

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 24th November, 1998

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

PAPERS LAID

The following Papers were laid on the Table:-

The Annual Report and Accounts of Nyayo Tea Zones Development Corporation for the year ended 30th June, 1994 and the Certificate thereon by the Auditor-General (Corporations).

The Annual Report and Accounts of Nyayo Tea Zones Development Corporation for the year ended 30th June, 1995 and the Certificate thereon by the Auditor-General (Corporations).

(By the Assistant Minister, Office of the President (Mr. Angwenyi) on behalf of the Minister of State, Office of the President).

The Annual Report and Accounts of Tea Research Foundation of Kenya for the year ended 30th June, 1997 and the Certificate thereon by the Auditor-General (Corporations).

(By the Assistant Minister, Office of the President (Mr. Angwenyi) on behalf of the Minister for Research and Technology).

The Annual Report and Accounts of Kenya National Library Services for the year ended 30th June, 1997 and the Certificate thereon by the Auditor-General (Corporations).

(By the Assistant Minister, Office of the President (Mr. Angwenyi) on behalf of the Minister for Home Affairs, National Heritage, Culture and Social Services).

The Annual Report and Accounts of Bomas of Kenya for the year ended 30th June, 1996 and the Certificate thereon by the Auditor-General (Corporations).

The Annual Report and Accounts of Mara Lodges Limited for the year ended 30th June, 1994 and the Certificate thereon by the Auditor-General (Corporations).

(By the Assistant Minister, Office of the President (Mr. Angwenyi) on behalf of the Minister for Tourism).

The Annual Report and Accounts of Kenya Industrial Estates for the year ended 30th June, 1997 and the Certificate thereon by the Auditor-General (Corporations).

(By the Assistant Minister, Office of the

*President (Mr. Angwenyi) on behalf of
the Minister for Industrial Development).*

NOTICE OF MOTION

SUBDIVISION OF NYAYO TEA ZONES

Mr. Kihoro: Mr. Speaker, Sir, I beg to give notice of the following Motion:-
THAT, in consideration of the enormous cultural and economic values many Kenyans attach to land, being cognisant of the fact that the price of land is beyond the reach of many Kenyans, and taking into account the vast lands placed under the Nyayo Tea Zones Corporation, this House resolves that all the land under the Corporation be sub-divided into portions of five acres each and distributed to the landless who have been working in the said farms as labourers, and that the cost of the land be recovered from the proceeds realised from the sale of the produce. Thank you, Mr. Speaker, Sir.

ORAL ANSWERS TO QUESTIONS

Question No.609

DISMISSAL OF MR. MUKOSI

Mr. Sifuna asked Minister of State of State, Office of the President:-

- (a) whether he is aware that the Assistant Chief of East Mateka Sub-Location, Mr. James Wabwile Mukosi, P/No.191970, was dismissed from employment for allegedly involving himself in politics, and;
(b) if the answer to "a" above is in the affirmative, why the Assistant Chief was sacked and yet he was doing a commendable job by not involving himself in politics.

The Minister of State, Office of the President (Maj. Madoka): Mr. Speaker, Sir, I beg to reply.

As the House will recall, I attempted to answer this Question last week, but the hon. Member brought up a letter and I said I would come and give a full answer.

(a) I am, indeed, aware that the ex-Assistant Chief of Mateka Sub-Location was retired in public interest because of poor performance and gross misconduct.

(b) The Assistant Chief was retired because of various reasons. The letter which was tabled before this House by hon. Sifuna, was a genuine. It was the same letter that was given to the Assistant Chief. When we asked for reasons, we were given the answer by the DC who deliberately withheld certain information which was more relevant to this Question. The reasons which we were given are that the Assistant Chief was insubordinate to his superiors which hindered meaningful development in his area, he was partial in solving land disputes which led to simple cases being taken to court, he failed to arrest chang'aa brewers and he also arrested and took his father to court in spite of pleas from his clan elders to forgive him. That is what was given by our DC.

The reason which hon. Sifuna brought up - and it is true it was given in the letter - is that he had been frustrating KANU recruitment drives for the last four months in his area and that he suggested he had links with the Opposition.

For that, that reason is definitely political and be that as it may, there were some other reasons. When he was retired in public interest, he was paid all his terminal benefits which are paid to people who are retired in public interest.

Mr. Sifuna: Mr. Speaker, Sir, this is a very surprising answer from the hon. Minister when he says that he locked up his father. Now, the Chief's father stole bricks and the DCs and other people wanted him not to take his father to court. Why did the Government victimize the Assistant Chief who was so neutral that he could take his father to court and the father was even charged? This Assistant Chief was very neutral and he even took action against his father, and because of this he was sacked. Could the Minister give this House the names of those people who were brewing *chang'aa* to confirm that actually the answer given to him is true?

Maj. Madoka: Mr. Speaker, Sir, the question of the Assistant Chief taking his father to court - I think the issue here is that in the African tradition, if your father comes and takes your bricks and you are his son, you do not take him to court. You will lose the respect of the people around you. It was felt that because of this, he was

not going to be very effective.

Ms. Karua: Thank you, Mr. Speaker, Sir. We are shocked by the answer given by the Minister. The Chief cannot forgive a criminal offence; he can later on reconcile with his father in court. The tone of the Minister suggests that the Government is encouraging chiefs to compound offences. As far as the brewing of *chang'aa* is concerned, can the Minister tell us whether there are policemen in the area who are supposed to enforce law and order, or are chiefs turning into policemen? The other question is that---

Mr. Speaker: Let him answer that first.

Maj. Madoka: Mr. Speaker, Sir, the Government certainly does not condone any of the chiefs not enforcing the laws of the country.

Mr. Kapten: Mr. Speaker, Sir, the reasons which the Minister has given for sacking this Assistant Chief are no reasons at all. In fact, it is the District Commissioner who was impartial and who made a mistake. In the light of this, can the Minister try to reinstate this Assistant Chief because there is nothing wrong with what he did?

Maj. Madoka: Mr. Speaker, Sir, we will look into that. I would not like to say that we will reinstate him now.

Mr. Sifuna: Mr. Speaker, Sir, this Assistant Chief was an Administrative Policeman before he was appointed an Assistant Chief. It is true that the Assistant Chief is innocent as far as everything is concerned. Could the Minister look into the possibility of making sure that this man is given his old job because evidence has it that, this Assistant Chief never made any errors at all. He was very honest and, therefore, he is fit to be promoted. Could the Minister make sure that the Assistant Chief is transferred back to his original post, otherwise he will sue the Minister?

Maj. Madoka: Mr. Speaker, Sir, I did discuss that with the hon. Member and we will look into it.

Mr. Speaker: Mr. Nderitu's Question.

Question No.722

KILLING OF MR. WAMBURU ROMAN

Mr. N. Nyagah, on behalf **Mr. Nderitu**, asked the Minister of State, Office of the President:-

(a) whether he is aware that Mr. Gitau Wamburu Roman (ID/No.9718920/71) was killed on 31st May, 1998, at the G.S.U roundabout along Thika Road by a vehicle Reg. No.KAB 028J owned by an employee of the Kenya Posts and Telecommunications Corporation;

(b) if he is further aware that the body of the late Mr. Gitau remained at the Kenyatta National Mortuary for one and a half months without the knowledge of his relatives; and,

(c) if the answers to "a" and "b" are in the affirmative, what steps the Minister is taking to ensure that the motorist who killed the deceased is arrested and charged in court with the offence.

The Minister of State, Office of the President (Maj. Madoka): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that the vehicle which was involved in that accident is a personal car, registration No. KAB 028Z; not KAB 028J, a Toyota Corolla Station Wagon.

(b) I am aware that the body of the deceased remained at the mortuary unidentified and unclaimed for a long time. The deceased had no identification documents on him. A fatal accident police investigation file was opened for the purpose of investigations which is now complete and has been forwarded to the Attorney-General for perusal and directions.

Mr. N. Nyagah: Mr. Speaker, Sir, you will agree with me that this is a straightforward case. The family of the deceased needs compensation. When this young man was killed, he was first taken to Aga Khan Hospital where he was pronounced dead. Eventually, the body was taken to Kenyatta National Hospital, which was odd. This is because you never take a dead person to Kenyatta National Hospital. The body stayed at Kenyatta National Hospital Mortuary for one-and-a-half months and later it was transferred to the City Mortuary. Could the Minister ensure that the owner of this vehicle is prosecuted immediately? The vehicle's registration number and the owner's name is known: He is Mr. Kimei, who works with the Kenya Posts and Telecommunications Corporation. He should be prosecuted so that his insurance cover compensates the family of the deceased.

Maj. Madoka: Mr. Speaker, Sir, we have said that we have taken up the case and the individual is being prosecuted and we will wait to hear what the judge will say.

Mr. Speaker: Mr. Ngenye Kariuki's Question.

*Question No.404*NUMBER OF LIVES LOST IN
AIRCRAFT ACCIDENTS

Mr. Kariuki is not here? Next Question. Mr. Norman Nyagah.

Question No.225

RECARPETING OF ROADS IN KAMUKUNJI

Mr. N. Nyagah asked the Minister for Local Authorities:-

- (a) whether he could give the total distance covered by tarmacked roads within Kamukunji Constituency;
- (b) out of the roads mentioned in "a" above, how many are in dire need of repair; and,
- (c) how much the Ministry intends to spend in the recarpeting of these roads.

The Assistant Minister for Local Authorities (Mr. Sasura): Mr. Speaker, Sir, I beg to reply.

- (a) The total distance covered by tarmacked roads within Kamukunji Constituency is approximately 55 kilometres.
- (b) Approximately 30 kilometres of roads within constituency are in dire need of repair.
- (c) The cost of rehabilitating these roads will be determined at the evaluation or bidding stage.

Mr. N. Nyagah: Mr. Speaker, Sir, the total distance of 1,215 kilometres is what is covered under tarmac in Nairobi; with a traffic population in excess of 250,000. Kamukunji is a very small constituency; with an area of about 12 square kilometres. At what stage are you, as a Ministry, going to ensure that the roads are properly repaired without considering the *El-Nino* factor, where the money came from World Bank and I benefited to the [Mr. N. Nyagah] tune of Kshs57 million?

Mr. Sasura: Mr. Speaker, Sir, I would request hon. Nyagah to repeat the question. I did not get it clearly; I only heard; "at what stage".

Mr. N. Nyagah: Mr. Speaker, Sir, in his answer to part "c" of the Question, he said the cost of rehabilitating these roads will be determined at the bidding stages. Kamukunji is in dire need of good roads. How far has the Assistant Minister gone in determining the 30 kilometres or so of roads that need good tarmacking, so that we know where to begin?

Mr. Sasura: Mr. Speaker, Sir, it is very difficult to determine the length or distance of the roads. It is very difficult for us to say, "this road is completely in dire need of repair". What is happening is that, particular roads have got potholes. We assess the area covered by the potholes and then we determine the distance. We cannot say that the entire road is in dire need of repair.

Mr. Wamae: Mr. Speaker, Sir, could the hon. Assistant Minister assure this House that when they start tarmacking these roads in Nairobi, they will give open tenders and everything will be done above board and that this contract will not be given to specific contractors?

Mr. Sasura: Mr. Speaker, Sir, we do not give contracts to specific contractors.

Mr. N. Nyagah: Mr. Speaker, Sir, poor management in the Nairobi City Council, lack of functioning maintenance facilities and lack of long-term vision on Nairobi is partly a major crisis that we have in Nairobi. Could the Assistant Minister tell us how long it will take for the roads that are already under repair in Nairobi to be completed? When are they going to be completed especially in Eastleigh; First Avenue and the Pumwani Road where the construction has already begun?

Mr. Speaker: Are they relevant to Kamukunji?

Mr. N. Nyagah: Yes, Mr. Speaker, Sir.

Mr. Speaker: Is Eastleigh in Kamukunji?

Mr. N. Nyagah: Yes, and the Minister knows it very well.

An hon. Member: Yes, and he comes from there!

Mr. Sasura: Mr. Speaker, Sir, I do not come from Eastleigh, but it is true that Eastleigh is in Kamukunji Constituency. I know hon. Nyagah is very concerned about the Second Avenue of Eastleigh and I would like to inform him that this is under the contract package No.8N2. It would be very difficult for me to say that the works

on this road; the tarmacking, recarpeting and the pothole-patching will be completed on a specific date. These repairs are at different stages and the roads are in different conditions. Like in Eastleigh, we need to completely redesign the road drainage system.

Question No.562

REDUCTION OF FISH YIELDS IN MBITA CAUSEWAY

Dr. Ochuodho asked the Minister for Natural Resources:-

(a) whether he is aware that with the construction of the Mbita Causeway, the fish catch in the beaches in Homa Bay District has since greatly diminished; and,

(b) if the answer to "a" above is in the affirmative, what compensation will be given to the affected fishermen in Homa Bay District.

The Assistant Minister for Natural Resources (Mr. Lengees): Mr. Speaker, Sir, I beg to reply.

(a) I am not aware that with the construction of Mbita Causeway, fish catch in beaches of Homa Bay District have since greatly diminished. Before Mbita Causeway was constructed, there were consultations between engineers and fisheries researchers, and it was found that the Causeway could have no serious effects on fish stocks in Lake Victoria, Nyanza Gulf. In fact, statistics show that the catches continued to rise until 1994 when they started dropping due to other causes.

(b) No compensation can be accorded to the fishermen of Homa Bay beaches, because it has not been established that the construction of Mbita Causeway is the cause of fish catch decline. If anything, the Causeway has been an important development to the people of Rusinga Island as well as those of Homa Bay District and the entire mainland.

Dr. Ochuodho: Mr. Speaker, Sir, I am a bit saddened that rather than the Assistant Minister answering from facts, his answer is based on what engineers and researchers recommended at the time. However, the problem between the politically correct district, Suba and Homa Bay, is serious and may end up in an ethnic flare up especially going by the controversy currently surrounding Ruma Park. Could the Assistant Minister tell us why they are not considering putting up a bridge instead of a causeway or drilling holes so that fish can pass, because the fish normally go to Suba to rear and then go back to Homa Bay, so that Homa Bay people can still get their catch? He also talked of statistics. Could he table them?

Mr. Speaker: Dr. Ochuodho, let him answer that one first!

Dr. Ochuodho: Mr. Speaker, Sir, his statistics are fake.

Mr. Lengees: Mr. Speaker, Sir, I do not have the statistics here, but I can table them on Thursday afternoon. On the other issue, the Ministry is not able to construct any bridge or drill any holes for the fish to go through, as the cause of this problem is not the Causeway that was constructed. There is another cause.

Mr. Kajwang: Mr. Speaker, Sir, Mbita Causeway is in my constituency and I know what Dr. Ochuodho is talking about. Fish does not breed in deep waters, it breeds in shallow waters. Fish migrates from Mfangano Island and Uganda and goes to breed in the shallow waters of Karachuonyo and Homa Bay. But this Causeway blocks them so that when they reach there, they do not know where else to go and they end up dying. So, this is an environmental and ecological disaster. The Assistant Minister must tell us how they are going to solve this problem. It is a serious matter; it is not a joke. He should go there and see. As for the statistics, that fish are increasing instead of decreasing, he should tell us by how many millions fish have increased.

Mr. Lengees: Mr. Speaker, Sir, the situation, definitely, seems serious. But I will be able to table the statistics on Thursday afternoon. At the same time, we will have to forward this problem to the experts and then discuss it and see whether the fish catch is dwindling because of this Causeway. But the answer is as given earlier.

Dr. Omamo: Mr. Speaker, Sir, this is a very serious matter. Given the fact that the fish would like warmer water for breeding and this warmer water is in the Nyanza gulf, the fish travel all the way trying to find this warmer water for breeding, but they are now blocked. This was an original fault design; this Causeway was constructed without taking into account all the environmental considerations. Could the Assistant Minister agree that this Causeway should be looked into again?

Mr. Lengees: Mr. Speaker, Sir, earlier on I had said that the researchers and engineers consulted one another before the Causeway was built. As I have seen, the Question is very serious and we will have to review it.

Dr. Ochuodho: Mr. Speaker, Sir, I may not very much blame the Assistant Minister, for he only knows about breeding cattle. Because of this Causeway, the fish from Homa Bay cannot crossbreed with the fish from Suba and that is not fair.

(Laughter)

Also, the Assistant Minister talked about other causes as having been responsible for the decline. Could he tell us what these causes are? I suspect he is talking about the water hyacinth. If it is the one he is talking about, what is the current position?

Mr. Lengees: Mr. Speaker, Sir, it is true, I am "Mr. Ng'ombe", I am not "Mr. Fish". But then, in this case, the water hyacinth has been the problem as per the experts around Lake Victoria. The Lake Victoria Environmental Management, under KARI is currently implementing the hyacinth control component around the Lake.

Question No.254

HIPPOTAMUS MENACE IN SIRONGO BEACH

Dr. Oburu asked the Minister for Natural Resources:-

(a) whether he is aware that in the recent past, hippopotamus have killed five people around Sirongo Beach in Central Sakwa Location in Bondo Constituency and that the game warders in Siaya District have declined to kill these animals or allow the local people to kill them on their behalf; and,

(b) if the answer to "a" is in the affirmative, what steps he intends to take to deal with the menace and compensate the families of the victims.

The Assistant Minister for Natural Resources (Mr. Lengees): Mr. Speaker, Sir, I would like to kindly request that this Question be deferred to Thursday afternoon as the answer given is not satisfactory to the hon. Member.

Dr. Oburu: Mr. Speaker, Sir, I have no objection to that.

(Question deferred)

Question No.228

DISBURSEMENT OF ROADS 2000 PROGRAMME FUNDS

Mr. Speaker: Mr. Murungi not here? The Question is dropped.

(Question dropped)

Mr. Obwocha: But you have not come to it for the second time!

Mr. Speaker: Order! Next Question!

Question No.425

COLLAPSE OF MODOGASHE-GARISSA BRIDGE

Mr. Shidie asked the Minister for Public Works and Housing:-

(a) whether he is aware that drift/bridge between Modogashe and Garissa Town has collapsed and the 60 kilometre road between Modogashe and Habaswein has been impassable for the past eight months as a result of the heavy *El Nino* induced rains; and,

(b) if the answer to "a" is in the affirmative, if he could, as a matter of urgency, repair this bridge/drift and make the road between Modogashe and Habaswein passable.

Mr. Speaker: Who is answering that Question from the Ministry of Public Works and Housing?

(Loud Consultations)

Order! Order! The House does not know, but the Chair is having an awful lot of problems here as a result of very loud consultations between Mr. Murungi and Mr. Kones.

Hon. Members: Where?

Mr. Speaker: Behind my back. So, I do not know what to do with this Question.

(Mr. Kones entered the Chamber)

The Minister for Public Works and Housing (Mr. Kones): Mr. Speaker, Sir, I apologise for coming late; but---

An hon. Member: Answer Question No.228!

The Minister for Public Works and Housing (Mr. Kones): Question No.228. or No.425.

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

Mr. Speaker: Yes, what is it?

Mr. Obwocha: Mr. Speaker, Sir, the Minister is answering a Question which has not been asked!

Mr. Speaker: That is Question No.425.

The Minister for Public Works and Housing (Mr. Kones): Mr. Speaker, Sir, I beg to reply:-

I am aware that the bridge between Modogashe and Garissa Town has collapsed and that a 60 kilometre stretch between Modogashe and Habaswein has been impassable for the last eight months as a result of the *El Nino* rains. The Ministry is looking for money to fund the reconstruction work. Meanwhile, the road is passable during the dry season. The bridge is programmed for reconstruction under the *El Nino* Disaster Project and the reconstruction will commence as soon as the agreement with the donors is finalised.

Mr. Shidie: Mr. Speaker, Sir, while appreciating the Minister's answer, the Minister has been to Modogashe and Habaswein and he knows the condition of this road. He is misleading the House because he is telling us that the road is passable during the dry season like now. Big lorries carrying heavy loads cannot pass. It is only Four-Wheel-Drive vehicles that can pass. I would like the Minister to confirm to this House that a company by the name Skanska was given a contract of Kshs150 million and the money has been wasted and to-date, that road is in a bad shape.

Mr. Kones: Mr. Speaker, Sir, it is true that crossing the drift is a bit difficult for heavy commercial vehicles. But with some bit of struggle, these vehicles are able to pass. The Kshs150 million which the hon. Member is referring to is the money which was used by a former contractor by the name of Skanska, but when I went out there to inspect the work, it is obvious that probably the designs that were made on that road were not meant to accommodate the heavy rains that came during the *El Nino*. However, we have had a fresh design of the road by a consultant called Alexander Gibbs and we think this time round, when the road will be reconstructed, it will be able to stand heavy rains like what we had during the *El Nino*.

Mr. Shaaban: Mr. Speaker, Sir, is the Minister aware that the same contractor, Skanska, who had been awarded Kshs150 million improperly used the money? The same contractor is now being awarded by the same Ministry, another Kshs120 million to waste again!

Mr. Kones: Mr. Speaker, I did not think it was the problem of the contractor *per se*. It was the designs that were agreed on. This time round, the consultant is different; the consultant who will do the design. This is Mr. Alexander Gibbs.

Mr. Shidie: On a point of order, Mr. Speaker, Sir! I think the Minister is misleading the House. That area is swampy and he knows this very well. If this contractor knew that this is a swampy area and they had put proper designs, today, the Government would not be spending another Kshs150 million on the same road. Incidentally, it is the same company that is being awarded this contract. Could the Minister cancel that contract? This is because if this company goes there, we are going to lynch them because they have wasted taxpayers money.

An hon. Member: Sema yote!

Mr. Speaker: That is not a point of order.

Mr. Salim: On a point of order, Mr. Speaker, Sir. I understand there is a lot of money which has been set aside to repair bridges which have been damaged by the *El Nino* rains. But, unfortunately, those projects have not been implemented, including (inaudible) foot bridge. Could the Minister inform this House when (inaudible) foot bridge will be repaired?

Mr. Kones: That sounds like a different Question altogether.

Mr. Mahamud: Mr. Speaker, Sir, Is the Minister aware that---

Mr. Speaker: Order! Order, Mr. Mahmoud! Order, Mr. Salim! Now, what the Minister said in response to your question is: "That sounds like a different Question," and I did agree with him. It is quite different. So, it was irrelevant to the Question. Now do you understand me?

Mr. Salim: Yes, Mr. Speaker, Sir.

Mr. Speaker: Very well. Mr. Mahamud?

Mr. Mahamud: Mr. Speaker, Sir, is the Minister aware that over 3,000 people died during the *El Nino* in Wajir because of lack of roads? Is he really serious when he talks of designing a new road when the rains are just approaching? Could he assure the people of Wajir that the roads are going to be passable in the near future?

Mr. Kones: Mr. Speaker, Sir, I am very serious about it.

Mr. Shaaban: On a point of order, Mr. Speaker, Sir. The Minister has not answered my question. I had said that the same contractor was awarded Kshs150 million, and that money has been misappropriated because the section where that money was spent is still impassable. Is he aware that his Ministry is awarding again a contract of another Kshs120 million to the same contractor to waste? Can he answer that question?

Mr. Kones: Mr. Speaker, Sir, what I said was that I do not think, in my opinion, it was the problem of the contractor. It was the problem of the design. We have had to have a different look at the design again and engage a totally different consultant---

(Loud Consultations)

Mr. Speaker: Can we hear him?

Mr. Kones: We have engaged a different consultant to look into this project afresh. It is not just like the other Gibbs. We have had several other consultants and we have now come up with a proper design. The contractor will not be a problem because the consultant should be able to deliver. In any case, the only contractor who is based there, and competent enough to tackle that job, is Skanska.

Mr. Shill: Mr. Speaker, Sir, I am sure that the Minister and the House will agree with me that the people of North Eastern Province do not have good roads and we are lagging behind in development. Since we have so many contractors, it is the trend in this country that contractors mismanage money and they do not fulfil their duties. Could the Minister assure this House that since North Eastern Province cannot afford to lose that money again, he will give us a project and a very good contractor who will complete the project?

Mr. Kones: Mr. Speaker, Sir, with serious consultations, we still think Skanska is going to be the best contractor out there.

Mr. Speaker: Can we leave this question now? Mr. Keynan will be the last one.

Mr. Keynan: Mr. Speaker, Sir, I think we are trying to set a precedent where corrupt companies that are managed by corrupt individuals steal money and can still be awarded more contracts. We will ensure that Skanska does not do any more work in our district, because these people have already messed, we know their record. In fact, most people died as a result of the *El Nino* induced rains because these people interfered with the natural flow of water. We are not going to allow a repeat. Right now, I have information that not only are they getting the Kshs120 million; they are also getting another Kshs225 million which is going to cover the section between Wajir and Mandera. If that happens, let it go on record that we are not going to allow them. You had better look for another contractor, but not Skanska.

An hon. Member: We will lynch them!

Mr. Kones: Mr. Speaker, Sir, I am not aware of any other road. I only know about the Habaswein Road which Skanska will address.

Mr. Speaker: Very Well. Next Question for the second time.

Question No.404

NUMBER OF LIVES LOST IN
AIRCRAFT ACCIDENTS

Mr. Ngenye Kariuki! Mr. Kariuki is not here? Question dropped.

(Question dropped)

Mr. Murungi: On a point of order, Mr. Speaker, Sir. What about my Question?

Mr. Speaker: Mr. Kiraitu Murungi's Question was dropped by me a long time ago.

Mr. Murungi: Mr. Speaker, Sir, I want to plead with you to exercise extraordinary mercy on me, because we went to consult about this Question with the hon. Minister and we did not know we were taking such a long time and when we came back---

Mr. Speaker: Did you also know that you are destabilising the Chair?

Mr. Murungi: Mr. Speaker, Sir, we really do apologise if we did that.

Mr. Speaker: Very well. I do accept your apology and maybe, you will then see me early in this session. Is that alright?

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

Mr. Speaker: Your apology is accepted and mercy is exercised. Questions by Private Notice.

QUESTIONS BY PRIVATE NOTICE

RENEWAL OF SONY SUGAR MANAGEMENT CONTRACT

Mr. Kajwang: Mr. Speaker, Sir, I beg to ask the Minister for Agriculture the following Question by Private Notice.

(a) Is the Minister aware that the management contract between South Nyanza Sugar Company Limited (SONY) and Booker-T- International is due to expire towards the end of this year?

(b) Is he further aware that the Board of Directors of SONY is trying to have the said contract renewed without international tendering?

(c) If the answers to "a" and "b" above are in the affirmative, could the Minister direct that the management contract be placed for international bidding under International Tendering System?

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

(a) I am aware that the management contract between South Nyanza Sugar Company Limited (SONY) and Booker Tate International is due to expire on the 31st December 1998.

(b) I am aware that in anticipation of the termination of the technical management agreement with Booker Tate Limited, the Board of Directors of SONY resolved that in order to exhibit professionalism, transparency and accountability, the recruitment forces for the managers to be effected through established local and international tendering systems. In order to avoid a vacuum, the SONY Board of Directors gave Booker Tate Limited an extension of one year to enable the board finalise the tender and selection process which they are currently working on.

(c) Since the company has already made the decision to go for both local and international tendering, it will not be necessary for me to direct them on the matter.

Mr. Kajwang: Mr. Speaker, Sir, if you have heard the Assistant Minister correctly, he first of all says that this contract will end on 31st December 1998 and then, he says that contract which has not yet ended, has already been extended for one more year, incidentally to give the board a chance to internationally tender. The contract itself which is ending on 31st December is only three years. They need one year to tender and they are giving these gentlemen one more year to loot SONY Limited and purport that it is in our interest. The question is: Is the Assistant Minister aware that in fact, the entire board of SONY Limited was taken abroad and feasted by Booker Tate International, so that this contract could be extended even before it ends?

Mr. Karauri: Mr. Speaker, Sir, Booker Tate Limited are technical managers and their purpose is not to loot but to manage this company and I am not aware that the board was taken abroad to be feasted.

Dr. Kituyi: Mr. Speaker, Sir, in the recent past, it has come to the knowledge of this House that, Booker Tate has been deliberately and systematically destroying the sugar industry in this country starting with Mumias and now SONY. If they were given a contract for three years, the Government and the Board of Directors of SONY knew that at the end of this year that contract would expire. What made it impossible for them to start tendering internationally and locally in time for avoiding a vacuum, instead of waiting for the contract to expire and then give them another year when all they are doing is to do to the sugar industry in Kenya what they have done to the sugar industry in Zambia?

Mr. Karauri: Mr. Speaker, Sir, the oversight is regretted and I am sure it will not happen again. Processing the contract---

Mr. Sambu: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister not misleading the House when he calls a deliberate action to sign a contract in advance an oversight? He has to withdraw that word and

apologise, because it is not an oversight but deliberate.

Mr. Karauri: Mr. Speaker, Sir, the contract has to be done in advance because if you wait until the expiry date, you may not be able to process the tender. These tenders are advertised locally and internationally and it takes them between three and nine months to process them.

Dr. Ochuodho: Mr. Speaker, Sir, this country suffers from a major chronic disease of lack of confidence in its own people. We never believe that Kenyans can do anything to the extent that, we have to keep recycling staff even when we have upcoming young Kenyans to do the job; like Charles Njonjo and Dr. Leakey whom we recycled. Can the Assistant Minister tell this House that, there are no Kenyans who can run SONY Sugar Company?

Mr. Karauri: Mr. Speaker, Sir, we have faith in our own people and this tender has already appeared in *The East African*. It is going to appear also in *The Economist*. It appeared on the 23rd November in *The East African*. It will appear again on the 30th of this month and it will reappear again in *The Economist*. If there are any capable local managers, they should tender and they will be considered.

Dr. Omamo: Mr. Speaker, Sir, considering that this Ministry is headed by a very experienced Minister with financial background, is it not unfair to wananchi and this country that an oversight should have crept in. This leaves wananchi and we as representatives of wananchi with no option but to think that there is more to it than meets the eye?

Mr. Karauri: Mr. Speaker, Sir, I have said that the oversight is regretted and it will not recur.

Mr. Speaker: Well, I suppose I will conclude with hon. Kajwang.

Mr. Kajwang: Mr. Speaker, Sir, Booker Tate Limited now employs seven expatriates who are the General Manager, Harvesting and Transport Manager, Human Resource Manager, Information and Technology Manager and Dr. Ochuodho is very good here in his technology - two engineers, a Financial Adviser and people with dubious qualifications. We are paying them Kshs150 million every year for doing this job and this same SONY Limited has never declared a dividend to the Government since this Booker Tate Limited took over. What are we doing? Why can we not run this company like Muhoroni and Chemelil which are being run by Africans and they are declaring dividends? Is this not just a strategic looting of our economy?

Mr. Karauri: Mr. Speaker, Sir, whoever wins the tender will employ the people he thinks are best suited to manage the company and I want to refute what the member has said---

Dr. Ochuodho: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to keep giving the same answer which has been rejected by this House? Why did we have to tender internationally? Are there no Kenyans who can do this work?

Mr. Karauri: Mr. Speaker, Sir, if the answer is correct, then there is only one answer to one question. I wanted to refute what the member said; that, this company is paid Kshs150 million per annum. They are paid---

Mr. Anyona: On a point of order, Mr. Speaker, Sir. I think it will be useful for the Assistant Minister to define what he means by oversight. Is it an ordinary English meaning or a contractual term? Is it not appropriate that the Assistant Minister is required to define what he means by oversight?

Mr. Karauri: Mr. Speaker, Sir, am I expected to answer that? That is an ordinary English word.

Mr. Speaker: Well, order! I suppose Mr. Karauri is quite right. I do not think it is part of his docket to take us on a lecture on the meaning of English words. Next Question by Private Notice!

NON-ADMISSION OF SILAS NYAMATO TO UNIVERSITY

Mr. Anyona: Mr. Speaker, Sir, I would like to ask the Minister for Education and Human Resource Development the following Question by Private Notice.

(a) Is the Minister aware that a student of Sengera Manga Secondary School in Kitutu Masaba, Otukeny Silas Nyamato (1996 Kenya Certificate of Secondary Education, Index No.706409026), has not been selected by the Joint Admissions Board to any of the national universities?

(b) Is he further aware that the student duly qualified to be so selected?

(c) If the answers to "a" and "b" are in the affirmative, could the Minister explain why the student was not selected and ensure that he is admitted?

The Assistant Minister for Education and Human Resource Development (Mr. Awori): Mr. Speaker, Sir, I beg to reply. This Question is in three parts, but I will give only one answer.

The student, Silas Nyamato Otukeny, who did the Kenya Certificate of Secondary Education (KCSE) examination in 1996 using Index No. 706409026, was admitted for a Bachelor of Arts degree course at Maseno University College during a supplementary intake. The student is, therefore, advised to contact Maseno University

College if he has not received direct communication.

Mr. Anyona: Mr. Speaker, Sir, the Question is in three parts. I do not really know why the Assistant Minister has chosen to give only one answer. I do not even know which part of the Question he has answered. I would like him to answer the first part of part "c" of the Question. Why was the student not selected in the normal manner in the first place? Why did he have to run to his Member of Parliament to acquire admission during a supplementary intake?

Mr. Awori: Mr. Speaker, Sir, if I were to answer all the three parts of this Question, I would have said: "(a) No, I am not aware." That would not help him. But to answer the Question, the student did not meet the subject cluster requirements for the degree courses he had chosen. The following are the details of the degree programmes he had chosen in comparison to the marks he had scored in each cluster:- One, Bachelor of Education (Science), Egerton University, cut-off points were 40, but he had scored 36 points. Two, Bachelor of Commerce, University of Nairobi, cut-off points were 44, but he had scored 38 points. Three, Bachelor of Arts (Land Economics), University of Nairobi, cut-off points were 42, but he had scored 36 points. Four, Bachelor of Science (Food Technology), cut-off points were 44, but he had scored 27 points. Under those circumstances, the Joint Admissions Board could not admit him to any of those universities.

Mr. Anyona: Mr. Speaker, Sir, I have a letter here from the student, in which he lists his priorities. One of the them is a Bachelor of Arts degree course at the University of Nairobi. In the end, he was admitted for a Bachelor of Arts degree programme at the Maseno University College. If he did not qualify in the first place in the relevant cluster of subjects, how come that later on he was admitted at Maseno University College and not at the University of Nairobi?

Mr. Speaker, Sir, I wish to lay the document on the Table.

(Mr. Anyona laid the letter on the Table)

Mr. Awori: Mr. Speaker, Sir, the Bachelor of Arts degree programme was the student's third choice. When he was eventually admitted for that degree programme, all the places at the University of Nairobi had been filled up. However, there was a vacancy for the degree programme at Maseno University College, where he was admitted.

Mr. Ndicho: Mr. Speaker, Sir, the cluster subjects requirement introduced recently by the Joint Admissions Board has brought a lot of confusion. I have 27 students in Juja Constituency who have qualified for admission to the public universities, but because of this requirement, they could not be admitted. I believe that there are many other students in the country who have been affected by this requirement. What has the Ministry done to ensure that the issue of cluster subjects has been rectified, so that students who qualify can join the public universities? Could the Assistant Minister consider dropping the cluster subjects requirement altogether and reverting to the old system of admitting students to public universities?

Mr. Awori: Mr. Speaker, Sir, there is a definite intention to ease this requirement. It has been found that the cluster system is responsible for shutting many qualified students out of admission to public universities.

NON-PAYMENT OF BENEFITS TO MRS. MOHAMMED

(Mr. Raila) to ask the Minister for Labour:-

(a) Is the Minister aware that M/S Trident Insurance Company Limited has not paid redundancy benefits, provident fund and issued a certificate of service to their former employee, Mrs. Razia Sultan Mohammed?

(b) Is he further aware that this matter has been pending since 1994 and that Mrs. Mohammed now runs the risk of losing her only residential house through auction for non-payment of loan?

(c) If the answers to "a" and "b" above are in the affirmative, could he take immediate steps to ensure that this matter is settled without any further delay?

Mr. Speaker: Very well! Hon. Raila's Question by Private Notice is deferred.

(Question deferred)

Next Order, Mr. Nyachae!

MINISTERIAL STATEMENTS

TENDER AWARD BY CENTRAL
BANK OF KENYA

The Minister for Finance (Mr. Nyachae): Mr. Speaker, Sir, on 11th November, 1998, hon. Shem Ochuodho called upon me to issue a Ministerial Statement regarding the award of a computer tender by the Central Bank of Kenya (CBK). He observed that the tender was not publicly advertised, and that only four companies were invited to bid for the tender.

Mr. Speaker, Sir, the four bids were as follows:- M/s Modern Business Communication, US\$1.8 million; M/s ICL, US\$2.2 million; Copycat, US\$3.04 million; and, M/s Computer Applications Limited (M/s CAL), US\$4.48 million. The hon. Member further asked the Minister to comment on the following questions: One, why the tender was not publicly advertised; two, why a high-cost computer is needed; three, why M/s CAL is being selected when it was black-listed; four, what the exact position of this tender is, and, five, if the tender can be cancelled or re-advertised. I wish to respond to these matters as follows.

One, the CBK purchased the two M/s IBM 9375 mainframe computers in 1988 for its computerisation programme. These computers have served the bank well during the past 10 years. However, they now have inadequate capacity, given the current and identified future needs of the CBK. The computers are also of older technology, and cannot be made the year 2000 compliant. These computers were purchased directly from the M/s IBM. However, when the M/s IBM stopped operations in Kenya, M/s CAL took over their maintenance as M/s IBM's authorised business partner. Since then, M/s CAL has satisfactorily serviced these computers.

Two, in order to renew these computers, and at the same time achieve year 2,000 compliance, the CBK invited tenders from five mainframe computer vendors in Kenya for the supply and installation of replacement computers, and the relevant operating software. Of the five, only four responded, and were subsequently invited to make presentations on their proposals. The M/s NCR (Kenya) Limited did not respond. In order to avoid extended or problematic delivery, the tender required that any non-manufacturer tenderer was to submit a joint tender with the manufacturer. Another key requirement of the tender was that the proposed system must be capable of migrating the current bank in-house developed applications at minimum effort and conversion.

The four vendors who made presentations were IBM and CAL, for a joint tender; Modern Business Communications Ltd. (MBC) and ICL and Sun Micro-Systems, Copy-Cat and Digital Company. Their tender prices ranged from US\$1.7 million to US\$4.1 million. The Central Bank has not yet awarded the tender, but it is in the process of evaluating the proposals submitted by the four firms taking into account tender presentations and the Bank's needs. The received proposals varied widely technically from vendor to vendor as the hardware is manufactured by different manufacturers and for different applications, different environments and different scales of operation. The decision on who will be awarded that tender will be based on the on-going evaluation, taking into account the Bank's current and future operations and the workload. The best value and the most relevant option will be selected, that is, the vendor who will give the Bank a reliable system for its needs at the most competitive prices.

In conclusion, Mr. Speaker, Sir, the tender was not publicly advertised as this is a specialised item and the few available local dealers have the capacity to deliver on it. In any case, the Bank's procurement procedures require, at least, three tenders for each item from the list of registered suppliers maintained by the Bank. It is, therefore, not mandatory for the tender to be advertised publicly. The issue of high cost is relative and can only be reviewed *vis-a-vis*, reliability in performing the job at hand. Concerning the proposal where CAL features with IBM, who are manufacturers as the principal, the tender is currently under evaluation. Cancelling and re-advertising does not, therefore, arise.

Thank you.

Mr. Speaker: Why do you not make your point from there?

(Dr. Ochuodho moved to the Dispatch Box)

Dr. Ochuodho: I think this is a very serious issue.

Mr. Speaker: Order! Order, Dr. Ochuodho! You are not entitled to speak from there. Will you move to the Back Bench?

Dr. Ochuodho: Thank you very much, Mr. Speaker, Sir. When US\$6 million (Kshs360 million) public funds are being misused at a time when we are complaining of doing so badly is a major serious issue. I would have requested you to allow me to make it as clear as possible through that microphone. However, I want to begin by advising the hon. son of Nyandusi that the CAL issue is an issue that he would better stay away from. About

five years ago, this company conned the Government of US\$6 million; an amount similar to what we are talking about today. The PAC did report on this issue in the past two PAC Reports and I have documents that I will table. That company was awarded a tender through single sourcing which the PAC was against. But even more interesting, they were paid US\$6 million for the supply of tandem computers which are today gathering dust in the Treasury; computers that were never used. I am also aware, through PAC Reports, that a similar amount was later also paid to the company for equipment that they never supplied. In the first instance, they were supplied, but they were never used; in the second instance, they were not supplied at all, but nonetheless, they were paid for.

In the PAC Reports, also it was reported that a Minister in this House is a leading director of the concerned company.

Mr. Speaker: Order, Dr. Ochuodho!

Mr. Obwocha: On a point of order, Mr. Speaker, Sir. I do not know whether you are aware that this matter is before the PAC and now debate is starting before the current PAC resolves the issue.

Mr. Speaker: Order! Order, Dr. Ochuodho! You may put to the Minister other issues, but what is pending before a Committee of this House and has not been reported to the House, leave it alone. Proceed.

Dr. Ochuodho: Mr. Speaker, Sir, I am talking about things that have been reported. Let me advise hon. Obwocha that I am closer to the Minister. He is just a neighbour in the constituency and that is why I am advising him to stay away from this one.

Mr. Obwocha: On a point of order, Mr. Speaker, Sir. I will not take that. I am just advising him because I am the Chairman of the PAC. I am saying that this is an issue before the Committee; I have no any other motive whether with an enemy or a friend.

Mr. Speaker: Order! Order! Dr. Ochuodho, I thought you said that this issue is serious? If it is, I am also serious about time, so you better make your business serious. Again, you have tried to tribalise this issue. Will you stop that completely and come to the meat of the matter?

Dr. Ochuodho: Mr. Speaker, Sir, what even makes this matter more serious is that, as we are sitting here today, I am told that this tender is being awarded at the Central Bank despite the fact that this Question has been brought to the House and irregularities pointed out. When it became clear that the tender---

Mr. Speaker: Are you making a speech or seeking clarification?

Dr. Ochuodho: Mr. Speaker, Sir, I am trying to give some background information on why I think this is irregular.

Mr. Speaker: Order! Order! I did not give you the whole afternoon. Will you seek clarification?

Dr. Ochuodho: Mr. Speaker, Sir, can the Minister tell us why they are in a hurry to award this tender despite the fact that this company was blacklisted by this House? It has not been cleared and yet, they are going ahead to award it the tender despite the fact that what he is quoting is about three times as much as what the lowest tenderer, which is an indigenous company, is quoting. Is it a further confirmation of lack of confidence in the---

The Minister for Finance (Mr. Nyachae): Mr. Speaker, Sir, firstly, the Central Bank Board meeting which took place this morning was only being shown the demonstrations. Therefore, the question of awarding the tender, as I have stated, will be decided after the evaluation.

Mr. Speaker: Dr. Ochuodho, I have a mind of going into another issue. If you cannot wait for the Minister to respond, I can go to another issue. Mr. Minister, would you like to finish?

The Minister for Finance (Mr. Nyachae): Mr. Speaker, Sir, I think it is also fair that we do not discuss matters which are pending before the PAC. But it is very misleading to allege that CAL was involved in the procurement of the tandem computers which are rusting in the Treasury. That was not brought by CAL. The problem we had with CAL and which is being handled by the PAC has something to do with Customs and Excise Department which is totally separate. I have gone into this matter about the tandem computers; I do not know what to do with them, but CAL had nothing to do with this. I think there is a mix-up here on this matter and I do not think that this House is being treated fairly when we come to complain here, when, in fact, all the cases are being evaluated. We have to wait until the evaluation is completed and we have to move at speed.

Mr. Speaker: Hon. Ntimama!

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

Mr. Speaker: Are you called Mr. ole Ntimama? I am sorry!

The Minister for Transport and Communications (Mr. Ntimama): Mr. Speaker, Sir---

(Mr. Achola and Dr. Ochuodho stood up)

Mr. Speaker: Order, order, Mr. Ntimama! Dr. Ochuodho, do you wish to lay the document? Fine, then do so.

Dr. Ochuodho: Mr. Speaker, Sir, I wish to lay the document whereby the Public Accounts Committee (PAC) on 9th June, this year, blacklisted this company and recommended that it should never even be invited to tender for any Government contract.

Mr. Speaker: Very well.

(Dr. Ochuodho moved to table the document)

(Applause)

Mr. Speaker: Order! Order, Dr. Ochuodho! If the document had been laid on the table before, you do not have to lay it again because it is already the property of the House.

(A number of hon. Members stood in their places)

Mr. Speaker: Order! Order, hon. Members! It is not what you wish. It is what the law says. It is as simple as that. That is what the law says.

Hon. Members: Point of order, Mr. Speaker, Sir!

Mr. Speaker: Order! Order, hon. Members! Actually, we cannot have rules of a mob from outside. It is not right. You cannot heckle every decision the Chair makes from there. I have said that the PAC report, after being tabled in this House, becomes a public document and more so, a document of this House. Therefore, any hon. Member who is interested in referring to that document, could use the date of the report which has been mentioned by Dr. Ochuodho. That can be done very easily. So, one cannot table the report again because the rules refuse it. It is that simple. Therefore, could we now proceed. Mr. Ntimama?

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

Mr. Speaker: Order! Order, hon. Members! We will not turn a Ministerial Statement into a debate. Again, that is a rule of the House. If there is something special and really interesting about what Dr. Ochuodho had said, one could find a way of putting it before the House; either by way of a question or contribution. But, we cannot turn a Ministerial Statement into a debate! It is not done that way! I will only give a chance to a hon. Member who wants to seek a clarification.

(Mrs. Ngilu stood up)

Mr. Speaker: Order, order, Mrs. Ngilu! Mr. Ntimama?

(A number of hon. Members stood up in their places)

Mr. Speaker: Order! Order! Order hon. Members! Order, Mr. Murathe! Hon. Dr. Ochuodho, I hope you are not revisiting the issue of placing those documents on the Table because I will not accept that. I have already ruled that out of order. But, is there anything else you wish to raise? This will be the very last one.

Dr. Ochuodho: Mr. Speaker, Sir, my concern was that I would have been very happy to raise this as a question. But, as I said, and the Minister did confirm, the board is meeting today to award the tender which will cost this country so much money. However, since you cannot allow me to lay the document on the Table or to read a section that implicates this company, could you allow hon. Achola, who was a member of PAC and knows about this company to say something?

(Loud consultations)

Mr. Speaker: Order, order, hon. Members! Dr. Ochuodho, certainly I will not lend you my eyes, because the rule is: Catch the Speaker's eyes, not Dr. Ochuodho's eyes. So, I will not agree to that.

Mr. Achola: Mr. Speaker, Sir, I wish to make one statement. I was in the PAC for two consecutive years. We did blacklist CAL for having swindled this country of millions of dollars. Now, why was it allowed even to participate in this tender? The Minister seems to be protecting the company.

Mr. Speaker: Very well. Could the Minister respond?

Mr. Achola: Mr. Speaker, Sir, I would like the Minister to assure this House that they will not allow CAL to be considered among those four firms which applied for the tender.

(Applause)

The Minister for Finance (Mr. Nyachae): Mr. Speaker, Sir, first, hon. Dr. Ochuodho is misquoting me. I did not say that the board was meeting today to award the tender. I stated to this House that the board was convened to receive demonstrations---

Hon. Members: By CAL!

(Loud consultations)

The Minister for Finance (Mr. Nyachae): Mr. Speaker, Sir, I do not want words to be put into my mouth. It is very wrong. I did name the suppliers who have quoted. The other point which hon. Members must be prepared to understand is this: I stated very clearly that the tenders have not been awarded.

The issue about the decision of the PAC will come in if it is breached, and that is when the issue of that company will come up. But, for now there is no evidence.

(Several hon. Members stood in their places)

Mr. Speaker: Order! Order, all of you! Mr. Ntimama?

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

Mr. Speaker: Overruled!

The Minister for Finance (Mr. Nyachae): Wacha hiyo!

(Laughter)

TENDER AWARD TO M/S ERICKSON

The Minister for Transport and Communications (Mr. Ntimama): Mr. Speaker, Sir, I rise here to give a Ministerial Statement to respond---

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

Mr. Speaker: Order, Mr. Murathe! I have already closed that matter. Mr. Ntimama is already on a point of order.

The Minister for Transport and Communications (Mr. Ntimama): Mr. Speaker, Sir, I wish to respond to hon. Maore's question last week about the irregular tender awarded by the Kenya Posts and Telecommunication board. Further to my earlier response about this issue, I wish to bring to the attention of the hon. Members the following additional information. M/S Erickson Telecommunication SPA of Italy was awarded the tender after having been evaluated as the most responsive bid to the Kenya Posts and Telecommunications Corporation specification. The tender, annex 1, clearly specified that the KPTC is not bound to accept the lowest or any other bid or give reason for rejection or acceptance of any bid or cancellation of the entire tender. The bidders were aware of the condition at the time of bidding and submission. This condition is crucial in tender awards because the price is not the key criteria as there is the technical competence. The bid prices at the opening date are as shown in annex 2 and were ranked as follows:

M/S China KPTC

M/S Zyong Zyng Telecom Limited of China

M/S Sumitom Corporation

M/S Erickson

M/S AlKatel

M/S Wilken

M/S Chedrang

Mr. Speaker, Sir, M/s Alkatel gave a discount which brought their price lower than M/S Erickson. But, their price was still higher than that offered by M/S China Kenya Posts and Telecommunications. M/S Zyong Zyng Telecom Limited of China did not meet the technical specification of the KPTC and were therefore

disqualified. Although M/S Alkatel met the basic technical specifications, the corporation had neither technical nor operational experience with the offered Alkatel equipment. The evaluation team recommended the award of the tender to M/S Erickson who was evaluated as technically and operationally superior, subject to M/S Erickson offering the discount to match M/S Alkatel's evaluated price.

Mr. Speaker, Sir, annex 3 is the board paper recommending the award of the tender to M/S Erickson. The board approved the award of the tender to M/S Erickson with the proviso that M/S Erickson matches the evaluated price of M/S Alkatel. The annex 4 is the extract of the board minutes.

Mr. Speaker, Sir, the corporation notified M/S Erickson of the award, with the proviso that they had not matched the price of M/S Alkatel. A copy of the letter is attached to annex 5. M/S Erickson considered and accepted to match the Alkatel evaluated prices and gave a discount of US\$1,400,000. M/S Erickson acceptance letter is attached on annex 6.

Mr. Speaker, Sir, a question has been raised as to why the KPTC had to tender when they could have sourced the equipment directly from M/S Erickson. The reasons are as follows. The KPTC followed the Government circular: Procurement Procedure for State Corporations, dated 15th May, 1998; reference No. OP39/1A, attached to annex 7. In order to attract high quality bids and computer depricing, it was necessary to follow the public tender process. The international finance corporation is willing to fund this project on condition that the acquisition of the equipment is based on international competitiveness. In view of the foregoing, the tender process was proper, transparent, fair and within the laid down procedures. The award of the tender to M/S Erickson is in the best interests of the Corporation.

Mr. Speaker, Sir, I want to say that we have done a lot of research here for the sake of hon. Maore and other interested hon. Members. We have got annexes in this Ministerial Statement showing exactly what happened. It would be better for somebody to look at these documents first so that he can probably determine what to do next. I wish to lay this document on the Table.

(Mr. ole Ntimama laid the document on the Table)

Mr. Maore: Mr. Speaker, Sir, the Minister has actually quoted a Government Circular that discourages single sourcing. You cannot have a Circular that prohibits single sourcing and have the same behaviour and action that amounts to single sourcing. If as per Annex Seven which the Minister has quoted, the procedures allow you to invite tenders and you have advertised for a public tender, and the tenderers have responded--- The Technical Evaluation Committee actually went and said that Alkatel was the best suited group to undertake the project. Within 12 hours after the Question had been put in Parliament, the Corporation was harassing Alkatel to go and denounce the deliberations and say that the award of the tender was transparent. The Minister knows this, but he is only trying to protect some other brokers. The Government Circular on this matter has been violated and he should actually own up and say that he is going to do something about it to keep up with is consistency of a very honest Cabinet Minister in the wrong the place!

Mr. Speaker: Mr. ole Ntimama, would you like to respond?

The Minister for Transport and Communications (Mr. ole Ntimama): I have no comment, Mr. Speaker, Sir.

RICE REHABILITATION LEVY

The Minister for Agriculture (Mr. Mudavadi): Mr. Speaker, Sir, I wish to make a Ministerial Statement on the Rice Rehabilitation levy as demanded by hon. Nderitu.

Mr. Speaker, the Rice Rehabilitation Levy has been collected by the National Irrigation Board (NIB) from 1992/93 Financial Year. The levy is collected and paid to Mwea Rice Mills Limited which is a subsidiary of the National Irrigation Board and which holds 55 per cent of the shares with the Mwea Multi-purpose Co-operative holding the other 45 per cent. The levy which is passed on to the consumer is built onto the rice price structure and was started for the purpose of rehabilitating or replacing the mills. Currently, the levy is charged at Kshs0.70 and Kshs1.50 per kilogramme of milled Sindano and Basmati rice respectively. The rice price structure used to be reviewed by an Inter-Ministerial Commodity Prices Review Committee chaired by the Ministry of Agriculture but since liberalisation, it is now reviewed and approved by the National Irrigation Board.

Mr. Speaker, Sir, upto October, 1998, a total of Kshs47,894,877.70 had been collected. Mwea Rice Mills Limited manages the levy. In 1997, proceeds accruing from the levy, amounting to Kshs37,896,051, together with retained earnings made by the company, were used to replace the oldest two by 2.25 tonnes per hour capacity mills. The other two mills of five tonnes per hour capacity which it installed in 1960 also needed to be replaced.

This is because milling technology has changed considerably since the 1960s, making it difficult for the NIB to sell their locally milled rice in a liberalised market where there is much better milled imported rice whose appearance is more attractive to the housewife.

Mr. Speaker, Sir, I have also attached some supplementary information to show when and for how much the mills were rehabilitated and the collections over the years.

POINTS OF ORDER

PHYSICAL COMBAT WITHIN THE PRECINCTS OF PARLIAMENT

Dr. Kituyi: Mr. Speaker, Sir, my attention has been drawn to the contents of the issue of last Saturday, 21st November, of the *East African Standard* to the effect that I was involved in a physical combat within the precincts of Parliament with another hon. Member of Parliament. Further, my attention has also been drawn to the contents of yesterday's issue of the same newspaper, where one hon. Member was bragging that he has punched me and he will continue to do the same if I oppose his preferred master politically. I believe in the decorum of Parliament; the collective responsibility of Members of Parliament to retain the dignity and the honourable conduct of this House. I wish to declare here that I have never been tempted or been involved in any physical fight within the precincts of Parliament or anywhere else in this country since the year 1967. I believe that it is the responsibility of all of us, with the assistance of the Chair, to promote, however difficult it might be for some of us who might only recently have been involved in "mtu wa mkono" livelihood, the use of our mouths and brains once we become hon. Members of Parliament and not to continue to be primitive and use physical threats or confrontations as a way of dealing with politics.

DISPUTE OVER RATES OF BONUS ARREARS

Mr. Magara: Mr. Speaker, Sir, I am seeking a Ministerial Statement from the Ministry of Agriculture on the issues and factors that are taking place in South Kisii District Zone 11 affecting Tendere Tea Factory and Nyamachi Tea Factory. The farmers in these two factories are disputing the rates which were used to pay them their bonus arrears. It was supposed to be Kshs19.50 per kilogramme and not Kshs13.40. The farmers have been requesting for a proper explanation from KTDA head office and its directors on the ground, but for the last one month none of these officials has given a proper explanation as to why the bonus rate was reduced from Kshs19.50 to Kshs13.40. The only explanation they are giving is that the two factories, and more especially Tendere Tea Factory, had overspent their earnings by Kshs7 per kilogramme. If you credit the green leaves that were delivered, of 18,300,000 kilogrammes, you will find that the total expenditure in Tendere Tea Factory was supposed to be Kshs126 million.

I need a Ministerial Statement explaining how the Kshs126 million was spent by Tendere Tea Factory which necessitated the farmers to be paid at the rate of Kshs13.40. I would also like to know what was bought, maintained and serviced in these two factories, more especially in Tendere Tea Factory.

As we speak right now, the directors from Zone 11 are "hibernating" in a resort hotel in Mombasa with the Managing Director without explaining what is happening to the farmers on the ground.

The farmers have threatened to go on strike and stop picking tea. I am specifically referring to Ogembo Tea Factory and Nyamachi Tea Factory.

Mr. Murathe: On a point of order, Mr. Speaker, Sir. Last week, I demanded a Ministerial Statement with regard to the banking crisis at the National Bank of Kenya, but the Minister was not in. Over the weekend, the Minister issued a statement in the Press, taking the debate out of this House. Do we still expect that Ministerial Statement, or is that equal to the statement---

Mr. Speaker: To the best of my recollection, I think you did not request for a Ministerial Statement. What you did is that you utilised your zero-hour, where the Minister is not obligated to respond, but he can if he so wishes. So, on zero-hour, you say what pleases you. It is, in fact, after the adjournment of the House.

Next Order!

BILL

*Second Reading*THE CONSTITUTION OF KENYA REVIEW
COMMISSION (AMENDMENT) BILL*(The Attorney-General on 19.11.98)**(Resumption of Debate interrupted
on 19.11.98)*

Mr. Speaker: Hon. Mudavadi was seconding.

The Minister for Agriculture (Mr. Mudavadi): Thank you, Mr. Speaker, Sir. I just want to reiterate that I stand to second the Bill. I would like, first and foremost, to take this opportunity to express a lot of gratitude to all the people who have been actively involved in the protracted deliberations that have resulted in this particular Bill. I think it is important to give specific mention to Bishop Sulumeti and his Drafting Committee, specific commendation to the IPPC which also set the ball rolling and worked tirelessly to be able to get this process to the stage that we have been able to get through. I would also like to express appreciation to the Office of the Attorney-General for the support it has given, both him individually, and also his technical support team, in ensuring that this document has received the kind of attention that it has received.

Mr. Speaker, Sir, I would not like to bore the House by trying to go into the details about this Bill. This is because I think the Attorney-General, after having spent the whole of Thursday afternoon, must have very effectively, dealt and explained on various aspects regarding this Bill, and various clauses, implications and the process that we shall take in order to start the review process.

The only thing that I would like to stress and to highlight is that I would like the hon. Members of Parliament to acknowledge that this document, as it is now, is a document that constitutes various views and opinions from a very wide cross-section of our society, who spent several months working on this document. I think there was a very clear understanding that when the document does come to this House for deliberations, we should, as Members of Parliament, maintain the spirit in which these recommendations were brought here. I say this because we do not want to have any amendment or suggestion that would be a radical departure from the document, as it is currently formulated. This is significant because we will start sending signals out there, that the Members in this House, some of whom participated in the actual formulation, are in the process of tampering with this particular document. So, I think it is significant that as we deliberate in this House, and whereas we know we have the right as Members of Parliament to amend any Bill that comes before this House, to bear in mind that we must maintain that principle, spirit and confidence, so that the whole process of Constitutional Review, will maintain the respect and confidence that it has not somewhat acquired from the broader constituencies outside this House. I thought that this is an issue that we need to underscore.

I would also like to say that it is, perhaps, significant that such a Bill is coming only a few days before the 12th of December, which is Jamhuri Day. It is significant that we are approaching Jamhuri Day with a very important Act of Parliament, which may be the genesis of not only a new Constitution, but, perhaps, the genesis of a Kenya that we all wish and aspire to have in the years to come, on the basis of starting the journey to a constitutional framework, in which all Kenyans will have participated and which Kenyans, having been exposed to the events in the world, and more widely read, will be able to contribute more effectively to the Constitution that we would like to govern us in the years to come.

So, Mr. Speaker, Sir, if one looks at the pages that deal with the Memorandum of Objects and Reasons of this particular Bill, I think the rationale there is very well explained. It is in simple English and it is very clear for us to know why this Bill is really before us.

I would like the hon. Members, as they deliberate on this Bill, to make sure that, first of all, we uphold the resolutions that we passed in all the Safari Park Hotel Forums. Secondly, we should not waste any more time in trying to repeat and becoming repetitive on issues that we have dealt with at length, so that the process of constitutional review itself, can start. We really hope that this Bill will be dealt with expeditiously so that we can be able to start the process, come January, and that it can give Members of Parliament time to go and start explaining, particularly during the period that we shall be on recess, the various constitutional structures that are being proposed here, to enable us to work and have a meaningful, rational and a very effective constitutional review process.

With those few remarks, I beg to second and I hope that hon. Members will also make sure that they

contribute. If I may plead, if they can be as brief as possible to allow as many Members as this House can carry, to be able to make some comments on this Bill, it would be very useful. So, let us hope that the next speaker, I do not know who it will be, but maybe it will be Kiraitu Murungi, will not prolong the debate on this Bill, so that other Members can also have a chance.

(Question proposed)

Mr. Murungi: Thank you, Mr. Speaker, Sir, for giving me an opportunity to support this very important Bill. Since the Attorney-General took a whole day in introducing the Bill, it is only reasonable that the Shadow Attorney-General takes two days.

Mr. Speaker, Sir, I would like to thank my colleague, the Attorney-General, the Sulumeti Committee, the team which supported the Drafting Committee, the Solicitor-General and the draftsmen from the Attorney-General's Office, my colleagues from the IPPC and all those other groups who participated at the Safari Park Hotel Forums, for coming up with this very important Bill.

Mr. Speaker, Sir, I must say that I have studied the Bill clause by clause, and the Bill faithfully reflects the consensus that we arrived at, at the Safari Park Hotel. So, in that respect, we do not wish to change anything in the Bill, and we would like to give it our total support.

Mr. Speaker, Sir, we also appeal to Members of Parliament, from both sides of the House, to support the Bill because they came to Safari Park Hotel and they were part of this consensus. Since we all said yes at Safari Park Hotel, we cannot now come to the House and say no. The Bible says: "Yea for yea and nay for nay". So, having said; "yea" at Safari Park Hotel, I think our word in this House should also be; "yea".

Mr. Speaker, Sir, we must be honest with each other and when we say we agree to this kind of consensus, then we should not go round it and undermine it.

The Bill is very important to this country because it will put to end to the one year debate that we have heard on the structures, mechanisms and processes of constitutional reform in this country. It is also important because for the first time in our history, Kenyans will be involved in writing their own Constitution. The Constitution written for this country by the Lancaster House conferences of the 1960s was not really a product of the Kenyan people. The delegates who attended the Lancaster House conferences were carefully selected by the British colonial elites. It is only the moderate Africans who were able to attend the Lancaster House Conference. Those who were radically opposed to the British rule were not allowed to participate.

I have in mind people like Bildad Kaggia. Even Jomo Kenyatta himself did not attend the Lancaster House Conference because he was not a member of the Legico. If Kariuki Njiri did not surrender his seat so that there was a by-election in Kigumo to enable Jomo Kenyatta to be elected as the Member for Kigumo, then Jomo Kenyatta would not have gone to Lancaster House.

Mr. Speaker, Sir, the Safari Park Hotel process is just one step in our long and difficult struggle for the constitutional reform in this country. This long struggle had its own heroes and victims. Many people have died. Many people have been killed, others have been imprisoned and others have been tortured so that we could change the Constitution of this country. We have in mind people like Matiba, Jaramogi Oginga Odinga, Anyona, Raila Odinga, Wanyiri Kihoro and many others. We have very many people who died in the course of the tribal clashes and during the Saba Saba rally. All those people died in the process of the constitutional reform in this country. Therefore, when we are talking about constitutional reform we should not just talk about Safari Park meetings. We should talk about all these backward linkages and the great sacrifices that the people of Kenya have made so that they can have the right to make their own Constitution. So, we are very proud that as a result of that long and difficult struggle, at long last, we now have the opportunity, as Kenyans, to participate in writing our own Constitution.

[Mr. Speaker left the Chair]

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

Mr. Temporary Deputy Speaker, Sir, after the intensive struggle by the opposition parties, religious organisations and civil society groups, the KANU Government was pushed last year from its position of no reform to the situation that they are going to bring in reforms after the election. To prove that they were serious, they published the Constitution of Kenya Review Commission Act 1997 in order to show that they were serious about bringing in reforms after the election. There was a bit of debate on that Act during the IPPG days and we made

certain recommendations which were incorporated in the amendment to the Act. At the beginning of this year, the Constitution of Kenya Review Commission Act came under heavy criticism from the civil society especially the NCEC, religious organisations, women's organisations and ordinary Kenyans--- I think I am making very important contribution and I need protection from the Chair from the loud consultations from both sides of the House.

(Loud Consultations)

The Temporary Deputy Speaker (Mr. Musila): Order, hon. Members! Consult quietly. Proceed, Mr. Murungi.

Mr. Murungi: Thank you, Mr. Temporary Deputy Speaker, Sir. I was saying that this Act came under heavy criticisms from the civil society, the NCEC and other groups who said that the Act was executive-driven, anti-people and illegitimate. It is because of that intense pressure that we were pushed back to the drawing board and the IPPC emerged.

It was argued that the Act did not provide adequate framework and opportunity for the people of Kenya to make their own Constitution. When the current amendment Bill was being prepared, all the sectors of the Kenyan society interested in the Constitution making were represented. The current Bill is a product of many months of consultations, both formal and informal, and dialogue between hon. Members, political parties, religious organisations, civil society sectors, professionals, women associations and so on. So, as far as I am concerned, it contains adequate mechanisms to ensure maximum participation by people of this country in making their own Constitution.

Mr. Temporary Deputy Speaker, Sir, I am convinced that the Bill contains an adequate framework for the creation of a new Constitution which will truly reflect the wishes and the aspirations of the people of this country.

An hon. Member: Will they be implemented?

Mr. Murungi: I have said that it contains adequate mechanisms. Whether you implement them or not, is another thing.

There has been a criticism, especially from our colleagues in the NCEC that the Safari Park Hotel process was flawed on the grounds that the Attorney-General imposed himself to be the chairman of those proceedings and that he manipulated and managed the process in an unfair and partisan manner. There is also criticism that the Safari Park Hotel consensus did not provide for ratification of the new Constitution by the people through either a referendum or a Constituent Assembly. My position is that the three-tier system which we created at the Safari Park provides Kenyans with sufficient space to make a beautiful Constitution for this country. We should also be aware that no human being is perfect. We, imperfect human beings live in an imperfect world and, similarly, the laws that we make cannot be perfect. So, what we should see as the product of the Safari Park Hotel meeting is an opportunity to bring a new hope for this country. We shall never have prescribed text book solutions to the problems of this country. As Constitution makers will tell you, there is no prescribed method of making a Constitution where you have to follow step one, two, three and so forth. Constitution making is a product of a country's historical and political history and, indeed, it has to reflect those moments of history.

Mr. Temporary Deputy Speaker, Sir, in this country, we have a lot of cynics and a lot of people who do not believe that there can be any movement forward. My position is that these cynical pessimistic and negative attitudes will not take this country anywhere. What we need is optimism. We need to look objectively at our social realities and seek practical solutions based on the experience of our people. It is true that in other countries we have the referendum and Constituent Assembly, but my experience--- I have been doing a bit of reading about the Constitution making in Uganda. The complaint in Uganda is that the Constituent Assembly was manipulated so that on critical issues like federalism and land matters, it was the opinion of the powers that be which carried the day despite having a Constituent Assembly.

I have also been studying referenda, especially in Morocco. There have been various referenda as to whether this country should have an elected Parliament, or whether it should have a Parliament which is appointed by the King. Every time a referendum has been conducted in the country since 1935, the people of Morocco have given the same answer to the effect that they do not need an elected Parliament; they are happy with the Parliament which is appointed by the King. So, the mere fact that there is a referendum does not mean that it cannot be manipulated. The few people with resources can shift public opinion. The same people who influence outcomes in elections can also influence an outcome of a referendum. So, this is not a magic solution! Our three-tier system, which has the Commission, the National and District Fora, can give us a good constitution without us having to go through a referendum and a constituent assembly, which is just a name. We, in this House, can

declare ourselves to be the constituent assembly in order to approve and ratify that constitution on behalf of the people of Kenya. In fact, hon. Ntimama or hon. Nyagah would not change. We shall be the same people here. The fact that we are called a "constituent assembly" and not a "National Assembly" does not really change anything. I think we have created adequate structures and institutions if we are serious about constitution making in this country.

Mr. Temporary Deputy Speaker, Sir, a referendum is good where one wishes to fool the people. It is also good where the answer is to be "yes" or "no". For example, in Malawi the people were asked: "Do you want a single party system or not", and they said that they wanted a multiparty system. If you have 100 clauses in a constitution and somebody wants Clause one, but does not like Clause 35, does he give a "yes" or "no" answer in that referendum? So, putting so many issue in a whole document and then telling people to give a "yes" or "no" answer is an abuse of the process. It is taking the people of this country for a ride! I think we can draw up our Constitution in this country without going into the pretences of having referenda.

Mr. Temporary Deputy Speaker, Sir, the greatest achievement about the Safari Park meetings is that it brought Kenyans from all walks of life together. We sat down, debated, disagreed and sometimes almost lost our tempers, but we eventually managed to arrive at a consensus. That consensus is what is written in this Bill. That is the only way out for this country, if we do not want more trouble. We think that the tools for our struggle should be concept, ideas and tolerance. We should be ready to listen, debate and convince each other. When it goes beyond that, then you are riding on an unruly horse and you do not know where it is going to lead you to.

Mr. Temporary Deputy Speaker, Sir, over the last weekend I read an article by Prof. Anyang'-Nyong'o, which was published by the *Daily Nation* on Saturday. He was saying that the few nice phrases in the Constitution, which we will come up with after this Constitutional Review process, will not solve the problems of this country. He said that we need a social revolution - a complete change in the power relations in this society. Obviously, these are nice and beautiful words: We need a complete change in the power structures of this country. If we cannot achieve it through the Constitution, what means will we use to get the social revolution that Prof. Anyang'-Nyong'o was talking about? I would have been very happy if he was in the House, so that he could tell us the methods we will use to achieve the social revolution. He should not tell the people about the end without telling them of the means to be used to achieve it.

Mr. Temporary Deputy Speaker, Sir, if we are thinking about a social revolution without talking about constitutional reforms, then we are talking about an armed struggle. We are talking about a violent overthrow of the Government through the use of arms. There have been quite a number of revolutions in Africa--- I think the most successful one was the Frelimo Revolution in Mozambique, which was led by the late Mr. Samora Machel. This is because Mozambicans defeated the Portuguese in the field. In the process, they totally destroyed the infrastructure in the whole country. They destroyed dams, bridges and everything else, so that even after they had won they went back to square one and had to reconstruct their infrastructure. After that the people they defeated regrouped themselves into Renamo. Because they were rich people they regrouped and got funds from South Africa and there was another war in the country from 1975 until 1992. It was as costly as the war of liberation, and Renamo and Frelimo had to sit down and talk about the new Constitution again. The question is, after all this destruction and taking the country through these great human and political costs, what has Mozambique achieved?

When we are talking to the people about a revolution, I think we need to go deeper. We should ask ourselves: "Are we prepared to pay the cost and is the cost justified?" That is why I think that if Kenyans can reason with one another and bring this social revolution we are talking about through constitutional reforms, then there will be no need for taking our people through that kind of suffering. I would like Prof. Anyang'-Nyong'o to come up and address us specifically on the question of the means. This is because he is treating our constitutional reform process as cosmetic. I would like him to address us on how we will bring about a social revolution in this country.

Mr. Temporary Deputy Speaker, Sir, I think I have said enough about the critics of the Safari Park Hotel consensus, and I would like to look at the process now. The Attorney-General (AG) gave us a very rosy picture. He took us through clause by clause of this Bill. He explained to us the historical development of the meetings held at the Bomas of Kenya by the Inter Parties Parliamentary Committee (IPPC). He also gave a textual analysis. It is not my intention to repeat all that, and neither is it my intention to give the House the gossip of what went on behind the scenes, the intense moments and the stand-offs we had with each other. I think it will be good if we focus on the end product, which is the Bill. There were also moments of excitement in the whole process, when we thought that we had really succeeded only to be "punctured" the following day.

The meetings have not ended. Even today there will be another meeting to criticise the Bill. This is part of democracy and, as a society, we should be tolerant. Let us hear all the views. There is no law which will be passed in this country without one or two groups criticising it. The question is that in a democratic society, we

have to go by the majority view. What the majority of the people of this country believe in is what Parliament is supposed to implement. So, it would be extremely difficult not to get adverse comments on this Bill or any other Bill. Since it provides us with adequate space, and answers the criticisms which have been there, we should go ahead with the constitutional reform process.

We shall improve it if new or better ideas come along. We, as a Parliament, are always willing to come back as we have come back this time and improve the system. We are not closed to new ideas. I believe that this Bill will sail through Parliament without any problems and that very soon, as the Leader of Government Business said, by January, we expect the Bill to receive Presidential assent. We expect the whole process to start from the New Year and onwards. We believe that when the Bill becomes law, it will provide unique possibilities and opportunities for the people of this country to participate in the unique task of constitution making.

I would like to consider what the Attorney-General did not talk about. This is about the threat that is likely to happen to this process once it starts. In this concept we look at the political context. We also look at the critical success factor which will determine whether we shall succeed or fail in implementing this Bill. In other words whether we shall actually succeed in getting a new Constitution for this country. Under Clause 6 of the Bill, this is the one setting up the Commission. The Attorney-General talked about us making a Constitution for posterity. This Clause is very good. We are tracing up a formation of 25 Commissioners who are not appointed by the President, but by the various interest groups and the President merely plays a ceremonial role of gazetting these people. We are very happy that under the new arrangement the Commission is being distanced from executive control. We hope that there will be no change of mind on this particular issue. We hope that there will be no attempt, once the Commissioners are appointed to try and influence them. The critical success factor in the Constitutional Review process will be the integrity, honesty and impartiality of the managers of that process, that is the 25 Commissioners who we appoint.

It is not only President Moi who can appoint bad Commissioners. The political parties even we in the Opposition who will be participating in the appointment of Commissioners can appoint bad Commissioners. We have learnt this from our appointment to the Electoral Commission. Some of us will be tempted to appoint our brothers whether they are qualified or not. Others will tend to appoint people from their tribes and their kinsmen. The greatest temptation for political parties will be to appoint the people who have fought for the party. It will be to appoint the key party officials and supporters because this will be seen as another opportunity for "eating". So, I would like to appeal to all those interest groups which are going to appoint the 25 Commissioners to forget this idea of "eating" and elect for us people of high integrity, professionals and people who know what they will be doing in that Commission. The chairmanship of the Commission will also be a very important position. If we do not get a strong chairman then we are not going to have the kind of Commission that we want. I am happy that we have prescribed very high standards even for the Chairman of the Commission. We have made it possible for the Commissioners to source a chairman even from outside the Commission. I think it would be very good if some judges from the Court of Appeal could be considered for this slot especially those who have already distinguished themselves like Justice Kwach and Justice Gicheru. We think these would be very good chairmen for this Commission.

The Act also talked about the Commission being assisted by experts. We have a lot of Kenyans who are experts. Some are briefcase consultants - these are basically unemployed Ph.D holders who for lack of anything else, describe themselves as consultants. It is likely that because these experts will meet the provisions they will also see another opportunity to "eat" at the Commission, so that through the Kenyan system you get very bogus experts who are supposed to assist the Commission. I would urge the Commissioners when they are appointing these experts to really look for people with constitutional experience. In the past, I think this is how the Attorney-General has been operating, when he is sourcing the experts even very good lawyers who have served this country well like John Khaminwa will never be appointed to any Commission in this country. Why? We feel that the Attorney-General is always doing some political balancing act. People who have fallen out with the system can never be appointed even to a task force. So, we are asking the Attorney-General to liberate himself when he is asked to recommend the Commissioners---

The Attorney-General (Mr. Wako): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is my dear friend who is also my "shadow" in order to say that I have not appointed any person who has fallen out with the system when he knows very well that I appointed Dr. Willy Mutunga to be a member of a very important task force which was dealing with security legislation? I can quote many more examples if he challenges me to do so.

Mr. Murungi: In fact I know how Dr. Willy Mutunga was appointed. He was appointed after we complained that there was a Committee to review detention laws and all that and yet there was no person who had been detained although many lawyers who were in that Committee had been detained before. So, we asked the Attorney-General: "How come we have a task force for reviewing detention laws and we do not have any lawyer

who has been detained in the Committee?" That is how Dr. Willy Mutunga was appointed. We want to urge the Attorney-General not to wait for us to complain. Like now in the constitutional review process we really have top experts in this country. The person who has been writing constitutions all over the Commonwealth countries is a Kenyan - Prof. Yash Guy. But Prof. Yash Guy has never taught at the University of Nairobi. He has only given one lecture some time back. This is the key Constitutional review expert. So, when we are sourcing experts please look for Prof. Yash Guy where he is sitting at the University of Hong Kong to come and help us at home. Let us not say that he is an Indian. We have others like Pheroze Nowrojee and others. Look at that expertise. Do not say these were NCEC people and, therefore, we cannot use them. These are the people who have been studying the Constitution when other people were grabbing plots.

Mr. Temporary Deputy Speaker, Sir, we have very qualified people as experts in this Commission. When the Commissioners have been appointed - and I like what he said about us making a Constitution for posterity; let them try to make a Constitution for posterity.

There is an American Professor, John Louise who has written a book called "*A Theory of Justice*". He proposes a method which I think is very good. He talks about making a social contract and then, takes people at what he calls "the original position". That is, let us assume we are people without a Government, without any law at all and now we are deciding amongst ourselves to make some laws which will enable us to live together in a just society. How do we make those laws?

So, he says: First, let all these people wear "a veil of ignorance" so that you do not know in that society that we are going to create what your position there is going to be. One could be a beggar, a king, a prisoner or anything. Without knowing what one is going to be in that society, then we make the rules. Because we do not know, we are obviously going to make good rules for various people in that society.

So, we would like our Commissioners to wear a veil of ignorance. Let us not make rules with anybody in mind because the mistake we made, especially in the amendments in the 1964 Constitution, was to make a Constitution for Kenyatta. Tom Mboya and Njonjo knew for whom they were making the Constitution. That is why in Kenya, they even introduced the rule that for one to be a President, one has to be over 35 years, because they knew Tom Mboya was not 35 years. It was specifically to disqualify him from being a President. Otherwise, before that, there were no rules saying how old one should be to become a President.

Mr. Temporary Deputy Speaker, Sir, we also concentrated a lot of power on President Kenyatta and gave him powers of detention without trial because Njonjo said here that, "you know Kenyatta was imprisoned for many years, he suffered so much, and surely he would be the last person to detain anybody". He said if it was another President, he would not give him these powers, but Kenyatta himself detained so many people. So, let us not make the Constitution with anybody in mind. We do not know who is going to inherit these laws. Let us make good laws.

Then we have also problems with what is now currently being called "the problem of incumbency". We were worried very much last Saturday, when the Chief Justice went to address a seminar in Mombasa and he said that in the Constitutional review process, we shall also be considering whether Kenya should return into a one-party state.

We know there are many KANU die-hards. I do not know whether my friend here is part of them who have never, at heart, accepted multi-partyism. They would see this Constitutional reform process as an opportunity for them to take this country back into the "old good days of one-party rule", according to them. We know that die-hards have their own strategists who will be advising them on how to return Kenya into a one-party state - I said I am taking two days, so people had better relax.

In every situation where there is Constitution change, there are always two forces. There is a force which will have benefitted from the old unjust political system and they will fight very much to preserve that system because it has given them privileges, wealth and they would like to protect these privileges and wealth.

There will be another group which has been excluded. It has been massacred, detained, tortured and it wants to change everything. Those groups do exist in this country and we will hear from one such group in this country: "Let us amend the Constitution to extend President Moi's rule, the Constitution has served us very well for the last 35 years and it does not need to be changed". So, we expect that debate to come up.

The same group also, when they lose at the national level they want to create enclave at the local level through the majimbo system. That is also going to be an intense debate in this country.

There is fear that a few powerful people in this country, despite the beautiful structures, National Forum, District Forum and the Commission, they can derail these beautiful structures that we have put together so as to protect their own interests so that they can protect their unjust privileges under the old system. As we create the Commission, we should be aware of these dangers.

Then, we saw something interesting here the other day during the "Motion of No Confidence". I do not

want to discuss what was happening before the Privileges Committee, but already there are rumours that if 100 Members of Parliament can be swayed and talked to the language of "kitu kidogo", how about only 25 Commissioners who are very few people? We can even talk about "kitu kikubwa". Then, things are organised and we extend the presidential term, return the one party rule and all the kind of things we have been talking about.

So, I think there is a dangerous culture and unless we appoint Commissioners of very high integrity, these under-hand methods can be used to derail the whole process.

Then there is something we have been calling Mobutuism. In 1992 when the African Continent was gripped with the reform process, Mobutu agreed to the National convention for reviewing the Constitution in Zaire. But he parked the place with delegates, "invented political parties", civil society groups and he totally paralysed the system for almost seven years.

Even in this country, we are not beyond Mobutuism in this process. We can park the District Forum or the National Forum, so that the majority of delegates there are people who will support the positions we want them to support.

We are extremely worried about the new districts which are being created after Safari Park. We said at Safari Park that, we are going to get three delegates from each district to come to a National Forum. That time, we were counting the number of delegates because we knew the number of districts. In between now and 1999 when the National Forum says we have created 10 additional districts, then this changes the whole equation.

I think we have to address these issues. Are the districts which were formed after Safari Park going to elect delegates to the National Forum? Are they going to create the District Forum, because if they act politically, they can strategically create districts which they know will support extension of President Moi's term by another term or two, support majimbo and will frustrate this whole process? So, I think we should come out clearly and say how many districts we are talking about and what will happen to the new districts.

With this indeterminate number of delegates, we can also keep on the Constitutional debate going on. Mobutu kept it on for six years. We can also make sure that our delegates disagree almost on every issue, creating stalemates. We were almost parking up at Safari Park until somebody talked to the President and he came and saved the situation. So, we can create stalemates both at the District Forum, the National Forum and the Commission so that there is no movement forward so this excitement we have can disappear.

These are critical success factors which we should look at and I think a lot of goodwill will be required. That is why I thought it was a good idea for Prof. Anyang'-Nyong'o to bring in this Motion, the Retirement Bill so that people do not feel threatened by this process. I think we should also identify other people who are likely to mess up the process and discuss with them because they are also here.

There is also the question of airwaves. The Bill says that one hour of KBC everyday will be devoted to the proceedings of the Commission. At the IPPG, we passed an amendment to the KBC Act, which says that it will fairly cover the political opinion in this country, and that, no one party will be given prominence over the others.

Mr. Temporary Deputy Speaker, Sir, the one hour coverage of the news should be all sided. If we select only what the KANU people say or what people who say the right things according to the powers that be say, the people of this country will be bombarded with a one-sided debate for over two years. So, they will think that certain positions are very popular when, in fact, they are not. So, I would urge the Attorney-General, because this is his mandate--- Unfortunately, he wears many hats. He is a member of the executive and he is a member of the legislature. Now, as a member of the executive, it is his duty to make sure that this law is implemented, so that KBC does not continue to behave as if this country is a one-party state. He should ensure that the proceedings of the Commission are fairly covered. If Kiraitu Murungi and hon. Ntimama speak before the Commission, let us be given equal time. Let him support majimbo and let me talk against it and then let the people of Kenya decide whether Ntimama made more sense than myself. If he did, let us have it. But let us not close the avenues of debate for our people through control of the instruments which govern the airwaves.

Mr. Temporary Deputy Speaker, Sir, even within the Opposition, the politics have changed. The other day, Prof. Anyang'-Nyong'o was talking about the "politics of intrigues". What is happening is that, there is a lot of struggle-fatigue among the leaders of the Opposition. After so many years of struggle, people have been economically destroyed. There has been a lot of suffering and that is why you hear of all this talk about "co-operation" and such things. This is because people are reaching 50 years, 60 years and the change seems to be a bit distant. So, this is very dangerous politics because, if we decide to co-operate in order to pass an unpopular section of the new Constitution, we can even return this country to a one party rule through the process of co-operation. We can extend the President's term of office through the process of co-operation. So, I think it is very important for the politicians in this country to work for the interests of the public good. We have suffered for such a long time, we should not worry over these last few miles. I think people should tighten their belts and we

continue; wajikaze tuendelee.

Mr. Temporary Deputy Speaker, Sir, the other threat is that, Parliament is going to play a critical role in the implementation process and in the debate. We are participating in the District Forum and the National Forum. If one day the President does not like what is happening in the whole process, all he needs to do is to wake up one morning and say that Parliament is dissolved -he has those powers within our Constitution and all these Forums we are talking about are going to disappear. So, the President has a critical role to play in the success of this exercise because he has enormous powers under the current Constitution to frustrate it. So, those who meet him and talk to him every day should tell him that, at least, Parliament should remain until it runs its full term. It should not be dissolved in the middle because if this were to happen, the implications for this country would be grave. In fact, I do see what will happen because there will be no movement, there will be a stalemate, war and many other things.

We also know that there are some people in the country who would like to make the country ungovernable, especially if things do not go their way. These people are not only in the Opposition; there are people in KANU who can make this country ungovernable, especially if they feel that majimbo is not going on well or such things. From what is coming out of the Akiwumi Commission, I will not be surprised if, when the Constitution process is doing so well, we will hear that tribal clashes have broken up in one place or another, to distract our attention, so that there are more urgent things to do rather than the Constitutional Review process.

Lastly, this country is sitting on a time bomb. I was watching television the other day when the President went for graduation at Kenyatta University. As he was conferring degrees to graduands, he was also telling them that "unfortunately, we shall not be able to give you jobs this year". Twelve thousand graduates from public universities will not be employed and all that. I was asking myself; "what is going on, in the minds of these students who are being told that they will not get jobs"? This is not a laughing matter; these are intelligent people who are suffering somewhere in the rural areas and others in the streets of Nairobi. We were told not to talk about tarmacking now because there is no tarmac, but democracy cannot survive on empty bellies. There is so much poverty in the country today; 47 per cent, almost half of the population, living below the poverty line is something to get worried about.

Mr. Temporary Deputy Speaker, Sir, my fear is that, unless we address this danger now and unless the Government takes serious measures to improve the economic wellbeing of Kenyans, the bankers' strike which was frustrated will come back, the teachers will be back in the streets, you know the doctors were there before, university students, *et cetera*. I do not know what will happen when the army and the police also decide to go on strike, because of poor pay and the difficult living conditions in this country. So, there is a threat of rebellion arising out of economic hardships and if there is a rebellion in this country, then there will be no Constitution to talk about; those who have money will run into exile, those who cannot afford will stay and fight it out.

We have analyzed and found that the reason why there is so much suffering in this country is not because the country is poor, but because of corruption. Our public wealth which should be at the Treasury is in the pockets of rich individuals like hon. Ntimama and others.

(Laughter)

I know he has only cows. I think we should address this issue of corruption seriously, if we want the economy to recover. Even the white men have refused to give you money because they are afraid their tax payers' money will be stolen, the same way the Kenyan taxpayer's money is also stolen. So, unless we take urgent measures to sort out the issue of corruption, it will be too late to talk about Constitutional Reform. I have decided to give this general picture because I want this country to have a beautiful Constitution, a Constitution which the people of Kenya would like to be governed with, a Constitution which we shall all be proud to be associated with. But we have to address this critical factor, if we have to have that Constitution.

With those few remarks, I beg to support this Bill.

The Minister for Transport and Communications (Mr. ole Ntimama): Thank you Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to contribute to this Constitution of Kenya Review Commission Bill.

Mr. Temporary Deputy Speaker, Sir, I was in all the consultative meetings; at Bomas of Kenya and the four Safari Park meetings. I am completely convinced that the way this Bill has been framed, goes to support the views that hon. Members of Parliament, the civil society, the churches and so on, thought were going to be the contents of this Bill. I want to concentrate on Clause 5, because I can see that I do not have very much time like my friend, hon. Murungi, who is the shadow Attorney-General and probably, the man who has spoken on behalf of the Leader of the Opposition or the leading Opposition party.

Mr. Temporary Deputy Speaker, Sir, I would like to concentrate on Clause 5, Section (a) and the subsequent sub-sections (a) to (g). I would like to thank the Attorney-General for the way he has provided in this Bill, the beacons which will chart out the approach when he comes to finally writing this Constitution. I think the Attorney-General has provided for the pillars on which we will build this Constitution. Indeed, sub-section (a) says:-

"The review will guarantee peace and national unity".

These are very important, words, but you can also add to say that, this should actually, guarantee the freedom, peace and liberty of all the people of this country regardless of colour, creed, nationality, ethnicity, social and political status and without discrimination. Sub-section (a) says:-

"And recognise the gender equity".

These are very important guidelines. These are beacons that we could build up this Constitution on, so that it really becomes a document that is going to help the people of this country.

Mr. Temporary Deputy Speaker, Sir, Sub-section (b) says:-

"This Constitution must establish the democratic system of Government".

I think this is important because the system of democracy has been supported all over the world as the best system. In fact, the famous Winston Churchill who led the British in the Second World War said: "Democracy might have some shortcomings. Indeed, it might have some flaws, but it is the best system of all the systems that have been tried on this world". So, it is important to say and to emphasise that, we support the democratic system of Government when we come to write this Constitution. What is the democratic system of Government? I personally support a multi-party system of Government, and I think we must continue so that in this country we have the Opposition to put the Government on its toes and which will expose vices, shortcomings, corruption and mismanagement of Government and the economy. It is important that we stick to the multi-partism system of Government, so that we have two, three or five parties in this country.

Mr. Temporary Deputy Speaker, Sir, it is through democracy that we think, we can protect the weak people and make sure that they have got all the rights that are given by the Constitution of the land, including of course, gender equity and so forth. A Constitution that will be drawn democratically, I see no reason why it should not last 1,000 years. If the Constitution is not going to favour a clan, tribe, an individual or a group of individuals, then I think, it could last for a 1,000 years. The American Constitution which was written in Philadelphia in 1787 has now lasted for over 200 years, with very minor amendments. This Kenya Constitution has been amended as many times as there are sections, for the last 35 years. You can imagine! It is because we are trying to tailor up a Constitution to suit other people. This is the unfairness that is in this country and we must get out of it.

Mr. Temporary Deputy Speaker, Sir, it says:-

"The Constitution must establish the rule of law".

It is important, because most African countries and even some Asian countries have continued to operate on jungle law. If we have to write this Constitution, we must make sure that the rule of law is really adhered to. Also, we must have the human rights enshrined in the Constitution, so that all people will have fundamental basic rights as they are known by the United Nations Organization of which we are a party.

Mr. Temporary Deputy Speaker, Sir, it is important that when we write this Constitution we say that we will not agree that the rule of the dictators comes back to this land. We must reject authoritarianism. We must reject the rule of the despots. We must reject the rules of the autocrats. We must reject the system of oligarchy. We must reject the rule of proletarianism. We must reject a group of cartels and dynasties if this country has to be Kenya, because we know it has got a lot of roots in this country.

(Applause)

This constitution is for our children, our posterity and the people of this country.

Mr. Temporary Deputy Speaker, Sir, subsection (c) talks about the separation of duties. That, the organs of Government in this country must be separated and must be seen to be separated. We have the Executive, the Judiciary and the Legislature. What has been happening in this country for the last 35 years is total muddle. The Executive has been the most notorious one for interfering with the Judiciary and the Legislature.

(Applause)

These things must be behind us. We are writing a constitution that will last for more than a thousand years for our posterity, not for any individual. It is very important that we must be guardians and protectors of the Constitution. It is not only one individual or one group of people that is supposed to protect and guarantee and guard the

Constitution. It is all of us and we must talk loud and clear. We must tell stories, because if we do not tell stories, then things will not happen. For example, I look at all newspapers these days. I know we were in IPPG and I was one of the principle speakers because I was offended through the Public Order Act. My people were prevented from coming to my home in December to have a party and the police were there to shoot my own people. I was so offended that I stood firm in IPPG and said the Public Order Act must be repealed and I think we have done something about that. We also said the Chief's Act must be amended, because the Provincial Administration has been used, and I think even today, they are used as agents of oppression and repression.

(Applause)

Right now, I look at the newspapers and I see the police and some APs stopping a meeting. Somehow, I think the Provincial Administration is coming through the back-door again to impose the Public Order Act and to harass citizens and prevent them from having the right to assemble. The right of assembly is a human right and we are not going to have our people again being harassed, thrown around, locked up or shot. This is because the right of assembly is a human right. So, we must watch. If some of the activities of the Provincial Administration are coming through the back-door, then we must tell these stories to the people and say it here in Parliament and everywhere. This is because we are not going to have this system coming back again.

(Applause)

Mr. Temporary Deputy Speaker, Sir, subsection (d) says: "This Constitution must be people-driven." It must be owned by the people. I think I support hon. Kiraitu Murungi on this question of the county councils or the districts. Right now, districts are being created. I do not know whether it is legal or illegal. But at least, it is illegal to split the councils right now when we are going to this constitutional arrangement because the county councils are supposed to be the guarantors of the district's constitutional fora. How are they going to do it? Are we going to get new county councils but we do not know where they are coming from? I think we should stick to the old county councils; they can do what they want with the districts. I do not know whether they are political or what, but I think the county councils should be intact, so that we know the number of county councils that are going to take part in this discussion. So, this one must be people-driven. There is a saying that it is the people who own the Government and not the Government which owns the people. This is something that we must be careful about. We must never allow any Government to own the people or to own the Government itself. It is the people who own the Government and they must be given the right to own, or throw out a Government that is not good for them through the window.

(Applause)

This is a very important thing; that, in this Constitution, we will not allow individuals to be the driving force behind the review, whoever they are. It must be driven by the people. You all know these people and you know what Abraham Lincoln said: "The Government of the people by the people will never perish on earth. But a Government that is not for the people and by the people, will definitely perish." When the Constitution of the United States of America was written in Philadelphia in 1787, the opening words are "We, the people of the United States---" That is the first sentence. The first sentence in our Constitution should be "We, the people of Kenya---", so that we own the Constitution; so that it is ours.

Mr. Temporary Deputy Speaker, Sir, I also want to talk about devolution. I have stood on this Floor for many times, even when I was Minister for Local Government and spoken about the fact that people at the grassroots must be empowered to decide on their own affairs of political nature and even on development. I still think that, that empowerment must be given to the local people. It is important that the local people also be masters of their own destiny. Whether it is going to be the council or any other system of local authorities--- Whatever it is going to be. But we must not muzzle the right of the people to think and work for themselves and to let them plan for their development and to respect whatever they have to say.

Mr. Temporary Deputy Speaker, Sir, subsection (b) again says: "This Constitution must guarantee free and fair elections." We have problems. I looked at the hon. Members of Parliament the other day arguing, including hon. Sinyo and some other Members. I watched it very carefully on KBC Television. What came out is that the politics of Kenya is commercialised. The politics of Kenya is money politics. The politics of Kenya has told the people of this country that it is only the people with money that can be listened to and no longer the people with ideas. I think this must change. It is a total disaster and this is why--- When you use money to dismantle your

opponent, then it is rigging! I think leaders of this country must refuse [**The Minister for Transport and Communications**]

this commercialisation of politics. It has created people who are thoroughly disabled, cannot think for themselves, have no open minds and have no clear minds. You know what they are called? Sycophants.

(Laughter)

You can always see them in the market places. I do not want to say you can see them in Parliament, but there is a possibility---

(Laughter)

There is a possibility that there could be a few who could pass out seriously as sycophants.

Mr. Temporary Deputy Speaker, Sir, I think sub-section E also talks about protecting the culture and traditions of our people. This one is very, very important. I think whatever Constitution we write and whatever Government comes in place, it must guarantee the traditions and cultures of the people. There is a Kiswahili saying which states: Mtu asiye na mila ni mtumwa. I think it is the Government that must also guarantee that the people keep and practice their own cultures and traditions. That does not stop people from being civilised. That does not stop people from being doctors, professors and whatever. In fact, it might even help them and because I am going fast, let me talk about sub-section F.

Mr. Temporary Deputy Speaker, Sir, this is about the economy; that, the Constitution must guarantee the economic growth of this country. I support this one very, very much indeed. However, we are being told that we are in this economic quagmire. We have hit the rocks economically because of the world recession, problems in Asia and because there are problems all over Africa. But this is only partially true. The truth of the matter is that, this country is corrupt from top to bottom.

(Applause)

It is corruption that has killed the economy of this country. I am saying these things because I want this economy to come out right. We do not have to do this and start thinking. If we have to really improve the economy of this country, then we must kill corruption in this country. You cannot kill corruption unless you tackle corruption from the top and from the official circles.

(Applause)

I read in the papers about a policeman being arrested, charged in court and imprisoned because he grabbed Kshs100 from a motorist. Some of the people in the Opposition, even in Embakasi said: "It is because their salaries are too small". I think I quite agree that maybe, that is the reason. But what happens now? I read in the newspaper the other day that the National Social Security Fund (NSSF) has been looted dry. It is not me; it is the newspapers. You arrest and imprison a poor policeman for grabbing Kshs100 and you let a major thief get away scot-free!

(Applause)

Mr. Temporary Deputy Speaker, Sir, I think this is very important to consider. The other day, the Ministry of Planning and National Development published a paper which showed that 40 per cent of the people of this country are below the poverty line. It is not 40 per cent and I think it is 50 per cent. It is a disaster. Shall we ever recover? The other day, I saw Provincial Commissioner Ogongo saying that there is an AIDS epidemic and he said that it is because of poverty. I think I agree with him. If you are a hungry man and if you do not sleep in the right place, even a common cold can kill you. You have no resistance; AIDS will kill them like flies because they are hungry and poor. I think we should tackle corruption. I saw my friend, the Attorney-General the other day when he was speaking at the workshop in Mombasa. He said: "We are determined to stop and kill corruption." I am sure he was serious but I think we should now stop rhetoric and go to action.

(Applause)

Mr. Temporary Deputy Speaker, Sir, before my time is over, I want to talk a little bit, about the press. I think we should emphasise the fact that, we must have a free press in this country. It is essential for democracy. It is essential for development. It is essential for the exposure of vices and sins that are committed by society. I know that some of our journalists and reporters have been blamed for being tribal, unfair, for not researching their stories properly and some of them for being outright malicious. It is true some of them have behaved like this. I do not think that is the nature of the African. I think that is the nature of a few fellows who are actually rotten eggs in society. I have also brushed shoulders with very good journalists who are objective and try to find reasons. I never want their protection but I want them to say the truth which I think is very, very important. We must support the press because the right to be informed is also a human right. The right to know is a human right.

(Applause)

Mr. Temporary Deputy Speaker, Sir, I have talked many times and said that, this world is becoming a small, little area. You cannot even--- This is my own view. I want the airwaves to be opened and free, so that we can have information and get the news from every corner. You know when you give the citizenry slanted news, you actually give them constipation and I think the best thing is to open up all avenues of a free press, including open airwaves so that we can get a variety of news. In any case you cannot stop people from hearing and listening to people. There are the satellites. There is the internet and you think you can stop people from knowing what is happening in the world? The best thing is to open up.

(Applause)

Mr. Temporary Deputy Speaker, Sir, one of the constitutionalists of America by the name of John Madison said: "I would rather live in a country without a Government but I cannot live in a country without a press". What was his name?

Mr. Kihoro: Mr. John Madison.

The Minister for Transport and Communications (Mr. ole Ntimama): Mr. Temporary Deputy Speaker, Sir, it is just a little show of support anyway. So, I want to say that even in the press, we should remove bad fellows. We should pluck them out but let us live the press as free as possible, so that we can know what is happening. Some people talk of the gutter press which sometimes gives information here and there, which we cannot get from anywhere. Maybe in the end if they do not really cope up properly, they might disappear. However, even the gutter press must be let to flow so that, the citizens can chose as to which paper to read and what news to read without any interference.

Mr. Temporary Deputy Speaker, Sir, I stand to support this Constitutional Bill.

(Applause)

Thank you very much.

Mr. Kibicho: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to contribute to this Bill. The process of constitutional review will not succeed unless Kenyans know what they are really reviewing. In the countryside, even learned people such as professors, principals and intellectuals do not understand what the Constitution of Kenya contains. In order for the objectives of constitutional review process to be realised, the Government must spend money to educate the citizens and enable them to understand the country's Constitution.

In 1963, this country had a more balanced Constitution than in 1997 and 1998. That Constitution was watered down on 12th December, 1963, but Kenyans did not complain, because they did not know what the Constitution was offered them. A constitution is a contract between the governed and the governors. So, we cannot have a constitution which does not clearly define the arms of the Government. When the first Cabinet was formed in 1963, it was announced that Permanent Secretaries would also be appointed by the President of the day. Since then, the powers of the Public Service Commission, which was created by the Constitution, were watered down, and that marked the beginning of a Government with no separation of powers. Since then, the Civil Service, as an institution, ceased to have any meaning in our Constitution. The situation became worse in 1983 when a High Court judge decided that everybody in this country holds office at the pleasure of the President.

Therefore, unless the new Constitution provides for the impeachment of the President in case he violets the Constitution, we will have a mere piece of paper purporting to guarantee Kenyans freedom. However, this will

not really be achieved. The current situation in the country is such that even hon. Members may not appreciate the seriousness of the Constitution. We have Parliament and the National Assembly. The latter refers to hon. Members, and the former refers to the President and the National Assembly. Therefore, it means that in this country--

(Loud consultations)

The Temporary Deputy Speaker (Mr. Musila): Order! Hon. Members, please, consult in low tones.

Mr. Kibicho: Mr. Temporary Deputy Speaker, Sir, in this country, the powers of the State are concentrated in the Office of the President. Unless Kenyans are well-educated, to enable them come up with ways of curbing the abuse of the Constitution by the Office of the President, we are not bound to achieve much. All of us are aware that the Office of the President appoints judges, Civil Servants, and determines when this House should meet and adjourn. The President can also dissolve this House at any time. Therefore, it is imperative that as Kenyans decide on the type of Constitution to have, they also address themselves to the powers of the Office of the President. Kenyans must be bold enough to say that they require a Head of Government and a Head of State.

Mr. Temporary Deputy Speaker, Sir, power corrupts, and absolute power corrupts absolutely. If the Office of the Head of Government and that of the Head of State continue to be occupied by one person, we will continue to have the same situation as we have today. Therefore, in order for the constitutional review process to be meaningful, this Parliament must vote some money for civic education, so that Kenyans may appreciate the current Constitution and look at other model constitutions to compare it with. Most Kenyans have been made to think that the current Constitution, which has been in place for the last 35 years, is the best.

It is only about two years ago when Kenyans gathered the courage to say that the Constitution is wrong. As some hon. Members have said here, the decision to review the Constitution did not come very easily. This achievement came about after a struggle, and this should not happen again. We want a Constitution which can guarantee Kenyans freedom and unity in years to come. The new Constitution should be able to root out corruption. So, for us to achieve our objectives, we must help Kenyans to understand the whole issue of constitutional review. There should be deliberate efforts to encourage Kenyans to think of introducing provisions for impeachment to the new Constitution. Without this provision, Kenyans will not be able to check the excesses of the Executive arm of the Government.

It appears that the review of the current Constitution will be based on what will be gathered from the grassroots. We are talking about the culture and the economy of our people. For the last 35 years, Kenyans have been made to think in such a way that, they do not know that they were being oppressed. They should be encouraged to think of ways of putting values into the new Constitution. We may talk about the culture of the people, but this on its own may not guarantee the people any freedom.

The statute laws of this country appear to be very good, but why are we having all these problems? It is because, this country has no moral values. Morals do not seem to have any importance in this country. If one steals and becomes a billionaire, he becomes a respected member of society. So, what do Kenyans need to do with the current Constitution in order for them to realise that the most important thing is what one does for the country? They should know that one can only be respected for his contribution in making other citizens' lives better, and not because one has made himself comfortable by manipulating a contract. Every afternoon, we talk in this House of irregular awards of tenders because the whole system is corrupt. We can only check these vices by addressing ourselves to the excessive powers of the Executive arm of the Government. It is these excessive powers that have driven us to where we are.

Therefore, so long as we say that we must come up with this Constitution within 24 months and present it to the House and enact it, we may not achieve anything. What is surprising me is that notwithstanding this Bill, which the Attorney-General has tabled here, there seems to be no effort of educating our people on what to face. We are just talking here in Parliament, they only depend on the Press, but there seems to be no serious efforts on the part of the Government to prepare the citizens of this country to tackle the challenges of this process. If it cannot be done without money, we are going to pass this Bill and only provide for, maybe, the costs of meeting the expenditures of the district forums, national forum and allowances for the Commissioners, but we are not addressing ourselves to this other important issue of preparing our people to participate in the constitutional process. We have Non-Governmental Organisations (NGOs) organising seminars to educate the public on this process and the Government should be involved, but this is a serious matter that by now, the State ought to have geared Kenyans to be ready for this process. In the absence of that, we may only have a piece of paper where politicians are going to play politics and in the process produce even a worse document than the one we have today.

However, Mr. Temporary Deputy Speaker, Sir, this is a golden opportunity for Kenyans to decide on how they should be governed. Kenyans must be prepared for this challenge. Since I am supporting this Bill, I do not intend to say more than it.

The Minister for Co-operative Development (Dr. Anangwe): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me the opportunity to make a contribution on this particular Bill. I know that this Bill has been prepared painstakingly and it has also been presented by the hon. Attorney-General in a similar manner I would like to support it, of course, subject to any amendments that may come by in the course of our deliberations and what the Departmental Committee may recommend.

Mr. Temporary Deputy Speaker, Sir, let me begin by emphasizing that the ultimate responsibility for legislating any Act of Parliament, constitutional or otherwise, is upon this august House. When this Bill was being prepared, somewhat, some sections of our society and particularly this House were marginalised. We did not have the opportunity to make our contribution and I think it is legitimate that we should seize this particular opportunity to make our contribution because ultimately we bear the responsibility of what will come through by way of amending this Bill. Notwithstanding the fact that there were some sections of our society out there which did not make their contributions, we should not allow ourselves to be steam-rolled because whoever it is that was involved through the various fora be at the Safari Park or the Bomas of Kenya; we are the representatives of our people in several constituencies in this country and the danger of listening to the views of the very few, particularly those based in the urban areas is that the wishes of the bulk of our Kenyan population, 80 per cent of whom are based in the rural areas, may not find expression if this Bill is left to pass the way it is. Therefore, whereas I support this Bill, let me also say that we should look at it critically and objectively and if it warrants to make amendments on it, let it be because ultimately this is our responsibility.

Mr. Temporary Deputy Speaker, Sir, I want to go through this Bill clause by clause. I would like to draw the attention of the House to Clause 5 which states the objectives and purpose of this particular Bill, which is to ensure that we review the Constitution and alter it in such a manner that we maximise certain values. Among these values, when the new Constitution is formulated as a consequence of this Bill, is to ensure that there is ethnic and regional diversity as well as to ensure that the various communities have a right to organise. I think this is a very important provision particularly viewed against the background of our history in this country. Unless we put in place some mechanisms to ensure that ethnic communities and regional identities find expression in well managed channels, sometimes, things can get out of hand. Of course, I am also saying this knowing very well that we are in a continent that is very turbulent and much of the turbulence is centred around ethnic conflicts. I would like to emphasise, as we pursue the constitutional review process, that ethnic identities, regional identities and the right of communities must be confined to cultural activities rather than finding expression in the political arena. Ethnic groups should not be allowed to organise for the purposes of maximising their political goals because by doing so, we may ignite a conflagration in this country that may not easily be manageable. Therefore, as we go about the constitutional review process, we have to ensure that we put in place mechanisms and the framework of managing both ethnic identities and animosities in a productive manner. It is not a crime to belong to any tribe, but notwithstanding that remark, I think that ethnic identity should not be abused or exploited to the extent of upsetting the ship; the nation.

Mr. Temporary Deputy Speaker, Sir, one other objective of this constitutional review process is to establish an equitable framework for growth and access to the national resources. This is a very good provision and talking at this particular moment in our history, we have had adequate experience on how public resources in this country and elsewhere, sometimes are not allocated in the way some sections of the society would wish that allocation to be. Let me emphasize that one of the root causes of destructive politics is when public resources are not allocated equitably or in a manner that is fair and that is the genesis of ethnic politics. Our politics, when it becomes ethnic it is not so much about our differences in language, colour and so forth, ultimately, we are all the same. Basically, we are all the same even in terms of linguistic expression. When one claims to be a pure Kikuyu, Luhya, Luo, Kamba and so forth, you ultimately discover that physically there is no difference between a Kikuyu and a Mkamba, a Luo and a Luhya, but when it comes to politics, these particular differences are given undue prominence. It is not so much about our physical tribes, but it is because we have differences of perception on how public resources should be allocated to the extent that, that allocation is fair and that we all have access to it. The real issue is not that we shall all have enough, but the little we have should be shared out equitably so that the people can see that it is fair. The real issue is not that we shall all have enough of resources, but whether that sharing of the scarce resources is seen to be there.

Mr. Temporary Deputy Speaker, Sir, in the past, that has not been the trend, particularly as we came through the Independence time and the mid 60's, 70's, 80's and so forth. There have always been complaints, and of course, tensions often characterised as ethnic, when, in fact, the main cause of contention is that perceptions

vary in the way people see resources being allocated. Therefore, I am saying that, indeed, this particular constitutional review process will have failed in its objects if it cannot put in place, at least, a frame-work and mechanisms to ensure that the scarce public resources we have or the small national cake we have, is equitably redistributed. In that way, we shall be able to preempt and, of course, forestall any attempt at subverting our political system.

Mr. Temporary Deputy Speaker, Sir, coming to the guiding principles as provided in Clause 5 (2) (c), it is being said here that the guiding principle should ensure that what comes out of the constitutional review process reflects faithfully the wishes of Kenyans. Indeed, that is desirable and it should be emphasised. But, sometimes it is easier said than done. Let us always remember that in this country there are 42 tribes and that the main principles of social cleavages are not just tribal, but also class based. We have the "haves" and the "have-nots"; poor and rich people. In the past, when you look at the way policies and public laws have been formulated, they have tended to reflect the views of the wealthy in the society. Of course, it is understandable when it is seen in this context: That in any society the dominant values of that epoch are those of the ruling groups. But, that notwithstanding, we can always moderate this particular tendency to ensure that this particular Constitution is, indeed, seen to reflect the wishes of the Kenyans, but not the wishes of the urban elite, the wealthy, or the dominant tribes. It should reflect the wishes of the very many tribes which exist in this part of the world. I am trying to say that if we are going to give expression to the very values that we are trying to achieve through this particular guiding principles, then we have to put in place the right structures in which it will be possible for Kenyans to channel their demands on how they wish the constitutional order to be; structures in which the membership of the Kenyan society is equitably represented within the review process. There is no point in putting in place constitutional review structures which end up being dominated by select few in the society. That ultimately may not reflect the wishes of Kenyans. The outcome of such a constitutional review process may be the very values of the very few in the society who may not constitute even more than 20 per cent of the population.

Mr. Temporary Deputy Speaker, Sir, what I am trying to emphasize is that, yes, let us have the Constitution review process and put in place structures to ensure the smooth flow of that particular process. Yes, let us have membership that will adequately represent the views of the diverse sections of the Kenyan society, but not just the urban elite and women or the very few who have resources.

Mr. Temporary Deputy Speaker, Sir, Clause 6 refers to the establishment of the membership of the various structures, particularly the constitutional review Commission. I have seen the distribution of the political groups and religious groups. It further says that the provinces should be represented. I have reservations in the way the arrangements have been done. The major political parties in this country are known; they are those with countrywide following. I do not think that it is really right that we should place or weigh them the same way we would; in relation to a party which has no representation in this House, let alone having very few hon. Members. The very fact that a party cannot be able to convince the Kenyan population to vote for it so that it has a massive representation in this House simply means that that party has no ideas to sell to Kenyans. Therefore, they should take a backseat and leave the responsibility to formulate the future state of this country to those parties with a massive following. So, I am suggesting that all parties with little representation in this House; of less than five hon. Members, should go and meet in one place and of course, have one representative in this Constitutional review process.

Mr. Temporary Deputy Speaker, Sir, I can see that they have catered for women organisations in the review process which is fine. But, many of the women organisations represented in this Bill are all urban based. They speak one language; they all reside in urban areas, and yet the bulk of the Kenyan women reside in the rural areas. For some of these rural based women, the kind of gender problems they encounter are totally different from those that women in the urban areas encounter. Those women in the urban areas may be complaining about "not sharing the responsibility of washing dishes with their partners," and yet in the rural areas, even the food itself is scarce to come by. Therefore, all I am trying to say is, that, as we restructure representation of the various actors and interest groups within the constitutional review process structures, we have also to balance. With respect to women representation, I am simply saying that all these urban based women groups like the Kenya Women Political Caucus, the League of Kenya Women Voters, the Collaborative Centre for Gender and Development, the Kenya Widows and Orphans Association, the Federation of Women Lawyers and the National Council of Women of Kenya should be represented by one person. The four places should go to the Maendeleo ya Wanawake, which has got grass-roots support. None of these women organisations have real representation at the grass-roots level. Therefore, they have no right to take places which really should be due to groups which are in the rural areas.

Dr. Kituyi: On a point of information, Mr. Temporary Deputy Speaker, Sir. I wish to inform my eloquent colleague that the Maendeleo ya Wanawake is a member of the Kenya Women Political Caucus and its chairlady voluntarily and freely declared support to the position that they should mobilise the numbers through the Kenya

Women Political Caucus. If they are not complaining, what is the problem with male hon. Members who are complaining on their behalf?

The Minister for Co-operative Development (Dr. Anangwe): Mr. Temporary Deputy Speaker, Sir, the Kenya Women Political Caucus has no representation in Butere constituency.

(Applause)

I am speaking on behalf of the many women in Butere constituency and also in Butere-Mumias District who stood solidly behind KANU and need to be represented adequately in this particular structures.

Mr. Temporary Deputy Speaker, Sir, on qualifications, I have looked at Clause 8 which states that people who are undischarged bankrupt and convicts in prisons should not be represented in the constitutional review process. I am just wondering: Are these people not Kenyans? The number of prisoners in this country is about 36,000 and when it is compared with some of the NGOs which we are insisting that they should be represented--- Some of these NGOs are one man or one woman organisations. Some just walk about with brief cases and we do not even know whether they have offices. All I am trying to say is that even prisoners and people who are undischarged bankrupt are Kenyans. So long as we are talking about stakeholding in the new constitutional order, we should also provide an opportunity for them to articulate what their needs are. Their station in life in prison is part of Kenya. You may never know who may end up in prison. Today you are free and tomorrow, because you have committed a crime, you may end up in prison. So, it is also important that those who are in prison and those who are undischarged bankrupt should come and tell the rest of Kenyans what is there in this new constitutional order. Prisoners are also Kenyans even if they are in prison, they are part of Kenya's extended family and they have every right to be heard. All I am trying to say is that the process we are engaged in is unique. It is not a normal law or the one we normally go through when we are enacting Bills. We are talking about preparing future constitutional order and each segment of society should be very explicit on what their stake is in that constitutional order. Those who are undischarged bankrupt and convicts are also Kenyans and some of them are from Butere Constituency. I am saying that wherever they are, they have a right to be heard.

Mr. Temporary Deputy Speaker, Sir, Clause 9 talks about the qualifications of the chairperson of the Commission. I am very surprised that they are insisting that he must be a lawyer or a judge. I have no problems with judges or lawyers, but the kind of process that we are involved in is a process in articulating and aggregating the views of many people. If you are a chairman, you sit there and synthesise what people are saying and then you prepare a report. As to the law, that is the point of arrival and not the point of departure. I see no reason as to why we should really insist that the chairman of this particular structure should be a judge. It is not only judges and lawyers who are capable of chairing meetings or commissions. We have seen many commissions chaired by other professionals, and of course, they come up with good reports; one of it was chaired by hon. Dr. Omamo. It came up with a very good report. So, why are we insisting on judges? The process involved is one of synthesising, aggregating the views, listening and of course, reconciling conflicts and contradictions. That does not need law. All it needs is your ability to bring the various ideas together. Of course, when it comes to formulating the Bill itself for this Parliament, you can bring in a lawyer to come and say how to rephrase or phrase the various provisions so that they are coherent. But the chairperson should not necessarily be a lawyer.

Mr. Temporary Deputy Speaker, Sir, may I say at this particular point that we always assume that every lawyer is an expert in constitutional law. I was not trained as a lawyer, but I know the curriculum and what the lawyers learn. Some of them are my friends. I can even table the university calender here showing what lawyers learn. To become a constitutional lawyer, you should go and specialise. It is only then that you become an expert and not every lawyer is an expert on constitutional law. So, let us not delude ourselves. Each time we have a problem of constitutional nature, we talk about lawyers and each time we want to come up and formulate some policy arrangements that could facilitate the politics of this country, we put lawyers. I have no problems with lawyers, but all I am saying is that not every lawyer is an expert on constitutional matters. May also emphasize here that there are other disciplines which are equally competent and can provide chairmen. I have in mind political scientists. In political science, people are concerned about the management of the political process and the conflicts that may arise. Law is at the tail end. The formulation of law is at the point of arrival and not at the point of departure. The point of departure in a constitution making is politics. So, we need a person who really understands politics and I am, therefore, proposing that as we go about thinking about who should be the chairperson, let us also include other disciplines like political science and political sociology so that these people can make their contributions where possible to the constitutional review process as chairpersons of this Commission.

Mr. Temporary Deputy Speaker, Sir, as regards the functions of the Commission, I am not too sure as to

the status of the district forums because according to the provisions of this particular clause, it is said that these particular forums will facilitate the deliberations of the Commission. But the contributions of this particular forums in the work of the Constitutional Review Commission are not made very explicit. The functions of the district forums will be to mobilise communities at the local level for the purposes of civic education in preparation for the Commission's work and to

perform such other duties as the Commission may assign. This places the district forums in a subordinate role. Let us remember that the bulk of the population is in the rural areas. We would like this particular structure to be given meaningful role in the constitutional review process. May I suggest that the role of the district forums should be to prepare district memoranda for inclusion within the constitutional review process rather than the way it is stated here. That way, we shall be emphasizing the need to have a bottom-up approach and we shall be utilising Members and councillors meaningfully.

Mr. Temporary Deputy Speaker, Sir, Clause 15 provides that this particular Commission should look at the composition and functions of the State in order to maximise the mutual checks and balances. Upon reading the Bill against the background of the current Constitution, I see no fundamental differences. Indeed, our current Constitution does provide for similar provisions, but what people tend to fail to see is that when checks and balances do not work, it is not because constitutions have not said so; it is because there are extra-constitutional impediments to the realisation of checks and balances. And in the context of many of our Third-World countries this has to do with the role of the executive within the development process and because it has been at the helm of socio-economic changes, it has been able, of course, to accumulate extra-constitutional powers through the control of the Exchequer and through the control of public resources and in that way, it has been able to acquire more powers than probably it may have been intended. That is to say that so long as the executive branch of the Government continues to exercise such a role within the development arena, whether or not we provide for such checks and balances within the Constitution, we may end up at the same point as we are today. This particular clause is also asking the Constitutional Review Commission to examine the federal and unitary systems of Government and recommend an appropriate system for Kenya. I think the phraseology here is not correct.

With those remarks, I beg to support.

Dr. Kituyi: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me a chance to make my contribution on a belated piece of legislative work for this Parliament. Belated because it has taken us more than one year, since the time when we were psychologically ready to embark upon the constitutional review process. As we embark on this step, we have a onerous responsibility to ask ourselves, on the outset, why has it taken the National Assembly of Kenya one year since we thought we were about to embark upon this process, to come up with a modicum of an acceptable Bill for the creation of the Constitutional Review Commission? It has been a failure of the political class. It has been a failure of the politicians to find a method of sitting down together, talking together and rising above partisan and parochial chauvinistic interests to define our responsibilities as Kenyan leaders.

At the onset, I wish to express my appreciation to His Excellency the Ambassador of the Federal Republic of Germany in Kenya, Mr. Michael Gerdts. This is because, whereas we have been congratulating each other in this House, for having been able to create the inter-parties committee to start discussing how to work out this draft, to eventually find a method of working together, the reality is that the caucus that eventually came to be called the IPPC was created during two meetings hosted by the Germany Ambassador to Kenya. While congratulating him, I wish to express my sadness in two regards. The first one is that we have no capacity on our own to find a locus of sitting together, abandoning our pettiness and addressing national concerns. It requires us to seek assistance from outside, being hosted by an ambassador, before we can say; "yes", we have a collective responsibility as leaders. I am sad because of our second responsibility. The business of enacting laws is the business of the National Assembly. Once we get to the point that Members of Parliament cannot seek the views of the constituencies, the constituents of this Republic and sit together as Parliamentarians and prepare an Act of Parliament, that we have learned not to trust each other unless NGOs, religious groups and other pressure groups sit with us, before we can find something mutually acceptable, is a statement of our failure as a political class.

If there is any lesson to be learnt from the way we have come, between the IPPG and this Bill being brought before this Parliament, is that we have not yet learnt to appropriate our responsibilities as leaders and as the legislature of Kenya. The stage must be brought exterior to the political class before we realise our obligations to the people of Kenya. It is a sad statement about ourselves.

Mr. Temporary Deputy Speaker, Sir, when I look at the Bill, one of the more important principle is this: Why was this Bill brought to the National Assembly? At page 412, Clause 2A(a) it reads:

The object and purpose of the review and eventually, the alteration of the Constitution is to secure provisions therein:

(a) Guaranteeing peace, national unity and integrity of the Republic of Kenya in order to safeguard the wellbeing of the people of Kenya. We have embarked upon a process. We are at the base camp of a mountain climb whose methods of delivery and products are supposed to be driven by the desire for peace and integrity of our country. The sovereignty and harmony of the peoples of Kenya should be a driving force for us. The midwives of this Constitution change, however, many organs you create, are the political class. At the end of the day, even if you establish district caucuses in the name of district and national forums, the persons who are going to organise, finance and transport peasants and fishermen to the forum are hon. Members. The things those people are going to say at that forum are given to them in much regard by the same politicians. So, we are supposed to be the midwife of a constitutional change that is driven by the desire for peace and national integrity. But look at ourselves; our styles and substance, do they reflect our being imbued by the desire for peace? Do we reflect in our conduct the principle of national integrity?

Mr. Temporary Deputy Speaker, Sir, one of the cardinal issues in the pursuit of a peaceful society is that the utterances of the midwife of that society come from the advocates of peace in public. They seek to heal wounds, bridge gaps between us and create a national identity. But what are we doing? We find only those things that divide us to be the substance of a political rhetoric in public forums. An hon. Member is not going to a Harambee or a public rally to tell people: "Let us live together and forget our past differences and seek the basis of unity in justice". What do we do? We say "my tribe is threatened by another tribe". We say "a certain community has a hidden agenda to hijack constitutional reform, the Presidency, the vice-presidency" We say; "either majimbo or nothing else." We say that we have stated our position and there is no looking back. Are those the midwives of a peaceful transition? If what excites us most is what sets our community apart from the rest of Kenyans, do we qualify as the right midwives for a new constitutional order that will serve this country's integrity and national integration into the next millennium? It is worrisome. It behooves all members of the political class to start learning how to stigmatise this divisive talk. It may be popular with your immediate audience, tribesmen, political patrons or clients, but it is divisive to the cause of national integration. It is divisive to the creation of an enabling environment for Constitution making.

Mr. Temporary Deputy Speaker, Sir, there will be very many things that will divide the people of this country in the Constitution making. We will find division in whether over-centralised authority is going to devolve to local authorities or to federal entities, tribal blocks or administrative entities. We will find problems whether to have a presidential system of Government or a parliamentary system of Government. We will find conflicts and disagreements on whether to have single MP constituencies or proportional representation in the national legislature. These are difficult questions. These are questions where one side will lose and another side win, and yet consensus building is the desire of finding a win-win situation where nobody loses face or feels that his positions, tribe, region and politicians have lost out. It is a very difficult exercise. But difficult as it is, our own divisive posturing makes it almost impossible to bridge. The process of creating an enabling environment for sustainable Constitution building in this country must start with the political class. We must have the political will to de-emphasize those things that are dividing us. If you believe strongly in majimboism or unitary system of Government, why do you want to posture about it at this stage? Why do you not reduce your rhetoric in putting your sharp difference with others at the base camp before you start climbing this difficult mountain.

Mr. Temporary Deputy Speaker, Sir, there are weaknesses in this Bill. But we have said we are seeking to build consensus. We are seeking to speak in one voice, de-emphasise our differences and forget that we belong to different religions or different ethnic groups. We should forget that we front different national entities with competing political appetites.

Mr. Temporary Deputy Speaker, Sir, we seem to forget that we belong to different religions and regions. We also forget that we have different and competing political views and belong to different political factions and patronage. This should not be the driving force for us. This intricate process should not be the theatre for us to play out those differences and competitions. The challenge for us is to find inside ourselves the possibility to rise above those differences and lead Kenyans in seeking a peaceful process of constitution making.

As I am speaking here today, there have been a number of significant peace initiatives in this country. There has been what is called "Bidii arap Too and hon. Kihika Kimani peace initiative" around Nakuru and Laikipia Districts. There has also been the National Council of the Churches of Kenya (NCCK) peace initiative which, was driven by reconciliation efforts between Members of Parliament from areas which had clashes between 1991 and 1997. There have also been other episcopal conferences of churches on peace initiatives. But typical of Kenyan politics, rather than appreciate whatever might be useful from the initiative of others and seek to augment it with the initiative we might identify it with, we turn this into an opportunity to fight. I try to believe that my initiative is better than another person's and, therefore, his or her initiative is driven by malice or his or her personal interest must have influenced the way he or she is thinking, because he or she is known to have had

certain political ambitions or material interest. One may have a thousand and one negative feelings about Bidii arap Too, hon. Kimani, the NCKK or the Supreme Council of Kenya Muslims (SUPKEM). But if their initiative has anything which is positive, why do you not embrace it? You should turn your back on the negative part of the initiative and try to complement it with any other positive initiative you know of.

Why can we not heal wounds? We should not open up wounds at this critical time in the history of our country. Why should we find the politics of competition much more important than the politics of compromise, live and let live? This is a critical time because we will soon surrender our powers to others. When it comes to the making of our Constitution every party or group must sacrifice some of the ideas it stands for. Why can we not encourage them to sacrifice their positions without losing honour? The only way they can honourably sacrifice their positions is by not boasting too much about it in the Press today. Secondly, they should know that their positions do not excite us and make us desire to attack their persons. But again we are just doing the opposite of that. We are seeking to know what hon. Nassir says, which I can respond to in order to hit the newspaper headline of tomorrow. We are also concerned about what he or any other person stands for, which I can do or not do in order to appear more intelligent than them. What is it that I must do or avoid, so that tomorrow's backpage of the *East African Standard* will suggest that I am the latest addition to the list of candidates for the Vice-President? These are the appetites that are driving us today.

Mr. Temporary Deputy Speaker, Sir, when people look back at the Eighth Parliament of Kenya, which was steaming with promise, formal education and rhetoric on national commitments once a while in the aftermath of an election, they will have a very sad statement to make about us. This is because they would not understand why we were unable to transcend the petty political games that we play at such a perilous cost to the nation.

Mr. Temporary Deputy Speaker, Sir, if you look at the history of other countries, one of the earliest things that the political class does is to define what the critical matters of national concern are. Once one defines them he de-emphasises them as the basis of partisan disagreement. He says that we will all be united on a particular issue. So, no political party can claim mileage on the basis on what all the people have agreed upon. The best example is Sri Lanka. In 1971, the Sinhalese and the Tamils who were already at each others throats said: "There are two cardinal things we have to sort out; we suspend war for a while. Let us have a long-sighted collective policy on education and collective vision on programme of action on health. Let all the different factions agree that this is good for Sri Lanka. Once we have embarked upon it no political party or any tribe will say that it is better than the other because we are implementing this." Whichever Government is in power will include certain people to invigilate examinations but they will not claim responsibility for it or any advantage because the examinations were invigilated.

It surprises a lot of people in this country why at a time of major economic crisis in the country, even for the sake of thinking on how to improve the economy or how the political class can create an enabling environment for foreign investment and domestic confidence to invest returns on investments in our own country, that we cannot even find common ground on this. We use this as an excuse to posture whether the multilateral donors, the Paris Club, is going to like the Government package or not and the Opposition to say whether the Government has been humiliated and therefore, you are happy or unhappy about it. To try and say whether the individual who was in any position at any given time has shown that he can be liked by donors more than others donors. These are petty games.

It is too late in the day to improve this fragile economy and the vulnerable security situation considering conditions within the neighbourhood and lack of an engine for moving us into the next millennium, and lack of political leadership, not in Government, but in the National Assembly of Kenya where we cannot find the best goodwill within ourselves to suspend our petty war games and define a core set of issues that are so critical to the survival of our country for posterity that we are driven collectively without competing to claim ownership.

The ecology is an example. The rate of our environment goes beyond partisan interest. Can we not find within our own self the drive to say: "At least we disagreed on other things, but we defined interest to protect our common heritage, and pass it on to our posterity. This is not a part of the equation or competition. It is only in that context that then we can start saying: "Hey, can we shield the constitutional making process from partisan competitive politics? Can we take our political competitions and brinkmanships outside the area that is so mild with land mines of conflicts? Can we rise above what others have risen above what others have thought about us as a political class and prove to the world, even surprisingly prove to ourselves, that indeed, the political class in this country is ready and capable of defining so important an arena as Constitution making to be outside the realm of competition". If you look at what other countries do, constitution making does not entail the whole population like a census or a general election. But because we do not trust each other we have to create all these expensive mechanisms to try and have as many people as possible to be involved so that what is said appears to gain some legitimacy. It is a vote of no confidence in ourselves. In many countries we have had twelve to fifteen persons

forming a caucus that goes around to relevant places only not to district foras and to divisional levels and so on, to gather critical issues and bring them before the political class and say: "Does this structure represent the balance of forces in such a way that the best in our individual and our communities is going to be brought out and that the worst is going to be contained?"

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Musila): Hon. Kituyi, you will continue with your presentation tomorrow. Hon. Members, it is time to interrupt the business. The House is, therefore, adjourned until tomorrow, Wednesday, 25th November at 9.00 a.m.

The House rose at 6.30 p.m.