

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 11th November, 1999

The House met at 2.30 p.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

ORAL ANSWERS TO QUESTIONS

Question No.640

REMUNERATION OF HOLDERS OF CONSTITUTIONAL OFFICES

Mr. Michuki asked the Minister for Finance:-

- (a) whether the Government, at any time since 1997, has increased the salaries and allowances of the holders of offices to which Section 104 of the Constitution of Kenya applies; and,
- (b) if he could give the date(s) when such increases were made.

The Assistant Minister for Finance and Planning (Mr. Arap-Kirui): Mr. Deputy Speaker, Sir, we had the impression that this Question had been deferred, because we have just received it.

Mr. Michuki: Mr. Deputy Speaker, Sir, the Clerk had consulted me on this issue, regarding the plea by the Ministry. I am agreeable that if you so wish, the Question should be slated for next Tuesday.

Mr. Deputy Speaker: The Question is deferred to Tuesday next week. Next Question, Mr. Munyes.

(Question deferred)

Question No.585

ADMISSION OF TURKANA STUDENTS TO PUBLIC UNIVERSITIES

Mr. Munyes asked the Minister for Education:-

- (a) how many students from Turkana District have joined public universities in the last three years;
- (b) if he could inform the House why seven students of Katilu Secondary School who scored a minimum grade of B- failed to be admitted to these universities; and,
- (c) if he could undertake to assist these students secure admission to the various universities.

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

(a) Students from Turkana District who applied for admission into public universities in the last three years and secured admission are as follows: 1996/97 academic year, 13 students; 1997/98 academic year, 12 students, and 1998/99 academic year, 26 students.

(b) Five students from Katilu Secondary School who had applied were admitted into various public universities in the 1998/99 academic year. The seven students from the school who had scored a minimum of grade B- in their KCSE examination and had applied for admission but were unsuccessful, did not meet the Joint Admissions Board approved criteria for admission to public universities.

Mr. Deputy Speaker, Sir, although the minimum university entry requirement is KCSE examination grade C+, the existing capacities for the various university courses have recently raised the admission grade and points, because of the reduction in the numbers of students admitted. The applicants are also required to meet the minimum subject cluster points requirement for admission to the course of study applied for. The applicants are, therefore, admitted to various university courses of their choice strictly on merit.

(c) To maintain academic standards in the public universities, applicants are admitted, based on the minimum required grades and points, depending on the course capacity, the course subject cluster requirement and the order of the choice of what course the students applied for. The onus to make it to the public universities is, therefore, on the student himself or herself. Since the capacities of the universities have been met, it is not possible to consider only the seven students and leave out other students with similar grades.

However, may I advise the hon. Member that, there are quite a good number of local private universities which admit students with a minimum of grade C+.

Mr. Munyes: Mr. Deputy Speaker, Sir, as you can see from the reply given by the Assistant Minister, Turkana District has been given a raw deal by the Government. It is a poor district which requires some affirmative action to boost the standards of education. We suffer because of the poor climatic conditions of our district. Our people live in abject poverty, and our children learn under very poor conditions. The issue here is that the Ministry did not support those seven candidates by submitting their application forms. So, this is a problem of the Ministry. What is the Ministry doing to ensure that the seven students are admitted to public universities? It was not the fault of the students, but the Ministry.

Dr. Wamukoya: Mr. Deputy Speaker, Sir, it cannot be the fault of the Ministry. I am saying that those seven students were not admitted because they did not meet the minimum requirements. The Ministry can only waive for some students in a few cases, where students from disadvantaged areas could be admitted with one lower point at grade B-; that is, 67 points instead of 68. This is only done when there is a vacancy in that course. Sometimes the universities waive on gender, so that they cater for affirmative action on gender issues.

Mr. Ngure: Mr. Deputy Speaker, Sir, the Assistant Minister is saying that those are the minimum requirements. In this House, we have repeatedly said that the Ministry of Education, Science and Technology, and, indeed, the Government, is not providing special minimum requirements for these hardship areas. So, when they are considering minimum requirements for entrance to the public universities, could he assure the House that, because of existing hardship, when students from disadvantaged areas apply for admission to the national universities, they will be considered? This is because it is not their fault that they went to schools lacking the minimum requirements for any standard education in this country.

Dr. Wamukoya: Mr. Deputy Speaker, Sir, I have just said that students from Turkana District, being one of the disadvantaged districts, are sometimes considered by lowering one or two points, to allow their admission to the universities, if the course has the capacity. I have also said that women are considered from these areas for the same reason; to cater for the affirmative action. I do not know whether my colleague understood me.

Mr. Munyasia: Mr. Deputy Speaker, Sir, this Ministry has had a policy of lowering grades for disadvantaged districts for admission to national schools after they have done their KCPE. Could the Assistant Minister consider extending the same policy to university in-takes, especially, in order to serve Turkana District?

Dr. Wamukoya: Mr. Deputy Speaker, Sir, the question of lowering the grades for specific districts has been discussed for a long time in the universities, and it was found that it was going to lower the standards of education. So, the universities came out with what I have just said; lowering a point or two, and I do not want to go through it again.

Dr. Ochuodho: Mr. Deputy Speaker, Sir, before I ask my question, I want to register my delight in seeing hon. Munyes after what we watched yesterday.

Could the Assistant Minister confirm or deny that ever since the University of Nairobi was established, only five girls have been admitted from North Eastern Province, and in the past three years that he has talked about, less than five of those who were admitted from Turkana District to the public universities were women? I hope the Government will do something to help those students from Turkana.

Dr. Wamukoya: Mr. Deputy Speaker, Sir, I want to make it clear that all the students who present themselves for examination do not apply to be admitted to the universities. Of those who apply to join the universities, they are considered according to merit, and I can assure you that, that is the principle that has been used to admit the students.

Question No.409

DISCRIMINATION AGAINST WORKERS
BY NAKUMATT LIMITED

Prof. Anyang'-Nyong'o asked the Minister for Labour:-

(a) whether he is aware that the employees of Nakumatt Limited are discriminated against and the employer does not obey Kenyan labour laws; and,

(b) what steps the Ministry has taken to address the grievances of these workers.

The Minister for Labour (Mr. Ngutu): Mr. Deputy Speaker, Sir, I beg to reply.

(a) The Government is not aware of any discrimination, mistreatment and underpayment of those employees. The employer has complied with Kenya labour laws and offers competitive terms and conditions of service. The wages are way above the statutory requirements, with allowance packages covering housing, transport, overtime and bonus. However, if any specific cases to the contrary are cited, my Ministry will take appropriate action immediately.

(b) Routine inspections have been made, and continue to be undertaken, to ensure compliance with the labour laws regulating the terms and conditions of employment.

Prof. Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, the Minister's answer to this Question is no different from the advertisement that Nakumatt Ltd carried in the Kenyan daily newspapers a few weeks ago, to try and pre-empt this Question from being addressed in Parliament, and the genuine issues that the workers have been raising. I have received several letters from Nakumatt Ltd employees all over the Republic, particularly in Nairobi and Kisumu. I would just like to refer to one of them, to enlighten the Minister of the terrible conditions under which Nakumatt Ltd. employees are subjected to. First, the Chief Executive of Nakumatt Ltd., a certain Attul Shah, has refused Nakumatt Ltd., employees from joining the Kenya Union of Commercial, Food and Allied Workers (KUCFAW) so that they can raise their grievances through the proper labour laws as guided by what the Minister said. This is one of the infringements in the Labour laws that Nakumatt Ltd has done. Could the Minister specify to the House whether, indeed, he is aware that Mr. Attul Shah has not prevented the workers of Nakumatt Ltd from joining the Union? In that regard, is the Minister aware that even KUCFAW cannot take up the cases of workers in Nakumatt Ltd because the same Attul Shah has his long hands to bribe the officials of the Union, playing them against the workers of Nakumatt Ltd., itself?

Mr. Ngutu: Mr. Deputy Speaker, Sir, I think I should give a little background of Nakumatt Ltd. It is a chain of supermarkets and has eight branches in Kenya, and is owned by Nakumatt Holding Ltd. In September, 1998, the Ministry received complaints - letters from workers of Nakumatt Holding Ltd. - which included forced overtime, working for long hours while standing, among others. Consequently, investigations were carried out and inspections revealed that the Nakumatt Holding Ltd complied with major aspects of labour laws, for example, paying salaries and wages above the minimum statutory requirement; payment of overtime, house allowances and bonus based on sales for each month. Comparatively, its employees are well taken care of. They are provided with free tea at 10.00 a.m. and 4.00 p.m. as well as lunch on a daily basis. Overtime allowances include---

Mr. Deputy Speaker: Order! The question was whether they have been allowed to join a union of their choice and not whether they are being given tea or lunch.

(Laughter)

Mr. Ngutu: Mr. Deputy Speaker, Sir, I just wanted to give a little background of this Question. To answer the question asked, these workers are allowed to join any union they want.

Mr. Munyao: Mr. Deputy Speaker, Sir, I am surprised that the Minister is unaware that there is discrimination in the Nakumatt Holding Ltd., which is not alone. Most of the companies headed by Asians in Kenya practice discrimination. For example, last time, when the Minister himself was in Mombasa, he visited a farm owned by an Asian and he was refused to be let in. When they opened the farmgate for him, he started asking a few questions and he was threatened to be thrown out, while workers watched all that. How will he comprehend this matter if that happened to him? How does he expect these Asians to respect workers if they could not respect him? He was about to be thrown out and even the Ministerial flag on his car was grabbed by an Asia.

Mr. Ngutu: Mr. Deputy Speaker, Sir, Nakumatt is a different firm from the one you have referred to in Mombasa. You cannot compare it with all other companies in Kenya. We have particular bad people, and the law will protect all employees regardless of who the employer is. There are Asians who are Kenyan citizens, and if they do anything wrong, they are dealt with accordingly.

Mr. Mwakiringo: Mr. Deputy Speaker, Sir, I wonder whether the Minister is aware that his officers who carry out inspections in Asian-owned factories are always compromised? I am raising this question because it is only when I asked a Question about Coast Bottlers that his inspectors went there, discovered many anomalies and rectified them. Today, we are talking about Nakumatt. Could he deny that his inspectorate team is not doing the right thing, and Ministers and Assistant Ministers are compromised by being given Harambee contributions by the management of these companies?

Mr. Ngutu: Mr. Deputy Speaker, Sir, I do not agree that we are compromised. If the hon. Member has any evidence of a particular case, he should refer it to me, and I will deal with it accordingly.

Mr. Ndilinge: Mr. Deputy Speaker, Sir, since the Minister has denied that his officers collude with Asians, could he send independent investigators who can get to know the plight of African employees, who work for Asians?

Mr. Ngutu: Mr. Deputy Speaker, Sir, if the hon. Member has evidence of a particular case, he should refer the matter to me for further investigation.

Mr. Ndicho: Mr. Deputy Speaker, Sir, more often than not, we have urged the Minister to make sure that labour laws are brought to this House for amendment. Because of the Minister's failure to do that, his Ministry has made Kenyans to be slaves of Asians in this country. All Kenyans working for Asian firms in this country are slaves. The Ministry is condoning slavery of Kenyans by Asians. What is the Ministry doing in so far as bringing labour laws to the House for amendment is concerned, so that Kenyans enjoy working for these Asians? When is he also going to stop slavery of Africans by these Asians?

Mr. Ngutu: Mr. Deputy Speaker, Sir, when we carry out reforms, labour laws will be made to suit the current requirements of this country. The Ministry will ensure that all loopholes are sealed.

Prof. Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, as the Minister was reading the long litany of the things that the workers at Nakumatt are given, he reminded me of the tea plantations in Kericho, when you and I were growing up. There used to be a bus "Asimba", which came to our areas to collect workers. They told us that if we went to work in the tea plantations, we would be given posho in the morning, play football in the afternoon and eat eggs in the evening as pay. Could the Minister produce in this House, a letter of appointment to any of the Nakumatt employees, stating their terms of service, and giving evidence of what exactly they get from Nakumatt, other than this public relations exercise that Nakumatt has put in the newspapers?

Mr. Deputy Speaker, Sir, when the Minister says that Nakumatt employees are unionised, could he tell this House whether there is any one single shop steward who is a member of the Kenya Union of Commercial, Food and Allied Workers, and who is also employed by Nakumatt?

Mr. Ngutu: Mr. Deputy Speaker, Sir, according to the information I have, all the employees of Nakumatt have appointment letters. If he wants me to produce a sample of the employment letter, then I am prepared to bring it on Tuesday.

Mr. Deputy Speaker: Next Question!

Question No.589

DESTRUCTION OF KAKAMEGA FOREST

Mr. Khamasi: Mr. Deputy Speaker, Sir, I have not received a written reply to this Question. Therefore, it is very difficult for me to prepare supplementary questions. I would like the Minister concerned to respond to that.

Mr. Deputy Speaker: Is the Minister for Environment present? We will come back to that Question later on! Next Question!

Question No.646

CAUSE OF WATER SHORTAGE IN MACHAKOS TOWN

Mr. Kikuyu asked the Minister for Water Development:-

- (a) if he is aware that there is acute water shortage in Machakos Town;
- (b) if he could explain the cause of this shortage; and,
- (c) if he could inform the House what the Ministry is doing to rectify the situation.

The Minister for Water Development (Mr. Ng'eny): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am aware that there is acute water shortage in various parts of Machakos Township, occasioned by long droughts experienced in most parts of Machakos District.

(b) The cause of the current shortage is the reduced volume of water received in the reservoir due to current drought at the source of the Nol Turesh Water Project. This has resulted in rationing of water so that people in different parts of the town receive water at different times.

(c) To rectify the situation, my Ministry is making arrangements to rehabilitate Maruba Dam. Plans are also underway to identify a new dam site.

Mr. Kikuyu: Mr. Deputy Speaker, Sir, could the Minister tell this House what has affected the source of Nol Turesh Water Project? The main source of Nol Turesh Water Project is Mt. Kilimanjaro, which comes from ice, and there has been ice throughout this year. Why does the Minister allege that there has been diminishing water from Mt.

Kilimanjaro? Could he tell us who is tampering with the pipeline of the water up to Machakos? Surveys carried out do not reveal drought as the cause.

Mr. Ng'eny: Mr. Deputy Speaker, Sir, I am sorry I did not get what the hon. Member asked clearly. Could he repeat?

Mr. Kikuyu: Mr. Deputy Speaker, Sir, the source of Nol Turesh Water Project is the ice on Mt. Kilimanjaro. For the whole of this year, there has been ice on Mt. Kilimanjaro every day. Why is he saying that water has diminished due to drought on Mt. Kilimanjaro?

Mr. Ng'eny: Mr. Deputy Speaker, Sir, Nol Turesh pipeline traverses nearly 100 kilometres from the source up to Machakos Town, and on the

[**Mr. Ng'eny**]

pipeline there are also consumers. The demand for water has increased because of the drought and, therefore, it is not enough for everybody, which has resulted in rationing of water for Machakos Town and everybody else along the pipeline.

Mr. Maundu: Thank you, Mr. Deputy Speaker, Sir. The Nol Turesh Water Project was intended to help industrialise Machakos Town. This question of shortage of water in Machakos Town has been perennial. Can the Minister be honest with this House and tell us why water from this project has been diverted to private users, to the detriment of the residents of Machakos Town?

Mr. Ng'eny: Mr. Deputy Speaker, Sir, I would like to assure this House that water from Nol Turesh Water Project has been solely and entirely used for the public cause and not for private individuals. I have personally visited the pipeline, from the source up to Kajiado, and I know that there is no diversion whatsoever from the main pipeline.

Mr. Mboko: On a point of order, Mr. Deputy Speaker, Sir. Is the Minister in order to mislead this House that the water intended for Machakos township is not used by private individuals? It is very true and clear that it is being used to irrigate a flower farm which is owned by the big fish in this country?

Mr. Ng'eny: Mr. Deputy Speaker, Sir, I absolutely deny that, that water is used for watering flowers. I have been there personally, and if there is any doubt, I would like to take some of the hon. Members to that place.

Mr. Katuku: Thank you, Mr. Deputy Speaker, Sir. The Minister has told us that water has not been diverted to other uses, while it is common knowledge that water which is meant to be serving Machakos Town is irrigating flowers at Athi River here, in a farm belonging to the son of the President of this country. What a shame, that water intended for Machakos Town is being used for irrigation elsewhere? Can the Minister, in view of this, order the disconnection of that water to the flower farm at Athi River, so that Machakos Town residents can get water?

Mr. Ng'eny: Mr. Deputy Speaker, Sir, occasionally, we should be absolutely honest to ourselves. I said that I have followed that pipeline from the source up to Kajiado. The pipeline comes up to the water tank at Machakos Town. That is the first place it collects before it even goes anywhere else. I do not see how the water from Nol Turesh jumps to somewhere else when its pipe is sealed. It, first of all, connects at Machakos Town before it goes anywhere else.

Mr. Kaindi: On a point of information, Mr. Deputy Speaker, Sir. I want to inform the Minister that the farm in question is called "Stony Athi". I have had the opportunity to interview the officials of the water corporation which comes under that Minister, and it is true that a two-inch pipeline has been diverted to that farm. These are facts and he should go and confirm them!

Mr. Nderitu: Thank you very much, Mr. Deputy Speaker, Sir. I am surprised to hear the Minister talk about this line as if it does not exist in this country. I was involved in the construction of that line, and I know that it passes through a stretch of 160 kilometres on bare land where the Maasais are tampering with it. There is a lot of leakage on that side, up to Emali Railway Station. Then, from the Emali Railway Station, coming upwards to Kiima-Kiu, we have got Major-General Musomba and three other businessmen who have been given outlets of pipes of three inches. Between Kiima-Kiu and the diversion to Machakos, there is a line going to Kajiado---

Mr. Deputy Speaker: Order! Ask your question!

Mr. Nderitu: The Minister is not in order to say that there is no diversion on that pipeline. Could he now, instead of misleading this House, go and check the line again? Can he deny or confirm that, that line leads to the flower farm at Athi River, which is owned by the Vice-President?

The Vice-President (Prof. Saitoti): On a point of order, Mr. Deputy Speaker, Sir. The hon. Member has got to withdraw that allegation because it is not true. I am not a recipient of water from the Nol Turesh Water Project, and there is no pipeline whatsoever, which comes to my place, Kitengela, although I was very much involved in the whole project in terms of negotiating for it. Can he withdraw? He has to withdraw the allegation that there is a water pipeline which comes to my home. Even hon. Muniyao knows it, and there are a number of hon. Members who know it. He has to withdraw!

Mr. Nderitu: Mr. Deputy Speaker, Sir, I asked the Minister to confirm or deny what I have said!

(Applause)

Mr. Deputy Speaker: Order! Hon. Members, you do not ask a Minister to confirm or deny by implicating another hon. Member.

Hon. Members: Yes! Let him do so!

Mr. Deputy Speaker: Order, hon. Members; do not get over-excited! This is a small matter. You cannot hide a pipe except by burying it underground, but it will be known where it passes. If you are stating a matter of fact, which the Minister can prove, stand up and say so.

Mr. Nderitu: Mr. Deputy Speaker, Sir, here I am stating a fact that, that line goes to that flower [Mr. Nderitu]

farm. If that flower farm is not owed by the Vice-President, I will withdraw that, but could the Minister---

Mr. Deputy Speaker: No, conditions!

(Loud consultation)

Mr. Deputy Speaker: Order! Hon. Members, this was a very good Question because it involves a lot of Kenyans who are suffering from lack of water.

(Mr. Muchiri stood up in his place)

Order! Order, hon. Muchiri! Please, let us treat this Question with the seriousness it deserves. Hon. Nderitu, do you know for a fact what you have just stated? If you do not, you had better withdraw because the consequences of not doing that are severe!

Mr. Nderitu: Mr. Deputy Speaker, Sir, I withdraw that statement and apologise to the Vice-President.

Mr. Munyao: Mr. Deputy Speaker, Sir, I agree with you that this Question is very vital. Water shortage has been discussed in Machakos Town for so many years. I am the Shadow Minister for Water Development, and I also sit in the committee that deals with this kind of thing. Can I ask the Chair to defer this Question and refer it to a committee of the House so that we get this House proper answers of what is happening? There is a controversy about water being diverted to irrigate flowers, or being taken to Kajiado, and that hon. Munyao has to confirm this or that. I will do it properly if the Question is referred to a committee of the House.

Mr. Deputy Speaker: Order! If a matter has to be taken up by a committee, it does not require the Chair to direct that. Hon. Members can take care of their own Motion. So, if you want it to go to the committee, take it there. But, for the time being, because of the importance of this matter, I direct so!

Mr. Anyona: On a point of order, Mr. Deputy Speaker, Sir. Whereas the option you have just specified is also available, I believe that under Standing Order No.151, paragraph (iv), and I think, sub-paragraph (e), the House can, in fact, refer formally, a matter of this kind to a committee of the House. I think both options are available. So, really, it is a question of which one we would like to adopt. We can formally refer it, or we ask an hon. Member to go before the committee.

Mr. Deputy Speaker: Order! What hon. Anyona is quoting is the mandate of the committees. They can exercise those mandates without reference back to the House. But if there is an issue which they feel they need the extra weight of the House, they can bring it to the House for a resolution. In this instance, I do not think there is that need. The requirement for the matter to go before the committee is self evident. So, proceed with the matter that way.

Question No.421

MANUFACTURE OF SUBSTANDARD MATTRESSES
BY VITAFOAM AND SUPERFOAM

Mr. Kombe asked the Minister for Tourism, Trade and Industry:-

(a) whether he is aware that Vitafoam and Superfoam Companies manufacture substandard products, especially the high density foam mattresses; and,

(b) what measures he has put in place to make sure that the said products are of the required standards.

The Assistant Minister for Tourism, Trade and Industry (Mr. Ekirapa): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am not aware.

(b) The Kenya Bureau of Standards (KBS), acting under the provisions of the Standards Act, Cap. 496, visits factories and selling outlets and collects random samples for testing, to ensure that the manufactured mattresses conform to the required standards. If goods are found to be substandard, the manufacturers are warned by the KBS. Where warnings are ignored, then such cases are taken to the courts of law.

Mr. Kombe: Mr. Deputy Speaker, Sir, I bought some pieces of high density foam mattresses sometime back. On reaching home, I found that the pieces were substandard. The Assistant Minister has told the House that the KBS is given the responsibility of ensuring that products conform to the required standards. Could the Assistant Minister confirm or deny that the practice of manufacturing substandard products is still going on today? Could the Assistant Minister confirm or deny that the KBS has been compromised by those companies?

Mr. Ekirapa: Mr. Deputy Speaker, Sir, I deny that the KBS has been compromised by those companies. But companies which have not conformed to the standards and continue to produce substandard mattresses, in spite of the warnings by the KBS, have been taken to court and prosecuted.

Mr. Mboko: Mr. Deputy Speaker, Sir, the Assistant Minister, who is my good friend, has no information about what we are talking about. The Vitafoam Company is giving us substandard mattresses. Sometimes, the mattresses are in pieces. Could he tell this House what action the Government has taken to punish the said company?

Mr. Ekirapa: Mr. Deputy Speaker, Sir, there is so much noise that I did not hear the question!

Mr. Deputy Speaker: Repeat the question!

Mr. Mboko: Mr. Deputy Speaker, Sir, what I am saying is this: The Assistant Minister, who is my good friend, may not understand what we are talking about! The Vitafoam Company is manufacturing and selling substandard mattresses. They just stick some parts together to make a mattress. What action will the Ministry take to punish the company?

Mr. Ekirapa: Mr. Deputy Speaker, Sir, as I have said, any company that manufactures substandard mattresses has been warned by the KBS. Those who have not heeded the warning have been prosecuted. For example, currently, there are four pending cases before our courts of law against companies that manufacture substandard mattresses. Those particular two companies are not included in the list of the four companies. But if the hon. Member can supply samples of substandard mattresses, the KBS will take appropriate action.

Mr. Gitonga: Mr. Deputy Speaker, Sir, could the Assistant Minister tell us what method is used to compare samples of mattresses with the end product? Could he also confirm or deny that the best mattresses are sold outside this country, and the locals are left without proper quality mattresses?

Mr. Ekirapa: Mr. Deputy Speaker, Sir, as you can see, hon. Oloo-Aringo was obstructing me! I did not hear what the hon. Member asked!

Mr. Gitonga: Mr. Deputy Speaker, Sir, my question is: What method does the Ministry use to compare the end product of those mattresses, and the samples provided? Could he also confirm or deny that the best mattresses are exported, while the locals are left with substandard mattresses?

Mr. Ekirapa: Mr. Deputy Speaker, Sir, if any company in this country is exporting products outside this country, we encourage that. But as far as the question of standards is concerned, the KBS has established a standard, No.KSO3376. This is the standard that every manufacturer is expected to conform to. The standard density is 25 kilogrammes per cubic meter for ordinary mattresses. For high density mattresses, the density is 35 kilogrammes per cubic meter. This is the standard that the KBS applies.

Mr. Anyona: On a point of order, Mr. Deputy Speaker, Sir. We have a very specific question, which can only be answered if a specific investigation by the KBS is carried out in respect of this particular issue, to confirm one way or another. The Assistant Minister is treating us to the general requirement of the law! Is the Chair satisfied that the Assistant Minister is seriously answering the Question? We want actual confirmation in respect of this particular issue; that the KBS investigated and confirmed, and lay the evidence before the House!

Mr. Ekirapa: The Kenya Bureau of Standards has confirmed that this particular company is not producing substandard mattresses, and every test it has carried out in respect of the products by this particular company shows that it has met the specifications.

Dr. Ochuodho: Mr. Deputy Speaker, Sir, the issue of KBS certifying substandard products is a well known concern. Those of us who consume dry cells know that when you buy dry cells, they do not last three days. Could the Assistant Minister tell us whether they have a way of certifying that KBS itself has done the correct job? In other

words, does the Ministry have a quality control system for the KBS itself?

Mr. Ekirapa: Mr. Deputy Speaker, Sir, the KBS has set its own standards and has a means of ascertaining whether or not a particular product meets the quality. If the hon. Member can give us a particular example of what he is referring to, we will take appropriate action. As I have said, the KBS is using its accepted standards and has already identified four manufacturers who have not been able to meet the standards, and these cases have been referred to the court of law.

Mr. Kombe: Mr. Deputy Speaker, Sir, the Assistant Minister has denied that the KBS has been compromised. I would like to bring that sample to this House so that it can be tested for the truth to be established. My colleague from the other side of the House has said that the Vitafoam company manufactures substandard mattresses. I would like this Question to be deferred so that I can bring the sample for testing.

Mr. Deputy Speaker: Mr. Kombe, you are not being fair to the Assistant Minister. After answering so many questions, we cannot have that Question deferred. Ask your last supplementary question and if you do not have any, we will move to the next Question.

Mr. Ayoki's Question.

Question No.491

UPGRADING OF KOMBWEA RURAL
HEALTH DEMONSTRATION CENTRE

Prof. Anyang'-Nyong'o, on behalf of **Mr. Ayoki**, asked the Minister for Medical Services:-

(a) considering the strategic position of Kombewa Rural Health Demonstration Centre in providing health services to the people of Kombewa Division and the neighbouring divisions, whether he could consider elevating it to a sub-district hospital; and,

(b) what plans he has to post a resident doctor and provide an ambulance to the health centre.

The Assistant Minister for Health (Dr. Wako): Mr. Deputy Speaker, Sir, I beg to reply.

(a) The elevation of Kombewa Rural Health Demonstration Centre to a sub-district hospital is under consideration by the District Health Management Board and the Divisional Development Committee. I am awaiting the recommendations of the District Development Committee on the elevation of the centre before taking the necessary action.

(b) A doctor will be posted to the health facility as soon as one is available. The centre currently has a broken down ambulance and arrangements are being made to have it repaired.

Prof. Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, I am surprised that the Assistant Minister is still awaiting the recommendations of the District Development Committee to upgrade Kombewa Rural Health Demonstration Centre to a sub-district hospital, when a DDC in Kisumu, in 1995, had already resolved to uplift Kombewa Rural Health Demonstration Centre and Chulaimbo Rural Demonstration Centre to the level of sub-district hospitals and the same Ministry confirmed, in 1995, that, that would be carried out. How come that four years later, the same Ministry is still waiting for yet another sub-DDC to make another recommendation for the Ministry to do what they would have done in 1995?

Dr. Wako: Mr. Deputy Speaker, Sir, we are not aware of the DDC recommending that Kombewa Rural Health Demonstration Centre be elevated to a sub-district hospital in 1995. We are aware that the District Commissioner has instructed the Divisional Development Committee Chairman to forward its recommendations to the DDC for discussion, which means that it has not been discussed.

Prof. Anyang'-Nyong'o: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for Ministers to keep on bringing routine answers to this House, which are not according to the records of the same Government? Can the Assistant Minister assure this House that he can produce all the minutes of the DDC in Kisumu, and I could point out to him the specific line where this was said in 1995? Can he produce the minutes to confirm or deny what he is saying?

Dr. Wako: Mr. Deputy Speaker, we do not have the minutes, but if the hon. Member has them, he can forward them to us. The fact remains that according to the information we have, the District Commissioner had written to the sub-DDC to make the recommendations.

Mr. Deputy Speaker: I wanted to inform you that the Chair is a member.

Prof. Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, are you going to allow the Assistant Minister to ask me to produce records of the Government for his own advantage? He is a messenger of the Government and he should bring those documents here in the House.

Dr. Wako: Mr. Deputy Speaker, Sir, the information I have comes from the district. The District

Commissioner has already written a letter to the Chairman of the Divisional Development Committee to discuss that subject and forward it to the DDC. If the hon. Member is aware that there was a DDC meeting in 1995, and the DDC has not gone through the minutes, can the hon. Member give us the information so that we can be able to follow it up?

Mr. Wamalwa: Mr. Deputy Speaker, Sir, the Assistant Minister's answer to part "b" of this Question, which asks when a doctor will be posted to this place, is that a doctor will be posted when he becomes available. I am quite sure that the spirit of the Question was how soon one is going to be available. Could the Assistant Minister be good enough and tell this House how soon a doctor is going to be available to be posted to this place?

Dr. Wako: Mr. Deputy Speaker, Sir, first and foremost, may I say that we only post doctors to sub-district hospitals and district hospitals. This is the policy of the Ministry. If the DDC will recommend to us and we accept their proposals, then we will post a doctor. As we all know, there is scarcity of doctors in the country, but we will look for one as soon as we receive those recommendations.

Dr. Kulundu: Mr. Deputy Speaker, Sir, part "b" of the answer is very misleading. This Ministry has got a habit of giving false answers to this House when it comes to the posting of doctors. Late last year, this same Assistant Minister promised to post several doctors to Kakamega Provincial General Hospital. To date, he has not done that. Can we have an assurance from him that once Kombewa Rural Health Demonstration Centre is elevated to a sub-district hospital, he will, indeed, send a doctor there?

Dr. Wako: Mr. Deputy Speaker, Sir, it is not true that we have not sent doctors to Kakamega Provincial General Hospital. I still remember that at that particular time, I did say that we had sent two consultants, who are already on the ground. I assure the House that as soon as we elevate Kombewa Rural Health Demonstration to a sub-district hospital, we will look for a doctor and make sure that he is posted there.

Mr. Ojode: Mr. Deputy Speaker, Sir, the Assistant Minister is misleading the House. When I asked a similar Question with regard to the posting of doctors to a sub-district hospital in Ndhiwa and Dhote Kojowi, he said they did not have doctors. Why is it that since Kombewa Rural Health Demonstration Centre has not been elevated to a sub-district hospital, the Ministry cannot send a doctor? What is the Ministry doing in order to post doctors to sub-district hospitals?

Dr. Wako: Mr. Deputy Speaker, Sir, as the hon. Members are aware, we have a shortage of doctors and we will do the needful as soon as possible. For this particular dispensary, as soon as it is elevated to a sub-district hospital, we will look for a doctor and post him or her there.

Question No.602

CONVERSION OF KICC GROUNDS INTO CAR PARK

Mr. Kihoro asked the Minister for Local Government:-

- (a) whether he is aware that the only green open space in Central Nairobi, which is opposite Parliament Buildings, was paved and converted into a car park after the Comesatex exhibition;
- (b) whether he is further aware that it is the only remaining planned open space which could be used as a stop by visiting upcountry people, especially children for rest and rehearsals during festivals; and,
- (c) if he could intervene and restore the space to its former use.

The Assistant Minister for Local Government (Mr. Kiangoi): Mr. Deputy Speaker, I beg to reply.

(a) Yes, I am aware.

(b) I am not aware.

Mr. Maitha: On a point of order, Mr. Deputy Speaker, Sir. If I remember yesterday, the Ministry of Local Government did not answer Questions, and you ordered that the Minister comes here so that he can be informed. Can we be told whether he is going to be available this afternoon?

Mr. Deputy Speaker: Order! I did not order any Minister to be here. I ordered a Minister including an Assistant Minister from that Ministry, to be here and one is right here in the name of hon. Kiangoi. Proceed!

The Assistant Minister for Local Government (Mr. Kiangoi): Thank you, Mr. Deputy Speaker, Sir. I did come yesterday.

(c) I wish to advise the hon. Member that the open space in Central Nairobi which is opposite Parliament Buildings and was used for Comesatex exhibition is a private property and the Ministry has no control on the use it is put to by the owners.

Mr. Anyona: On a point of order, Mr. Deputy Speaker, Sir. I do not know whether you listened carefully to the answers to part "a" and part "b". The way the Question is framed, if you are aware of "a", you must *ipso facto* be

aware of "b". You cannot say you are aware of "a" and not aware of "b". If it has been made a car park, it means it is not available for those children. Is it really in order to answer a question like that?

Mr. Kiangoi: Mr. Deputy Speaker, Sir, regarding "a", to answer it in full, I am aware that the green open space in Central Nairobi which is opposite Parliament Buildings was paved and converted into a car park after the Comsatex exhibition.

(b) I am not aware that this is the only remaining planned open space which could be used as a stop by visiting upcountry people especially children for rest and rehearsals during festivals. I think it is different and distinct.

Mr. Kihoro: Mr. Deputy Speaker, Sir, it is incredible we have such an answer where the Assistant Minister is aware of part "a" and not aware of part "b" which actually follows from the former. It is important for the Assistant Minister to establish when this property actually became a private property. The Ministry has no control over it and I suspect this is property that has been grabbed by an authority which I do not know.

Mr. Deputy Speaker: Order! I think to be fair, I will defer this Question because that answer is not satisfactory.

(Applause)

Order! However, more importantly, I am deferring it because I do not want it to dilute the interest in the next order which I think we should now proceed to with great dispatch.

(Question deferred)

POINTS OF ORDER

POLICE HARASSMENT IN KEIYO SOUTH

Mrs. Seii: On a point of order, Mr. Deputy Speaker, Sir. I rise to seek a Ministerial Statement from the Minister of State, Office of the President regarding a serious matter which is happening in [Mrs. Seii] Keiyo South. I had raised this issue before and it has not been answered and I would like to do so for the second time. There is a lot of police harassment involving people particularly those from three locations in Keiyo South, namely; Chebiyor, Tot and Kaptarakwa. The police have been set loose on those people and the residents cannot sleep at night because there are people who are being sought after, and these people happen to be Democratic Party (DP) members. To date, there are two young men missing from their homes, who were physically abducted by the DCIO. There are other 16 people being sought. Two of them were arrested yesterday and I would like the Minister to explain what wrong these people have done apart, from registering and belonging to an Opposition party?

Thank you.

Mr. Deputy Speaker: Do you want to respond now, Mr. Minister?

The Minister of State, Office of the President (Maj. Madoka): No, Mr. Deputy Speaker, Sir.

CHAIR'S RULING ON PROF. ONGERI

The Minister for Public Health (Prof. Ongeri): On a point of order, Mr. Deputy Speaker, Sir. I rise to seek guidance from the Chair on the ruling that you made yesterday morning; whether it did take into account that the Minister for Public Health, Prof. Ongeri was ordered to be present in this House. I do so because one particular newspaper has notoriously headlined me as having been named in this House. Therefore, I seek guidance from you as to what was the actual ruling?

Mr. Deputy Speaker: Order! If hon. Prof. Ongeri wants to see the exact wording of my ruling; he should refer to the HANSARD. That would settle the matter. However, I did not name any Minister in my ruling yesterday. What I said was simply this: That if Ministers continue to absent themselves from the House and, therefore, fail to answer questions, and hon. Members wish to name them, I will allow it to happen.

(Applause)

As it so happened, there were Questions directed to the Ministry of Public Health and to the Ministry of Local Government. So, it is by inference really that the papers insinuated that I named hon. Prof. Ongeri and hon. Kamotho. I did nothing of the sort. Now, I have said before that newspapers should listen very carefully and report accurately.

However, that is the risk you run for not coming to the House.

(Applause)

I did not name Prof. Sam Ogeri or Mr. Joseph Kamotho by name as such.

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

Mr. Deputy Speaker: Order! You can keep your opinions about them outside the Chamber. So, you should be at peace with the Chair. The Chair did not malign you in anyway.

The Minister for Public Health (Prof. Ogeri): On a point order, Mr. Deputy Speaker, Sir. I think it is in order for me to be heard without arousing excitement. First and foremost, that Question was directed to the Minister for Medical Services and not the Minister for Public Health. Will I, therefore, be in order to request that the newspaper withdraws that statement?

(Loud consultations)

Mr. Deputy Speaker: Order! Order! We want to move on to serious business! Only cool tempers will enable us to succeed.

IMPOSITION OF EXAMINATION FEES BY
NYANDARUA DISTRICT EDUCATION OFFICER

Mr. Waithaka: On a point of order, Mr. Deputy Speaker, Sir. I rise to seek a Ministerial Statement on an issue I raised yesterday and the hon. Assistant Minister for Education Science and Technology dismissed the issue. I am still seeking a Ministerial Statement as to why the District Education Officer, Nyandarua, is charging schools some money for the purposes of financing the Kenya National Examinations Council (KNEC) examinations; the Kenya Certificate of Primary Education and Kenya Certificate of Secondary Education, whereas individual candidates have paid examination fees for the papers they are going to take. This is a very serious issue because there is an outcry in the district that, this money is being collected and it may not end up financing the examinations, because this examinations are financed by the KNEC.

(Hon. Members stood up in their places)

Mr. Deputy Speaker: Order! Order! I think hon. Members are being rather cheeky. Today is Thursday, and those who wish to raise matters, ought to raise them during the Zero-Hour. I allowed Prof. Ogeri to raise a point of order because he was not here yesterday and he felt that the matter that had appeared in the Press needed to be corrected. So, these others are sneaking in irregularly. Therefore, there will be no more points of order along these lines.

(Several hon. Members stood up in their places)

An hon. Member: We have Questions by Private Notice!

Mr. Deputy Speaker: Order! Hon. Members, because of the interest that has been generated on the Bill before us, I will defer Questions by Private Notice, so that we can go directly to the Bill before us.

QUESTIONS BY PRIVATE NOTICE

CLOSURE OF TARU SECONDARY SCHOOL

(Mr. Mkalla) to ask the Minister for Education the following Question by Private Notice.

(a) Is the Minister aware that Taru Secondary School has been closed?

(b) Is he further aware that China Road Company has been working at Taru Quarry without taking into consideration environmental and health conditions of the area residents and that, stones and dust have made the learning process in the school impossible?

(c) What urgent action is the Minister taking to re-open the school in order for studies to resume?

(Question deferred)

CITY COUNCIL'S FAILURE TO PAY WORKERS

(Mr. N. Nyagah) to ask the Minister for Local Government the following Question by Private Notice.

- (a) Since the Nairobi City Council has been unable to pay its workers; salaries for the last two months, what action is the Ministry taking to pay their dues without any further delay?
- (b) Could the Minister table a list of all external debt collectors, including that of lawyers engaged by Nairobi City Council and indicate how much they have recovered and remitted to the council?
- (c) How much have these lawyers been paid by the Nairobi City Council as fees?

(Question deferred)

REHABILITATION OF MUSINGINI BOREHOLE

(Col. Kiluta) to ask the Minister for Local Government the following Question by Private Notice.

- (a) Is the Minister aware that the borehole at Musingini in Kangonde Location is not operational?
- (b) Is he also aware that as a result, people from this area have to travel long distances in search of water?
- (c) What action is the Minister taking to ensure that this borehole is repaired and put into use?

(Question deferred)

CONFISCATION OF MRS. KITHEKA'S GOODS

(Mr. Musila) to ask the Minister for Local Government the following Question by Private Notice.

- (a) Is the Minister aware that on 28th August, 1999, five employees of the Mwingi County Council raided a kiosk owned by Mrs. Agnes Kakima Kitheka and confiscated goods worth Kshs19,239/90, while demanding payment of licence fees?
- (b) Under what law was this confiscation done?
- (c) Could the Minister order the Clerk to the Council to return the confiscated goods and refrain from illegally confiscating goods belonging to wananchi whenever they fail to produce licences?

(Question deferred)

ALLOCATION OF GOVERNMENT HOUSES
TO MR. FRANCIS BAYA

(Dr. Kulundu) to ask the Minister for Lands and Settlement the following Question by Private Notice.

- (a) Why has the Ministry allocated government houses to a Mr. Francis Baya and nine others in Kakamega Municipality at the expense of the civil servants now residing in those houses?
- (b) What is the Ministry doing to stop the eviction of the affected civil servants?

(Question deferred)

Mr. Deputy Speaker: Next Order!

(Mr. Anyona stood up and moved to the Dispatch Box)

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

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

Mr. Deputy Speaker: Order! Order!

Mr. Anyona: Mr. Deputy Speaker, Sir, what---

Hon. Members: No! Sit down! You are wasting our time! Sit down!

Mr. Anyona: Mr. Deputy Speaker, Sir, what I want to raise is, in the best interest of the matter before the House.

Hon. Members: Noo! Sit down!

Mr. Anyona: Mr. Deputy Speaker, Sir, we cannot turn this House into a forum where people shout without even knowing what they are shouting about! I insist on my rights, as an elected Member of this Parliament, to be able to articulate the matter that I think is important to this House.

Mr. Deputy Speaker, we had a Bill yesterday which received First Reading formally. It is part of our records as proceedings of this Parliament. Now, because of the magnanimity that gripped this Parliament, in which we agreed to adjourn and go into further consultations, which has resulted in another Bill, I thought that, in terms of the provisions of Standing Order No.113 of our own rules, we would require that---

Hon. Members: Nooo!

Mr. Anyona: So that our records continuous, we now formally withdraw the Bill that was read yesterday, in order to give way for the new Bill that succeeds the Bill we had yesterday.

Mr. Deputy Speaker, Sir, I want to insist that, in accordance with the provisions of Standing Order No.113, that is the correct procedure. Anybody who is shouting has not read the Standing Order.

(Loud Consultations)

Mr. Deputy Speaker: Order! Order! Order, hon. Members! Well, the Standing Order that hon. Anyona has cited, of course, states what he has just stated. There is no need for me to repeat it. But if you look at the Bill before us--

Order! There is a note to it, which tells you that, this Bill now supersedes the Bill that was read the First Time yesterday.

(Applause)

Order! In my understanding of the word "supersede", it means takes precedent and replaces the former. So, this Bill is rightly before the House.

(Applause)

Order! Order! Accordingly, I call upon the Mover to move the Motion.

(Applause)

PROCEDURAL MOTION

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

The Vice-President (Prof. Saitoti): Mr. Deputy Speaker, Sir, I beg to move the following Procedural Motion:-

THAT, this House orders that the publication period of the Constitution of Kenya (Amendment) Bill (Bill No.12) be reduced from 14 days to two days.

Mr. Deputy Speaker, Sir, let me just say only a very few things. Yesterday, in the course of the Motion of Adjournment, I did inform the House that, indeed, the Bill would be brought here for the Second Reading.

I have now upheld the pledge that I made to this House.

(Applause)

Number two, Mr. Deputy Speaker, Sir, I did also inform the House that, indeed, there has been consultations which have been taking place between the two sides of the House; right from last week onwards. These consultations were meant to build some consensus. It was a consensus-building exercise; taking into account that the passage of a

Constitutional (Amendment) Bill, really needs to seek the consent of all of us. Therefore, the new Bill which is published today, is as result of the consensus of both sides of the House.

(Applause)

Therefore, I bring this Procedural Motion so that the Bill now can actually go through all the stages and we shall finish with it today.

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

(Applause)

The Minister for Information, Transport and Communications (Mr. Mudavadi): Mr. Deputy Speaker, Sir, in order to get to the crux of the matter, as soon as possible, I beg to second.

(Applause)

(Question proposed)

Mr. Kapten: Thank you, Mr. Deputy Speaker, Sir. I support the Procedural Motion. The truth is that, the other Bill has been there for more than 14 days and this Bill is just a substitute of the other one. I support it and I call upon the Chair to put the Question.

Mr. Orengo: Thank you, Mr. Deputy Speaker, Sir. I do not want to say much because we are going to the substantive Bill. However, the only thing that I wanted to register is that, arriving at a consensus is normally not easy. So, I want to congratulate KANU Back Bench for making sure that we reached at this consensus.

(Applause)

(Question put and agreed to)

Mr. Deputy Speaker: Next Order!

BILLS

First Reading

THE CONSTITUTION OF KENYA (AMENDMENT) BILL

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

Mr. Deputy Speaker: Next Order!

Second Reading

THE CONSTITUTION OF KENYA (AMENDMENT) BILL

(Applause)

The Attorney-General (Mr. Wako): Mr. Deputy Speaker, Sir, I beg to move that The Constitution of Kenya (Amendment) Bill be read a Second Time.

It is my honour and privilege, and destiny to move this important Bill. The fact that I am moving it, is to me an indication of a step towards creating this National Assembly to achieve what that great political philosopher and orator, Edmund Burke, described as the parliamentary ideal. He described parliamentary ideal as follows:-

"Parliament is not a congress from different and hostile interests, which interest each must maintain as an agent or as an advocate against other agents or advocates. Parliament is a deliberative

assembly of one nation with one interest, that of the whole, where not local purpose, not local prejudices---"

Mr. Ojode: On a point of order, Mr. Deputy Speaker, Sir. I believe that there is a mistake on the Order Paper because what we are passing in Order No.9 is Bill No.12 and the Bill itself is Bill No.13. Can you confirm to us which Bill we are passing; is it No.12 or 13?

The Vice-President (Prof. Saitoti): On a point of information, Mr. Deputy Speaker, Sir. Indeed, that did catch my eyes and I did talk to the Clerk about it. The information is as follows:-

As far as the registration number is concerned for the National Assembly, according to their records, the Bill is No.12. However, as far as the Printer is concerned, the number is 13 because by the time this Bill was printed, apparently, the Printer had already printed or published another Bill which had not yet reached the Clerk's Office. That is the old Bill. So, that is the position. I hope that can be understood.

The Attorney-General (Mr. Wako): Thank you, Mr. Deputy Speaker, Sir. As I was stating, Mr. Edmund Burke in his definition of a parliamentary ideal stated that:-

"Parliament is not a congress from different and hostile interests, which interest each must maintain as an agent or as an advocate against the other agents or advocates. Parliament is a deliberative assembly of one nation with one interest, that of the whole, where not local purpose, not local prejudices ought to guide but the general good resulting from the general reasoning of the whole."

Mr. Deputy Speaker, Sir, I remember when I move constitutional Bills, indeed, I make some reference to the African concept of democracy where elders sat and consulted until they agreed. I did say that, in the modern context, Members of Parliament are actually the elders of our community. Therefore, in that regard, we can still be guided by what our ancestors did by discussing, tolerating each other's opinion, entering into constructive dialogue with a view of making genuine efforts towards finding solutions to our country. I am glad that this Bill shows exactly that. It is a Bill which has been brought and which is acceptable to both sides of the House as first of all, evidenced by two resolutions that were passed on 7th July, 1993, and 11th November, 1998.

I can say that those resolutions were, in fact, passed unanimously by both sides of the House. Therefore, the fact that I am now moving the Bill which is to implement those resolutions, and that both sides of the House are supporting that, to me, is indicative that we are now moving forward. I would like to appeal to hon. Members to forget whatever acrimony has been there in the past. As leaders of this community, let us forget the past and focus on the now and focus on the future. For those of us who are Christians, St. Paul said that forgetting the past, he looked into the now and strained forward to that ideal, which he hoped he would get the crown of righteousness in Heaven. I am now, therefore, saying that, we as leaders of this nation, should forget whatever acrimony that has been there in the past and at least, from today, let us work together, both sides of the House, to that ideal. What is that ideal? That ideal is to create Kenya, a united, dynamic and vibrant nation. That ideal is to establish foundations based not on sand, but foundations based on rock; foundations for a real democratic system of Government which enshrines good governance and constitutionalism.

Mr. Deputy Speaker, Sir, I promised to be brief. This Bill is extremely important because of its title; constitutional. Anything that touches on the Constitution even what may appear to be a minor amendment is a very, very important matter that must be deliberated upon by this august House. It is this Assembly which has the responsibility of amending the Constitution. And because the Constitution is so basic, as you are aware, amending it requires that much more effort than amending a mere legislation. That is why it is critical, in fact, very important that as the Constitution is a basic document of this nation, that whatever amendments we make to the Constitution, I hope not just this particular amendment, but amendments in future, will be amendments which will be supported by both sides of the House.

Mr. Deputy Speaker, Sir, as it has been stated again and again, the concept of constitutionalism, particularly as propounded by that Jurist Montesquieu, is a concept where there must be separation and balance of power because power corrupts and absolute power corrupts absolutely.

Mr. Deputy Speaker, Sir, therefore, there must be a separation and balance of power. So, we need greater recognition for the demarcation of responsibilities amongst the State organs of the Executive, the Legislature and the Judiciary so as to create checks and balances between them and ensure accountability of the Government and its officers, to the people of Kenya. It is, therefore, absolutely important that power must be so divided as to afford checks and balances, so that power is not abused. The survival of democracy in Kenya will, therefore, not only depend on the creation of a strong democratic culture, but must also take into account the democratic institutions, to make them strong and efficient, so that they can play their roles effectively. That is the only way by which we can remove a Government that is not under the rule of law, and which rules by the whims of whoever may be heading that Government.

Therefore, the Bill before this House today is about Parliament, which we all know that it plays an important

and central role in the whole mechanism of the power structure of our Constitution. In fact, without Parliament, there can be no Executive. The President, the Vice-President, the Ministers and the Assistant Ministers are all in Government because they are Members of Parliament. Without Parliament voting for the Budget, the Government cannot operate. Without Parliament, there can be no Constitutional amendments. Also, without Parliament enacting laws, the Judiciary will have nothing to interpret. Therefore, Parliament is a very central organ in the Constitutional governance of this country. Therefore, in my view, the amendment being sought by this Bill is very important.

Mr. Deputy Speaker, Sir, of course, it has been said that the sovereignty of the State lies with the people of Kenya. However, that sovereignty is now being exercised by hon. Members because the people of this country have elected them to represent them in this House. Therefore, hon. Members are exercising their duties on behalf of the people of Kenya. Some Constitutions in the world lay a greater emphasis on the Legislature because of the central role it plays. This is because, it is in Parliament, where the people's representatives, who are duly elected, sit, deliberate and make decisions. I would like to give the Constitution of the United States of America, as an example of a Constitution that puts much emphasis on the people of a nation. Its preamble starts with the words "We, the people of the United States of America---". Immediately after the preamble, Article One of that Constitution goes straight to say that there shall be a Congress, consisting of the House of Representatives and the Senate. Therefore, that Constitution, really, lays a emphasis on the importance of the Parliaments we have today.

The Bill before the House is about enhancing the dignity, independence and the supremacy of Parliament. The resolutions being implemented by this Bill emphasise that fact very well. I would like to draw the attention of hon. Members to page 836 of the printed Bill, where the resolution that was passed by this House on 7th July, 1993, is contained. This resolution was reached at and passed because this House was conscious of the need to re-affirm the full independence of the Legislature. Also, the resolution that was reached at by this House on 11th November, 1998, was passed "in order to promote and consolidate the dignity, independence and the supremacy of Parliament". Therefore, the Constitutional Bill that is before this House is focused on ensuring that Parliament plays its true role in our Constitutional system. It is focused on re-capturing and enhancing the dignity, respect and the proper role of Parliament in our constitutional governance.

Mr. Deputy Speaker, Sir, Lord Keith of the House of Lords of the United Kingdom once said: "Democracy is very good, but one of the most difficult things about democracy is how to make Parliament operate efficiently". One of the ways of making Parliament efficient is ensuring that its employees are employed and are accountable to the institution itself. This Bill is to focus not so much on the efficient operation of what goes on in this august House, but on the efficient operation of the support staff, who make our work efficient. For instance, the staff of National Assembly keep the records of the proceedings of this House and remind us of what should be done from time to time.

As stated in the Motion that was passed by Parliament on 7th July, 1993, its objective was to make the Legislature independent in terms of effective work by its staff. For that purpose, the Motion called upon the Speaker to establish a Parliamentary Service Commission to be charged with the welfare of the staff of the National Assembly and, in particular, with reference to appointments, confirmation and discipline. This Bill is to give effect to the wish of this House, which it indicated when it passed that particular resolution.

Mr. Deputy Speaker, Sir, we have three organs of State. The effect of this Bill will be to ensure that the staff of the Parliament are answerable to Parliament. Currently, the staff of Parliament are, of course, employed through the Public Service Commission. Therefore, this House shares, as it were, with the Executive when it comes to matters of employment of staff. So, the passage of this Bill will enable the separation of that responsibility; the Executive will remain with the Public Service Commission to take care its employees as the Parliamentary Service Commission takes care of the staff of Parliament. I would like to inform this House that the Judiciary has already taken step to also ensure that all of its employees are under the Judicial Service Commission. So, the passage of this Bill will, really, enhance the independence of the three arms of the Government.

Mr. Deputy Speaker, Sir, I am sure that hon. Members have read this Bill carefully. I do not have to go into it again. It is well known that it is about the constitutional provision for the creation of a Parliamentary Service Commission. If passed, the Bill will pave way for the creation of a Parliamentary Service Commission, of which Mr. Speaker will be the Chairman. Hon. Members of this House will also be represented in that Commission, and will have the usual powers that any employer has over its employees.

With those few remarks, I beg to move.

(Applause)

Mr. Oloo-Aringo: Thank you, Mr. Deputy Speaker, Sir. With a lot of humility, I am privileged to second this extremely important Bill. I want to endorse that the Bill which is before the House is a product of consensus. We have discussed, and thus as it should be, is also the measure of our maturity of give and take. Without give and take,

Parliamentary democracy cannot function. Therefore, we arrived at this Bill after consultations. I can assure this House that there are only three changes which have taken place over the past one, which was No.10. The first, of course, is that the number has changed to 12 on our records here and 13 in the records of the Government Printer. The second change is on the date. The first Bill was published on 22nd October, 1999, but this one was published on 10th November, 1999. The third change is, of course, the signature.

(Applause)

Personally, I do not have any problem at all because the end justifies the means. What we want is the final product which is about to be born - an independent Parliament.

Mr. Deputy Speaker, Sir, I would like to assure the hon. Members that this was not hon. Oloo-Aringo's Bill. When we passed the resolutions on 4th November, 1998, the hon. Members of Parliament met in the Old Chambers and collectively, the more than 100 Members established a Committee of nine Members. I was privileged to be in this Committee which consisted of hon. Wambua, hon. Magara, Dr. Ali, hon. Mrs. Seii, hon. Leshore, hon. Ochilo-Ayacko, hon. Kapten, hon. Ndwigwa, hon. Murungi, hon. Angwenyi, hon. Kathangu, hon. Shakombo, hon. Waithaka, hon. Muturi, hon. Badawy, and hon. Keynan who represented nearly all parties in this august House.

We have worked long hours, spent our own resources - sometimes during the recess, we came here several times to make drafts and let our own consultants look at them. At this stage, I would like to say that this is Kenyan made Bill; there is no expatriate.

(Applause)

We did seek advice from one source and the consultant, who had worked for the House of Commons, but the majority of the other people who worked on this Bill are Kenyans. This shows us that we can actually do it. This was led by Mr. Gicheru, who is sitting at the head of the civil servants Bench. He rose to the level of the Deputy Clerk of this National Assembly. He is a trained lawyer and trained draughtsman, who had an extra course in Australia on drafting. I was not working with any mediocrity, but I was working with experts.

I would like to thank the Attorney-General, who lent us his specialised staff, and particularly, Mr. Nyegenye, who is seated third from Mr. Gicheru. I would also like to thank Mrs. Nzioka, who is the Head of Parliamentary Unit and who made her offices available to us. So, we are not talking about anything that was not done properly.

Mr. Deputy Speaker, Sir, having said all that I would once again say that every hon. Member in this House is equal.

An hon Member: The Bill is gender sensitive!

Mr. Oloo-Aringo: Therefore, every hon. Member has a right to bring a Bill, a Motion and ask Questions in this House. What has happened in this Bill must not be repeated. The Government must do its work and if it fails to do it, it should not go round usurping the work done by hon. Members of Parliament.

(Applause)

This is because for six to seven years, resolutions have been passed in this House, but this Government is deaf to the views of Kenyans!

An hon. Member: Yes!

Mr. Oloo-Aringo: Mr. Deputy Speaker, Sir, I am very magnanimous and conciliatory. The truth must be said!

An hon. Member: Tosha!

Mr. Oloo-Aringo: Mr. Deputy Speaker, Sir, may I take this opportunity to pay tribute to the Back-benchers, particularly those in the ruling party. They have gone out of their way to help shape opinion in both the party and the Government. That is why this consensus has been reached at.

I would also like to say that all along I was not bragging because we were doing our research. We had the support of 95 per cent of hon. Members of this House, including many in the Government, and I would like to support them for the support they have given us all this time.

(Applause)

An hon. Member: Do not name them!

Mr. Oloo-Aringo: Mr. Deputy Speaker, Sir, Parliament is a community forum where the representatives of

the people make laws, formulate policies and control the Executive. It is also the focal point for the expression and organisation of citizens' opinion. It is in Parliament where the representatives of the people express the views of the citizens and articulate their grievances. Therefore, it is Parliament that expresses the will of this nation, resolves balances, conflicting interests and reaches a consensus.

Mr. Deputy Speaker, Sir, I know the anxiety in the House. I also know that I had intended to speak much longer, but because of the conciliatory mood in the House, I second this Motion so that we can move ahead.

Mr. Deputy Speaker: Order! Hon. Members, you know that in this Bill, as in every constitutional Bill, there is no voice call. Your Standing Orders state as follows:

"In every instance where the Constitution lays down that a fixed majority is necessary to decide any question-

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

Section 47(1) of our Constitution states as follows:

"Subject to this section, Parliament may alter this Constitution.

(2) A Bill for an Act of Parliament to alter this Constitution shall not be passed by the National Assembly unless it has been supported on the Second and Third Readings by the votes not less than 65 per cent of all the Members of the Assembly (excluding the *Ex officio* Members)."

An hon. Member: Mr. Wako!

Mr. Deputy Speaker: It also goes on to say:

"If, on the taking of a vote for the purposes of sub-section (2), the Bill is supported by a majority of the Members of the Assembly voting, but not by the number of votes required by that sub-section and the Bill is not opposed by 35 per cent of all the Members of the Assembly, or more, then subject to that limitation and conditions as may be prescribed by the Standing Orders of the Assembly, a further vote may be taken."

(Question proposed)

The Vice-President (Prof. Saitoti): Mr. Deputy Speaker, Sir, I want to confirm the mood of this side of the House. We have gone through this Bill and we are going to vote for it. I also do believe that the other side is also going to vote for this Bill. There appears to be a consensus. Having said that, the narration that was presented here by hon. Oloo-Aringo, has shown that there has been a working relationship. Indeed, the fact that the Attorney-General worked on it shows clearly that the Government had no malice.

Mr. Deputy Speaker, Sir, if there were any doubts at all, it was, perhaps, the appearance of what could have been or may not have been politics. Let us not go into recriminations here or there. We have arrived at a consensus. It has not been an easy one, but at least we have a consensus for the benefit of this. We are about to demonstrate the supremacy of Parliament as far as the matter of legislation is concerned. I hope that we will then follow this to the letter and to the spirit that where we are supposed to do so, we rise to the occasion. I wish to support this Bill and I hope that we can be able to satisfy the wishes of all of us as soon as possible.

I, therefore, support the Bill.

Mr. Kibaki: Mr. Deputy Speaker, Sir, I rise to support the Bill. It is a happy moment that we have consensus which can now be written into the Constitution of Kenya. Indeed, if any one of us has been following the proceedings for the last few months, you can see that consensus is brought about by being open and frank to each other, and above all, for people to establish that they mean what they tell their colleagues. We want to remove those doubts so that no one doubts when he is promised by his fellow Member of Parliament that he will take a particular line of action. That is actually what we have been taught. We should all be happy to have learnt it.

Mr. Deputy Speaker, Sir, this Bill will allow us, as a Parliament, not only to have a strong service, but also to organise our own calendar for the year and for the business that we shall conduct in this Parliament. It will ensure that a year is properly utilised and that we shall not be subjected to irrational adjournments and long recesses. Now is not the time to go into that, but we can look forward to that better time. Let us be committed to implementing it. Let nobody have any second thoughts. We are used to too many second thoughts. This is a step forward; let us not have any step backwards. Let us keep stepping forward and we shall get where we want to get to.

Mr. Deputy Speaker, Sir, in this same spirit, I am sure that those of us here who represent all the political parties can now see that we should take another step and establish the Commission. We should go around the whole country taking people's opinions so that we can write a proper new Constitution for the nation of Kenya. I am sure that, that is what Kenyans are looking forward to. That is what we should now do rather than dilly dallying over nothing.

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

The Minister for Education (Mr. Musyoka): Mr. Deputy Speaker, Sir, I also rise in support of this Motion. In doing so, I want to hail this very symbolic act. I have always believed that this Parliament can rise to any occasion and face any challenge that comes to us as a people. I do recall that when we all went initially to the Bomas of Kenya, I am on record as having argued for the supremacy of Parliament. As a country, we believe in the rule of law and the concept of separation of powers. By bringing this Bill to this House collectively, which symbolises the supremacy of Parliament, I believe that we are doing this country proud.

Mr. Deputy Speaker, Sir, I would want to agree with the Leader of the Official Opposition, when he said that it is within the province of Parliament to come up with a Commission. In properly exercising its mandate and supremacy, this Parliament can actually give the road map towards the constitutional dispensation that this country looks up to. Therefore, we should not be tied to a situation where we go out into the streets and discuss with the extremist elements. We have to expunge the element of extremism from amongst our Members, particularly those strangers to this House, who arrogate to themselves the responsibility of determining what is right for all of us in this country. Therefore, I hope that we will move the extra mile as a Parliament and show this country the way forward in the area of the new constitutional dispensation. I wish to support.

Mr. Wamalwa: Mr. Deputy Speaker, Sir, I rise to support this Bill and to congratulate all Members of Parliament for the unanimity they have shown, that when it is really important, Parliament can rise to the occasion. I say this because of late there has been a tendency of members of the public to run down Parliament. There has been a tendency for so many people to say that they cannot trust Parliament to do certain things. I think we, as Members of Parliament, must now in unity demonstrate to this country that we are capable of doing all those things that other people have doubted us upon.

It is very dangerous for people to run down or mistrust Parliament. In the absence of Parliament, we can only have anarchy. We must defend our dignity. What we have done today must send the right signals to this country that when it is important Parliament can forget bipartisan politics and rise to the occasion. When this Bill goes through it will not be anybody's victory; it will not be hon. Aringo's, the Opposition's, or the Government's victory; it will be the victory of Parliament itself. With those few words, I beg to support.

Mr. Nyachae: Thank you Mr. Deputy Speaker, Sir. I am not going to say much because of the mood in the House. I listened carefully to what the Attorney-General said and I did appreciate everything he said. I ask for sincerity because today we are in the right mood, but for several weeks we have not been in the same mood. The Attorney-General has said that we should forget the past and move forward. Let that trust and that statement be put into practice. We all agreed to bring this amendment today. That is what I can see in this House today. Let us also agree that Kenyans want the review of the total Constitution. Therefore, that mood that is being demonstrated today by the Front Bench--- For their information, we had made up our minds that we will push everything to ensure that the right things that Kenyans want are done.

Mr. Deputy Speaker, Sir, I say so, because we want to see this Bill passed. Today, I left Kisii at 4.00 a.m. because of this important Bill.

Mr. Deputy Speaker, Sir, these are brothers---

Hon. Members: Sisters!

Mr. Nyachae: Well, sisters are not on the Front Bench. These are our brothers and we do not hate them. I know Kenyans do not hate them either. But Kenyans would hate their behaviour, if they do not work for the interest of our country. That is all what I am saying. Therefore, I do not want to say much. I had prepared to talk much, but because of the mood of the House, I want to appeal to hon. Members to work for the interest of Kenyans. Hon. Members, on the other side of the House, are Kenyans just like us. Those who elected us are also Kenyans and let us think only about them.

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

Mr. Kamolleh: On a point of order, Mr. Deputy Speaker, Sir. In the light of the matter that, this Bill has been debated, according to me, very satisfactorily, I feel it is now time to call upon the Mover to reply.

(Applause)

Mr. Deputy Speaker: Order! Hon. Members, you cannot deny that, in fact, this Motion has been discussed sufficiently. We had two Motions on the same subject. So, really, given that we want to go into Committee Stage on the same Bill, and there is another Bill which we want to treat in the same manner, I think---

An hon. Member: We are satisfied!

Mr. Deputy Speaker: Order! The mood of the House indicates that, you want us to make progress.

Hon. Members: Yes!

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

The Attorney-General (Mr. Wako): Mr. Deputy Speaker, Sir, I thank all the hon. Members who have contributed to this Bill. Everybody has talked about the new mood and new spirit. My prayer is that, this new spirit continues with us, in the days to come. That, the mutual distrust and suspicion should be eliminated, so that we can now move forward in sincerity. Thank you very much for your contribution. It is a victory for Parliament.

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

Mr. Deputy Speaker: Hon. Members, for the avoidance of doubts, let me go through what I read earlier, so that we are together. If you have your copies of the Standing Orders you are free to refer to them. If you look at Standing Order No.53(2), it says:-

"Mr. Speaker shall direct a Division to be taken in every instance where the Constitution lays down that a fixed majority is necessary to decide any question."

I also read to you Standing Order No.61. It says:-

"In every instance where the Constitution lays down that a fixed majority is necessary to decide any question.

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

Now, I will direct that the Division Bell be rung. It will ring for five minutes.

Mr. Anyona: On a point of order, Mr. Deputy Speaker, Sir. In accordance with the provisions of Section 47 of the Constitution and the Standing Order you have just read, I think it is important for the Chair to guide the House in terms of numbers. I think, the requisite number here is 145. Unless we have that number, we cannot proceed.

(Loud consultations)

Mr. Deputy Speaker: Order! The number we require is "144.3". But even the smallest of us here, is bigger than "0.3". So, we will go for 144 Members.

An hon. Member: But we are 220!

Mr. Deputy Speaker: Order! But I still want to establish that there are 144 Members present before I direct you to the Lobbies. So, the Division Bell will ring for five minutes. We will take the count, then I will direct you to move into the Lobbies. So, ring the Division Bell.

(The Division Bell was rung)

DIVISION

Mr. Deputy Speaker: Order! Hon. Members, I have established that we have the numbers to proceed to Division.

(Question put and the House divided)

Tellers of the Ayes: Messrs. N.M.K. Nyagah and S.P. Leshore

Tellers of the Noes: Messrs. G.O. Achola and M.M. Shidiye

Standing Order No.55(1) reads as follows:-

"When the doors have been locked and the Bar drawn and the names of the Tellers have been announced, Mr. Speaker shall put the question again and then direct the Ayes into the Lobby on his right---

Hon. Members: KANU side!

Mr. Deputy Speaker: Order!

"---and the Noes similarly to his left and the doors of each Lobby shall be locked ten minutes thereafter."

Standing Order No.55(2) reads as follows:-

"Mr. Speaker or the Chairman of the Committee shall, fifteen minutes after the locking of the Lobby doors, call the House to order, and any Member who shall not have voted, then, shall forfeit his or her right to vote."

Standing Order No.56 reads as follows:-

"No Member shall be obliged to vote in a Division, but those present but not voting shall record their names with the Clerk."

Hon. Members, you may now proceed to the Lobbies.

(Question carried by 185 votes to 0)

AYES: Messrs. Achola, Affey, Dr. Ali, Dr. Anangwe, Mr. Angwenyi, Prof. Anyang'-Nyong'o, Messrs. Anyona, Dr. Awiti, Messrs. Awori, Biwott, Chanzu, Choge, Criticos, Donde, Ekirapa, Ethuro, Dr. Galgallo G.B., Messrs. Galgallo M.A, Galgallo M.N., Gatabaki, Gitonga, Gumo, Haji, Imanyara, Kaindi, Kajembe, Kajwang', Kalulu, Kalweo, Kamanda, Kamau, Kamolleh, Kamotho, Kanyauchi, Kaptan, Karauri, Kariuki, Karua (Ms.), Karume, Kathangu, Katuku, Keah, Keriri, Khamasi, Khaniri, Kibaki, Kibicho, Kihara, Kihoro, Kitonga, Kiluta (Col.), Kikuyu, Kimeto, Kimkung, Kiptoon, Kirwa, Kirui, Kittony (Mrs.), Kitur, Dr. Kituyi, Messrs. Kiunjuri, Kiyonga, Kochalle, Kofa, Kombe, Kombo, Kones, Kosgey, Koske, Dr. Kulundu, Messrs. Kuria, Lagat, Leshore, Leting, Lotodo J.D., Lotodo F.P.L., Madoka, Magara, Maitha, Maizs, Manga, Marrirmoi, Masakhalia, Matano (Ms.), Maundu, Mbela, Mboko, Michuki, Mkalla, Mohamed H.M., Mohamud M.A., Morogo E.T., Morogo W.C., Muchilwa, Muchiri, Mudavadi, Mugeke, Mugo (Mrs), Munyasia, Muihia, Muiruri, Muite, Munyao, Murathe, Dr. Murungaru, Messrs. Murungi, Musila, Musyoka, Muriuki, Mutahi, Muya, Muturi, Mwachai (Ms.), Mwakiringo, Mwangi O.K., Mwangi P.G., Mwangi P.K., Mwenda, Mwenje, Mwewa (Mrs.), Nassir, Ndambuki, Nderitu, Ndicho, Ndilinge, Ndwiga, Ngala, Ng'eny, Ngure, Ngutu, Njuki, Nooru, Ntimama, Ntutu, Ntwiga, Nyachae, Nyagah J., Nyagah N., Nyanja, Nyenze, Obwocha, Ochilo, Dr. Ochuodho, Messrs. Odongo, Ojode, Okemo, Oloo-Aringo, Omamba, Dr. Omamo, Messrs. Ombasa, Omino, Prof. Ongeru, Messrs. Onyango, Orenge, Osundwa, Otita, Otula, Parpai, Poghishio, Rotich, Ruto, Prof. Saitoti, Messrs. Salim, Sambu, Samoei, Sang, Seii (Mrs.), Shaaban, Shakombo, Shidiye, Shill, Shitanda, Sirma, Sudi, Sungu, Toro, Twaha, Waithaka, Dr. Wako, Messrs. Wamae, Wamalwa, Wambua, Dr. Wamukoya, Messrs. Wanjala, Wehliye.

Tellers of the Ayes: Messrs. N. Nyagah and Leshore.

NOES: Nil.

Tellers of the Noes: Messrs. Achola and Shidiye.

(The Bill was read a Second Time and Committed to a Committee of the whole House today by leave of the House)

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[Mr. Deputy Speaker left the Chair]

IN THE COMMITTEE

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

THE CONSTITUTION OF KENYA (AMENDMENT) BILL

Clause 2

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move:- THAT, Clause 2 be amended by repealing Section 45.

(Question of the amendment proposed)

Mr. Anyona: Mr. Temporary Deputy Chairman, Sir, in terms of Clause 2, I think, having done these things so well, we need to be meticulous as to the process that follows thereafter to make sure that the implementation of this Bill and Act does not have any hang-ups. I would, therefore, like the Attorney-General to explain the relationship between Clause 45A(2) and 45B(1). There is some relationship between this and Clause 4(1) but we have not come to that. But there is a relationship there in terms of the appointment of the Clerk and the staff of the National Assembly. If I may briefly refer to the first part which refers to the Clerk, it says:

"The Clerk and staff of the National Assembly shall be appointed under Section 45B".

If you look at that section, it still refers back to the appointment of the Clerk under Section 45A(1) and sub-section (2) provides for the appointment of the staff. If you look at Clause 45B (1)(b) with respect to the staff--

The Temporary Deputy Chairman (Mr. Musila): Mr. Attorney-General, can you respond to that?

Mr. Anyona: Mr. Temporary Deputy Chairman, Sir, although we have not come to Clause 4, Clause 4(1) refers back to Clause 45A which says the appointment is under Clause 45B. I want him to explain that relationship.

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I do not follow quite well what the hon. Member is asking. We have not come to Clause 4(1), but this is a saving clause and all it is saying is that the person who is the Clerk of the National Assembly shall be deemed to be the Clerk of the National Assembly and appointed under Section 45A. Of course, it is a saving provision. One has to read not only Clause 4(1) but also Clause 4(2) which has transitional provision. They are deemed to be appointed until the Commission has been appointed and has begun its work. There will be that interim period before the Act comes into force and it will come into force when the President gives assent to it. Once he gives his consent to this particular Act, the Commission will be appointed but we cannot expect the Commission to be appointed and start its operations immediately by appointing the Clerk. So, there will be a period when the Commission will be preparing itself to do what it is supposed to do under this particular Act. Part of that preparation will involve enacting a legislation which has been envisaged in a number of sections under the Bill. For example, if you look at page 830 the work of the Commission can only be done in a manner prescribed under an Act of Parliament. On page 831 part "g", one of those things that will be prescribed by Parliament is, for example, to determine the terms and conditions of service of persons holding or acting in the office of the Service, who will include the Clerk. Therefore, there will have to be an Act of Parliament before the Commission can formally begin to discharge its job of appointment. During that interim period, the provisions of Clause 4 will apply; where there are transitional provisions that every person who is now working as a Clerk or is currently employed in this National Assembly will be deemed to be an employee of the Commission. Once the Commission starts its operations, the employees will be given three months to indicate whether or not they want to continue to be in the Public Service Commission or come under the Parliamentary Service Commission, or the Commission itself may say they do not want a particular officer. That is what is provided for under sub-section (3) on page 835. Therefore, such employees will have to revert back to the Public Service Commission. But there is that interim period when they are deemed to be employees of the Parliamentary Service Commission.

Mr. Anyona: Mr. Temporary Deputy Chairman Sir, we will require Clause 4(1), (2) or (3) or a consolidated Act of Parliament. What is the time frame? Are we going to go on recess without those laws in place, in which case this Act cannot be implemented or are we going to do it before we go on recess?

The Attorney-General (Mr. Wako): Once this Bill is enacted and the President gives consent and it comes into operation, the Commission can be appointed. The Commission will be appointed because it does not need any further legislation. It can be appointed and it can start preparing itself to discharge its duties. To be able to discharge those duties, we shall need a specific Act of Parliament in the same way that the Public Service Commission is provided for under the Constitution. But there is a specific Act of Parliament for the Service Commissions which provide both for the Public Service and the Judicial Service Commissions. We shall need that and from what I understand, that legislation is being drafted. But the Commission can be appointed and start its work pending the enactment of that legislation.

(Clauses 2, 3 and 4 agreed to)

(Schedule agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of the Constitution of Kenya (Amendment) Bill and its approval

thereof without amendment.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[Mr. Deputy Speaker in the Chair]

REPORT AND THIRD READING

THE CONSTITUTION OF KENYA (AMENDMENT) BILL

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

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

The Minister for Information, Transport and Communications (Mr. Mudavadi) seconded.

(Question proposed)

(Question put and agreed to)

The Attorney-General (Mr. Wako): Mr. Deputy Speaker, Sir, I beg to move that the Constitution of Kenya (Amendment) Bill be now read the Third Time.

The Minister for Information, Transport and Communications (Mr. Mudavadi) seconded.

(Question proposed)

Mr. Anyona: Mr. Deputy Speaker, Sir, I want to record my pleasure and gratitude that we as a Parliament and as a country have arrived at this historic moment. I say this because once upon a time when Parliament was not free and supreme, Members of Parliament, including the Deputy Speaker of this Parliament, were actually "abducted" from this Parliament and sent into detention. I happen to have been one of them, so, I really feel very happy that I am alive today to witness this particular occasion.

Mr. Deputy Speaker, Sir, now, having said that therefore, I would like to hope that from this moment onwards, this Parliament will be the supreme organ of State. That we shall not have any dilly-dallying about whether or not Parliament is supreme. We would like the Executive to be given its due respect. However, we do expect the Executive now to recognise that Parliament is a Parliament representing the people of this country, and there should be no tug-of-war about that. I would like to kind of capture this moment by saying this: That, what has made this possible is the spirit of dialogue, consensus, magnanimity, maturity, collective wisdom, and unanimity. There are no winners and we are all victorious. It is this Parliament that has won; it is national unity that has won this day and let us proceed in that manner from now on.

Thank you.

The Minister for Tourism, Trade and Industry (Mr. Biwott): Mr. Deputy Speaker, Sir, I also rise to point out the fact that Kenyans can unite when unity is necessary. This is the second time we have united to shame those who have no confidence in our own unity. The first time was the IPPG and the second time is---

Mr. Ndicho: On a point of order, Mr. Deputy Speaker, Sir. The hon. Biwott has said something very interesting; that Kenyans can unite when unity is necessary. Can he tell us when unity is never necessary in this country?

Mr. Deputy Speaker: Order! Order, hon. Members. Hon. Members, you really ought to know what happens during a Third Reading of a Bill. It is not an occasion for an extended debate or for raising frivolous points of order. It is an occasion for you to raise a few but pertinent points that drive home the importance of the Bill we have just passed. Proceed!

The Minister for Tourism, Trade and Industry (Mr. Biwott): Mr. Deputy Speaker, Sir, the hon. Member

cannot deny that we united before the last General Elections and we worked together as IPPG and produced something good for this country. Today, we have united to demonstrate the spirit and goodness of bi-partisan politics in this House. It is something which we should nurture. We should embed in this House the spirit of understanding, faith in one another and the conviction to do things because they are good in themselves and for this country. We have passed this Constitution of Kenya (Amendment) Bill today - the day we had initially planned to have it on the Order Paper for debate and enactment. So, from now on, it is absolutely necessary that the hon. Members opposite should have more trust and moral rearmament in order to focus more on this.

With these few remarks, I hope that we have been able to demonstrate that unity is strength.

Mr. Deputy Speaker: Order! Order! We have had enough Members! I think we must proceed now! We shall proceed in exactly the same fashion, as we did previously. The Division Bell will be rung for five minutes. After that, I propose that we use the same Tellers as before. The Ayes will proceed to the Lobby on my right, and the Noes to the Lobby on my left. So, ring the Division Bell now, and at the end of it, I will state whether we have the numbers required for us to proceed to Division or not.

Ring the Division Bell!

(The Division Bell was rung)

DIVISION

(Question put and the House divided)

(Question carried by 178 votes to 0)

AYES: Messrs. Achola, Affey, Dr. Ali, Dr. Anangwe, Mr. Angwenyi, Prof. Anyang'-Nyong'o, Messrs. Anyona, Dr. Awiti, Messrs. Awori, Biwott, Chanzu, Choge, Criticos, Donde, Ekirapa, Ethuro, Galgallo M.A, Galgallo M.N., Gitonga, Gumo,

Haji, Imanyara, Kaindi, Kajembe, Kajwang', Kalulu, Kalweo, Kamanda, Kamau, Kamolleh, Kamotho, Kanyauchi, Kapten, Karauri, Kariuki, Ms. Karua, Messrs. Karume, Kathangu, Katuku, Keah, Keriri, Khamasi, Khaniri, Kibaki, Kibicho, Kihara, Kihoro, Kitonga, Col. Kiluta, Messrs. Kikuyu, Kimeto, Kimkung, Kiptoon, Kirwa, Kirui, Mrs. Kittony, Messrs. Kitur, Kiunjuri, Kiyonga, Kochalle, Kofa, Kombe, Kombo, Kones, Kosgey, Koske, Dr. Kulundu, Messrs. Kuria, Lagat, Leshore, Leting, Lotodo J.D., Lotodo F.P.L., Madoka, Magara, Maitha, Maizs, Maore, Marrimoi, Masakhalia, Ms. Matano, Messrs. Maundu, Mbela, Mboko, Michuki, Mkalla, Mohamed H.M., Mohamud M.A., Morogo E.T., Morogo W.C., Muchilwa, Muchiri, Mudavadi, Mrs. Mugo, Messrs. Munyasia, Muihia, Muiruri, Munyao, Dr. Murungaru, Messrs. Murungi, Musila, Musyoka, Muriuki, Mutahi, Muya, Muturi, Ms. Mwachai, Messrs. Mwakiringo, Mwangi O.K., Mwangi P.G., Mwangi P.K., Mwenda, Mwenje, Mrs. Mwewa, Messrs. Nassir, Ndambuki, Nderitu, Ndicho, Ndilinge, Ndwiga, Ngala, Ng'eny, Ngure, Ngutu, Njuki, Nooru, Ntimama, Ntutu, Ntwiga, Nyachae, Nyagah J., Nyagah N., Nyanja, Nyenze, Obwocha, Ochilo, Dr. Ochuodho, Messrs. Odongo, Odoyo, Ojode, Okemo, Oloo-Aringo, Omamba, Dr. Omamo, Messrs. Ombasa, Omino, Prof. Ongeru, Messrs. Onyango, Orengo, Osundwa, Otula, Parpai, Poghishio, Rotich, Ruto, Prof. Saitoti, Messrs. Salim, Sambu, Samoei, Sang, Mrs. Seii, Messrs. Shaaban, Shakombo, Shidiye, Shill, Shitanda, Sirma, Sudi, Sungu, Toro, Waithaka, Dr. Wako, Messrs. Wamae, Wamalwa, Wambua, Dr. Wamukoya, Messrs. Wanjala and Wehliye.

Tellers of the Ayes: Messrs. N. Nyagah and Leshore.

NOES: Nil.

Tellers of the Noes: Messrs. Shidiye and Achola.

ABSTENTION: Nil.

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

(Applause)

Mr. Deputy Speaker: Hon. Members, we will move on to the next Order and this is the

[Mr. Deputy Speaker]

consideration of the Appropriation Bill. I would like to bring to your attention the fact that since we have been so unanimous in sitting to consider this Bill, we should also remain equally unanimous in considering the next Bill. If we should exceed our allotted time, under Standing Order No.17, I will use my discretion to extend the sitting hours up to 7.00 p.m, or until we finish the Business of the House.

BILL

First Reading

THE APPROPRIATION BILL

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

Second Reading

THE APPROPRIATION BILL

The Minister for Finance (Mr. Okemo): Mr. Deputy Speaker, Sir, I beg to move that the Appropriation Bill be now read a Second Time.

His Excellency the President has signified his consent to the Bill. The hon. Members have had the opportunity to contribute to the debate on several Votes during the Committee of Supply stage and the rest of the Votes were Guillotined in accordance with the provisions of Standing Order No.142(7).

Mr. Deputy Speaker, Sir, the Vote on Account approved by this House on 24th June allowed me to release half of the net sums included in the 1999/2000 Estimates of Recurrent and Development Expenditures. Once this Bill is enacted and given assent by his Excellency the President, I will be able to issue the total sum of K£6,354,125,482 from the Consolidated Fund to enable Ministries and Departments to incur expenditure and provide services to the public.

Mr. Deputy Speaker, Sir, the provisions enumerated in the Bill follow the established practice and I will, therefore, urge the hon. Members to enact this Bill so that I can release the total voted provision to the Ministries and Departments from the Consolidated Fund.

Mr. Deputy Speaker, Sir, with these few remarks, I beg to move.

The Minister for Information, Transport and Communications (Mr. Mudavadi) seconded.

(Question proposed)

Mr. Michuki: Mr. Deputy Speaker, Sir, having developed the events of today, it is important that we too, on the Opposition side should show magnanimity and accept to be here so that the deal into which we got yesterday can be realised. The Bill has not got many issues because all that is intended is that it should appropriate from the Consolidated Fund the money raised through the Finance Bill which we have already discussed. Therefore, I do not intend to say much. All there is, is to take money from the Consolidated Fund. There could be arguments on the side of the Finance Bill. In any case, we have already appropriated half that money through the Vote on Account.

Therefore, I beg to support.

Ms. Karua: Mr. Deputy Speaker, Sir, I rise in support of the Bill, but I have one thing to say: When this money is appropriated we expect to get service. Time and again money is appropriated, but we do not get service. We are asking the relevant Ministry to ensure that tendering is above board and transparent. It is time we started getting names of directors and shareholders of companies that are tendering for Government services and supplies, to ensure that the people who sit to award the tender are not the same people who are tendering under a different name. We are also asking that the Ministries concerned look carefully at the recommendations of this House through PIC and PAC and act on those recommendations to avert further waste.

With those few remarks, I beg to support.

Mr. Kajembe: Mr. Deputy Speaker, Sir, taking into account the mood in the House today, I think it will be

appropriate to call upon the Mover to reply.

(Applause)

Mr. Deputy Speaker: Order! I will allow a few more speakers.

Mr. Orengo: Mr. Deputy Speaker, Sir, I rise to support the Appropriations Bill with all my heart. I am supporting it because for the first time we have demonstrated that when you see a beautiful flower, whether you come from the lake, the coast or the mountains, a beautiful flower is beautiful. Today I had the privilege and honour of voting together with these respected men in the Front Bench. They deserve my congratulations for a job well done. I only appeal to you that next time you see a beautiful flower, please see it. Do not let it pass without you seeing it because there are so many beautiful flowers in this country. I urge you to demonstrate the same spirit and that the Leader of Government Business continues to guide the Front Bench on that basis. We are going to be very good friends. On that note, I hope that what we are appropriating, you are going to make it into a beautiful flower. Do not urinate on the flower. Thank you.

The Minister for Education (Mr. Musyoka): On a point of order, Mr. Deputy Speaker, Sir. The Member for Ugenya has just used unparliamentary language by saying "urinating on a beautiful flower". Will I be in order to ask him to withdraw those remarks?

(Laughter)

Mr. Deputy Speaker: Order! Mr. Keriri, you have the Floor!

Mr. Keriri: I rise to support this Bill. There is not very much to say because we have voted, agreed on everything and nobody has behaved in a manner likely to make us oppose this Bill. I would like to appeal to the Minister that when you issue AIE's to the district and that money is committed, it is only fair that you only send the cash required. I say this because in all the districts, the DC's and all the other departmental heads are allowed to spend money to employ contractors and commit the Government. However, when it comes to paying, it is said there is shortage of money. This causes a lot of hardship and embarrassment to the Government. I know there may be shortage of cash, but since the Minister has said while moving the Bill that he intends to issue all the money that is required, I hope he will honour his word.

With those few remarks, I beg to support.

Mr. Deputy Speaker: I will now put the question.

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

The Minister for Finance (Mr. Okemo): Mr. Deputy Speaker, Sir, I want to thank all the Members who have contributed to the debate and I beg to move.

(Question put and agreed to)

(The Bill was read a Second Time and committed to a Committee of the whole House today by leave of the House)

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[Mr. Deputy Speaker left the Chair]

IN THE COMMITTEE

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

THE APPROPRIATION BILL (BILL NO. 11)

(Clauses 2 and 3 agreed to)

(Schedule agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Minister for Finance (Mr. Okemo): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of the Appropriation Bill and its approval thereof without amendment.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[Mr. Deputy Speaker in the Chair]

REPORT AND THIRD READING

THE APPROPRIATION BILL

Mr. Musila: Mr. Deputy Speaker, Sir, I beg to report that the Committee of the whole House has considered the Appropriation Bill and approved the same without amendment.

The Minister for Finance (Mr. Okemo): Mr. Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee of the whole House in the said Report.

The Vice-President (Prof. Saitoti) seconded.

(Question proposed)

(Question put and agreed to)

The Minister For Finance (Mr. Okemo): Mr. Deputy Speaker, Sir, I beg to move that the Appropriation Bill be now read the Third Time.

The Vice-President (Prof. Saitoti) seconded.

(Question proposed)

Mr. Mwenje: Mr. Deputy Speaker, Sir, now that we have given the Government authority to withdraw funds from the Consolidated Fund, I would like to appeal to the Minister for Finance to make sure that Ministries will not misappropriate funds. This is because year in, year out, we get the report that so much money has been misappropriated. Let us hope that they make sure nothing like this happens. Those officers who will misappropriate funds should be treated in the same way just like what the Minister for Local Government did today, by sacking all officers who have been accused of stealing money from City Hall. In future, this action should be taken against all officers who misappropriate public funds.

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

Prof. Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, I would like to add my voice to thank all hon. Members who have supported the Appropriation Bill. First of all, I want to congratulate you, for handling this House so competently and fairly, yesterday and today. Secondly, I want to appeal to the Minister for Finance: Now that we are giving the Government money, to make sure that hon. Members of Parliament get the money they need, to be able to travel from Nairobi to their constituencies. I think that is overdue and Parliament should be properly treated to what has been approved by this House without any delay.

Finally, Mr. Deputy Speaker, Sir, while we are giving the Government permission to withdraw funds from the Consolidated Fund, it is important to also "feed the goose that lays the golden egg". That is, the Government should ensure that investments both local and foreign, flow into this country, so that we can have the money to spend. But there is one bottleneck that this House must be aware of. We were driven to what we experienced yesterday and today by one person. Let us be frank, it is the President. The President told the Cabinet not to vote for the Bill.

(Applause)

Mr. Deputy Speaker: Order! Order!

The Vice-President (Prof. Saitoti): On a point of Order, Mr. Deputy Speaker, Sir, the hon. Member on the Floor wants again to plunge us into chaos. Please, can you really ask the hon. Member to allow hon. Members to go home peacefully, having done a first-class job? We are in the Third Reading of the Appropriation Bill.

Mr. Deputy Speaker: Order! As I said before, we do not want to open further debate. This is the time to make points that would support the importance of the Bill that you have passed. So, hon. Prof. Anyang'-Nyong'o, restrict yourself to the Bill, or if you have no any new matters to raise, take your seat.

Prof. Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, it is only that the truth hurts sometimes, but even during delicate moments like this one, it needs to be said.

Nonetheless, I would "extend an olive branch to the Government" and say that we shall advance you the money that you require and hope that you will obey hon. Mwenje's advice; that use the money responsibly.

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

Mr. Anyona: Mr. Deputy Speaker, Sir, I do not think that we want to leave here with "a sour taste in our mouths". If one does not feel well that we have done ourselves and the country proud, he or she should not sour our mouths.

Mr. Deputy Speaker, Sir, I just want to say two things. One, Parliament has taken back its authority and supremacy and we truly expect the Government to be responsible to Parliament as required by the Constitution, and Parliament will give you the necessary support and back-up. Now, in that context, I would like the Minister for Finance to do two things: One, under the Exchequer and Audit Act, he is supposed to make a report to Parliament about withdrawals from the Consolidated Fund. I cannot remember that ever happening in this House. We want that to begin with this particular Bill. Secondly, it will be a good thing to maintain this spirit and also, if the Minister, in view of the difficulties we have with the economy, makes quarterly, or fairly regular Ministerial Statements as to how the Budget and the collection of taxes are doing. This is generally to be able to maintain this same tempo of goodwill and national unity.

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

Mr. Kimeto: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to contribute on the Appropriation Bill. I would like to say that what we have done is something that would help us in future to continue to contribute and do a good service to the Kenya Government. I would like to state here categorically that, as from today onwards, we should not entertain people from the Front Bench "jumping" to interfere with a national issue like this. We want people to be guided by reason so as to enable them to guide Kenyans to the best of their ability.

(Applause)

Mr. Deputy Speaker, Sir, the appropriated money should be used to serve members of the public in our villages. I support the Bill.

(Question put and agreed to)

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

MEMBERS' HALF-HOUR STATEMENTS

Mr. Deputy Speaker: We have overshot our time, and I have got two issues for the Zero-Hour, one by hon. N.M. Nyagah.

EVICTION OF RESIDENTS BY THE CITY COUNCIL

Mr. N.M. Nyagah: Mr. Deputy Speaker, Sir, I would like to request the Minister for Local Government to explain why the Acting Director of Housing and Social Services of the Nairobi City Council has evicted occupants of house nos. 15, 16 and 32, when rent has been fully paid for one year? One of the houses is rented by the International Committee of the Red Cross, and this has never happened before. We would like an explanation as to why the current Acting Director of Social Services acted in that manner. I would also like the Minister to explain why there is constant harassment of occupants of house Nos.38 and 28 in the same estate. I will pass over the details to him for his investigations.

The Minister for Local Government (Mr. Kamotho): Mr. Deputy Speaker, Sir, I will be able to respond to that issue next Thursday.

EXPULSION OF DISABLED CHILDREN

FROM CHILDREN'S HOME

Mr. P.K. Mwangi: Mr. Deputy Speaker, Sir, I stand to request the Minister for Home Affairs, Heritage and Sports to make a comprehensive statement on the management and ownership of Dagoretti Children's Centre. I would like him to explain why the new management has expelled disabled children who have been brought up in that centre and who do not know any other home. At the moment, they could be in the hands of good samaritans. I would also like him to explain why the former Director, Mrs. Salome Guard, was unceremoniously retired after 35 years of service, without being paid her benefits, and why she was replaced by another Director who has run down the institution and also sent away other employees without their terminal benefits.

The Minister for Home Affairs, Heritage and Sports (Mr. Ngala): Mr. Deputy Speaker, Sir, I will respond on Wednesday.

ADJOURNMENT

Mr. Deputy Speaker: Hon. Members, it is now time for the interruption of business. The House, therefore, stands adjourned until Tuesday 16th, November, 1999 at 2.30 p.m.

The House rose at 6.45 p.m.