another person on 18th April, 2001 by the police at Ngong Cemetery, after having been arrested from their homes by the police. But the public claim that they were innocent Kenyans who were murdered in cold blood by the police.

## DISPOSAL OF KCB ASSETS

**Mr. Ojode:** On a point of order, Mr. Deputy Speaker, Sir. The Minister for Finance promised to bring a report to this House concerning a question which I brought before this House about the disposal of the Kenya Commercial Bank assets and the computer project which was costing Kshs550 million, through single sourcing. To date, he has not come up with any report. Could the Chair order the Minister for Finance to bring the report which he was supposed to have brought before this House two weeks ago?

**Mr. Deputy Speaker:** Yes, Mr. Assistant Minister for Finance!

**The Assistant Minister for Finance and Planning** (Mr. Arap-Kirui): Mr. Deputy Speaker, Sir, I will look into the matter to see whether we can hopefully make a Ministerial Statement on that issue next week.

**Mr. Ojode:** On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister did promise to bring a report to this House two weeks ago. However, he is saying that he is going to investigate and bring a report to this House next week. Exactly on which day will he bring the report? I am talking to a "half Minister", but I had talked to the "whole Minister"!

**Mr. Deputy Speaker:** Order, Mr. Ojode!

**The Assistant Minister for Finance and Planning** (Mr. Arap-Kirui): Mr. Deputy Speaker, Sir, the hon. Member says that he was talking to somebody else other than myself. I think, I am entitled to go and inquire what happened.

**Mr. Deputy Speaker:** When do you think you can be ready to bring the report to this House?

**The Assistant Minister for Finance and Planning** (Mr. Arap-Kirui): I propose to do so on Thursday.

**Mr. Deputy Speaker:** Thursday next week! That is all right.

Mr. Maitha, you have the Floor.

## INTRODUCTION OF VISAS

**Mr. Maitha:** Mr. Deputy Speaker, Sir, two weeks ago I demanded a Statement from the Minister of State, Office of the President on the introduction of visas because this matter is affecting the tourism industry at the Coast. Up to date, I have not got that Ministerial Statement. Could the Chair order the Minister to give that Statement because tourists are cancelling their flights to Kenya?

**Mr. Deputy Speaker:** Anybody here from the Office of the President?

**An hon. Member:** Mr. Nassir is here!

**Mr. Deputy Speaker:** Order! Order! It is true that Mr. Maitha did raise the issue of visas for tourists coming into Kenya last week and the Minister undertook to issue a Statement this week. As far as I am aware, this week is ending today. So, Mr. Samoei, what do you have to say?

**The Assistant Minister, Office of the President** (Mr. Samoei): Mr. Deputy Speaker, Sir, unfortunately, the Statement was not complete by the time the Minister left for Abuja. I do undertake to ensure that, that Statement will be given on Wednesday.

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

**BILL***Second Reading*THE CONSTITUTION OF KENYA REVIEW  
(AMENDMENT) BILL

*(The Attorney-General on 24.4.2001)*

*(Resumption of Debate interrupted on 25.4.2001)*

**Mr. Deputy Speaker:** Mr. Ekirapa, you were on the Floor and you have 20 minutes.

**The Assistant Minister for Tourism, Trade and Industry** (Mr. Ekirapa): Mr. Deputy Speaker, Sir, I was talking about civic education. I was saying that civic education in the constitution-making process is a core responsibility of the Constitution of Kenya Review Commission. The reason is simple; civic education is necessary, especially in areas where communities do not have any other system of learning about the constitution-making process. I was suggesting that the Commission should have a standard procedure and format, with standard contents and questions, which they

should ask the people when seeking views from them.

Mr. Deputy Speaker, Sir, the original idea, which seems to be gaining currency, is the notion that the NGOs should take responsibility for civic education. There are areas in this country where there is not a single NGO existing. We did not want, for the first time, NGOs to appear in those areas to try to learn those communities and try to teach them how they should conduct themselves during the constitutional review process. The responsibility for giving civic education must, therefore, be completely and firmly placed upon the Commission and, therefore, the Commission will have to find ways of ensuring that all the people of Kenya have an opportunity to get a fair or uniform standard of education in this process.

Mr. Deputy Speaker, Sir, it is now common knowledge that some NGOs are ready and totally prepared to start civic education. They have their programmes and money ready for that purpose. In fact, some of them, like you heard in this House yesterday, have a Draft Constitution already. In other words, they have the Constitution they want to pass on to Kenyans; to impose it on them or to make sure that Kenyans just swallow it up. I think time has come when we must say that this process must be the responsibility of Kenyans themselves. They must be the ones who would come up with ideas about the changes they require in the Constitution and, they must not be fed with information by anybody whose is a non-Kenyan. I think Kenyans must accept that. We may have our own problems and we may disagree on various issues, we may not agree even on the common process, but it is very important that nobody else, but Kenyans themselves should be the ones who will contribute to this process.

Mr. Deputy Speaker, Sir, the audacity of some people who are non-Kenyans to go to the extent of drafting a Constitution for Kenyans and expect Kenyans to accept it must be rejected in total by Kenyans. I want to urge our people, wherever they are, that they must be prepared and they must know what the current Constitution is providing, what they are concerned about and what kind of a new Constitution they would like to have. Therefore, the bottom line must be that civic education must be the responsibility of the Constitution of Kenya Review Commission and the Commission must devise means and methods of ensuring that all Kenyans are properly enlightened in the constitution-making process.

Mr. Deputy Speaker, Sir, the clamour about including a large percentage of NGOs into the Constitution of Kenya Review Commission is understandable because it is common knowledge that some people who want to become Commissioners are also in charge of certain NGOs. They, therefore, expect to benefit from that kind of process, where on one side, they are Commissioners and on the other side, they expect their own NGOs to become the means by which the process is facilitated at the grassroots. I think that would be unacceptable. Certainly people in areas where some of us come from, where there is not a single NGO operating, although we have spent a lot of time trying to persuade NGOs to come and help those people to develop and help them solve their problems in areas like health, education--- They have been completely unable or unwilling to go to those areas. Now, it appears as if NGOs want to run to every part of the country. I think that will be unacceptable and communities in areas where NGOs have not worked before will not accept that. Certainly, we will reject them.

Mr. Deputy Speaker, Sir, there is also the question of the life of the Commission. I know that there has been some concern as to whether Commission's life should be extended or not. That also must be left to Kenyans and the House to decide. If the 17 months are not adequate for completing the process, we must empower that Commission to come back to this House and make some recommendation, whether or not the life of the Commission should be extended. I think Kenyans must be given the right to discuss and agree on whether the extension is necessary, depending on the circumstances at that time. I think Kenyans must have the right to determine whether they want to extend the life of the Commission or not. If they want to extend it they must decide on what terms would they want it extended. That should be the responsibility of this House.

*(Mr. Gumo crossed the Floor without  
bowing to the Chair)*

**Mr. Deputy Speaker:** Order, Mr. Gumo! This is Parliament not a market place!

**The Assistant Minister for Tourism, Trade and Industry** (Mr. Ekirapa): Mr. Deputy Speaker, Sir, we have also heard people complain about the fact that there may be intentions to extend the life of this House. I think Kenyans must retain the right to determine such a major issue that affects their lives. If the recommendation, the understanding of the public or the information that the Commission will collect throughout the country, suggest that Kenyans are interested in getting the Constitution completely done away with, so be it. This is because that is the wish of the majority of Kenyans. We cannot determine here today that, irrespective of what will happen towards the end of the year 2002, there will be no extension of Parliament. I think it will be wrong for us to do that now, but it will be absolutely justifiable, by the people of Kenya, if they decide that they need this process to be completed and, therefore, they need Parliament to carry on until they finalise this process. Kenyans must be given that responsibility and right.

This is a chance for the majority of Kenyans. It is understood, and we all know, that the Constitution that has served us well, so far, was negotiated by our leaders with their colonial masters at that time. This Constitution has served us well for a long time. I think time has come when Kenyans must be given the responsibility and the opportunity to contribute to the new Constitution. It is our hope that Kenyans will do so in large numbers; they will express their views and recommend what they would like to be changed in the Constitution. We hope that when the decision to amalgamate or collect the views of Kenyans is reached and the matter is discussed at the National Conference, Kenyans will agree or support the views of the majority of Kenyans.

Mr. Deputy Speaker, Sir, should it happen that during the process there are certain contentious areas where we, either at the grassroots or the national convention are not agreeing, then the Commission should define what those issues are. The Commission should recommend that in respect of those specific issues upon which we have not been able to agree, we should go to a referendum and ask our people to collectively make a decision whether or not what is recommended should be agreed or not. It will be a question of "Yes" or "No" to specific questions put forward. It is will be undesirable for us to predetermine that there will be a referendum when we do not know what the issues are.

As I said here yesterday, we have not, in fact, determined the referendum laws. What kind of rules must we follow in the referendum? Therefore, it will give Parliament the opportunity to make the rules of the referendum, but this will be done when it is clear that there is need for the referendum. I would like to propose, therefore, that we consider the possibility of not introducing the referendum unless there is a clear reason why we must do so.

The referendums we know in other countries, where peace has become the norm have defined rules. I would like to say that these referendums are always restricted to specific questions, whose answers will simply be "Yes" or "No". Therefore, I would like to propose that if the time comes when Kenyans are collectively united in the kind of Constitution they need, then the need for a referendum will cease to be. I hope that when the matter, therefore, comes before Parliament, we will agree on the kind of Constitution we need.

There has also been the issue of remuneration to the Commissioners. I would like to say that this has become an issue because many people have commented whether or not these Commissioners should be paid money. I think we have had Commissions in this country before. Therefore, there is a precedent. I would like to ask the Government to make proposals to Parliament through the Parliamentary Select Committee as to the kind of remuneration we should pay our Commissioners. I heard yesterday some hon. Members say that it is an honour to be selected or given the responsibility to participate in the constitution-making, as a Commissioner.

That is a job that many people do not qualify for. It is, therefore, a job of honour that we hope that our Commissioners will feel proud to perform for this country and, therefore, remuneration should not be a major issue. But, of course, nobody has said that our Commissioners should do the job for free. We expect that we will pay them some honoraria or an agreed figure, but that figure must not look as if the Commissioners were looking for a job to the extent that we pay them exorbitant amounts of money.

Mr. Deputy Speaker, Sir, I was saying that the ordinary people, this time round, will have an opportunity to express their views. The recommendation that the Commissioners will go round the country is very good. I would like to say that it will be very useful and provide our people with the opportunity to express their views, meet the Commission and make their recommendations. It is my hope that every Kenyan will feel that he or she has participated in the process. Therefore, no Kenyan will feel that he or she was left out, and the Constitution we come up with, hopefully, will serve us for many years. This is the reason why we, as Kenyans, must accept that the process we are going through is in the interest of all our people and hopefully for a long time to come. This is because there is no more time left for us to keep on arguing about our people being honest about the process or not being honest. I think there are some few people who feel that the process must not move forward because they already have preconceived ideas that some of our people are not being honest about this process.

The communities that have not been involved in the past in the process of constitution-making or even in the making of laws, because they are spread away from areas where they can learn about law or constitution-making, must be given the opportunity. There must be time to educate them about the current Constitution, what we expect them to do and ask them to contribute to the process. The only way to do that is to find better methods of educating them rather than expecting that some of the NGOs, which we already know what they want to do, will educate our people on the process of constitution-making. This is because there is genuine fear that some of these people have already made up their mind and they know what they want to do. Therefore, they want to take the opportunity to get the people to think one way about this process. The Commission must ensure that the civic education that it intends to carry out is done by people who are independent; people who have no particular view about the Constitution because the objective of that exercise is to give our people an opportunity to participate fully in the process. We should allow them to ask questions, whose answers they do not know. We should allow them to hold seminars which will be conducted by people who have the interest of this country at heart and people who do not have their own hidden agenda. Therefore, we hope that the Constitution that we will come up with at the end of the day will be acceptable to all Kenyans.

We have heard people say that if this does not happen, then the constitutional review process cannot go ahead.



Time has come when the majority of Kenyans must speak their minds, because we cannot afford again to lose this opportunity. We have lost so much time arguing about who should be included in the Commission and how many Commissioners should be nominated by what party.

Mr. Deputy Speaker, Sir, I now have come to the conclusion that there may be a number of us who are not interested in this process. Therefore, the majority of us must make up our minds and move forward. I hope this debate in this House today will reach a firm decision that we will go forward, irrespective of the few of us who are not committed to the review process. I heard some people complaining and saying that it may be the President who is not interested in the constitutional review process, but it seems to me that the President is the only one who wants the process to take off. It appears as if some of the hon. Members on the opposite side do not want the constitutional review process to take off because we do not want, for example, to reduce the powers of the President. This is because we hope that some day, we will become presidents and we will need to use that power. Also some of us in KANU feel the same way merely because we are looking at the future with selfish motives rather than in the national interest.

I want to appeal again to both sides of the House that time has come, and this is the opportunity we have. We must look forward to the future of this country and the future of our children and come up with a Constitution that will serve this nation for many years to come. If the Constitution that was designed by just a few people more than 30 years ago has served us this long, there is no reason why the Constitution we are about to formulate should not last longer than that. Therefore, it is my prayer that this august House will give Kenyans the Constitution they have been waiting for.

With those few remarks, I beg to support.

**Ms. Karua:** Thank you, Mr. Deputy Speaker, Sir, for giving me the opportunity to contribute to this Bill. Like my colleagues who have spoken before, I am in support of a merger. I am hoping that the process we have gone through has taught us a lesson, namely, that we cannot take each other for granted and whatever might we might think we have, from whatever side, Kenya belongs to all of us.

Mr. Deputy Speaker, Sir, when the Act that is sought to be amended by the Bill before the House was brought here last year, and when the majority of the Opposition hon. Members walked out, I agreed with them, but I remained in the House to contribute to the debate. Hon. Members who were left inside the House and who, except me, were supporting the then proposed Bill, which we now seek to amend, and who were from KANU and the National Development Party (NDP), were very intolerant of my contribution, and the HANSARD is there to confirm this. I had to weather a barrage of murmurs and points of order. I had to very firmly deal with these hon. Members to get my right to be heard.

It is that kind of intolerance that is discouraging people from coming together. We should be tolerant of each other even where our views are not in agreement. One should patiently listen to the other person and then taken his chance to give reasons why he does not agree with the other's proposition. The lesson we ought to learn from the process we are undertaking is that the Government must not take the Opposition for granted, and we in the Opposition should also not take the Government for granted. We should all sit down and reason together. We have been back in this House on the amendments to the Constitution of Kenya Review Bill and this is fourth time round. This is a waste of the taxpayers' money and is a clear indication that we are abdicating our responsibility, as a House, to offer leadership. It is embarrassing that while we are talking about moving the process forward, and whereas the negotiations between Ufungamano Initiative and the Parliamentary Select Committee on constitutional review were based on good faith, the Government is beginning to show signs of backtracking and not having good faith.

Mr. Deputy Speaker, Sir, one of the conditions in the memorandum of understanding was that the Government will promote the rule of law and respect the rights of every one. By threatening to cancel the rally convened by Parliamentarians from the Mount Kenya region in Meru, the Government is showing utter disrespect for the law and the rights of the public and of those hon. Members to associate. This does not augur well for the nation, and even for the initiatives before the House. It appears to me that not everyone, not even some Ministers, has bothered to read the Public Order Act. One of the Assistant Ministers in the Office of the President, who spoke here earlier, talked of the police cancelling the rally. The Public Order Act does not provide for licensing of rallies. It merely talks of notification. Under Section 5, Sub-Section (6), it is provided that the regulating officer should notify the organisers of the rally that they can go ahead and convene a public meeting or procession, that licensing officer becomes *functus officio* until the day of the rally. That officer has no power to purport to cancel the rally before it begins. However, Sub-Section (8)(b), reads:-

"Any public gathering, meeting or procession which, having regard to the rights and interests of persons participating in such a gathering, meeting or procession, there is clear present or eminent danger of a breach of the peace of public order may be stopped".

Mr. Deputy Speaker, Sir, one wonders what rights and interests of persons intending to attend the rally have been threatened or are in imminent danger. We even do not know who intends to attend the rally. We have to wait for Saturday to see who will attend the rally. I am very glad that the hon. Members involved in the rally, I included, have given indication that the rally will go on in accordance with the law. If the Government decides to disobey the law, it will be met with the full force of the public. One might wonder what force the public has. I do not have to explain. This

House has even been forced to---

**The Assistant Minister for Agriculture, Livestock and Rural Development** (Mr. Sumbeiywo): On a point of order, Mr. Deputy Speaker, Sir. Hon. Karua has used very strong words. She has threatened that the public will cause chaos if the rally will be cancelled. She has admitted that if the police decide that there will be a breach of the peace, and that security of those who will attend the rally will be threatened, the public will cause chaos. Is she in order to incite the public?

**Mr. Deputy Speaker:** Order! As far as the Chair is concerned, hon. Karua is expressing her opinion about a matter that she feels very concerned about. As we speak now, the Minister has not stated to us that, that rally is cancelled. But if it concerns the Assistant Minister, hon. Karua started with the word "if". Hon. Sumbeiywo, do you understand that?

**An hon. Member:** He did not go to school!

**Ms. Karua:** Mr. Deputy Speaker, Sir, I sympathise with the hon. Member and he may not quite have comprehended what I read out from Section 5 of the Public Order Act. This being a Parliamentary copy of the Act, I will release it so that the hon. Member, when he gets time, may try to understand the section.

Mr. Deputy Speaker, Sir, it is the right of every Kenyan to ensure that the law is obeyed. That is why citizens have a right to arrest offenders. I am saying that I, as a citizen of this country, and those who wish to come to the meeting in Meru, will use our citizen's power to arrest anybody breaking the law, be they agents of the Government, or otherwise. That is why I am saying that they will be met with the full force of the public. I think that we have been making a mistake in this House. We have been letting law enforcement agencies to break Opposition rallies, and rallies by Members of Parliament who do not find favour with the Government. It is time to say no! If we do not say no, then we are losing the campaign before we even start. We are tired and ready, and I hope the message has sunk. If it has not, then we are tired of the Government disobeying the law. Once again, I would like to say that, that does not augur well, not just for the constitutional review process, but as a way forward for this country. It shows that having negotiated a joint review process, some elements in the Government are still taking this side of the House and Kenyans for granted. That must stop! Otherwise, it will have disastrous consequences not for one side of the House and selected Kenyans, but for all Kenyans. We better watch it and offer leadership.

Mr. Deputy Speaker, Sir, coming back to the Act, a Minister from the Office of the President who contributed yesterday, I believe it is Mr. ole Sunkuli, stated that the Ufungamano Initiative, in filling up the vacancies for Commissioners that have now been created, should not appoint political activists or their cronies. We are calling for an end to double standards. The statement sounds innocent and okay. But if you look down the list of the Commissioners nominated by the Parliamentary Select Committee, you will see the faces of political activists, mainly from the ruling party. You will see the faces of cronies of Ministers, including the Minister who was contributing. That was amply stated by Mr. Ndwiga. Why should one Member feel that he can appoint his confidant and, at the same time, expect those on this side of the House not to appoint their confidants?

**The Minister for Vocational Training** (Mr. Ruto): On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Member of Parliament for Gichugu to mislead the House that, there is a set of Commissioners who were nominated by the Parliamentary Select Committee when, in fact, the advertisements were carried out in the normal Press and the Commissioners appointed in the normal manner as set out in the law? The interviews were properly carried out. Is it in order for her to mislead this House?

**Mr. Deputy Speaker:** Order! There is nothing criminal about a Commissioner being a friend of a Member of this House! There is no crime whatsoever. So, make no apologies about it! If they are your friends, they are Kenyans. Those Commissioners were nominated as Kenyans.

**Ms. Karua:** Mr. Deputy Speaker, Sir, it is a matter of English and once again, I sympathise with the Minister! I do agree, and I am guided by the Chair's ruling---

**The Minister for Vocational Training** (Mr. Ruto): On a point of order, Mr. Deputy Speaker, Sir. The honourable lady has taken leave to abuse almost everybody in this House! I have just mentioned to her that, at no time did we appoint Commissioners! They went through a process. My point is that they were not appointed! That is not a problem of understanding English!

**Mr. Deputy Speaker:** Order! It is unlikely that you will find Commissioners who have no friends in this country! I said, make no apologies for the fact that some Commissioners whom you know, or whom I know, were nominated! That is because this House did that. The Select Committee made its recommendations to this House, and it is this House which made its recommendations to the President for the appointments. So, nobody in this House should feel guilty that a Commissioner is a friend, a brother or a sister to him or her!

**Ms. Karua:** Now, to put my colleague on the opposite side of the House at ease, by a matter of English, I meant that the word nomination has different meanings and interpretations, which include the interviews! I hope that puts him at ease!

Mr. Deputy Speaker, Sir, I want to agree with what the Chair said; that, it is not wrong for people known to

Members of this House to be nominated as Commissioners, so long as they are qualified. All I am saying is that we should not have double standards. Do not cry that the people nominated by the other group are activists, when you have a list of activists which you produced from your pocket. Let all those activists sit together as Kenyans, and let them take the process forward. Nobody's interests should be looked after better than those of the other group.

Mr. Deputy Speaker, Sir, it has also been suggested that the Ufungamano Initiative is an amorphous group. I am asking: Why did the Select Committee discuss with an amorphous group? They recognised them as Kenyans who they needed to talk to. Let us drop this language so that we may be able to move together. You do not need to be registered---

**The Minister for Vocational Training** (Mr. Ruto): On a point of information, Mr. Deputy Speaker, Sir.

**Ms. Karua:** I do not want any information! Not from you my brother! I am saying that to move forward, we need to start respecting one another, and not taking each other for granted. We should respect the memorandum of understanding. Let the Commissioners given by the Ufungamano Initiative be added to the Commission without a whimper, because those were the terms of the agreement. We are tired of negotiating and when it reaches a point of action, one side of the House starts back tracking. That is what we are seeing now. I would urge Members of the opposite side to be gentlemen and gentle ladies, and continue honouring the agreement.

**The Minister for Vocational Training** (Mr. Ruto): On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the honourable Lady to continue to mislead this House that, indeed, there is anything called an agreement which is before the House and that, there are Commissioners who will come from a group called Ufungamano Initiative? There is nothing of the sort in the current Bill, and the Lady is misleading the House and the public when she continues to refer to that.

**Mr. Deputy Speaker:** Order! You just made a speech!

**Ms. Karua:** Mr. Deputy Speaker, Sir, I sympathise with my brother who does not even appear to be listening. So, he targets me with points of order on matters that are not correct. I talked of a memorandum of understanding. I never said that it is before this House! But it will be laid on the Table in due course. I am beginning to wonder, noting that he is from the Office of the President, whether his instructions are to come to this House and deny that there were--

**An hon. Member:** No, he is the Minister for Vocational Training!

**Ms. Karua:** Whatever office he comes from, noting that he is a Member of the Cabinet, are his instructions to come before this House and deny the obvious? If that is the case, then it is a disgrace that he is following such terrible instructions, which actually go against the mandate that has brought him to this House. Every Member is brought to this House to do what is best for Kenyans, and not what is best for cliques of people, "Kitchen Cabinet" or other groupings. I would urge every Member, including my brother on the opposite side of the House, to always hold national interests above petty personal or group interests. I have looked at the Bill, and in particular Clause 11, which seeks to repeal Section 10 of the Act and replace it with a new Section. Section 10, which the Bill seeks to repeal, is the Section that established the current Select Committee on Constitutional Review. To "repeal" means "to do away with." Once that Section is done away with, it will be as though it never existed.

Mr. Deputy Speaker, Sir, therefore, the current Select Committee will actually cease once this Bill is passed. What that means - and we need to be very clear about it - is that, immediately this Bill becomes law, this House will constitute a new Select Committee, which will represent the entire House, unlike the current Select Committee. We cannot move forward when major parties in this House are not included in the Select Committee. I am saying the obvious. For those of us who have doubt, to "repeal" means "to do away with". Once we do away with that Section, it goes with its Committee. Then in will come a new Section 10 with a new Select Committee to be instituted. This is a matter we would like the Attorney-General (AG) to address when he responds to this debate.

Mr. Deputy Speaker, Sir, in Kenya today, we have lawyers, I being one of them, who interpret the law contrary to the known principles of legal interpretation. This tendency has spilled over to the courts. We, therefore, need a clear statement from the AG. We do not have to go for an interpretation that is either lopsided or deliberately wrong. Let us clear the air during debate and not before. In any event, where there is doubt about the intention of Parliament we always go to the details of the debate. Unfortunately, the AG is not here, but we would like whoever is deputising him to respond on the substance of Clause 11, which seeks to amend Section 10.

*[Mr. Deputy Speaker left the Chair]*

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

Mr. Temporary Deputy Speaker, Sir, while contributing to this debate, some hon. Members said that when the Chairman of the Commission gives the list of the 12 proposed extra Commissioners to the Select Committee, they will

have to be subjected to interviews. I would like those who have that kind of thought to look at Section 32, the transition and saving provisions. That will not be the case. So, the 12 proposed Commissioners will be deemed to have gone through the process. Just as the new Commissioners will not interview the lot that was interviewed before they came in, the old Commissioners will not interview the incoming Commissioners. The current Select Committee shall not interview the new lot of Commissioners that is coming in. Let us stop practising double standards. Our duty will just be to see whether the 12 extra proposed Commissioners actually have the qualifications stipulated in the Act.

Being an Ufungamano sympathiser and participant, I would like to say that the 12 persons are eminently qualified and that their qualifications can, in fact, rival those of the earlier Commissioners. Let us, therefore, go into this process together without any hidden surprises awaiting the other side of the House. We should remember that if anybody backtracks on this proposed Bill, this will mean that there will be no unified constitutional review process. This will further mean that those who will have spoilt this initiative will also not be able to go far. How many times have Bills been passed here and later subjected to further debate?

I want to say that I support this Bill subject to the passage of the proposed amendments appearing on the Order Paper. I support the proposed amendments that clarify the origin of the 12 extra Commissioners. An amendment to this effect has been proposed by Mr. Muite. I also support largely the amendments that have been proposed by Mr. Kajwang, which are as a result of negotiations among the majority of the Members of this House. I have also proposed an amendment to Section 22, which I must say I thought about after listening to the contribution by my learned senior colleague, Mr. Muite.

I think it is necessary that the Commissioners' salaries and allowances are determined not by the Executive but rather by the Select Committee of this House in conjunction with the Minister in charge of Finance. If we let the Executive alone determine the salaries or allowances of the Commissioners, it will make them partisan, because they will be dependent on the Executive for their bread and butter. So, I am urging hon. Members of this House to support the necessary proposed amendments that will remove ambiguity, strengthen the role of the Commission and take the process forward.

Mr. Temporary Deputy Speaker, Sir, a lot of people are making a lot of fuss about a proposed amendment that seeks to empower the Commission to propose to Parliament some reforms to either the law or the Constitution. Parliament does not need to be prompted by the Commission to use its legislative powers. What the particular proposed amendment intends to do, therefore, is create a link between Parliament and the Commission in case it is felt that there is any obstacle in the law or Constitution hindering the speedy process of the review. However, Parliament retains, and must retain, its legislative power to amend the Constitution. It is up to this Parliament, in its wisdom, to debate whatever proposals are brought before it by either hon. Members or as a joint initiative of Parliament, or as a result of recommendations by the Commission. I think the fear that is there has been created by the manner in which the Government is responding to issues on a day-to-day basis, such as the cancellation or the purported threat to cancel meetings whose notification has already been given and the breaking up of development initiatives by Members of Parliament who have not found favour with the Government. These are the issues that make Kenyans fear. Is the Government going to actually keep its part of the bargain?

*(A mobile phone rang)*

**The Temporary Deputy Speaker** (Mr. Poghiso): Order! Order! A mobile phone is ringing from somewhere within the House!

*(Dr. Anangwe withdrew from the Chamber)*

**Hon. Members:** It is Dr. Anangwe's phone! He has already gone out!

**Ms. Karua:** Mr. Temporary Deputy Speaker, Sir, therefore, the success of this process depends on the hon. Members of this House, especially the Government side, which must honour its part of the bargain, improve security and stop breaching the security of Kenyans by forcefully breaking up--

**The Temporary Deputy Speaker** (Mr. Poghiso): Order! Order! Hon. Members, I would like to make this very clear. The Chair has ruled that you should always switch off your mobile phones while in this House. It is actually a big mistake on the part of the hon. Member whose cell phone went off while the House is in session. I do not know whether it was Dr. Anangwe's phone that rang. But that ought to be the very last cell phone that is going to ring in this House.

**An hon. Member:** Send him out!

**The Temporary Deputy Speaker** (Mr. Poghiso): He has already taken himself out. Please, hon. Members, ensure that you turn off your cell phones before you get into the Chamber.

**Ms. Karua:** Mr. Temporary Deputy Speaker, Sir, I can see that my brother on the other side of the House is

relaxed. He is now in a joyous mood. That is an improvement.

*(Laughter)*

I would like to ask hon. Members of this House to take up the responsibility of ensuring that the constitutional review process moves forward this time round, and that we do not waste Kenyans' time wrangling about this or that in the process.

Yesterday, an hon. Member from this side of the House - I believe it was "Mtumishi" Kathangu - said that in 1997, the National Convention Executive Council (NCEC) was broken up, or its initiative was actually scuttled, by the Inter-Parties Parliamentary Group (IPPG). Regarding that remark, I would like to say that we all have the responsibility of practising what we preach. The NCEC was not broken up by the IPPG, but rather by lack of internal democracy in its operations. Any Member or any group including the Government that thrives on dictatorial practices will similarly break. I am urging the Members from the Government side to heed this call; that they will actually break if they continue with their undemocratic and dictatorial practices.

I was a member of the IPPG for which I have no apologies. Parliament took leadership in its legislative role and it should continue to do so. This should not be for the interest of Members of Parliament only, but for all Kenyans. The fact that the laws that were amended during IPPG have not been observed does not mean that the IPPG was a wrong deal. It is the duty of the Government and all of us to ensure that those laws are enforced. Even concerning the Constitution we are about to make, it is each citizen's duty to ensure that these laws are not breached so that the Constitution is upheld. I have in mind the blatant violation of one of the IPPG amendments by the Government, not only to do with public rallies, but also with the Kenya Broadcasting Corporation (KBC), which continues to give favoured attention to the ruling party, to the exclusion of other parties. I want to suggest to myself and to Members who are affected by this that it is time we took the KBC to court and refused to allocate money to the Ministry of Information, Transport and Communications until this matter is rectified.

One might wonder which court will address this issue, but matters must be ventilated. We must take the battle to Parliament and any other forum that is available. I am calling on Members of this House to refuse to award any money to the Ministry of Information, Transport and Communications if they fail to observe that particular provision. We should also deny the Office of the President money if they continue violating the rights of Kenyans. Now that they have shown that they are unrelenting, come June, we had better beware and use the power of the past to make the Government obey the law. Laws are made to be obeyed by everybody, including the Government.

The Commission has no business licensing civic education. I am happy with the current amendment which frees civic education bodies from having to apply for licences and also gives the Commission the role of also being a facilitator in giving civic education. I think we should all join hands and take the process forward. We should do what needs to be done when the Government does not obey the law. I will be there in Meru to do what I have to do if the Government disobeys the law.

I wish to support.

**The Minister for Vocational Training** (Mr. Ruto): Thank you, Mr. Temporary Deputy Speaker, Sir. I stand to support this Bill. I wish to differ a bit with some of the clauses that have been put in this particular Bill. Overall, we all understand that the clamour for constitutional review has been on in Kenya for the last several years. This Parliament has seen several Bills brought here, and this is actually the fourth one. Most of what has been said is in the right direction. Some of the promises that have been given to some of these amorphous groups are misplaced. At no stage have we entered into any negotiations. We have had wide consultations and it is in that spirit that we were able to listen to all Kenyans, including those who may have congregated behind Hall Nine of the University of Nairobi. Through those consultations, some amendments were proposed. It was not entirely necessary to come with such a huge Bill. Some of the provisions that appear here are actually obnoxious, like the one referred to by my dear sister here, which, states that:

"Provided that persons nominated, appointed or elected shall be deemed to have been nominated, appointed or elected---"

I thought we were all talking about being equal before the law. I thought this House has been championing equality before the law. I fail to understand how this same House will start championing for different categories of appointment for different sets of people. This means that there will be different criteria for different groups. I will be reluctant to support a situation where one group comes in through advertisement and another is sneaked in through some very strange provisions. I do not wish to disagree heavily with the Attorney-General, but I do not agree with some of the issues that we have heard. This Parliament appointed a Commission and I think it was expected to start business right away. I do not understand why, six months down the line, we are still discussing issues and it has not even started doing its work.

This is a letdown and we expect the Commission to start working. The sooner they do that, the better. Kenyans expect a comprehensive constitutional review in the next one and a half or two years, and we should not waste a lot of time discussing how to go about it. It is not essential to create all these rules to do a constitutional review. The

Commission could easily proceed with its work using the existing Act. Nevertheless, I support, to a large extent, some of the issues here. I think we are starting from the wrong premise when we put in place provisions that discriminate. This Commission that we are setting up is hierarchical. It talks of a first vice-chairman, other vice-chairmen with all their responsibilities. We have designed and put into place a very strange "corporation". We are even saying in this same Bill that this Commission will operate and have its own funds and that an accounting officer will be appointed to that Commission. Further, we are saying that the Commission is exempt from the provisions of the State Corporations Act. I do not know what we are coming up with. Do we expect this Commission to stay on permanently and forever? The provisions in the previous Bill had put this Commission under the auspices of the Clerk. We expected that any funding to the Commission would come through Parliament in the normal way and that the Clerk of the National Assembly ought to be the accounting officer. I do not know why we were required to come up with all these provisions. I do not know whether it was essential that all these provisions be brought. At the end of the day---

**Hon. Members:** Which ones?

**The Minister for Vocational Training (Mr. Ruto):** Mr. Temporary Deputy Speaker, Sir, I expect some decorum from some of the Members although that would be expecting too much from them, because they are well known to heckle most of the time. However, I wish to proceed.

**Mr. Muithia:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. Member for Chepalungu to talk to us in parables about "this", "that" and "those?" What is he talking about?

**The Temporary Deputy Speaker (Mr. Poghisio):** Well, I suspect he has plenty of time and so he is coming round to what he is intending to say.

**The Minister for Vocational Training (Mr. Ruto):** Mr. Temporary Deputy Speaker, Sir, I want to bring to the attention of the Members who are complaining, the areas which I have problems with so that they can relax and listen. For example, we have a provision in this same Bill, which is Section 23---

**Hon. Members:** On which page is it?

**The Minister for Vocational Training (Mr. Ruto):** Mr. Temporary Deputy Speaker, Sir, allow me to find out since I am not a lawyer but a lawmaker.

**Mr. Khamasi:** It is on page 429!

**The Minister for Vocational Training (Mr. Ruto):** I know he is misleading me.

**The Temporary Deputy Speaker (Mr. Poghisio):** Mr. Ruto, could you address the Chair and proceed!

**The Minister for Vocational Training (Mr. Ruto):** Mr. Temporary Deputy Speaker, Sir, the Bill provides that registered political parties but which have not even been represented in Parliament shall be members of the National Convention.

**Mr. Anyona:** On a point of order, Mr. Temporary Deputy Speaker, Sir. This is a matter of procedure and any Bill that is before the House has clauses and sections. It has sections when it becomes law. So, if you begin to mix the language, the correct procedure is that you should call it "clause" and not "section". That is the process of learning!

**The Minister for Vocational Training (Mr. Ruto):** Mr. Temporary Deputy Speaker, Sir, hon. Anyona is entitled to his own opinion and I do not want to engage him on any debate on that. I was taking issue with the provision that registered political parties which are well-known, some of them are just briefcase political parties while others are well known to be on sale and have been given a space in the national---

**Mr. Khamasi:** On which page is it contained?

**The Minister for Vocational Training (Mr. Ruto):** They have been given space to attend the National Constitutional Conference. These include the NGOs and various religious groups which have been allocated up to 25 per cent seats.

**The Temporary Deputy Speaker (Mr. Poghisio):** On which page is that?

**The Minister for Vocational Training (Mr. Ruto):** Mr. Temporary Deputy Speaker, Sir, it is on page 431 of the Bill, Section 3(b) and it states:-

"One representative from each political party registered at the commencement of this Act must be a Member of Parliament or a councillor."

Political parties are expected to represent specific populace. They are not expected to just come to the conference. Political parties are registered and they should compete for political power in a general election and they should test their acceptability by being elected even at the councils. However, now we have a provision that is going to accommodate 1001 political parties to come and discuss matters of national importance, and we have given them a lot of space. We have also accommodated religious organisations, several of the so-called professional bodies, and we are giving them 25 per cent of the space. I do not think it was very essential to have all these groups. I support the proposals that have been given by hon. Kajwang in terms of--

**Mr. Munyao:** On a point of order, Mr. Temporary Deputy Speaker, Sir. While I believe that the speaker on the Floor needs to rest a little to organise his mind, there was an appeal earlier by the Chair that whoever sees the Leader of Government Business should first alert the Chair that he has come in. I have seen him and I am alerting the Chair that

the Leader of Government Business has come. So, if there was any document to be handed over by the Leader of Government Business, could you call him so that he may now receive the address from the Chair because he is already here? I beg to draw the attention of the Chair that the Leader of Government Business is here.

**The Temporary Deputy Speaker** (Mr. Poghiso): Thank you, Mr. Munyao. Proceed, Minister!

**The Minister for Vocational Training** (Mr. Ruto): Mr. Temporary Deputy Speaker, Sir, Nominated Members of Parliament would want to interrupt others because ordinarily they have no other business. I wish to proceed.

I want to support the amendments so far proposed in this Bill although they are not for debate at this moment, but the drafting of the Bill has tended to water down the role of the Secretary and had indicated that he should be reporting to the Commission through the Chairman. Apparently, there was an attempt to concentrate everything in the hands of one person. I believe this was necessarily going to bog down the work of the Commission, and that the Secretary would not easily be able to perform his duties.

Mr. Temporary Deputy Speaker, Sir, I think if we are discussing democracy and a Constitution that is going to cater for everybody, democracy itself should start from the Commission. The Commission should organise itself, or we should help to organise the Commission in a manner that encourages consensus, teamwork and discussion. We should not attempt to create bureaucracies in its own work and, at the end of the day, we will then not come up with a Constitution that addresses some of the imbalances.

Mr. Temporary Deputy Speaker, Sir, Kenyans are expecting a Constitution that will address some of the imbalances that have occurred for the last several years. In the early years of Independence, development tended to be lopsided. The allocation of resources should be equitable. In the last 30 years, the drawing up of our Budgets has been done centrally. Outlying districts have always been ignored. I believe local authorities need to be given more power and be involved in the planning of their own resources. There ought to be autonomy for the local authorities to ensure that areas that have no heavy representation in the Civil Service are not marginalised.

Mr. Temporary Deputy Speaker, Sir, when the Commission goes out to listen to views in our constituencies, we expect them to pay much attention and give due weight to those views. One of the sections which I have just read is the attempt by this Bill to load the National Constitutional Conference with NGOs which are mainly based in Nairobi. We all know that most NGOs are based in urban areas. For example, there are no NGOs in Turkana District. This Bill stipulates that civic education be provided by NGOs entirely, and yet, most NGOs are mainly based in Nairobi. They are not in the outlying districts. I support the amendment that asks the Commission to actually conduct and facilitate civic education. Some hon. Members have argued that the provision of civic education is not the core function of the Commission. What is the core function of the Commission, if they cannot provide civic education to our people? Most provisions in our current Constitution are not necessarily understood by everybody in this Republic. It is not even clear what the work of this Commission will be in the constituencies, unless civic education precedes the collection of views.

Mr. Temporary Deputy Speaker, Sir, during the various discussions which were alluded to earlier in the Parliamentary Select Committee, we had occasion to listen to various views. We accepted certain suggestions from Kenyans that we allocate extra Commissioners to some of the fellows who used to refer to themselves as "stakeholders" and they have been congregating themselves in various places. Some of them have been meeting behind Hall 9 at the University of Nairobi. For the interest of accommodation, we gave them ten positions. The remaining two commissioners should be nominated from areas that are not properly represented; that is, Rift Valley and North Eastern provinces.

Mr. Temporary Deputy Speaker, Sir, this morning we read in the Press that Rev. Mutava Musyimi says the entire list of 12 Commissioners must come from a caucus headed by him. I want to state here that, that is misleading. The correct position is that the Select Committee would receive 12 names from Prof. Ghai; ten of them would be sourced from some of those fellows he has been consulting with and two of them would be appointed by the Parliamentary Select Committee. We expect that the entire group of 12 Commissioners will conform to the procedures that applied to the 15 Commissioners appointed by the Parliamentary Select Committee. We will not have one set of Commissioners who will just be deemed to have been appointed. We cannot deem any group to have been appointed simply by a provision of a list. They must go through the normal process of appointment, including being vetted by this House, and appointed by the Executive.

**Mr. Kihoro:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I am not sure whether the hon. Minister is referring to Clause 9 of this Bill when he speaks about the qualifications of the 12 Commissioners who will be appointed. Is he referring to Clause 9?

**The Temporary Deputy Speaker** (Mr. Poghiso): Mr. Kihoro, you are asking questions.

**The Minister for Vocational Training** (Mr. Ruto): Mr. Temporary Deputy Speaker, Sir, I must sympathise with him because I think he has just walked in. What he is asking me is irrelevant and I do not answer questions here. If it was a point of order, I would have responded.

Mr. Temporary Deputy Speaker, Sir, all I am saying is that the 12 additional Commissioners must conform to the requirements. No province will provide more than four Commissioners. If the Ufungamano Initiative sources those

names from Nairobi area, then they will all be disqualified. They must be allocated to specific provinces. At the end of the day, we expect that each province will have not more than four commissioners. Secondly, the requirement that six of them be women will have to be met. The requirement that 11 of them must have legal knowledge must be complied with. I want to make it clear that nobody should arrogate themselves powers to nominate a Commissioner for people in Rift Valley Province. The people of Rift Valley will nominate whoever they think will represent them effectively in the Commission. Rift Valley Province is not represented in the Ufungamano Initiative.

**Mrs. Ngilu:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Minister in order to mislead this House that an additional member of the Commission must be nominated from Rift Valley Province when we know Mrs. Alice Yano represents that province? Is she not a person from Rift Valley?

**The Minister for Vocational Training (Mr. Ruto):** Mr. Temporary Deputy Speaker, Sir, Mrs. Alice Yano is in the group of the 15 Commissioners appointed by the Parliamentary Select Committee. In fact, she represents gender in the Commission and not Rift Valley Province. The people of Rift Valley Province are normally represented by men.

*(Laughter)*

**Mrs. Kittony:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Minister in order to say that Rift Valley Province is not represented by women? Is he in order to say so?

**The Minister for Vocational Training (Mr. Ruto):** Mr. Temporary Deputy Speaker, Sir, I am saying "usually" people in Rift Valley are represented by men. Even Mrs. Kittony knows this. If she was to be honest, she would say so too. However, because she is in this House, she does not want to agree with me.

**Mr. Ndwiga:** On a point of order, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker (Mr. Poghiso):** Order! Mr. Ndwiga, the Minister is responding to a point of order.

**The Minister for Vocational Training (Mr. Ruto):** Mr. Temporary Deputy Speaker, Sir, the Gracious Lady is representing women from the Rift Valley.

**The Temporary Deputy Speaker (Mr. Poghiso):** Order! Order, Mr. Ruto!

**Mr. Ndwiga:** On a point of order, Mr. Temporary Deputy Speaker, Sir. It is the tradition of this House that you cannot stand here and proffer unconstitutional issues. Our Constitution states very clearly that there should be no discrimination and this Minister here has categorically said that a woman cannot represent people from a certain area. That is in breach of the Constitution and the man is a Minister. He should be sacked!

**The Temporary Deputy Speaker (Mr. Poghiso):** Order! Order, Mr. Ndwiga! I think I will have to be very strict next time someone stands on a point of order.

Proceed!

**The Minister for Vocational Training (Mr. Ruto):** Mr. Temporary Deputy Speaker, Sir, they are wasting my time. I did not intend to annoy anyone in---

**Mr. Anyona:** On a point of order, Mr. Temporary Deputy Speaker, Sir. As a matter of record, we are debating this Bill and not another Bill. When the Minister talks about 12 names, that is not in this Bill. Clause 32 (4) of this Bill talks about 12 new Commissioners out of a list. So, that list is much longer than the 12 names. So, he is misleading the House.

**The Minister for Vocational Training (Mr. Ruto):** That is correct, Mr. Temporary Deputy Speaker, Sir. We shall expect a very long list, possibly containing 70 names, but it is only 12 names that will be picked. The interpretation of my colleague is quite in order. A number of us have been misleading the House by talking about 12 names, but certainly not myself. We have only indicated that within that list, 10 commissioners will be nominated by that group which meets somewhere at the University of Nairobi, and then the other two will come from other areas including North Eastern Province.

With those few remarks, I beg to support.

**Mr. Orengo:** On a point of order, Mr. Temporary Deputy Speaker, Sir. There are things which are a matter of record in this House. One is that, every Member took the Bible and swore to protect and defend the Constitution. A Member of this Government has said that women cannot represent a very large section of this country. If that is left as a matter of record, something which is against the Constitution is being said and the Chair is not saying anything about it. A senior Minister, who most of the time, when he speaks, I think I hear the views and the voice of the President in this small man!

**The Temporary Deputy Speaker (Mr. Poghiso):** Order! Order! Mr. Orengo, when you rise on a point of order and you want to say that he must have probably missed something--- But if you are misinterpreting what he said about representation of women for which he had many points of order raised and the issue put to rest at that particular point, I will say that we need to proceed. I think I will not handle that particular issue right now.

**Mr. Orengo:** One of the most beautiful things about the first Speaker, Mr. Slade, was that even when Jomo



Kenyatta was sitting on that Chair there, in the Old Chamber, if he said anything that went against the law, he was told off by the Chair. He was not allowed to say anything that went against the law of the land. Here is a Minister who is saying something which is really against the law---

**The Temporary Deputy Speaker** (Mr. Poghiso): Order! Order! Mr. Orengo, you are going to turn this place into a court and we do not want to do that. That will all be subject to interpretation.

**Mr. Orengo:** On a point of order, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Mr. Poghiso): Order! Order, now! The Chair is on its feet. It is going to be based on how you interpret what he said because other Members have not heard it the way you have heard it.

**Hon. Members:** We heard it!

**The Temporary Deputy Speaker** (Mr. Poghiso): Order! Order, all of you! We are contravening the Standing Orders of this House. If he does contravene anything on the Standing Orders of this House, I will be able to respond to you.

**Mr. Orengo:** Mr. Temporary Deputy Speaker, Sir, if you allow me to clarify---

**The Temporary Deputy Speaker** (Mr. Poghiso): No, I do not want because we are retracting the process. We are taking so much time.

Order, Mr. Orengo! The Chair is on its feet and I am not going to allow that. We are going to waste so much time on things that I do not want to proceed with. In order to put this to rest, Mr. Orengo, I would like Mr. Ruto to clarify what he said.

**The Minister for Vocational Training** (Mr. Ruto): Mr. Temporary Deputy Speaker, Sir, I was simply explaining to the House that one more Commissioner will be representing Rift Valley. One hon. Member brought to my attention that there is one lady already there from Rift Valley. Indeed, there is yet another man also, not just a lady. I only pointed out that when she was appointed, it was on gender consideration. Further, I pointed out that usually---

*(Several Members stood up in their places)*

**The Temporary Deputy Speaker** (Mr. Poghiso): Order! Order! We want to hear him.

**The Minister for Vocational Training** (Mr. Ruto): I referred to certain past practices of certain groups of the Rift Valley. I was also talking about the present and the future. In fact, we are now opening up issues. I think I have clarified why there was that need. If anybody is misinterpreting what I am saying, that is his own business.

**The Temporary Deputy Speaker** (Mr. Poghiso): The record will speak for itself. Order! Order, all of you! We are going to move on with the contribution on this Bill.

**Mr. Orengo:** On a point of order, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Mr. Poghiso): Order, all of you! If you so insist, the HANSARD is very clear. If you find that he has broken any rule of our Standing Orders, the Speaker will make a ruling on that.

Proceed, Dr. Kituyi!

**The Minister for Education** (Mr. Musyoka): On a point of order, Mr. Temporary Deputy Speaker, Sir. So that this House may proceed, is it in order for the hon. Member for Ugenya to have stood after the hon. Member for Chepalungu, Mr. Ruto, had concluded his remarks because I attempted to do exactly that? The Member for Gichugu, Ms. Karua, had said things that I wanted to rise on a point of order and because she had concluded her contribution, I was not allowed to make that point of order. I seek the Chair's intervention here. Is it really in order to entertain that point of order? It is completely out of order.

**Mr. Orengo:** Mr. Temporary Deputy Speaker, Sir, if you allow me---

**The Temporary Deputy Speaker** (Mr. Poghiso): Mr. Orengo, I do not know why you are proceeding in that particular direction. What are you up to?

**An hon. Member:** He is responding to a point of order!

**Mr. Orengo:** Why am I not being allowed---

**The Temporary Deputy Speaker** (Mr. Poghiso): Because it is no longer a point of order. We have already moved on from there.

**Mr. Orengo:** If you do not allow people to speak in this House, then---

**The Temporary Deputy Speaker** (Mr. Poghiso): Mr. Orengo, it is turning into an argument. A point of order raises issues that are brought against our Standing Orders.

**Mr. Orengo:** Standing Orders are based on the Constitution.

**The Temporary Deputy Speaker** (Mr. Poghiso): What Standing Order?

**Mr. Orengo:** If you read the Constitution, Section---

**The Temporary Deputy Speaker** (Mr. Poghiso): Order! I think I am just going to proceed from there.

Proceed, Dr. Kituyi!

**Dr. Kituyi:** Thank you, Mr. Temporary Deputy Speaker, Sir. It gives me much pleasure to come immediately

after Mr. I. Ruto. I listened very carefully to the speech by Mr. Ruto, and there was one refrain that I liked and which he repeated very many times.

**An hon. Member:** He is a python!

**Dr. Kituyi:** Mr. Temporary Deputy Speaker, Sir, he said: "I cannot understand that this is being provided for--" But there was another issue which I could understand; whatever else one may say, even the KANU side listened when Mr. Ruto was speaking, because they were hearing the views from State House.

*(Applause)*

You will notice that many of the sentiments he was expressing were those ones we have been getting very clearly, lately.

**The Temporary Deputy Speaker** (Mr. Poghisio): Order, Dr. Kituyi! What is the point that you are making?

**Dr. Kituyi:** Mr. Temporary Deputy Speaker, Sir, he was speaking like the President.

*(Laughter)*

**The Temporary Deputy Speaker** (Mr. Poghisio): Order, Dr. Kituyi!

**Dr. Kituyi:** Mr. Temporary Deputy Speaker, Sir, he was not speaking as the President. There is a difference between "as the President" and "like the President."

**The Minister for Vocational Training** (Mr. Ruto): Mr. Temporary Deputy Speaker, Sir, is it in order for the hon. Member to lead us into unnecessary references, when he should be contributing to the Bill before the House? I think the hon. Member has got nothing to contribute and if, indeed, he has nothing, then, he should sit down.

**Hon. Members:** That is not a point of order!

**The Temporary Deputy Speaker** (Mr. Poghisio): Order, Dr. Kituyi! I think we all know what the Standing Orders say about the name of the President. I am just asking Dr. Kituyi to tread very carefully in that particular direction.

**Dr. Kituyi:** Mr. Temporary Deputy Speaker, Sir, I very well understand what the Standing Orders say about the name of the President. I am not going to discuss the personal and private conduct of the President, but when the President arrives at the Jomo Kenyatta International Airport from an overseas trip and comments on the salaries of Commissioners of the Constitution of Kenya Review Commission; or when the President says: "They are bringing a Kikuyu to represent Rift Valley," that conduct must be discussed when we are discussing the Bill before us.

*(Applause)*

**The Minister for Education** (Mr. Musyoka): On a point of order, Mr. Temporary Deputy Speaker, Sir. I well appreciate what Dr. Kituyi is saying about his sense of understanding of the Standing Orders, but does he remember that one of the basic rules of the House is that, you shall not use the name of the President as an authority for your argument? That is what Dr. Kituyi is doing now, leave alone discussing the conduct of the President.

*(Both Dr. Kituyi and Mr. Musyoka  
remained standing in their places)*

**The Temporary Deputy Speaker** (Mr. Poghisio): Order, both of you! Both of you cannot be on your feet.

**The Minister for Education** (Mr. Musyoka): Mr. Temporary Deputy Speaker, Sir, let him avoid the controversy.

**The Temporary Deputy Speaker** (Mr. Poghisio): Dr. Kituyi, you have enough time. Have you finished?

**Dr. Kituyi:** Mr. Temporary Deputy Speaker, Sir, did you listen to what he was trying to say, and he is supposed to be a lawyer? The fundamental issue that I am raising is as follows, and lend me your ear; when the Minister says that, "we, in Rift Valley, cannot be represented by a woman," those who are in that Parliamentary Select Committee know what problems they had about Mrs. Yano, because she is a woman! There are some fundamental---

**Mr. Anyona:** On a point of order, Mr. Temporary Deputy Speaker, Sir. If any blame has to be apportioned over the appointment of one of the Commissioners regardless of the gender, then, it is the Parliamentary Select Committee and this Parliament which should take the blame because these names went to--- Is it in order for an hon. Member who has a chance to contribute to the Bill to start discussing the contribution of another hon. Member?

**Dr. Kituyi:** Mr. Temporary Deputy Speaker, Sir, our parliamentary system is adversarial. One of the main strengths of your argument is by negating the argument of another person. If a person is in this House and does not know that, that is not my responsibility.

I wish to say the following: I cannot understand what Mr. Ruto said. You see how it goes; we are having a

crisis because at the highest peak of power, there is a genuine fear. I cannot understand, but I will get clearer further along.

I want to start my substantive intervention this way: The critical role of the National Assembly is the discussion of constitution-making in Kenya. It is, first and foremost, founded on our collective responsibility to nurture the supremacy of this House. It is not because some people outside there have agreed on something, which is also important. It is not because the nation is happy about a certain direction the constitutional review process has taken, which is important. But it is because we are seized by a responsibility to show leadership as the National Assembly, and to protect and nurture the dignity of Parliament as an institution, not just in the process of constitution-making but, ultimately, in the governance of this country to posterity. I start that way because of this: We have had a recent history where hon. Members cede the sovereignty of Parliament to entities other than Parliament. That is where we start saying that once something is agreed, let us not touch it, let us pass it as it is. That is very dangerous because it breaches our responsibility under Section 47 of the Constitution of Kenya, which says Parliament is the supreme organ and the only organ that should make laws.

It is useful and sometimes helpful when we are not capable to rise to our challenges, that other groups find a role mediating or even taking responsibility to prepare the ghost of legislation. But the ultimate responsibility remains ours alone and we must be responsible to our own selves; that we pass laws that we accept, not because they were part of an entente outside Parliament.

The other side of a similar argument is that if we are stopping outside groups, whether we like them or not, from making laws for us, we must similarly stop the Attorney-General making laws for us. There was a very serious matter raised here and it can come back to haunt us; the matter that was raised by Mr. Orengo. The media took it as an attempt to block the merger debate. Many hon. Members took it as an attempt to derail consensus. But, eventually, you look at this reality: We all want Prof. Ghai to become Chairman of the Constitution of Kenya Review Commission and work successfully as the Chairman. If there is a weakness in the law under which he has been appointed; if you want him to remain there, we should rectify that problem when we still have a chance, instead of thinking that by bravado; by repeating that "I have got the power---" Is that an energizer advertisement or a statement of logic; that, if you say that, "I have got the power," then, you become right in law?

If you look at that law again, the Act of 1997 and the Act of 2000 set out three criteria for the appointment of the Chairman of the Commission. When they were created, nobody had Prof. Ghai in mind. He has come along, and he does not qualify by those definitions, but he is a good person to have as a Chairman. What is the route to take? The route to take is to introduce an amendment in the existing Act, to legitimise his role as the Chairman, but if you just pretend that the Attorney-General can say that "I have got the power to substantively amend the law," three months from now, a person will be paid by the enemies of the constitutional reform process to go to court or to go to Justice Kasanga Mulwa or any other Judge---

**The Minister for Education** (Mr. Musyoka): On a point of order, Mr. Temporary Deputy Speaker, Sir. Are you satisfied that it is in order for the hon. Member to mention specifically, the name of a High Court Judge, without bearing in mind the provisions of Standing Orders No.73? Will he bring a substantive Motion? I want to assure him that we shall defend hon. Justice Kasanga Mulwa.

**Dr. Kituyi:** Mr. Temporary Deputy Speaker, Sir, you can understand his political rationale. I said: "Or any other Judge." You heard me saying that. I would want to continue.

If a person appears before any Judge of the High Court of Kenya and argues that "every amendment in the laws of Kenya is contained in the merging of the relevant Acts of Parliament; that this provision was amended on such and such a date; "if you challenge him or her, you will find that there is no date in the merging of the Acts which shows when those provisions about qualifications for the Chairman of the Commission were changed. It is in our interest and the interest of---

**The Minister for Education** (Mr. Musyoka): On a point of order, Mr. Temporary Deputy Speaker, Sir. I demand your ruling.

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

**The Minister for Education** (Mr. Musyoka): Mr. Temporary Deputy Speaker, Sir, I seek your ruling.

**The Temporary Deputy Speaker** (Mr. Poghisio): Order, Mr. Musyoka! The hon. Member was probably headed in a direction that would have given you the ammunition to rise on a point of order, but he stopped mid-way. I did not hear him say anything adversarial to the particular name that he mentioned. So, if he proceeded in that direction, probably, I would have commented.

**Dr. Kituyi:** Thank you, Mr. Temporary Deputy Speaker, Sir. We have a fundamental problem. The biggest challenge for this House is not how to make a water-tight constitutional reform law. I would say, with honesty, that the laws for constitutional reform in South Africa and Uganda are both poorer legislations than the laws before this House right now. But what is lacking is not the laws. You can always find some excuse to throw the spanner in the works and

what is making the exercise of closing all the loopholes tedious is the absence of political goodwill. Those who are celebrating because certain hawks have been defeated; because we are finding common ground, and we must pass this law, do not celebrate a lull in the war. This is not the end of the war. You might be winning a preliminary battle; the war is yet to be won.

Mr. Deputy Speaker, Sir, our challenge is to say, can we identify and break the entrenched forces that are inimical to the cultivation of the consensus in the constitution-making process in Kenya? You do not do so through celebrating a very superficial victory. There are two parliamentary processes that I think we have to address. Our constitutional agenda primarily has two fundamental components. One, how can we create an infrastructure for a democratic society in the new millennium? Two, how can we diminish the cost of transition? How can we reduce the cost of changing leaders? That is where the problem is.

We have two constituencies in this country represented in this House and which are a major problem to the constitution-making process, peace-making and national development. There is a constituency made up of those persons who have a lot of skulls in the cupboard; persons who have a hatable history or discrete history. They belong to a frightened constituency. They are frightened because they are not certain of what will happen to them when they are not protected by the instruments of power. So, they want to postpone the inevitable permanently.

We have another constituency arraigned against that constituency. That is the constituency of the bitter persons whose livelihood has been destroyed, and whose life has been abused and their relatives killed because of the acts of the fearful. That is the constituency of the bitter persons. Unless we can identify the existence of these two diametrical opposite forces, whose interests cannot converge unless they rise above their pettiness or eventually, they might have to be crushed, then goodwill will not triumph in this country.

We would be pretending when we say, because we agreed on a comma, therefore, we are now going to the same direction. We have stood here before and celebrated consensus; we have diluted ourselves before, that is because we have said now, "this is a common process, let us strike a deal because we are going somewhere." Do not confuse beating time with getting the process going on. The first test of this goodwill is going to come next week when we will start discussing the Constitutional Amendment Bill to entrench this Act into the Constitution of Kenya.

Mr. Deputy Speaker, Sir, I have no benefit of pre-science, but it is my personal and simple impression that KANU is going to defeat the attempt to entrench this process in the Constitution. But I do not want to pre-empt that until that time. I will be very gladly surprised if they prove me wrong and accept the Constitution of Kenya Amendment Bill to entrench this process into the Constitution.

Mr. Deputy Speaker, I have a problem of persons who shift between national responsibility and parochial regional responsibility. When you talk as a Minister of State, Office of the President at one moment, and the other moment you talk like a person from Rift Valley, you have problems. Am I being led by a Minister of Government or a Minister from Rift Valley?

*(Applause)*

Mr. Deputy Speaker, Sir, in 1996, I had the privilege of attending the funeral of the late Dr. Onyonka. At that funeral, a Minister who speaks very little in this House, spoke something that was very touching to me. The hon. Katana Ngala said the following:

"Some of us who were young in the Cabinet remember the contribution of Dr. Onyonka. He inducted us into the responsibility of being Ministers and conduct of Ministers. He gave us an understanding about how we should present ourselves as national leaders."

Mr. Deputy Speaker, Sir, looking at the way certain Ministers are behaving these days, I think KANU is still mourning the death of Dr. Onyonka.

*(Laughter)*

This is because you have persons upon whom the authority of the State has been placed, but they have no capacity to transcend their juvenile styles and produce qualities of leadership. When they stand up, you listen and---

*(Applause)*

**The Temporary Deputy Speaker (Mr. Poghisio):** Order, Dr. Kituyi!

**Dr. Kituyi:** Mr. Temporary Deputy Speaker, Sir, I am not going to deal with any individual. I would just say that the Government has certain responsibilities to project the decorum of Ministers as a reflection of decorum of Kenyans. If we have Ministers who are charged with high responsibilities and privileges of holding high positions, but

are unable to suppress their temptations to copy bad manners, they diminish our stand in the international community. When some of them speak, they cause a flight to the stock exchange. They have the privilege of steering the ship of State at a time---

**The Temporary Deputy Speaker** (Mr. Poghisio): Order! Order, Dr. Kituyi! Dr. Kituyi, you are turning this debate into discussions on the Cabinet.

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

**The Temporary Deputy Speaker** (Mr. Poghisio): Order! Order! Dr. Kituyi, get yourself focused on the amendment to the Constitution.

**Dr. Kituyi:** Mr. Temporary Deputy Speaker, Sir, the Chair is always right. Unfortunately, a substantial number of hon. Members on this side are not totally agreeable that the Chair's opinion on what I am doing is totally fair.

**The Temporary Deputy Speaker** (Mr. Poghisio): Order! Get yourself back to the debate on the Constitution.

**Dr. Kituyi:** Mr. Temporary Deputy Speaker, Sir, I am thinking about a provision for civic education. I have listened to some eminent hon. Members from the other side. Indeed, many of them have gone to fair schools. However, when they talk about civic education, I do not know whether we are speaking in English Language because understanding of civic education and its facilitation is so alien to me. They say it is good that NGOs should not do civic education because it is the duty of the Commission to facilitate civic education. What is facilitation? Is that the same as doing civic education? Do they understand that what they are negating is actually being defended by the provision in the Bill, which they are supporting?

Mr. Temporary Deputy Speaker, Sir, when we are talking about the need to have an informed electorate and citizenry, before we can soundly debate how to construct a Constitution for Kenya, we have to understand that civic education component is just one of the many processes of loosening up and allowing people more space. How do you allow people more space, when you can allow the brutal and criminal violence that we saw yesterday on TV at Radio Citizen Station?

*(Applause)*

Mr. Temporary Deputy Speaker, Sir, I cannot discuss the matter because it is in court. But how can you display such bad manners over a person? Only the other day, we were praising him because of the political line he was pursuing. Even if you do not like Mr. Macharia because Radio Citizen is moving from one place to another, how do you condone such a criminal act, involving the beating up of the wife of Mr. Macharia, or roughing up an elderly person in public? I do not agree with him at all on many things, but I respect him because he is an elder in this society. He is a businessman who wants to build the country and reap fruits of the industry. You do that and yet you are talking about allowing alternative view. You deny the citizens of this country the right to listen to Nation Radio and Nation TV, away in certain areas, and you are talking about allowing for alternative view.

Mr. Temporary Deputy Speaker, Sir, I was amazed last weekend whether we are trying to create a culture to allow for alternative views on the basis of give and take, or whether we are laying the foundation for a Constitutional order. I saw the Chairman of a Committee of this House which is responsible for internal security--- In a normal democracy, that is a very senior position. That is the person who epitomizes our collective desires, so that the law and our leaders are respected. He is the Chairman of an important Committee and we should respect him. Mr. Kimeto is the Chairman of a Committee responsible for internal security in this Parliament. When he is in his constituency, he is supposed to do what the Government expects him to do; building infrastructure for development. But what happened? All of a sudden, the police force that does not have enough resources to chase murderers and other thieves, is mobilised with tear-gas canisters; starts breaking up a rally and roughing up the Chairman of a Parliamentary Committee. In a normal society, the Leader of Government Business would have come to this House to express the horror of the House over that conduct.

*(Applause)*

But what do we see? Since Mr. Kimeto is not in the good books of a certain faction of Government, therefore, they had to look the other way. You will keep looking the other way until every one of us is a victim of the same. That faction does not know or understand anything. Do we have such shallow memory of history? We must ask leaders to commit ourselves collectively in steering the constitution-making process. It is not our responsibility to drive the constitution-making process. Even if we can do like someone said, "I cannot understand", we should see that we have a larger responsibility to lower the tensions in the land and to create an atmosphere where we can forgive and be forgiven. It is always said that a good driver uses the rear mirror to see where he is coming from and what is following him, but most of the time he keeps his eyes in front to see where he is going. But we have a perversion of people who either want to

forget behind; they can break down the rear mirror, or they are so lame that their eyes can only see what is behind and they cannot conceive moving forward. I would like to point out that both of these people are not a right crop, and both are a disgrace to the whole of this National Assembly.

Mr. Temporary Deputy Speaker, Sir, I would like to say a few specific things now that I am about to round off. We have a series of amendments that have been proposed here. My party, FORD(K), has been party not only to the consultations held at Ufungamano, where I had a privilege to be one of the negotiators, but we also had consultations at County Hall.

**An hon. Member:** There was no proper negotiation!

**Dr. Kituyi:** Mr. Temporary Deputy Speaker, I will come to that because I agree with certain hawks in KANU that there was no proper negotiation. During the consultations, some wisdom came through and some amendments were proposed. We accept those amendments, but we should not close our eyes to the reality that certain ideas may skip our attention, and they are brought by other hon. Members who may not have been at those consultations. You cannot be right to say that because I have a certain opinion of Mr. Nassir, if he brings a good amendment to a Bill before the House, I reject it because it comes from Mr. Nassir. That is the kind of juvenile thinking that has diminished the honour of this National Assembly.

*(Applause)*

**An hon. Member:** Mr. Ruto!

**Dr. Kituyi:** Mr. Temporary Deputy Speaker, Sir, there were very useful amendments which escaped the groups both at Ufungamano, the Parliamentary Select Committee on the Constitution led by Mr. Raila and the consultations held in the Old Chamber and County Hall. Some of those amendments have been captured in the proposals by Prof. Anyang'-Nyong'o, while others have been captured in the proposals by Mr. Muite. We cannot negate these amendments just because we do not like the faces of the persons who bring them, or just because we do not like the political tendency of the persons who bring them. We will fail in our collective responsibility.

**Mr. Kajwang:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member in order to speculate debate on some amendments which have not even been moved? Is he in order to do that?

**Dr. Kituyi:** Mr. Temporary Deputy Speaker, Sir, I have steered very clear of suggesting anything specific about amendments being brought to the House, unlike the immediate two hon. Members who contributed before me. But I am saying that part of the debate at this stage - I know I will not contribute in the Committee Stage because I will be out of the country - is to express my opinion about the right approach to any proposal for amendments. That is what I am talking about. I enforce a principle of give and take and reject any proposal about specifics.

**Mr. Anyona:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I think the Chair should guide the House on this issue. My understanding of the Standing Order is that the purpose of proposing amendments is to give the House an opportunity during the Second Reading to express itself on those amendments.

**Hon. Members:** Yes, it is!

**Mr. Anyona:** Mr. Temporary Deputy Speaker, Sir, that is my understanding of the Standing Order, so that an hon. Member is actually free to discuss amendments that have been published on the Order Paper. If that is the case, I think the Chair should better clarify.

**Dr. Kituyi:** Mr. Temporary Deputy Speaker, Sir, you have not objected to that, and so, I will continue. There is a fundamental problem that we have not addressed so far, and it was raised partly by Mr. Murungi in his contribution. In a society which is so polarised, like ours; in a society whose political class has shown such a deficit of their capacity and challenge--- I would like to say that when you have contentious issues in constitution-making, you need certain mechanisms to resolve them. A proposal has been made here that there will be a Select Committee of Parliament. Maybe, that is what will happen.

My opinion is that the Select Committee of Parliament is not well suited to being the mechanism to resolve contentious conflicts in the process of constitution-making. When we come to the making of a political audit of the draft Constitution, you will have, for example, competing positions on presidential governance or parliamentary governance; you will have, for example, competition between constituency politics and proportional representation; you will have competition between bicameral Parliament and unicameral Parliament; you will have competition between federalism and unitary government. These are matters where there is no science of what side is right and what side is wrong. But in a clear society like ours, they will accumulate political posturing with some people going out and saying that their side must have, *wapende, wasipende*. This is not the language of constitution-making, but since we are so crippled in our utterances, that this is the language we know how to use in our politics.

Mr. Temporary Deputy Speaker, Sir, in such a society, there is always need for a certain informal mechanism of persons who are collectively respected by both sides of the political divide; a mechanism of esteemed persons; elders,

younger persons, men and women of such transcends of political competition, who can be approached and be told:

"Think together and advise us. We have disagreed on this because of this and that. What do you think is the way forward?"

These people will in turn come back and say:

"Give away this one; you are so keen about bicameral Parliament. Now, give away the desire that they have proportion representation instead of constituency politics"

That mechanism cannot be a Committee of Parliament because a Committee of Parliament inherently reflects the conflicts in the cleavages of our political life. A Committee of Parliament represents the opposing factions in the political debates and, therefore, it cannot be the mechanism to bring peace or heal the wounds that are caused by political disagreement.

*(Applause)*

What would have been most natural is to start cultivating collectively certain heroes that we can respectfully respect; persons whose opinion we may not always agree with, but we are ready to live with them because we respect those persons and believe that they are well-meant opinions. The absence of that mechanism constitutes the single most serious hurdle in the part of constitution-making in this country.

Right now, we may say that we are merging; we are having one process. All of us, including those who have been the most voracious enemies of a constitutional review process, are all of a sudden the saints now singing from the highest mountains about how much reason prevails, when they have been opposed to a common process; a people-driven process. Today, you stand up and say that reason has prevailed. Do you mean that reason has prevailed over you, because what has prevailed is not what you were standing for before? Since we distrust each other like that, I think we should find it within our imagination to start creating an informal mechanism. This mechanism should not even be provided in any law; it may not draw any allowances, but a group that will stop assailing and will come in extremely handy at the time when we resolve the biggest problem; the political audit at the National Constitutional Forum.

Mr. Temporary Deputy Speaker, Sir, somebody did mention something that is very important, but has not been dealt with. This is the question of transitional justice. The process of constitution-making is a very slow-starting process. This process also entails the debate on how to resolve an emotional account. We have to do an audit of our emotions; the bitterness and the baggage we have carried from history. I may not like the face of Mr. Biwott, and when I see him, I am scared and I cannot work with him. Could I find a mechanism to bring out the reason why I do not like Mr. Biwott? Could he also bring out the reason why he thinks that I do not like him, and then we find a way of helping to build Kenya together? Those kind of questions are part of the baggage of how we will manage the transition between now and the new constitutional order.

Some people have been saying that because of the absence of sufficient trust, we should have a transitional Government. It makes sense, but I think it is not tenable under the current political circumstances. I am not in a hurry to propose now that we start thinking about the new transitional Government arrangement. But we must now open the debate that will be critical in creating an enabling environment for a new constitutional order. What do we do with the scars that have been inflicted by some people in high office? What do we do with the bitterness that has been carried over from Maela to Enosupukia; from Likoni to Mount Elgon; from West Pokot District to Isiolo District? We cannot run away from these issues. I cannot understand what suspicions will answer that. The reaction should be that what we do not understand, we should find people who understand it and let their knowledge inform our sentiments.

Finally, I was a member of the Ufungamano negotiating team, a team which was set up by the Ufungamano initiative to engage the other side in negotiations. We were first and foremost victims to the absence of political goodwill in the country. We went through three months of negotiations without ever holding a single meeting together. There was never a single meeting between the Parliamentary Select Committee on Constitution Review and the Ufungamano negotiators. Part of the problem of that method was that we had to resolve consciously to find it more important as a historical responsibility to create a good constitutional order for Kenya than to look at the faces of the negotiators from the other side, such as hon. Gumo, hon. Kajembe and hon. Kitony. We thought we had more urgent things to do, but the problem that our agreement created was that issues that were agreed upon were never signed on any piece of paper. So, any of the parties can stand up and say: "We did not agree on that". We are victims to the pestering mood of distrust.

I remember, in my last meeting of the Committee before the Ufungamano Initiative eventually said it was accepting a merger, I raised the matter. KANU had told us that we were supposed to nominate 12 Commissioners, but hon. Members on the other side had talked to me over a drink in Parliament Buildings and said that the Opposition could only nominate 10 Commissioners to the Commission, so that it could give KANU an opportunity to sneak in one more commissioner from the Rift Valley Province, and one more from North Eastern Province, because the arithmetic was not done well when we were doing the earlier calculation. So, I told the Ufungamano Initiative that if it wanted to trust

KANU, it should get KANU to write down this provision into the Act and forget about the schedules. I did have pre-science, but some of my fears are being confirmed very nicely here; we have all been to school for many years but we are getting to be victims of arithmetics again, and about ten or 12 Commissioners being deemed to have been appointed like the other ones and appearing before the Select Committee of Parliament on Constitution Review.

This is not the fundamental problem, but it is a reflection of the big problem of distrust. We have the ability to outgrow our pettiness and be national leaders, and husband the constitution-making of this country, or we will be victims of an angry society. Ours is an angry and impatient population which holds us responsible for the absence of employment, thuggery in Mathare slums, insecurity nationwide and for their continued perseverance of a Government of this nature.

With those few remarks, I beg to support.

**Dr. Anangwe:** Thank you, Mr. Deputy Speaker, Sir, for giving me the opportunity to make my contribution on this important Bill.

May I say at the outset---

**Mr. Mwenje:** On a point of order, Mr. Temporary Deputy Speaker, Sir. According to our Standing Orders, it is provided that if one hon. Member stands up in his place, even if the Chair does not see him, he can continue speaking.

**The Temporary Deputy Speaker** (Mr. Poghisio): Order! Mr. Mwenje, I like the way you enlighten the Chair on the Standing Orders. However, Mr. Anangwe, proceed!

**Dr. Anangwe:** Mr. Temporary Deputy Speaker, Sir, I want to say at the outset that I support this Bill because it is an important Bill which touches on the lives of Kenyans.

It is very regrettable that it has taken a long time to resolve this matter. As many will recall, this process began in 1997. We had a Bill before this House and an Act was enacted. Then in 1998, and now for the fourth time, we are having another amendment. I hope that this is the last time that we are having this Bill before the House and this House should swear that never again shall we have another Constitution Review (Amendment) Bill. It is important that we move forward. If we continue with this kind of cat and mouse game, where we are just mark-timing, we will not move forward. If we can take five years discussing the Constitutional Review Act, how long will it take for us to discuss the draft constitution when it is formulated?

I regret to say that given the kind of background and---

*(Loud consultations)*

**The Temporary Deputy Speaker** (Mr. Poghisio): Hon. Members, we cannot follow what Dr. Anangwe is saying. Those of you who want to consult can consult in very low tones, and those of you who wish to withdraw from the Chamber should withdraw quietly. We would like to follow whatever Dr. Anangwe is saying. It is good for this country.

**Dr. Anangwe:** Mr. Temporary Deputy Speaker, Sir, if it has taken us five years to prepare for the Constitution review process, how long will it take us to discuss the draft constitution? I regret to say that it will even take longer than this because the [Dr. Anangwe]

basis for acrimonious exchanges will be there. The Constitution will have some controversial and unacceptable provisions. This will raise a lot of heated debate. We should move forward. A Bill of this nature need not be flawless if there is goodwill. If there is goodwill, we can even proceed with a skeletal Constitution Review (Amendment) Bill. The Britons say that the proof of the pudding lies in the eating but not in the making. We have spent a lot of energy on the process itself to a point that we may not enjoy the "meal" as and when it comes. So, may I request that we resolve to make this the last Constitutional Review (Amendment) Bill and never again shall we go through the same circus every year, so that we can move forward.

Mr. Temporary Deputy Speaker, Sir, we have arrived at this point after many years of acrimonious exchanges. It is important for us to recollect and know what it is that we were disagreeing about. We were not disagreeing about personalities, but we were disagreeing about fundamental principles of parliamentary democracy. There was the Parliamentary Select Committee on Constitution Review on one hand, and the Ufungamano Initiative on the other hand. We, in the Parliamentary Select Committee on Constitution Review, wanted Parliament to lead in the constitution review process because we believed, and we still believe up to today, that it is only elected people, through representative democracy, who have the mandate to speak on matters that affect our people. The Committee also said that in the constitution review process, Parliament is supreme. By saying this, we did not want to turn a blind eye to the larger society, but were only submitting ourselves to the fundamental principles of democracy. On the other hand, the Ufungamano Initiative held a different perspective. The Ufungamano Initiative said that Parliament had no mandate at all; that Parliament, being a creation of the Constitution itself, could not discuss this particular matter. Some of their popular notions were about a people-driven constitution review process.

**Mr. Gitonga:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the former Minister in order to say



that some people, particularly from this side of the House, said that Parliament has no mandate? Is he in order?

**The Temporary Deputy Speaker** (Mr. Poghisio): Order! It does not breach any Standing Order saying it. You must be able to raise a point of order relating to what he breaches in the Standing Orders!

Proceed!

**Mr. Kajwang:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is there a title in this House called "former Minister?" We are either Members, Ministers or sycophants!

**The Temporary Deputy Speaker** (Mr. Poghisio): That is a question, Mr. Kajwang!

Proceed!

**Dr. Anangwe:** Mr. Temporary Deputy Speaker, Sir, what I will simply say is this: I was only saying what has already occurred. I said that, in terms of recapitulating history, it is true that the Ufungamano Initiative insisted that Parliament, being a creation of the Constitution, cannot have a role in constitution-making. They said that. They also said that for a constitutional review process to be people-driven, it must be outside the framework of Parliament. That is also true. But now, I am just wondering whether they realise that it is quite the opposite of what they stood for! Right now, they are here and have acknowledged the very principles that we stood for; that, it is Parliament that has a role to play. It has a principal role to play in the constitution-making process. What I may say is that people have been describing this point of arrival as a merger. But I am simply saying that, what they are now calling a merger is simply an acceptance of what we stood for before. We did not compromise any principles at all. It was simply a capitulation to the point of view that the Parliamentary Select Committee---

**Mr. Mwenje:** On a point of order, Mr. Temporary Deputy Speaker, Sir. In view of the fact that the whole country is waiting and watching to see that we conclude this matter so that we can be on the move; and many Members have now contributed, I beg to move that the Mover be now called upon to reply.

*(Applause)*

**Dr. Anangwe:** So, Mr. Temporary Deputy Speaker, Sir, it is very good that now, we are together. We are speaking the same language. DP and FORD(K) are speaking the same language. Others, like SAFINA and FORD(P), are sitting on the fence. May I call upon them to also join and follow suit, so that we can move together.

**Mr. Kiunjuri:** On a point of order, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Mr. Poghisio): Order! Let the Member finish! Please, allow him to finish!

**Dr. Anangwe:** Mr. Temporary Deputy Speaker, Sir, in some of the contributions that have been made so far, some people have raised a lot---

**Mr. Wanjala:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Normally---

**The Temporary Deputy Speaker** (Mr. Poghisio): What is "normally?"

**Mr. Wanjala:** Mr. Temporary Deputy Speaker, Sir, when a Member rises on a point of order the way Mr. Mwenje did, you make a ruling and put the question!

Could we now call upon you to put the question before the former Minister continues?

*(Applause)*

**The Temporary Deputy Speaker** (Mr. Poghisio): Thank you, Mr. Wanjala! That is very good! However, I will consider what has been said. I will wait for him to finish and make a ruling on that issue.

**Dr. Anangwe:** Thank you, Mr. Temporary Deputy Speaker, Sir. During presentations and contributions that have been made so far, a lot of normative principles have been stipulated. People have said what the constitutional review process should be. But may I say this: It seems like it is the story of the elephant and three blind people. Each one of them had touched a different part of the elephant, and came up with a different perception of what an elephant is like. The same seems to be arising in respect of the constitutional review debate and the process itself.

I have heard it said here that the process needs to be non-partisan. It needs to be technical and, of course, it needs to have goodwill. May I say this: Let us be a bit careful, lest we set ourselves certain standards which, in practice, may prove a bit difficult to realise, given that it may be a larger society or problem in terms of the kind of polarisation that we already have in this particular country. No Parliament can legislate against polarisation in the larger society. So, what I am simply saying is this: Let us be very careful in terms of the kind of parameters we set for the constitutional review process. Let us continue with reality and move from the known to the unknown. We cannot recreate society if it is already polarised, ideologised and ethnicised. That is the best parameter from which we shall proceed and continue.

**Mr. Kiunjuri:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Now that you have consulted enough with Mr. Biwott, could you put the question?

**The Temporary Deputy Speaker** (Mr. Poghisio) Which question?

Proceed!

**Dr. Anangwe:** Mr. Temporary Deputy Speaker, Sir, what I am saying is that, let us not attempt to create Kenya. Kenya is ethnicised, polarised and ideologised. That is the reality, and Parliament has no power to recreate and change Kenya so that tomorrow, when we begin the constitutional review process, we can have a different society called non-partisan, non-polarised and non-ethnicised! If we proceed along those lines, the danger is that some of the expectations that we have, in terms of parameters and pre-conditions, may turn out to be a source of frustrations, and can be a bone of contention as we proceed with the constitution review process. So, let us accept the society the way it is. Let us accept Kenya the way it is, and proceed faithfully with the constitutional review process.

**Mr. Mwenje:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I am standing on Standing Order No.80---

**The Temporary Deputy Speaker** (Mr. Poghisio): Order, Mr. Mwenje! Even if you want to raise a point of order, you still have to be in order yourself!

Proceed!

**Dr. Anangwe:** Mr. Temporary Deputy Speaker, Sir, the issue of being non-partisan is desirable. Commissioners, participants in the Parliamentary Select Committee and those in the Ufungamano Initiative should be non-partisan. That is true and expected. That is the ideal way to move forward. But where will we get those people? In one way or another, they have come from a corner of Kenya where they have political interests. In one way or another, they have been associated with political parties. We may call upon them to cease being active members of their political parties, but have they handed over their life membership certificates? They are still members of their own political parties. Formally, during day-time and during the proceedings of the Commission, they will say so. But at night, they will go and hobnob with their political masters to conspire. That is exactly what will happen in that kind of environment. What I am saying is that, in that kind of environment, to expect a non-partisan person in an ideologised, polarised and ethnicised society is not possible. Such a person does not exist at all. You need to go to the City Mortuary in Nairobi. There, a dead person is not partisan. He or she does not take any sides. He or she has no interests because he or she is dead! That is where you will find a non-partisan person. But anybody who is still alive and politically active will always hold certain views, whether ethnic, local or ideological. That should not be taken for granted as we proceed forward!

Mr. Temporary Deputy Speaker, Sir, I am also saying that in a society like Kenya, we are highly ideologised and polarised along ethnic lines. That is the reality everywhere!

**The Temporary Deputy Speaker** (Mr. Poghisio): Order, hon. Members! Now, I am prepared to put the Question as asked by Mr. Mwenje. As you notice, the Attorney-General is not available but I have found out that someone will respond on his behalf.

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

**Dr. Anangwe:** Mr. Temporary Deputy Speaker, Sir, when I was interrupted, I was saying that the Kenyan society is extremely polarised, ideologized and ethnicised. In the rural areas, you will be surprised at what members of different communities say about each other. You find Luhyas saying one thing about Kikuyus, Kikuyus saying another thing about Luos, and Luos saying something else about another community. That is the reality, and we had better accept it. We cannot close our eyes to the reality since we all belong to tribes. Unless one is a keen observer, he may not realise that Kenya is polarised along two ideological lines. Pastoralists, peasants and the so-called "have-nots" belong to one ideology. On the other hand, the few people who managed to amass wealth through use of the State machinery can be called "petty bourgeoisie" or "indigenous capitalists". That is the line of polarisation in existence in Kenya today. We, in KANU, symbolise the yearnings and worries or the ideologies of the have nots. We want a constitutional order, a set-up, or a Government which identifies itself with the wishes of the very poor of society. That is our main ideological line.

Mr. Temporary Deputy Speaker, Sir, KANU is the trojan horse behind which are hidden interests representing the bulk of what Kenyans are. The bulk of Kenyans are peasants and pastoralists, who are generally poor. On the other hand, you may find some resemblance of capitalism. That is the truth.

**Mr. Murathe:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the sacked Minister to turn this debate into a KANU versus Kenyans contest? I thought we were talking about the Constitution, which belongs to all Kenyans. The hon. Member cannot stand here and make it appear as if this is a contest between KANU and the rest of Kenyans.

**The Temporary Deputy Speaker** (Mr. Poghisio): Mr. Murathe, that is not a point of order.

Proceed, Dr. Anangwe!

**Dr. Anangwe:** Mr. Temporary Deputy Speaker, Sir, the hon. Member pre-empted what I was going to say. I had just began a discussion on the Democratic Party of Kenya (DP). I will complete that shortly.

I was saying that the Kenyan society is polarised along two ideological lines, which are deep-rooted amongst members of the larger society. Even this House cannot effectively deal with the "fight" between the "haves" and the "have-nots".

**Mr. Gatabaki:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Considering the general consensus of the nation that we need to approve the proposed amendments, is it in order for the former Minister to use the Floor of the House to plead his case for reinstatement to the Cabinet?

**Dr. Anangwe:** Mr. Temporary Deputy Speaker, Sir, that is frivolous.

*(Applause)*

**The Temporary Deputy Speaker** (Mr. Poghisio): Order! Order! I would say that, that was a frivolous point of order.

Proceed, Dr. Anangwe!

**Dr. Anangwe:** Mr. Temporary Deputy Speaker, Sir, I would, therefore, say that the Government side of this House consists of people who represent the interests of the "have-nots", namely, pastoralists, peasants and the lanthen(?) proletariat such as the people of Mathare Valley. Those on the other side of the House represent the interests of indigenous capitalists. One of those capitalists is Mr. Njenga Karume. There are many other capitalists on that side of the House.

*(Applause)*

**Mr. Kiunjuri:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the sacked Minister to impute bad motives on another hon. Member and behave in the same hawkish way he used to behave before he stole the money that led to his being sacked?

**The Temporary Deputy Speaker** (Mr. Poghisio): Order! Order! I believe that, as a Member of Parliament, hon. Anangwe knows the good thing to do. So, he will need to apologise.

**An hon. Member:** What should he apologise for? No apologies to be made!

**Dr. Anangwe:** Mr. Temporary Deputy Speaker, Sir, I was only trying to explain the line of fusion that exists between the Government and the Opposition sides of the House. I said that the division is ideological. Whether the constitutional review process will be handled by partisan or non-partisan persons, experience will be required.

**The Temporary Deputy Speaker** (Mr. Poghisio): Order! Order! Dr. Anangwe, whether you were explaining the ideological line by which Kenyans are divided or whatever you were explaining, the fact remains that you called Mr. Karume something that is, for some reasons, offensive. So, you should withdraw that part.

**Dr. Anangwe:** Mr. Temporary Deputy Speaker, Sir, I was only giving examples of capitalists.

**Hon. Members:** No!

**Dr. Anangwe:** It is true that Mr. Njenga Karume is a capitalist!

**The Temporary Deputy Speaker** (Mr. Poghisio): Order! Order!

**Dr. Anangwe:** Mr. Deputy Speaker, Sir, I apologise.

*(Laughter)*

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

**The Temporary Deputy Speaker** (Mr. Poghisio): Order! Order, hon. Members! Everybody sit down! Sit down, Mr. Nyanja! Hon. Members, you can see that I am on my feet. You know that as soon as the Chair rises, you should sit down. That is the rule of this House.

Dr. Anangwe, you should now withdraw the offensive remarks you had made against Mr. Karume and apologise.

**Dr. Anangwe:** Mr. Temporary Deputy Speaker, Sir, I apologise for saying that Mr. Njenga Karume is wealthy.

**Mr. Karume:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I would like Dr. Anangwe to know that I got my wealth through my sweat. I never stole any public money like him. He is a thief and a liar!

*(Applause)*

**The Temporary Deputy Speaker** (Mr. Poghisio): Order! Order! Hon. Members, I cannot allow what is happening to continue. Dr. Anangwe and Mr. Karume shall now withdraw from the Chamber!

**Hon. Members:** On a point of order, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Mr. Poghisio): Order! Sit down everybody. Nobody shall rise on a point of order until the two hon. Members withdraw from the Chamber.

**Hon. Members:** On a point of order, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Mr. Poghisio): Order! Order! I said that nothing will happen here until the two hon. Members withdraw from the Chamber.

*(Dr. Anangwe and Mr. Karume  
withdrew from the Chamber)*

**The Temporary Deputy Speaker** (Mr. Poghisio): Order! They are being suspended under Standing Order No.88 for disorderly conduct. They have to withdraw those remarks first.

**Hon. Members:** They have already withdrawn from the Chamber!

**The Temporary Deputy Speaker** (Mr. Poghisio): Order!

**Mr. Maundu:** On a point of order, Mr. Temporary Deputy Speaker, Sir. We want the Chair to guide the House. When an hon. Member has made a statement which is unparliamentary, does he withdraw it first before he is suspended from the House, or is he allowed to go and return to the Chamber without withdrawing that remark? According to your ruling, you have ordered both Members to go out for making unparliamentary statements. I thought they were supposed to withdraw their statements before being sent out.

**The Temporary Deputy Speaker** (Mr. Poghisio): Order! Hon. Members, we need to know that gross misconduct has taken place here. This is seen by the fact that we asked Dr. Anangwe to withdraw the statement, but he did not do so.

**Hon. Members:** He did!

**The Temporary Deputy Speaker** (Mr. Poghisio): Order! What did he withdraw? He did not apologise.

**Hon. Member:** That is unfair!

**The Temporary Deputy Speaker** (Mr. Poghisio): Order! So, it was not called for at all that Mr. Karume would rise on a point of order and be offensive on the other hand. That does not augur well with what we are called to do here. It is enough for him that he has gone out.

Mr. Chanzu, you can proceed.

**The Assistant Minister for Energy** (Mr. Chanzu): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me the opportunity to contribute. Constitution-making is a very important process for any nation---

**Mr. Munyao:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I am pleading with the Chair to give an honest ruling. Here is an hon. Member whom you asked to withdraw and apologise for a remark he made, which he did. You have chased away an hon. Member for no reason at all.

**The Temporary Deputy Speaker** (Mr. Poghisio): Order, Mr. Munyao. The matter has been put to rest. You are not allowed to re-open it.

Proceed, Mr. Chanzu.

**Mr. Kihoro:** On a point of order, Mr. Temporary Deputy Speaker, Sir!

**The Temporary Deputy Speaker** (Mr. Poghisio): Let the hon. Member proceed. We are running out of time.

**Mr. Kihoro:** It is an important point of order.

**The Temporary Deputy Speaker** (Mr. Poghisio): It cannot be. The matter has already been closed. What is it?

**Mr. Kihoro:** Thank you, Mr. Temporary Deputy Speaker, Sir, for the opportunity. I thought it is an established rule in this House that Members will speak in the alternate. In fact, you called Dr. Anangwe to speak; Mr. Maundu to make a point of order, and now you have given a chance to my very good friend, Mr. Chanzu. When will you give an opportunity to this side of the House? I have been standing here since 2.00 o'clock!

**The Temporary Deputy Speaker** (Mr. Poghisio): What point of order is that?

**The Assistant Minister for Energy** (Mr. Chanzu): Mr. Temporary Deputy Speaker, Sir, once again, thank you very much for the opportunity to contribute to---

**Hon. Members:** On a point of order, Mr. Temporary Deputy Speaker, Sir!

**Temporary Deputy Speaker** (Mr. Poghisio): Order, Mr. Chanzu! I have heard a lot from Members of Parliament who have little regard for the Chair. I would like us to learn as hon. Members that what we say with regard to the Chair goes into the records of this House, and if you want to be remembered as someone who never respected the Chair, it will always be there for you. I would like you to remember that.

Proceed, Mr. Chanzu!

**The Assistant Minister for Energy** (Mr. Chanzu): Mr. Temporary Deputy Speaker, Sir, once again thank you

very much for the opportunity to contribute to this very important Bill. As I was saying, constitution-making is a very important process to any nation and must be handled with care.

**Mr. Odoyo:** On a point of order, Mr. Temporary Deputy Speaker, Sir. In view of the exhaustive manner in which this Bill has been discussed, would I not be in order to move that the Mover be now called upon to reply?

**The Temporary Deputy Speaker** (Mr. Poghisio): Order! I note the mood in the House. I will put the Question again.

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

**The Minister for Education** (Mr. Musyoka): Mr. Temporary Deputy Speaker, Sir, I want to---

**Mr. Mwenje:** On a point of order, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Mr. Poghisio): What is your point of order? He does not have much time. What do you want to raise?

**Mr. Mwenje:** Mr. Temporary Deputy Speaker, Sir, I know that he does not have time and I want to raise that.

**The Temporary Deputy Speaker** (Mr. Poghisio): Mr. Mwenje, let him go ahead and say what he has.

**The Minister for Education** (Mr. Musyoka): Mr. Temporary Deputy Speaker, Sir, I want to take this opportunity first to thank God for this country and all those hon. Members who have taken the time to make very useful contributions albeit sometimes controversial. I have been requested by the Attorney-General who was the Mover of this Bill to reply. So, I would want to address the various issues.

**Hon. Members:** On a point of order, Mr. Temporary Deputy Speaker, Sir!

**The Minister for Education** (Mr. Musyoka): Mr. Temporary Deputy Speaker, Sir, it is very difficult to continue when Members are on their feet on so many points of order.

#### MEMBERS' HALF-HOUR STATEMENTS

**The Temporary Deputy Speaker** (Mr. Poghisio): Hon. Members, it is now Zero-Hour and we will proceed to requests for Ministerial Statements under the provision of Standing Order No.20(A).

#### FORCEFUL ARREST OF MR. S.K. MACHARIA

**Mr. N. Nyagah:** Mr. Temporary Deputy Speaker, Sir, I rise to seek a Ministerial Statement from the Minister for Information, Transport and Communications. I would like to know the circumstances leading to the massive destruction of broadcasting equipment of Citizen Radio and Television that was done by the police and the Communications Commission of Kenya (CCK) and yet, there is a Civil Case, No.294, pending before the High Court. This case arose as a result of a Milimani Court case No.15 of 2000, which restrained the Attorney-General, the CCK, the KBC and Telkom Kenya limited from interfering with the operations of Citizen Radio and Television before it was heard and determined. However, a warrant of arrest was given by a lower court and it seems to have carried the day. We would also like to know why massive force was used by police and the employees of CCK, and why they could not apply civil methods to arrest Mr. S.K. Macharia. In the case of Karen, the police forced their way to get the equipment from a container.

Mr. Temporary Deputy Speaker, Sir, at the same time, we would like the assurance that the following journalists will not be arrested: Mr. Waweru Mburu, Mr. Clarkton Samboja, Ms. Mukami Ileri and Mr. Edward Waigwa. Right now, there is a Land Rover waiting for them. They are being arrested by the police because of what they do in their normal duties of producing and presenting programmes like *Yaliyotokea*, *Wembe wa Citizen* and *Mjadala*. Why should they be arrested? We would like the Minister of State, Office of the President, in charge of security, to restrain the police officers from arresting these journalists.

We know that Citizen TV and Radio stations cover Rift Valley, Eastern and Central provinces. Does it mean that the KBC, which we all contribute our money to, cannot face any competition? Was there any malice? Is it because the Saturday meeting at Meru would have been covered live? What signals are we sending to the international community about the image of this country when we behave in such uncivil manner?

When issuing the statement, the Minister should take into consideration the fact that on 29th January, 2001, the Directorate of Civil Aviation inspected the site for transmitter beacons of Citizen TV and Radio stations in Karen. We know that the KARENGATA Association had raised some problems, but this site was inspected by the Directorate of Civil Aviation.

**The Minister for Information, Transport and Communications** (Mr. Mudavadi): Mr. Temporary Deputy

Speaker, Sir, I will seek the indulgence of the House because this is a very serious matter and I want to make a fairly comprehensive statement on the issue that has been raised by Mr. N. Nyagah.

On 25th April, 2001, the CCK, with the assistance of the police, disabled broadcasting transmission equipment of Royal Media Services, which was illegally sited at Ambank House, LR.No.116039, and on LR.No.1160/39, located along Forest Road, Karen, and owned by S.K. Macharia. Royal Media Services were assigned both radio and television frequencies to broadcast in Nairobi. The transmitters for both the television and the radio broadcast were authorised to be sited at Limuru at latitude one degree south and eight minutes and longitude 36 degree east and 38 minutes, under altitudes 725 feet.

By reason of Section 36 of the Kenya Communications Act 1998, it is the responsibility of the CCK to prescribe matters regarding the nature and position of radio communication stations. Under ITU regulations, it is incumbent upon Kenya to submit geographical co-ordinates for all broadcast and other transmitters for approval by ITU. This is to ensure that emissions from such broadcast do not cause interferences to facilities in neighbouring countries, and conform to International Radioactivity Standards, especially those regarding the protection of human health. The coordinates of M/s Royal Media Services with transmitters located at Limuru were duly submitted to and approved by the ITU. Of late, there had been several complaints to the CCK regarding interferences with broadcasting and other communication facilities within Nairobi. The CCK undertook several monitoring exercises and noticed that a powerful TV transmitter had been erected at Ambank House along University Way. The transmitter was related to TV Channel 39.

On 28th November, 2000, the CCK wrote to Mr. S.K. Macharia, the proprietor of Royal Media Services Limited, asking that the illegal transmission emanating from Ambank House should cease. On 29th March, 2001, Mr. S.K. Macharia responded to the CCK saying that:

"All that is done at Ambank House is to test a new standby transmitter for Channel 39 with our live signals at Ambank House before it is installed".

Mr. Temporary Deputy Speaker, Sir, I will lay on the Table copies of the evidence.

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

However, a further monitoring exercise conducted on 23rd April 2001, clearly revealed that the emissions from Television Channel 39 were emanating from powerful transmitters located at Ambank House contrary to Mr. Macharia's assertions in his letter dated 29th November, 2000, that the emissions were for testing new equipment. On 13th February, 2001, the Karen Langata Association, through their lawyers, wrote to the Communications Commission of Kenya complaining of the erection of a broadcast transmitter with powerful transmission facilities on LR.No.1160/39, a residential property along Forest Road, Karen. The Commission undertook a monitoring exercise in the area on 14th March, 2001, and discovered that radio and television signals for FM 106.7 and Television Channel 39 were emanating from a transmitter located at the property. Karen is a residential area and the erection of a broadcast mast in the area exposes the residents to serious electro-magnetic radiation.

On 2nd February, 2001, the Commission inquired from the Directorate of Civil Aviation (DCA) concerning authorization by the DCA to the erection of the mast by M/S Royal Media Services Limited at Karen. The DCA confirmed that the authorization was specific to the mast not being a hazard to air traffic and was subject to all other statutory requirements by other organisations, namely the CCK, being met to the satisfaction of those organisations. No authority of the Commission was sought to erect the transmitter at Karen contrary to Section 36 of the Communications Commission of Kenya Act, 1998. By a letter dated 28th February, the DCA informed the CCK that M/S Royal Media Services Limited constructed the mast before receiving approval from the DCA.

Due to blatant breach of the law by M/S Royal Media Services Ltd., continued interferences with other broadcast and communication facilities and exposure of the Karen residents and tenants at Ambank House to dangerous radio emissions, the CCK, on 16th March, 2001; 17th April, 2001 and 24th April 2001, obtained warrants from the Chief Magistrate's Court to enter the premises of M/S Royal Media Services Limited, both at Karen and Ambank House, in order to search and obtain apparatus concerning the illegal transmitters. The entry and search at both locations was conducted in the morning of 25th April, 2001. The entry and search at Ambank House was conducted by eight officers from the Commission and from the Central Police Station.

Having found the illegal transmitting equipment, the officers seized the same, but when they were about to leave, Mr. S.K. Macharia, in the company of a battery of aides, entered the offices and ordered that the steel meshed entrance be locked and the officers not be allowed to leave. By that time, a number of employees from M/S Royal Media Services Limited had camped at the door and were baying for the blood of the police and the Commission staff. Some of the staff of M/S Royal Media Services Limited were screaming loudly and uttering all sorts of obscene words. When the police and the Commission staff noticed that their lives were in danger, they requested for reinforcement from the Central Police Station. When the reinforcement arrived, the place was awash with members of the public, the Press and

staff of M/S Royal Media Services Limited. In order to have an orderly operation, these people were requested to leave the site. Mr. S.K. Macharia and his staff were requested to allow the police and Commission staff locked inside the offices to leave. They had refused to open the grilled door. Mr. S. K. Macharia was late yesterday charged in court with the offence of establishing and using a radio communication station, contrary to Section 35 of the Kenya Communications Act, 1998. In Nairobi, the Criminal Case Number is 201/201/2001 and Criminal Case No.171/141/2001. He was also charged with obstructing police officers in the lawful execution of their duties.

Mr. Temporary Deputy Speaker, Sir, this is purely a criminal matter and has nothing to do with the on-going Civil Case No.15/2000 or any other civil or miscellaneous applications or appeal in which M/S Royal Media Services has sued the Communications Commission of Kenya, the Telkom Kenya Limited, the Kenya Broadcasting Corporation and the Attorney-General. Had Mr. S.K. Macharia confined his transmitters to the authorised sites, and had he complied with the Commission's request to remove the illegal transmitters, the Commission and the police could not have had a reason to enter his premises to seize the illegal installations. Copies of all the correspondence are also attached to the statement, from the DCA, the CCK and the replies by Mr. Macharia. I will table them so that hon. Members can have a look.

*(Mr. Mudavadi laid the documents on the Table)*

*(Applause)*

**Mr. Maore:** Mr. Temporary Deputy Speaker, Sir, we need further clarification and assurance from the Minister who is getting a big nod from Mr. Biwott. The civil suits that he is not making reference to--- The Government has turned to starting judicial persecutions, and whatever outrageous things that they want to do, they use the courts. We have the case of the Kenya Road Boards and the Kenya Anti-Corruption Authority (KACA). Now, when we are talking of freedom of information, where the world has turned to the internet, you cannot keep Kenyans in a KANU cocoon of trying to insulate and suffocate them with the rubbish coming from KBC, forever. It is possible for a renegade Kenyan--

**The Temporary Deputy Speaker** (Mr. Poghisio): Order, Mr. Maore! This is not debate time.

**Mr. Maore:** Mr. Temporary Deputy Speaker, Sir, I am trying to seek clarification. I am not debating. I know that it is getting jittery to everybody who works for the system.

**The Temporary Deputy Speaker** (Mr. Poghisio): Order, Mr. Maore! What have you said?

**The Minister for Education** (Mr. Musyoka): On a point of order, Mr. Temporary Deputy Speaker, Sir.

**Mr. Maore:** Mr. Temporary Deputy Speaker, Sir, I am still on a point of order.

**Hon. Members:** Sit down, Mr. Musyoka!

**The Minister for Education** (Mr. Musyoka): Hon. Members, I have the permission.

**The Temporary Deputy Speaker** (Mr. Poghisio): Order, hon. Members! Proceed, Mr. Maore. Can you seek your clarification?

**Mr. Maore:** Mr. Temporary Deputy Speaker, Sir, the point that I am raising is that the Minister has not---

**The Temporary Deputy Speaker** (Mr. Poghisio): Order, Mr. Maore! Mr. Maore, as much as you would like to be heard, and I also gave you the opportunity to speak, I heard you saying that the Chair is working for the Government.

**Hon. Members:** He did not say that!

**Mr. Maore:** Mr. Temporary Deputy Speaker, Sir, I did not say that.

**The Temporary Deputy Speaker** (Mr. Poghisio): What did you say?

**Mr. Maore:** Mr. Temporary Deputy Speaker, Sir, I am not capable of saying that. I said that it is getting jittery to anybody who works for the system, and that is why they are heckling about it. In the year 2001 it---

**The Temporary Deputy Speaker** (Mr. Poghisio): Order, Mr. Maore! Can you seek your clarification?

**Mr. Maore:** Mr. Temporary Deputy Speaker, Sir, I am trying to seek clarification. It is not possible to keep people in a cocoon where you have to control and manipulate what they listen to. The clarification is this: What is the Minister for Information, Transport and Communications trying to achieve by ordering the mutilation of equipment, as if the equipment is part of the criminal act?

**The Minister for Information, Transport and Communications** (Mr. Mudavadi): Mr. Temporary Deputy Speaker, Sir, I made it very clear, and it is also obvious, and there are many lawyers here, that you cannot go and seize or search premises without a court order. I have stated here very clearly, that there was a relevant court order from a magistrate's court, which justified the entry of the CCK officials and the police into those premises.

**Mr. N. Nyagah:** Mr. Temporary Deputy Speaker, Sir, because the Ministerial Statement is very lengthy, we will look at it and then we can raise the matter appropriately if need be.

**The Temporary Deputy Speaker** (Mr. Poghisio): Order, Mr. N. Nyagah! Can you now proceed to your next

point of order?

GOVERNMENT'S POSITION ON MERU MEETING

**Mr. N. Nyagah:** Mr. Temporary Deputy Speaker, Sir, there was another issue that I had raised concerning the meeting to be held at Meru on Saturday, as to the reasons pertaining to the cancellation of the meeting. I have made it quite clear, and if the Minister is in, we will request for that explanation.

**The Assistant Minister, Office of the President (Mr. Samoei):** Mr. Temporary Deputy Speaker, Sir, as the hon. Member has said, I have spoken to the OCS who received the notification of the meeting. I have also spoken to the OCPD and the Commissioner of Police. I am surprised that an hon. Member can stand up in this House to give false information. As I am speaking, the notification of the meeting to be held in Kinoru Stadium on Saturday is in place, and there will be security for that meeting to take place.

If there is need to publicise that meeting, I think the hon. Member should seek another forum and not this House.

*(Applause)*

**The Temporary Deputy Speaker (Mr. Poghio):** Order! Order, hon. Members! I think that is the end of the Zero-Hour.

**Hon. Members:** We still have time before 7.00 p.m.!

ADJOURNMENT

**The Temporary Deputy Speaker (Mr. Poghio):** Order! This is time for the Zero-Hour Statements. It was actually improper even for you to be allowed to debate because during the Zero-Hour, you do not debate or add anything. You should ask for Ministerial Statements and then statements are made by Ministers.

Hon. Members, it is now time for the interruption of business. The House is, therefore, adjourned until Wednesday, 2nd May, 2001, at 9.00 a.m.

The House rose at 6.45 p.m.