

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 20th July, 2005

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

POINT OF ORDER

ABSENCE OF PEOPLE IN PUBLIC GALLERY

Mr. Kajwang: On a point of order, Mr. Speaker, Sir. I rise on a very serious point of order, although there is no point of order which is more serious than the other. I notice that this Parliament is sitting in camera today because there is nobody in the Public Gallery.

(Applause)

I was in this House when I was a teacher at the polytechnic when they were changing the current Constitution to introduce the one-party State. At least, I was allowed in the Public Gallery. What is happening to this country?

(Applause)

Mr. Speaker: Order, hon. Members! Apparently, you are in very good mood today!

Hon. Members: Yes!

Mr. Speaker: Order, hon. Members! You are in a very good mood today! This is encouraged by the Chair. Could we cool down now? I have not ordered that the House sit in camera. I do not know whether there have been people who wanted to come.

Hon. Members: They have been barred!

Mr. Speaker: Order! As far as the Chair is concerned, the House is not sitting in camera. I have not ordered the House to sit in camera. Could we proceed?

Hon. Members: Shame! Shame!

PETITION

CONSTITUTIONALITY AND LEGALITY OF THE CONSENSUS ACT

(Loud consultations)

Mr. Speaker: Order, hon. Members! For the second time, since I became the Speaker, there is a request for a Petition.

Proceed, Mr. Samoei!

Mr. Samoei: Thank you, Mr. Speaker, Sir. Pursuant to the provisions of Part XX of our Standing Orders, I, William Samoei Ruto, Member of Parliament for Eldoret North, do hereby present the following petition on behalf of one million Kenyans who have petitioned this august House as follows:-

We, the undersigned residents of Kenya draw the attention of the Speaker and the House to the following:-

(i) THAT, we shall not engage in the constitutional review process under the current Constitution of Kenya Review (Amendment) Act, 2004, commonly known as the Consensus Act. This is because the constitutionality and legality of the Consensus Act is the subject of pending court cases

(Applause)

(ii) THAT, since the publication of the Consensus Act, the country has been polarised to the extent that the very core of the existence of our State is gravely threatened and, therefore, national peace and stability cannot be guaranteed in the coming months.

(iii) THAT, Section 47 of the current Constitution empowers Parliament to only engage in amending and altering the Constitution but does not give it the power to replace the current Constitution with a new one.

(iv) THAT, the referendum as an automatic organ of the review process is not envisaged in Section 47 of the current Constitution or in any other section thereof. Now, therefore, the petitioners call upon the National Assembly to take the following actions:-

Mr. Speaker: Order! You must comply with our Standing Orders! All I have to hear are the prayers and not the commands. Nobody can command this Parliament! So, read out the prayers!

Mr. Samoei: Mr. Speaker, Sir, the prayers of the petitioners are as follows:-

(i) THAT, Parliament immediately ceases any debate on the Report of the Parliamentary Select Committee on Constitution Review until the constitutionality and legality of the Consensus Act is determined.

(ii) THAT, Parliament immediately introduces a Section 3(A) to the current Constitution to expressly provide for the sovereign power and mandate of the people of Kenya to replace their Constitution.

(iii) THAT, Parliament immediately amends Section 42(A) of the current Constitution to include referendum as a function of the Electoral Commission of Kenya.

(iv) THAT, Parliament immediately amends Section 47 of the current Constitution to include referendum as an automatic organ of the review process.

(v) THAT, Parliament immediately repeals the Constitution of Kenya Review (Amendment) Act, 2004, which is commonly known as the Consensus Act.

(vi) THAT, the hon. Speaker does now use powers vested in his office under the Constitution of Kenya and under the Standing Orders of the National Assembly which---

(Applause)

Mr. Speaker: Order! I must hear the prayers!

(Laughter)

Proceed, Mr. Samoei!

Mr. Samoei: Thank you, Mr. Speaker, Sir. I will repeat the last prayer.

(v) THAT, the hon. Speaker does now use powers vested in his office under the Constitution of Kenya and under the Standing Orders of the National Assembly to defer and not to facilitate any debate whatsoever on the constitution review process within the framework of the Constitution of Kenya (Amendment) Act, 2004, to enable the facilitation of the prayers contained herein.

(Applause)

*(Mr. Samoei moved to the
Dispatch Box)*

Mr. Speaker: Order, Mr. Samoei! Just stay where you are, first. Is the Petition signed?

Mr. Samoei: Yes, Mr. Speaker, Sir.

Mr. Speaker: How many signatures?

Mr. Samoei: Mr. Speaker, Sir, the signatures I have here are 5,000. There were a million signatures but they were impounded by the police on my way to the National Assembly!

Hon. Members: Shame! Shame!

Mr. Speaker: Order, hon. Members! Mr. Samoei, state what you have!

Mr. Samoei: Mr. Speaker, Sir, I have 5,000 signatures.

Mr. Speaker: Could you proceed to the Dispatch Box and lay the Petition on the Table?

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

Mr. Clerk-at-the-Table, could you ensure that, that document is duly signed?

Order, hon. Members! You must be patient! I am just discharging my duties!

(Applause)

Very well! I have confirmed that all the various papers forming the Petition have been signed. However, I cannot confirm the number because it is not serialized. I do not know how many they are.

Hon. Members: You can count!

Mr. Speaker: Order, hon. Members! I am not employed as a clerk, but a Speaker!

(Laughter)

Could we proceed to the next Order?

Dr. Khalwale: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order, Dr. Khalwale! Please, look at your Standing Orders. I draw your attention to Standing Order No.163 which states that there shall be no debate or comment on a Petition. It just goes into the record and that is all!

Next Order!

PAPER LAID

The following Paper was laid on the Table:-

Report of the Departmental Committee on Agriculture, Lands and Natural Resources on the Forests Bill, 2005.

*(By the Chairman, Departmental
Committee on Agriculture, Lands
and Natural Resources (Mr. Bett))*

NOTICES OF MOTIONS

Mr. Khamisi: Mr. Speaker, Sir, I beg to give notice of the following Motions:-

**INTRODUCTION OF A BILL TO
STREAMLINE CASHEWNUF FARMING**

THAT, aware that cashewnut farming is an important economic activity at the Coast; considering the fact that farmers are facing a lot of problems due to lack of comprehensive legislation to regulate farming processing and marketing of the product; cognisant of the fact that farmers continue to destroy cashewnut trees because of low prices and frustrations as a result of infiltration into the industry by unscrupulous middlemen, this House do grant leave to introduce a Bill for an Act of Parliament to be called the Cashewnut Act, to streamline the industry and provide economic safeguards to farmers in the region.

REPEAL OF THE COCONUT INDUSTRY ACT

THAT, aware that the coconut tree with its multiple uses has not been fully exploited for the benefit of farmers and the country; considering that the Coconut Industry Act which was enacted in 1948 and last amended in 1964 is now obsolete and no-longer responsive to the economic needs of the people of the region; bearing in mind the need to fully exploit the industry so as to reap maximum benefits for the farmers and the country, this House do grant leave to introduce a Bill for an Act of Parliament to repeal the Coconut Industry Act and replace the same with the Coconut Development Act to ensure full exploitation of the coconut tree and its by products.

**ACQUISITION OF LAND
FROM ABSENTEE LANDLORDS**

THAT, in view of the chronic problem of landlessness in the country and especially in Coast Province; cognisant of the fact that large tracts of land are owned by absentee landlords; this House urges the Government to urgently take all measures necessary to acquire the said land from absentee landlords and distribute it to squatters already residing within it and in neighbouring villages.

QUESTIONS BY PRIVATE NOTICE**WRONGFUL CONFINEMENT
OF MR. DAVID OTWANI**

Mr. Ojaamong: Mr. Speaker, Sir, I beg to ask the Minister of State, Office of the President,

the following Question by Private Notice.

(a) Is the Minister aware that Mr. David Otwani was arrested and detained at Buru Buru Police Station on 8th December, 2004?

(b) Is he further aware that Mr. Otwani is still detained at the said police station without any charges being preferred against him?

(c) What urgent measures is the Minister taking to ensure that Mr. Otwani is released and compensated for wrongful confinement?

The Assistant Minister, Office of the President (Mr. M. Kariuki): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that Mr. Otwani was arrested on 8th December, 2004, and was held in custody in Buru Buru Police Station.

(b) I am aware that Mr. Otwani was held at Buru Buru Police Station for the offence of murder, contrary to Section 203 as read with Section 204 of the Penal Code. A Case File No.CR.134-1360-2004 was opened, and on completion of investigation, the file was forwarded to the Attorney-General on 15th June, 2005, for consent to prosecute. The suspect was subsequently charged with the offence of murder vide Nairobi High Court Criminal Case No.71 of 2005 on 15th July, 2005 and remanded in prison custody. His case will be mentioned on 25th July, 2005.

(c) I regret to state that the suspect was held for an inordinately long period before being arraigned before court as the police sought some witnesses to record statements. I wish to give my unreserved and unqualified apology to the suspect and the people of this country who have entrusted the Government with the protection of their personal liberty.

I wish to reassure Kenyans that the rule of law will be upheld at all times regardless of one's status in society. Such wayward conduct on the part of police officers will not be condoned, but will be dealt with firmly and decisively. Meanwhile, appropriate disciplinary proceedings have been commenced against the then DCIO, Buru Buru, OCS, Buru Buru and the investigating officer who were involved in this aberration. The measures envisaged could lead to the ultimate dismissal, if found guilty of abdicating their responsibilities. The suspect is at liberty to raise any complaint he may have before the trial court.

Mr. Ojaamong: Mr. Speaker, Sir, despite the good answer and apology from the Assistant Minister, Mr. David Otwani has been in police custody for close to seven months without being taken to court. Charges have been fabricated against this man. In fact, he was taken to court on the 15th of this month because I brought up this Question four weeks ago. If the investigating officer and the DCIO are going to be sacked, what assurance could he give, that the colleagues of these officers who will handle this matter will not victimise Mr. Otwani in order to frame him on this murder charge?

Mr. M. Kariuki: Mr. Speaker, Sir, the matter is now before the court. The suspect will have his day in court to present his case. The investigations are now complete and we are waiting for a trial date.

Mr. Mwenje: Mr. Speaker, Sir, Buru Buru Police Station is notorious for arresting and detaining people and not even taking them to court. There is a group calling itself Rhino Squad which is harassing, arresting and detaining people in police cells. Could the Assistant Minister disband this Rhino Squad and assure us that it will not continue harassing people and detaining them without taking them to court?

Mr. M. Kariuki: Mr. Speaker, Sir, we no longer have the Rhino Squad. When it was there, it was specifically detailed to deal with the *Mungiki* menace which we have contained. They have now disbanded.

Mr. Midiwo: Mr. Speaker, Sir, this is a very unique case. I personally called Buru Buru Police Station when I heard that this man had been arrested in December and that by May, even a

statement had not been taken from him. When I did further investigations, I was told that Mr. Otwani was taken to Buru Buru Police Station because he had disagreed with his girlfriend who happened to know one of the police officers in Buru Buru Police Station. I personally called them and that is how I informed the hon. Member that there was constituent of his who was suffering in the police cells. As has been said by the hon. Member, the charges against this man have been fabricated. Could the Assistant Minister undertake to investigate further, so that this man can be vindicated and taken out of police cells because the charges are purely fabricated?

Mr. M. Kariuki: Mr. Speaker, Sir, we can guarantee the suspect a fair trial. If the hon. Member has some evidence which might assist the defence case, he is at liberty to go and record a statement. As matters stand, let us leave it to the court. I must emphasise that this is a very unprecedented case. We have not had a case where somebody has been held in police custody for seven months before making a statement. That is why I found it necessary to make the apology.

Mr. Ojaamong: Mr. Speaker, Sir, this is a young man who is being sacrificed. I do not know for what reason. In view of the fact that Mr. Otwani and other innocent Kenyans across the country are victims of police brutality and framing, what measures has the Assistant Minister put in place to ensure that other citizens who are being framed elsewhere across the country are taken to court as soon as they are arrested and investigations done urgently?

Mr. M. Kariuki: Mr. Speaker, Sir, that is not a charge of fabrication. The accused is suspected to have killed a number of members of his family. That is a capital charge. Let us give the court an opportunity to hear and determine his guilt or innocence.

Mr. Speaker: Very well! Next Question by the hon. Member for Gem Constituency!

SACKING OF SIAYA DISTRICT HOSPITAL WORKERS

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

(a) Is the Minister aware that services at Siaya District Hospital have collapsed due to suspension of nurses and other staff who recently went on strike?

(b) Is she further aware that the rate of death has gone up and that dead bodies are not attended to in that facility?

(c) How many nurses and other staff have been sacked at Siaya District Hospital?

(d) What is being done to immediately remedy that situation?

The Minister for Health (Mrs. Ngilu): Mr. Speaker, Sir, I apologise to the hon. Member because I have not given him a copy of the written answer.

However, I beg to reply.

(a) I am aware that provision of health care services at Siaya District Hospital have been severely affected due to the suspension of nurses and other staff who went on strike in June, 2005.

(b) Based on the report that we received from the Hospital, there is an average of 40 deaths in a month, which are usually caused by HIV/AIDS related illnesses, malaria and anaemia, especially for children under five years. Therefore, the deaths have not increased due to the shortage of health workers.

It is true that we suspended the mortuary attendants, but the duties are being performed effectively by a trained and professional attendant. Therefore, no bodies are lying uncollected from the wards as alleged.

(c) None of the health workers at Siaya District Hospital have been sacked. We have, however, suspended some of them who participated in the illegal strike.

(d) We advertised for jobs to employ personnel to replace those who were suspended, as we analyse those who may have been off-duty and others who were forced out of their offices. If that is proven, they will be deployed in the same positions.

Mr. Midiwo: Mr. Speaker, Sir, I am very surprised by the answer that has been given by the Minister. In fact, last week, the Minister was in her district hospital decreeing the level of Health Provision Act and the sacking of nurses and other health workers. There is a unique problem in Siaya and our people are dying! Even mortuary attendance to the dead is not there! I, personally, was there last week---

An hon. Member: What is your question?

Mr. Midiwo: Mr. Speaker, Sir, can you protect me against---

Mr. Speaker: Yes, I will but, you see, I cannot protect you against the Standing Orders! Ask your question!

Mr. Midiwo: Mr. Speaker, Sir, is the Minister aware that there are volunteer workers in Siaya District Hospital who charge Kshs200 to administer medicine?

Mrs. Ngilu: Mr. Speaker, Sir, Siaya District Hospital is not unique at all. I want to inform the hon. Member that many districts in Nyanza and Eastern provinces were the worst affected by the strike. One of them was Siaya District Hospital. There are many other areas where health workers did not go on strike. We are specifically looking at those hospitals where workers went on strike. We are going to replace those who went on strike without being forced by workers from other departments. Those who did not participate in the strike will be taken back. However, we shall fire those who went on strike voluntarily.

Mr. Weya: Mr. Speaker, Sir, is the Minister aware that 90 per cent of staff at Siaya District Hospital were suspended?

Mrs. Ngilu: Mr. Speaker, Sir, the hon. Member does not have the right information. It is not 90 per cent. Nearly 100 per cent were suspended because they went on strike. They left patients to die on their beds. So, we suspended them.

Mr. Kajwang: On a point of order, Mr. Speaker, Sir. Earlier on, the Minister said that work was going on at Siaya District Hospital and there were some volunteers. Now, she is saying that 100 per cent of the staff were suspended. What is going on? Is there a hospital in Siaya any more?

Mr. Speaker: Order, Mr. Kajwang! That is a question!

Mr. Kajwang: Is there a hospital in Siaya any more?

Mr. Speaker: Is there a hospital?

(Laughter)

Mrs. Ngilu: Mr. Speaker, Sir, there is a hospital. But I am saying that those who went on strike---

Mr. Weya: On a point of order, Mr. Speaker, Sir. How can the Minister say there is a hospital and there no staff?

(Applause)

Mr. Speaker: What are you talking about? What is your point of order, Mr. Weya?

Mr. Weya: Mr. Speaker, Sir, is the Minister in order to say that there is a hospital in Siaya, when there are no staff members? There are no doctors!

Mr. Speaker: Order now! You will relax now! The Minister will be given a chance to reply.

Proceed, Madam, Minister!

Mrs. Ngilu: Mr. Speaker, Sir, I said that those who went on strike were all, without

exception, suspended.

An hon. Member: Why?

Mrs. Ngilu: Mr. Speaker, Sir, they were suspended because the strike was illegal. We had also asked them to remain on duty. The Government had already increased their salaries last year. We were also going to increase their salaries this year. It is in the Budget. The same thing is going to be done again next year. But they still went on strike and left patients to die in the hospitals. What is the reason that can make us keep such people? They were suspended!

Mr. Speaker: Madam, Minister, maybe, you could help the House. After the suspension, did you replace them?

Mrs. Ngilu: Yes, Mr. Speaker, Sir. After those ones were suspended, we advertised for the same positions. We interviewed some people and sent them there. Not all the staff were replaced. In Nyanza District Hospital---

Hon. Members: Siaya! Siaya!

Mr. Speaker: Order, hon. Members!

*(Archbishop Ondiek stood
up in his place)*

Order, Archbishop! We cannot make progress if we will not allow the Minister to reply! Listen to the Minister first.

Proceed, Madam, Minister!

Mrs. Ngilu: Mr. Speaker, Sir, out of those we have recruited, 17 nurses have already reported. We expect another 40 to report. We have recruited four laboratory technicians, and they have all reported. We have also recruited two pharmacists, and they have reported.

Mr. Speaker, Sir, we have recruited four public health officers, and they will be reporting. Those who have not reported are the maintenance people. Out of four who were recruited, only one has reported. We have one dental officer instead of two. One, out of six drivers, has reported. We have only two anaesthetists, instead of four. We have two clerical officers, one nutritionist, one consultant gynaecologist, one orthopaedic technologist and one plaster technician. Therefore, there is a shortage and we are going to fill the shortfall.

Dr. Ali: Mr. Speaker, Sir, I am a bit confused here. The Minister says 100 per cent of medical practitioners went on strike and all of them were suspended, and that they are replacing them after interviews. How many weeks or days was the hospital closed from the time of the strike until new staff were recruited?

Mrs. Ngilu: Mr. Speaker, Sir, the strike took place on the 2nd of June and we asked all health personnel to go back to work, but they did not do so. By the 4th of June, they had not reported and we had skeleton workers. Doctors never went on strike.

Therefore, immediately, we advertised and people came forward and we hired them and posted them. That took a week or so. So, although it is a little slow, we are treating people.

Archbishop Ondiek: Mr. Speaker, Sir, I was in Siaya District Hospital on Friday, last week, and there was no single medical officer in that hospital, and patients were dying. Siaya's population is over 600,000 people. Could the Minister tell us when the new recruits reported?

Mrs. Ngilu: Mr. Speaker, Sir, first of all, a population of 600,000 patients in a hospital is an exaggeration. However, as I said, doctors did not go on strike. Most of those who went on strike were nurses and other health personnel. Therefore, doctors are the ones who were taking care of the facilities in the absence of the junior personnel.

Mr. Speaker, Sir, as I said, we have now interviewed people and we are replacing those who were suspended until their cases have been analysed and found who is guilty and who is not.

Mr. Midiwo: Mr. Speaker, Sir, I have always liked this Minister. But today, I am really

surprised at her attitude.

An hon. Member: How do you like her?

(Laughter)

Mr. Midiwo: Mr. Speaker, Sir, the Minister cannot afford to trivialise an issue of this magnitude. I wonder if this is meant to finish my people. If that is the case, I want to say on record that it will not, because it has been tried before and failed and it will fail again this time. Since this is an issue affecting many hospitals and health centres in this country, could the Ministry take back the fired workers as they sort out this situation? There is no way people can be picked from the streets to provide medical help. We also know that the striking health workers have been "fired" selectively across the country.

Mrs. Ngilu: Mr. Speaker, Sir, first of all, I do not know what the hon. Member talks about "liking me." I hope he likes my work and not me. However, ---

(Laughter)

Mr. Billow: On a point of order, Mr. Speaker, Sir. You heard what the Minister said!

Mr. Speaker: What did she say?

Mr. Billow: Mr. Speaker, Sir, hon. Midiwo said he liked the Minister. But the Minister now says he should not like her. Does she want the hon. Member to hate her?

The Assistant Minister for Education, Science and Technology (Mrs. Mugo): On a point of order, Mr. Speaker, Sir. We are here to perform our duties like every other Minister, not to be "liked." We expect our work to speak for us. We are not seeking affection.

Mr. Mwandawiro: On a point of order, Mr. Speaker, Sir. I thought all Members of Parliament understand English?

Mr. Speaker: What did you say?

(Laughter)

The Minister for Roads and Public Works (Mr. Raila): On a point of order, Mr. Speaker, Sir. I think you should help the House. It appears hon. Members are confusing the word "like" with "love."

(Laughter)

The Assistant Minister for Education, Science and Technology (Mrs. Mugo): On a point of order, Mr. Speaker, Sir. Women are tired of being patronised. We are here in this House like any other hon. Member capable of performing fully, and we are not confusing "like" with "love."

(Loud consultations)

Mr. Speaker: Order! Order, hon. Members! I notice that hon. Members are in a particularly jolly mood today. Therefore, we must do everything in moderation. I find nothing particularly offensive about the word "like."

(Applause)

But a Member who is "liked" does not necessarily deserve to reciprocate. So, the Minister is

entitled to say "you may like me,
but I do not like you."

Proceed!

(Laughter)

The Minister for Water and Irrigation (Ms. Karua): On a point of order, Mr. Speaker, Sir. I think we are missing the point here. It is offensive to be patronised, whether for a man or a woman. Even though the Chair or any other person may find the remark appreciable, we are also entitled to our positions. We are not here to be patronised.

(Applause)

Mr. Speaker: Can I bring this to an end? No patronage!

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

Mr. Keter: On a point of order, Mr. Speaker, Sir. We do not want any hon. Member to disturb you. Hon. Midiwo is on a point of order and you cannot hear because the Vice-President and Minister for Home Affairs and the Minister for Education, Science and Technology are disturbing you!

Mr. Speaker: I am not being disturbed. I am being consulted, which is my job also.

Mr. Midiwo: On a point of order, Mr. Speaker, Sir. The Minister did not answer my question as to whether the Government should consider reinstating the nurses until the mess is sorted out.

Mrs. Ngilu: Mr. Speaker, Sir, if the hon. Member only listened to my answers, I said that we are not going to reinstate the health officers who went on strike until we have analysed why they went on strike. We want to find out whether they were forced out of their places of work by workers from other Ministries. It is only after that, that we will take them back. We will not reinstate the officers who truly went on strike. However, we will replace them with trained health personnel, whom we have in our data bank.

CANCELLATION OF CBK
CURRENCY PRINTING TENDER

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

(a) Could the Minister confirm that the Central Bank of Kenya is currently in the process of tendering for the printing of banknotes for the Republic of Kenya?

(b) Could he explain the reasons for the cancellation of the tender earlier advertised?

(c) What is the Minister doing to ensure that the companies that have in the past been disqualified do not rank for supply?

*(Ms. Karua crossed to the
Opposition side)*

The Minister for Water Resources and Irrigation (Ms. Karua): I am looking for the Member who made an idiotic remark!

Mr. Keter: On a point of order, Mr. Speaker, Sir. Is it in order for hon. Karua to call some hon. Members idiots?

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

Mr. Speaker: Order, hon. Members! Any hon. Member who will be on his feet any more will be sent out of this House! Any further disorder in this House will be met by the Chair with all its power. You must keep order in this House. Let us give a good example to Kenyans.

Mr. Moi: On a point of order, Mr. Speaker, Sir. An hon. Member has crossed the Floor to the Opposition side and she has insulted the hon. Members. She has called them idiots. Is that parliamentary language? Is it palatable?

Mr. Speaker: Order, hon. Members! I would like to hear from the Minister. Did you insult hon. Members?

The Minister for Water Resources and Irrigation (Ms. Karua): Mr. Speaker, Sir, I came to this side looking for an hon. Member. If anybody heard me utter his or her name, then he or she is the hon. Member I am looking for!

Mr. Billow: On a point of order, Mr. Speaker, Sir. It is the dignity of this House which is at stake. We cannot allow arrogance to that level where somebody can insult hon. Members and can again have the courtesy to tell you that she meant the hon. Member who heard what she said. That is wrong! Can you order her out?

Mr. Speaker: Order! Hon. Members of this august Assembly, I ask you now to look into your hearts and souls and project them into the future and know what legacy we, as a House, wish to leave for the Kenyan people. I suppose that, as a House, we do not want to leave a legacy of being completely a House without honour. Hon. Minister, now from the Chair, with all the seriousness that I can muster and the seriousness that I can demand of you, is that allegation true or false? That is all I want to hear.

The Minister for Water and Irrigation (Ms. Karua): Mr. Speaker, Sir, let the HANSARD bear me witness.

(Loud consultations)

Mr. Speaker: Order, hon. Members! Hon. Minister, I want to get a definite answer from you. Is that allegation true or false? That is all I want to know.

The Minister for Water and Irrigation (Ms. Karua): Mr. Speaker, Sir, it is not true. I said the following words: "I am looking for an hon. Member who made an idiotic remark".

Mr. Speaker: Order, hon. Members! Hon. Minister, I am afraid you must withdraw that remark and apologise. I have no such hon. Members in this House.

The Minister for Water and Irrigation (Ms. Karua): Mr. Speaker, Sir, is it unparliamentary to say that someone has made an idiotic remark?

Mr. Speaker: Hon. Minister, you have the last opportunity to comply with my order! Will you withdraw and apologise or not?

The Minister for Water and Irrigation (Ms. Karua): Mr. Speaker, Sir, to the extent that it may have offended those who are not concerned, I withdraw and apologise. If anybody assigns that label to himself or to herself, I cannot, in good heart, apologise to him or to her.

Mr. Speaker: Order! We have a momentous debate slated for discussion in this House. This is something that has never happened in Independent Kenya. This is a debate on a total change of our Constitution, but we take all the time doing things that should be done outside this Chamber. Hon. Minister, I am afraid, unless you unequivocally withdraw and apologise, I will have to deal with you very firmly.

(Applause)

The Minister for Water and Irrigation (Ms. Karua): Mr. Speaker, Sir, I beg to withdraw the word except--

(Several hon. Members stood up in their places)

Mr. Speaker: Order! Order, hon. Members! Except what, hon. Karua? Hon. Karua, for the last time, could you withdraw that word?

(Several hon. Members stood up in their places)

Dr. Ali: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order, Dr. Ali! Dr. Ali, you must sit down! Madam Minister, since you are unwilling to comply with the order of the Chair, I am afraid that you must now be excluded from the House.

(Ms. Karua withdrew from the Chamber)

(Applause)

Order! Order! Order, hon. Members!

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

Mr. Speaker: Mr. Salat, you should sit down or fall out!

(Loud consultations)

Order! Order! Order, hon. Members! Order, Mr. Bifwoli. Let all of you be served with notice that if this House must proceed with its business with the minimum quorum, that will happen! There must not be disorder here. We must maintain the dignity of this House. We must be serious. We must be respectful to one another and to the House. You do not have to like them, but you must respect your colleagues. From this very moment, anybody who will be disorderly they will go out, and I will not care about their status. You will all go out, because before me, you are all equal.

(Several hon. Members stood up in their places)

Order! Order! All of you, sit down now. No further points of order!

(Mr. Lesrima consulted with hon. Members on the Front Bench)

Order, Mr. Lesrima! We will not transact business in the manner we have been behaving since the beginning of this sitting. Now, hon. Members should be serious. I mentioned, when I came in this afternoon, that hon. Members are in a specially good mood. It does look that the good mood is not good for the House. I now call for a foul mood in the House, so that we can do business!

I think I will have to defer Mr. Omingo's Question together with the remaining Questions

now, because Question Time is up.

(Question deferred)

IMPLEMENTATION OF REP
IN SUBA DISTRICT

(Mr. Kajwang) to ask the Minister for Energy the following Question by Private Notice.

(a) Is the Minister aware that the money allocated to Suba District under the Rural Electrification Programme for 2003/2004 and 2004/2005 amounting to about Kshs18 million was not spent in the District?

(b) What steps is the Minister taking to avail the said resources to Suba District forthwith to facilitate speedy connectivity of electricity to health institutions, schools, shopping centres and beaches?

(Question deferred)

ORAL ANSWERS TO QUESTIONS

Question No.359

ESCALATION OF INSECURITY
IN UGENYA CONSTITUENCY

(Question deferred)

Question No.538

TRANSFER OF IDB DEPOSITS
TO EQUITY BANK

(Question deferred)

Question No.279

ALLEVIATION OF POVERTY
IN MARSABIT DISTRICT

(Question deferred)

Question No.016

NUMBER OF KENYAN STUDENTS
IN UGANDAN UNIVERSITIES

(Question deferred)

Question No.222

TERMINAL DUES FOR

MR. CHRISTOPHER KOMBE

(Question deferred)

Question No.317

PAYMENT OF SHARES/DIVIDENDS
TO UFUNDI SACCO MEMBERS

(Question deferred)

Question No.551

ATTEMPTED INVASION OF PRIVATE
LAND IN NDITHINI BY SQUATTERS

(Question deferred)

(Loud consultations)

Mr. Speaker: Order! Order! Order, hon. Members. Hon. Members whose Questions have been deferred are kindly requested to liaise with the Clerk of the National Assembly to have them put on the Order Paper on days convenient to them, beginning tomorrow afternoon.

Could we now proceed?

POINTS OF ORDER

INCREASE OF POLICE BRUTALITY

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

Mr. Speaker: What is it, Mr. Billow?

Mr. Billow: Mr. Speaker Sir, I rise on a point of order to seek the indulgence of the House on a serious matter. This afternoon, one person was shot and injured seriously by the police, another one had his arm broken and ten people were arrested. The brutality by the police is increasing day by day. Yesterday we raised this issue. It is now becoming a serious matter. The Minister, unfortunately has an infamous name, "Kimendero", should assure this House that he will stop brutality by the police, so that our people do not continue to suffer?

Mr. Speaker: Very well. Mr. Minister, are you ready to respond to that point of order?

*(Mr. Michuki made a
negative gesture)*

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

Mr. Speaker: On what, Mr. M. Kilonzo?

Mr. M. Kilonzo: On Order No.7, Mr. Speaker, Sir.

Mr. Speaker: Order! Order!

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

Mr. Speaker: What is it, Mr. Munya?

Mr. Munya: Is it in order for an hon. Member to call a Minister "*Kimendero*" on the Floor of the House?

Mr. Speaker: What is happening in this House?

Mr. Billow, did you call a Minister a name?

Mr. Billow: Mr. Speaker, Sir, I heard a name from some hon. Members and I used it. But if it is offensive, I withdraw it and apologise.

Mr. Speaker: By the way, this is getting out of hand. We cannot turn this House into a name-calling den.

Hon. Members: Out! Out!

Mr. Speaker: This is getting out of hand! We cannot turn this House into a den of name calling. This is, apparently, that is what you are bent on doing. If, really, you cannot hold yourself with dignity, please, go out. Go out before I send you out. Begin now! I mean now!

Any hon. Member who cannot hold himself or herself with dignity, please, on your own volition, move out before I send you out. Let us stop playing now. I think we are making ourselves the laughing stock of the country!

The Assistant Minister for Foreign Affairs (Mr. Ojode): Mr. Speaker, Sir, before you throw him out, we would like to know what the word *kimendero* means. It might be something good.

Mr. Speaker: Order! order, hon. Members! Mr. Ojode, I am tempted to throw you out!

*(Several hon. Members
consulted loudly)*

Order, Mr. Moi! Order, hon. Members! Those who want to participate in the House should hold themselves with dignity but those who do not want can be rowdy, disrespectful, and you will go out beginning now!

Next Order!

Mr. M. Kilonzo: On a point of clarification, Mr. Speaker, Sir. With your kind permission, I stand to seek a clarification and your ruling on whether this House is in order to proceed to Order No.7 on the Order Paper--- **Mr. Speaker:** Order, Mr. Kilonzo! That is a matter which is not yet before this House. It must be before the House before you can speak on it. I cannot speak on a matter which is outside!

MOTION

ADOPTION OF PSC REPORT ON HARMONISATION OF CONTENTIOUS ISSUES IN DRAFT BILL

The Minister for Energy (Mr. Nyachae): Mr. Speaker, Sir, I beg to move the following Motion:-

THAT, pursuant to the provisions of Section 27(1) and (3) of the Constitution of Kenya Review Act (Chapter 3(A) of the Laws of Kenya), this House;

(i) adopts the report of the Select Committee on the Review of the Constitution of Kenya laid on the Table of this House on 19th July, 2005, being the

recommendations to harmonise the report on the contentious issues in Chapter 4 - Citizenship; Chapter 6 - Bill of Rights; Chapter 11 - The Legislature;---

Mr Kajwang: On a point of order, Mr. Speaker, Sir. I want to get your ruling correctly, so that we do not make a mistake. I suppose that if somebody thinks that the Motion, as we read and understand it, is unlawful, he can raise it before the Motion gets to the House. We cannot sit here and listen to an illegality!

Mr. Speaker: Order, Mr. Kajwang! You have been in this House long enough to understand the law. This is what the law says: The matter has to be proposed by the Chair, after which you can raise objections as it will be before the House.

Since it is not before the House, we cannot argue on a paper, which is called the Order Paper. We should be arguing about the Business of the House. That is the procedure, and you must live with it!

Proceed, Mr. Nyachae!

The Minister for Energy (Mr. Nyachae): Mr. Speaker, Sir, do I have to begin afresh?

Mr. Speaker: No, Proceed!

The Minister for Energy (Mr. Nyachae): Mr. Speaker, Sir, I beg to move:-

THAT, pursuant to the provisions of Section 27(1) and (3) of the Constitution of Kenya Review Act (Chapter 3A of the Laws of Kenya), this House:

(i) adopts the report of the Select Committee on the Review of the Constitution of Kenya laid on the Table of the House on 19th July, 2005, being the recommendations to harmonize the report on the contentious issues in Chapter 4 - Citizenship; Chapter 6 - Bill of Rights; Chapter 11 - The Legislature; Chapter 12 - The Executive; Chapter 13 - Judicial and Legal Systems; Chapter 14 - Devolved Government and Chapter 18 - Constitutional Commissions adopted by the House on 30th June, 2005, with the Draft Bill adopted by the National Constitution Conference on 15th March, 2004 and the report of the Constitution of Kenya Review Commission; and

(ii) further recommends that the Attorney General accordingly publishes a Bill entitled "The Constitution of Kenya Bill, 2005" pursuant to the Draft Bill and the amendments thereto as contained in the report of the Select Committee.

The Select Committee on the Constitution of Kenya Review---

Mr. M. Kilonzo: On a point of clarification, Mr. Speaker, Sir. I stand to seek your ruling as to whether this hon. House can proceed on a business which is clearly a contravention and violation of the Constitution.

(Applause)

It will be recalled---

Mr. Speaker: Order, Mr. Kilonzo! Let the matter be proposed, then you can take it up from there!

Mr. M. Kilonzo: Mr. Speaker, Sir, I thought that the hon. Minister was putting forward his argument.

Mr. Speaker: Order, order hon. Members! Let me just explain to you. If honestly, Mr. Kilonzo, you want to stick to the Constitution, you must begin by sticking to the rules of this House! The rule of the House is the following: A matter is not before the House unless it has been proposed by the Chair! You must wait until the Minister has moved his Motion and have it seconded, then you can take it up from there.

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

Mr. Speaker: Are you challenging my ruling?

Mr. Muturi: Mr. Speaker, Sir, it is approximately a week to the day, when you made a ruling regarding the hon. Minister of State, Office of the President. The Minister was about to move debate on the Vote of his Ministry when we successfully raised objections because of the way it was done. It had been done contrary to the law. Is it not in order, that at this juncture, we know if the Motion hon. Nyachae is about to move is in contravention of the Constitution?

Mr. Speaker: Hon. Muturi, you must distinguish between the two matters and put them in their correct perspective. If you recall, the matter involving the Vote of the Minister of State, Office of the President, did not arise at the time the Motion was moved. It began much earlier, from a point of order raised by an hon. Member, Mr. Billow.

In fact, that was concerning the way the whole Printed Estimates had been set out.

If you remember, there was no Vote on that. I had to call the Minister responsible, the Minister for Finance, to come and explain to the House the change of the format of the Printed Estimates. It was on that note that I made an order, that before any other Vote was brought here, the Printed Estimates be reverted to the way they used to be. So that was not a Motion being moved. The matter originated from a Standing Order.

(Loud consultations)

Order hon. Members! First of all, let us agree on one thing. There is only one Chair which must make a ruling. The ruling of the Chair must be given due respect. That is how it is supposed to be and that is how it will be.

Alright, let us proceed!

The Minister for Environment and Natural Resources (Mr. Musyoka): On a point of order, Mr. Speaker, Sir. I would not want to object to the ruling by the Chair. However, I thought that the Standing Orders would permit a situation where once the Clerk-at-the-Table reads out the Order for Motion No.7---

(Applause)

Mr. Speaker: Order, hon. Members! By the way, it is not a popularity match. It will depend on how you convince me and not how you applaud.

Let me listen to the Minister!

(Laughter)

The Minister for Environment and Natural Resources (Mr. Kalonzo): Mr. Speaker, Sir, I, therefore, thought that Mr. M. Kilonzo was right because the Clerks-at-the-table have read out clearly Order No.7; Motion.

At that point, if an hon. Member wishes to raise a preliminary objection, because once it has been proposed and seconded, then the matter becomes debate. Hon. Members cannot, therefore, have time to raise any preliminary objections.

(Applause)

Mr. Speaker: Order, hon. Members! I am fully aware of the matter. I am aware of the matter that Mr. M. Kilonzo has raised. He has, unlike most hon. Members, the courtesy to let the

Chair know in advance what his objections are. I really thank him and congratulate him for that. The gratitude of the Chair notwithstanding, we must follow the rules.

Once I propose the Question, I will give him the time to put his case. If he convinces me, there will be no debate after that. If he does not, debate will continue.

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

There is a difference between seeking the indulgence of the Chair and blocking the business of the House. I will not allow that! I have already indicated to the House, and I will not go back upon it, that once the Minister has moved the Motion and it has been seconded, I will give Mr. M. Kilonzo the opportunity to challenge the legality of the same.

Please, Proceed, Mr. Minister!

The Minister for Energy (Mr. Nyachae): Mr. Speaker, Sir, the Select Committee on the Constitution of Kenya Review was constituted on 15th May, 2005:-

(i) to provide leadership in the Constitution review process with a mandate of compiling and presenting a report on the contentious issues to the National Assembly. In the execution of its mandate, the Committee constituted a sub-committee whose task was to study the Bomas Draft Bill and the Constitution of Kenya Review Commission (CKRC) Report adapted on 15th March, 2004, and the Consensus Building Report mainly referred to as the Naivasha Accord and extract contentious issues for approval by the Committee.

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

Mr. Speaker: The rule again, if I must remind you, is that hon. Members must be seated in their places unless you are transiting. That is the rule!

Please, proceed, Mr. Minister!

The Minister for Energy (Mr. Nyachae): Mr. Speaker, Sir, the Committee's mandate was also:-

(ii) to prepare a new draft Bill based on the Bomas Draft and the Consensus Building Report for presentation to the Committee.

(iii) to co-opt such experts as may be deemed necessary.

The sub-committee reported its findings on 28th June, 2005 when its report was adopted.

The Committee thereafter held consultations with various stakeholders with a view to building national consensus. The following stakeholders were invited to appear before the Committee: The Kenya Church, the Media Owners Association, the Supreme Council of Muslims of Kenya (SUPKEM)---

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

Mr. Speaker: Order, hon. Members!

Mr. Muriithi: On a point of order, Mr. Speaker, Sir. It is very hard for us to hear the contribution being made by the Minister because there are loud consultations in the House.

Mr. Speaker: Order, hon. Members! Will you take your seats? My dear colleagues, I want to repeat the following. Today will probably go down in the history of this nation as the most

momentous day.

Mr. Keter: Worst day!

Mr. Speaker: Order, Mr. Keter! If you interject the Chair again, you will go out!

Hon. Members: Even Wanjala!

Mr. Speaker: Mr. Wanjala, you will accompany him out!

I am saddened that when we are about to discuss a matter that has exercised the minds and the souls of the Kenyan people, we are, in fact, trivialising it. We are, indeed, not serious about it and not listening. If you do not listen, how do you respond? Or have you already made up your minds about what happens?

Hon. Members: Yes!

Mr. Speaker: Well, if you have made up your mind for whatever case it is, you are obligated to keep quiet! You are also obligated not to listen. You can keep quiet and not listen. However, you have no right to disturb those who want to hear!

Please proceed, Mr. Minister!

Mr. Keter: On a point of order, Mr. Speaker, Sir. I agree with you that the matter which is before this House is so serious. However, during the launch of the Young Parliamentarians Association, you made a remark as the Speaker of the National Assembly, that unless Section 47 of the Constitution is changed, there is no short-cut to a new Constitution. We are now going to allow an illegality. That is my concern!

Mr. Speaker: Order, Mr. Keter! Mr. M. Kilonzo will tell you that and I will tell you my piece! You make the law, but I do not. Where have you been all these years?

Proceed, Mr. Minister!

(Laughter)

The Minister for Energy (Mr. Nyachae): Mr. Speaker, Sir, the Committee also invited the Ufungamano Initiative, the Central Organisation of Trade Unions (COTU), the Permanent Secretary and Secretary to the Cabinet and Head of Public Service, the Judiciary, the Association of Local Government Authorities of Kenya (ALGAK), the Association of the Physically Disabled, the Law Society of Kenya (LSK), the Women Consensus Group, Parliamentary Consensus Group, the Association of Professional Society for East Africa---

(Loud consultations)

Mr. Speaker: Order, hon. Members! That is not an applause according to me! However, if you want to do an exercise, this Parliament has already built a gym. Go out there!

Proceed!

(Laughter)

The Minister for Energy (Mr. Nyachae): Mr. Speaker, Sir, the Committee invited the Association of Professional Society of East Africa, the African Network for Prevention and Protection Against Child Abuse (ANPPCAN).

The Committee also held consultations with hon. Members who presented their views which the Committee took into consideration when drafting this Report. It is from these consultations that the Committee was able to appreciate the diverse opinions held by various groups with regard to the Constitution.

The stakeholders further presented written memoranda which were scrutinised by the sub-

committee in an effort to find a middle ground---

*(Prolonged applause from
Opposition Benches)*

Mr. Speaker: Order, hon. Members! Why are you slowing down? Applaud more!

(Laughter)

The Minister for Energy (Mr. Nyachae): Mr. Speaker, Sir, the stakeholders further presented written memoranda which were scrutinised by the sub-committee in an effort to find a middle ground and, therefore, form a basis for the amendments proposed by the Committee in this Report. The amendments were all aimed at harmonising the contentious issues adopted by the House on 30th June, 2005, with the draft Bill adopted by the Constitutional Conference at Bomas on 15th March, 2004. I would like to emphasise that the Committee made efforts to retain the provisions of the Bomas document.

Mr. Speaker, Sir, I now wish to highlight the major recommendations reached by the Committee on contentious issues. These issues are contained in Chapter 4, Citizenship; Chapter 6, Bill of Rights; Chapter 10, Representation of the People; Chapter 11, the Legislature; Chapter 12, the Executive; Chapter 13, Judicial and Legal System; Chapter 14, Devolved Government and Chapter 18 on Constitutional Commissions.

Mr. Speaker, Sir, Chapter 12, the Executive, the Committee, in its Report, has proposed an Executive President who is the head of State and head of Government, whereas the Bomas draft recommends a less powerful President who shares power with the Prime Minister.

Hon. Members: Shame! Shame!

The Minister for Energy (Mr. Nyachae): Mr. Speaker, Sir, secondly, the President has power to appoint or dismiss the Prime Minister, the two Deputy Prime Ministers, Ministers and Deputy Ministers. On the other hand, the Bomas draft recommends a President who can be dismissed by Parliament for misconduct.

Thirdly, while the Committee recommends that the Prime Minister be appointed by the President from among the hon. Members of Parliament and also provides for procedures for appointment, the Bomas draft, however, advocates for a powerful Prime Minister who is also the head of Government and leader in the House.

Mr. Speaker, Sir, Chapter 11, the Legislature, a major departure from the Bomas draft is deletion of the provision for the two-tier House. As a result of this deletion, the Committee has further recommended amendments that are consequential in nature and touch on many other issues, including the following: The election of hon. Members of Parliament, the sovereignty of the people and supremacy of the Constitution, devolution at two levels; national and district, harmonisation of district boundaries, sizes and population.

On Citizenship, a statute is to be enacted to provide for dual citizenship. That is on culture, Bill of Rights, land and property.

Constitutional commissions will be limited to five commissions while others will be established through legislation.

Mr. Speaker, Sir, on Chapter 12, the Judiciary, the Committee made recommendations which would enhance the offices of the Attorney-General and the Judiciary. The Committee recommends that the office of the Attorney-General and the Judiciary be separated. The Attorney-General should enjoy security of tenure. The Committee further recommends that the provisions for *nolle prosequi* be subjective to a court process. Mr. Speaker, Sir, the provisions of Kadhi

Courts will be as provided for in the Bomas draft, but the Chief Kadhi will not sit in the Judicial Service Commission (JSC).

Mr. Speaker, Sir, the Report, as I have indicated, also touches on transitional and consequential provisions as well as other issues such as the death penalty which the Committee upheld. Elections where one-third of elected positions shall be reserved for women is also provided for.

As I conclude, Mr. Speaker, Sir, I wish to appeal to hon. Members to make reference to the Report and annexure provided to enable the House engage in debate on this crucial matter in order to help the House complete its mandate as spelt out in the Constitutional (Amendment) Bill, No.9 of 2004. According to the Act, Parliament ought to have debated the Bill for onward transmission to the Attorney-General by 22nd July, 2005. Thereafter, prepare the Constitution of Kenya Bill, 2005, which should be ready by 21st August, 2005 in readiness for public debate and referendum.

Mr. Speaker, Sir, it is the desire of the hon. Members of my Committee and, indeed, hon. Members of this House and Kenyans, to have a new Constitution by the end of this year. For this to be achieved, I wish to once again, appeal to hon. Members to approve this report in order to enable the Attorney-General to publish the Constitution of Kenya Bill. Thereafter, we can complete the process in time for moving to the referendum.

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

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

Mr. Speaker: What is it, Mr. Marende?

Mr. Marende: Mr. Speaker, Sir, I do not wish to challenge your earlier ruling. But it is my contention that by invoking Standing Order No.40, we can, at this stage, challenge the constitutionality of this Motion now that the Mover has---

(Applause)

Mr. Speaker: Order! Mr. Marende, you are actually challenging my ruling and it will stand! As I said, the matter will be challenged by Mr. M. Kilonzo after it has been proposed by the Chair!

Proceed, Mr. Awori!

The Vice-President and Minister for Home Affairs (Mr. Awori): Thank you, Mr. Speaker, Sir. I rise to second this Motion. The country and Kenyans have waited for the new Constitution---

Mr. M. Kilonzo: On a point of order, Mr. Speaker, Sir. I am sure that the Chair can see the concern that is on the Floor of the House. The issue is, after the proposer has proposed, and the seconder has seconded, the Standing Order would entitle you to call for a vote.

Mr. Speaker: To do what?

Mr. M. Kilonzo: Mr. Speaker, Sir, to call for a vote at any stage. It will eliminate whatever proposals and arguments that I wish to advance. We are deeply concerned.

Mr. Speaker: Order! We cannot change the matters from the Floor of the House on any exigencies; political or otherwise. We must follow the procedures of the House. You have my commitment that after the matter has been proposed from the Chair, I will call upon you. Do you doubt my integrity?

Mr. M. Kilonzo: No, Mr. Speaker, Sir. I do not!

Mr. Speaker: Very well!

Proceed, Mr. Awori!

The Vice-President and Minister for Home Affairs (Mr. Awori): Mr. Speaker, Sir, I rise to second this Motion. The country has waited for a new constitution for, at least, ten years. It has

actively been engaged in trying to write a new constitution over the last three years. The process has been hard and difficult because of different opinions about the process. Temperatures have risen and, sometimes, they have come down. The road has had a lot of obstacles and potholes. The air has had a lot of turbulence but, with determination, we should be able to get there. We have held discussions and dialogue. We know that a constitution is a guideline for people to live in an orderly society.

Mr. Speaker, Sir, the Bomas Draft was far too detailed. A constitution is not static. It changes according to the current dynamics. It is not intended to be tailored for any particular individual, organisation or community. It is a document that should help people to live in an orderly manner. It is a document that helps people to exercise their human and democratic rights. We need a document that will protect and observe the human rights of our people. It is a document that must recognise the diversity of culture and understanding. Nobody can pretend that the document that has been presented is perfect. But many people have taken a lot of trouble to try and find a meeting point.

Mr. Speaker, Sir, we agreed to be led by the rule of law and democratic principles. Democratic principles call for dialogue. People have to discuss together. We had the Bomas Conference where we spent many days and weeks. We held discussions with the Ufungamano Group. We held discussions at Safari Park. We held discussions in Naivasha and came up with the Naivasha Accord. We went to Limuru and, finally, to Kilifi just the other day. So, let us not call this document a Government document!

Hon. Members: It is! It is!

The Vice-President and Minister for Home Affairs (Mr. Awori): Mr. Speaker, Sir, it is the people's document.

Hon. Members: No! No!

The Vice-President and Minister for Home Affairs (Mr. Awori): Mr. Speaker, Sir, there were 113 Members of Parliament in Kilifi. Those 113 Members represent a very large section of people. We were elected to speak on behalf of our people. When we sat there, we were representing the people. The report that we have brought here is a document of our electors.

Mr. Speaker, Sir, let us not try to be dramatic. As democratic practitioners, we must not condemn anybody who did not go to Kilifi. We must respect the opinions of those who did not go to Kilifi. But we do believe in democracy. Democracy is the rule of the majority. We gave a chance to the few to have their say, but the majority must have their way. This is a forum for discussion. The streets are not the place for discussing the Constitution.

Mr. Speaker, Sir, demonstrations on the streets do not form part of discussing a Constitution. Please, let us, as elected Members, give guidance to our people. Let us try and redeem ourselves when we are called hon. Members. We are going to have an opportunity once again, to talk to our people. Once the Attorney-General has prepared the document, there is going to be a period for civic education. That is the time all of us should go home and educate our people. A constitution is only as good as those who implement it. It is as good as the leaders who lead the people. Experience has shown that even the best constitution, when it is in the wrong hands, creates demagoguery. We know that good constitutions have been used by people like Hitler, Mussolini and Mobutu to suppress their people. Therefore, it is the leadership that is required.

There is no better constitution than the Bible. But we know, for instance that, the Spanish inquisitors used the constitution to suppress the freedom of their people. We know that it is the Bible that created the pilgrims who had to leave Europe and try to look for a new world. It is the Bible that was used to create slavery, take our people from Africa, cross the ocean to America, the Caribbean and other places. The contentious issues---

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

Mr. Speaker: Order! What is it, Mr. Twaha?

Mr. Twaha: Mr. Speaker, Sir, is it in order for the Vice-President and Minister for Home Affairs to declare that the Bible is the best constitution when, in fact, it is the Holy Quran which is the best constitution?

(Laughter)

Mr. Speaker: Order, hon. Members! I think that is quite serious. The Chair is the custodian of all faiths in equal measure. I order the Vice-President and Minister for Home Affairs to keep his faith to himself.

The Vice-President and Minister for Home Affairs (Mr. Awori): Mr. Speaker, Sir, I said that the Bible is one of the best constitutions. The Holy Quran is another.

(Applause)

Mr. Speaker, Sir, when we look at the contentious issues that have been brought to us, they are only contentious when one looks at them from the point of personal ambitions. But when one is looking at a country as a whole, they are not that contentious at all.

Mr. Speaker, Sir, let us look at the executive powers that are given to the presidency. If you go through the document, you will find that there are checks and balances that will guide the President in the execution of those powers. For instance, we are saying that there will be a requirement for the President to come to Parliament from time to time, to contribute to debate and ask questions.

We say somewhere that the President will go to a public forum where he will have to speak to the people whether it is on television or radio. We have put mechanisms that will ensure that the executive powers are not as excessive as people are beginning to portray them. What we need to do or what we will not be able to do are the hangers on. How do you deal with hangers on when you have also given a President executive powers? It is up to us to ensure that the President is true to his powers.

Mr. Speaker, Sir, the same thing applies with the Prime Minister. We are at the moment saying that the Prime Minister is powerless but this is not so at all. It will depend entirely on the person who will be appointed as the Prime Minister. The Prime Minister must work within the guidelines. Why should there be any fear that the Prime Minister will be sacked without the approval of Parliament? Surely, if the President has outlined the powers that he has given to the Prime Minister and the Prime Minister works within those guidelines, there should be no fears whatsoever.

Mr. Speaker, Sir, the other contentious issue has been devolution. We know for sure that we are not at a stage where we can afford to have two chambers. We can only have one chamber as we do today which can be quite effective, able to legislate and help our people. We would like to have just two areas and these are the national and the district. The provincial area and the regions give us an indication that we are right in having only two levels which are the national and the district. Let me give a very simple example. There is an organisation here called the Kenya Charity Sweepstake. This is one organisation that helps disaster and whenever money is sent down to the person who requires it, they normally sent it to the Provincial Commissioner. Probably it will stay around that place for two or three months before it goes to the district and reaches the beneficiary. There is a delaying mechanism there that we feel is only right to be removed.

Mr. Speaker, Sir, however, I believe that the best testimony to show that we need only two levels is the recent innovation of the Constituency Development Fund (CDF). The CDF has

revolutionised the lives of our people where funding comes directly from the national level to the constituency level. The same thing applies to the District Roads Committees (DRCs). Our roads have now improved considerably in the rural areas because there is not any intermediate step from the national level right down to the grassroots. The same thing applies to the Constituency Aids Control Committees (CACCs). This clearly shows that it is only right that we should have two levels which are at the national and district levels.

On the question of citizenship, we must join the world and conform to all other international conventions so that we can have dual citizenship that will allow people to live in two countries. What is wrong with the Kadhis Courts? We have had them right from Independence and it is only right that they should be so.

*(Loud foot thumping
from the Opposition)*

Mr. Speaker, Sir, the year 2007 is a very long way ahead. There is no reason at all why we should be looking at 2007 to help us---

Let the year 2007 not influence our voting for the Constitution because there are going to be many other elections. There will be elections in 2012, 2017 and so forth. So, let us not look at one specific year because none of us are going to be here 100 years from now. We are one people with diversity but let us try and work as one.

Mr. Speaker, Sir, I want to remind hon. Members of August 7th, 1998 when there was a bomb blast. Let us try and recapture that atmosphere where it was lovely to see the retired President Moi, the then Leader of the Official Opposition, Mwai Kibaki, the then Presidential candidates Charity Ngilu and Mike Wamalwa all coming together because we had been assaulted.

This is a time that we should try to come together and give *wananchi* a Constitution that they require.

Mr. Speaker, Sir, I beg to support.

*(Applause)
(Question proposed)*

Mr. M. Kilonzo: Mr. Speaker, Sir, thank you very much for giving me this opportunity to seek your guidance and a ruling on extremely weighty matters and issues going to the very roots of the foundation of this country. I seek your ruling and guidance as to whether this House can, in fact, engage in a Motion of this nature when it violates Sections 30, 46 and 48 of the Constitution? Allow me to say this: That it is common knowledge in this country that the Constitution of Kenya (Amendment) Act of 2004 has not been entrenched into the Constitution. Therefore, what that means is that it is subordinate to the Constitution.

Mr. Speaker, Sir, having said that, with your very kind permission, allow me to read out to you Section 30 of the Constitution:

"The legislative power of the Republic shall vest in the Parliament of Kenya, which shall consist of the President and the National Assembly".

I want to emphasize the words "Legislative power". If you may allow me again, with your kind permission, to read Section 46 of the Constitution, which appears on page 30, because I consider these to be extremely weighty matters which should be given weight and consideration. Before I read it out, I need to mention that, in fact, these issues have not been agitated in the country. Section 46(i) says:

"Subject to this Constitution, the legislative power of Parliament shall be exercisable

by Bills passed by the National Assembly".

(Applause)

I want to emphasize the words "shall be exercisable by Bills passed by the National Assembly".

With your kind permission, Mr. Speaker, Sir, that brings me to the Motion which is before this honorable House, and which has been proposed by my good friends, hon. Nyachae and hon. Awori. You will see, even at a glance, that part (ii) of that Motion says:

"Further recommends that the Attorney-General accordingly publishes a Bill entitled "The Constitution of Kenya Bill, 2005" pursuant to the Draft Bill and the amendments thereto as contained in the report of the Select Committee".

My position is this, and I seek your guidance here very humbly.

(a) Section 46 leaves nobody in doubt that this honourable House cannot engage in the debate or even a discussion of a Draft Bill.

(Applause)

I dare say that I share the aspirations of the Kenyan people to seek a new Constitution and, therefore, if anyone wanted this House to debate a Draft Bill, in my very humble view, he would be required to amend Section 47 of the Constitution to make a provision for the presentation of a Draft Bill seeking the amendment of the Constitution.

(Applause)

If you allow me once again, you will also notice that under the Standing Orders, a Bill for presentation to this House under Section 46 of the Constitution requires to be published in the Kenya Gazette; (a) For the purpose of educating the country and the world that Parliament is contemplating passing a law. After it is published, it is also required that it be brought here for First and Second Reading.

(Applause)

Mr. Speaker: Order, hon. Members! Order! Order! Those hon. Members who have nothing else to do but applaud, please, listen. I have to listen and you are not going to stop me from listening! I must warn you again that it is not the amount of applause that will determine my decision one way or the other; it is the ability of the hon. Members to convince me.

Mr. M. Kilonzo: I am very much obliged, Mr. Speaker, Sir. I too would like to convey this in a climate where nobody would be in doubt as to what I am saying. I would prefer everybody to listen. The point I am making is this; looking at part (ii) of the Motion, it violates Sections 30 and 47 of the Constitution in so far as we are giving a so-called Draft Bill to the Attorney-General to publish, meaning that we will not get any opportunity---

Mr. Speaker, Sir, let me repeat, this House will not have any opportunity to verify, study or comment on whatever the Attorney-General does. I have the utmost respect for the Attorney-General's ability to formulate law, but ask yourself this question, and I ask with humility: In as much as you may trust the Attorney-General and accept his ability to draft a Bill in accordance to these recommendations, will it be legal if he sends it out to the country before Parliament has exercised its power under Sections 30 and 46 of the Constitution?

(Applause)

I will not bother giving my answer to that question because it is you, Mr. Speaker, to decide this very critical issue as to whether we can actually abrogate our responsibility in this House and leave legislation.

Mr. Speaker, Sir, I say this once again with humility. In an opinion dated 22nd August, 2004, the Attorney-General declared Section 27(1)c of the Constitution unconstitutional. That opinion was given to the special Parliamentary Select Committee on the Constitution that I had the privilege of serving. If you so desire, I will give you the opinion. Mr. Speaker, Sir, the second point that I wish to make is this: As a result of passing Act 9 of 2004, what did we achieve? The Act went to His Excellency the President and as a result, a memorandum was returned to us. But His Excellency the President opted only to deal with the issue of the majority that will be required to amend the Bomas Draft. I dare say this: I have read the opinion of the Attorney-General countless times, and I urge hon. Members to look at that opinion before they proceed further. That opinion is to the effect that this Act; Act 9 of 2004, is subordinate to the Constitution and it violates that Constitution. That is why His Excellency the President returned it.

(Applause)

Mr. Speaker, Sir, I am saying this again and, please, accept that I respect your position. But I am aware of one thing and one thing only: That, from where you sit, you cannot declare an Act of Parliament unconstitutional. I know that, but what I am asking for is direction and guidance, so that this country can understand once and for all, what we are doing. To assist you, I have brought along the entire bundle of pleadings in a court case called *The High Court of Kenya Miscellaneous Civil Application No.675 of 2005* that was filed on 10th May, 2005. I hope that, in the sobriety that is required of the Legislature, somebody will look at these pleadings. Let me just read out to you two lines:

"Parliament has no power to ignore the conditions of law making that are imposed by Sections 30, 46 and 47 of the Constitution".

As I speak to you, this case has not been determined and the issue that must inform your mind, knowing how senior you are in law, is as to whether when we debate what we are debating, we are not infringing on the rights of Mr. Job Nyasini Momanyi, the applicant in case No.675 of 2005, for his day in court, so that the Judiciary may decide as to whether what I have read out to you is true or not.

Therefore, my position is this, and that is why I am seeking your guidance: That, in making a ruling as to what I am saying, you may, if you prefer, take refuge in saying that you cannot declare an Act of Parliament to be unconstitutional, but with your permission, I am laying an application before the Judiciary in which they have been requested to make the declaration that I am seeking, on the Table.

(Mr. M. Kilonzo laid the document on the Table)

Mr. Speaker, Sir, I dare say, and I stand to be corrected, that until a decision has been reached, this House should not proceed with the debate on this Motion as the matter is *sub judice*.

(Applause)

Now, there is even a more fundamental point, and it requires determination.

An hon. Member: *Tosha!*

Mr. M. Kilonzo: I know somebody might say *Tosha!*, but allow me the opportunity to tell you this: That under---

Mr. Speaker: I think also for the benefit of the Chair, there is something called precis, which helps to condense. So, if you talk for half a day and you expect me to respond and you know that I have no table or a stenographer in front of me, please, be mindful.

Mr. M. Kilonzo: Thank you, Mr. Speaker, Sir. Fortunately, as you mentioned to the House, I presented to you a three-page letter representing and reproducing these arguments in detail.

The other point I wish to make concerns Section 42 of the current Constitution. If you look at this Act, it is calling for a referendum to be held. It is my submission that until Section 47 of the current Constitution is amended--- I do not want to belabour this point because everybody keeps on talking about it. As long as there is no mention of referendum in Section 47, we are proceeding on an illegality. Moreover, Section 42 that establishes the Electoral Commission of Kenya (ECK) has not made provision for that Electoral Commission to conduct a referendum in the Republic of Kenya.

May I conclude by saying this: As a matter of fact, if you look at page 45 of the Report which the Minister has moved and seconded by the Vice-President, on the question of appointment of the Prime Minister, it says:

"Clauses 1 and 2 to provide new procedure for the appointment of the Prime Minister."

Mr. Speaker, Sir, first of all, that procedure has not been spelt out and yet we are being asked to adopt this Report. It will be the Attorney-General to spell it out. Therefore, he will be legislating because we will never debate it.

Secondly, Parliament is invited on page 45, to determine the way forward where the majority party is in opposition or where the first and second of choices are rejected, or if the President is an independent candidate. Again, we are being asked to "determine the way forward" and, at the same time, telling the Attorney-General to legislate.

Mr. Speaker, Sir, I beg and seek your ruling on this matter.

(Applause)

Mr. Speaker: Mr. Marende, you had risen. Are you happy with what he has said?

Mr. Marende: Mr. Speaker, Sir, I am completely and entirely in agreement with the sentiments as expressed by Mr. M. Kilonzo. Just to emphasize by invoking Standing Order No.40, it is legitimate that the Chair, at this point, makes a ruling or gives guidance on the constitutionality of this whole matter.

Mr. Speaker, Sir, it is also my argument that the Motion as moved and seconded, applying the test of Standing Order No.40, is unconstitutional. This is because it seeks to put in place a process that is unconstitutional and illegal. I also need to add that it seeks to put in place other actions that are unconstitutional, including proposing that the ECK shall preside over a referendum when, in fact, Section 41 of the Constitution which establishes the Commission, clearly sets out the functions and powers of the Commission.

Speaker: Order! You do not have to go over again what he has said. But I want to ask you the following question and then come back to Mr. M. Kilonzo: Mr. Marende, were you not a Member of the Parliamentary Select Committee on the Review of the Constitution of Kenya (PSC)

for the whole of last Session?

Mr. Marende: Mr. Speaker, Sir, if you allow me to answer, yes, indeed, I was a Member of the PSC in the last Parliamentary Session. The points I am making, I am on record, as having made them. There is a resolution of that Committee requiring Section 47 to be amended before we can go on with this exercise.

(Applause)

Mr. Speaker: Very good. I just wanted to be on record because, as you know, I was not a Member of that Committee.

Mr. M. Kilonzo, can I just get your position also correctly? In the last Session, you served as a Member of the PSC that, in fact, did develop in the end the passage of the so-called Consensus Act. Were you not?

Mr. M. Kilonzo: Thank you very much, Mr. Speaker, Sir. That is an extremely valid point. Yes, I served in that Committee. You have called for dignity in this House. I want to say this very firmly. From the very outset, hon. Marende and I reserved our positions regarding the constitutionality of the Act. The minutes will bear us out.

Mr. Speaker, Sir, let me also mention another thing. Even as I was serving in that Committee, when we drafted this Act, it was agreed before we went to Naivasha, that it would be brought to the Floor of this House, subject to amendment of Section 47. I dare say that my learned colleague, the hon. Minister for Justice and Constitutional Affairs, thereafter, after coming from Naivasha said, after consultation, they would not amend Section 47. Our position has been consistent.

Mr. Speaker: Very well! In other words, you are telling me there was a Memorandum of Understanding (MoU) broken.

Mr. M. Kilonzo: Yes, Mr. Speaker, Sir. There is no question about it. Promises were made and broken. I do not like, as you know, indulging in that sort of thing. I sincerely want sobriety because you know, at the bottom of my heart, I am raising points that are legitimate and ought to be addressed by a sober House.

(Applause)

Mr. Speaker: Very well. Let us hear Mr. Muite now.

Mr. Muite: Mr. Speaker, Sir, the bottom line of the summary of the argument by nominated Member of Parliament, Mr. M. Kilonzo, also enjoying the rank of Senior Counsel, is that he is asking the Chair to declare the Constitution of Kenya Review Commission (CKRC) (Amendment) Act 2004, unconstitutional.

That physically---

Hon. Members: No! No!

Mr. Speaker: Order! You must listen! If you do not want to listen, take leave!

Proceed!

Mr. Muite: Mr. Speaker, Sir, Mr. M. Kilonzo's argument is that this Motion is unconstitutional because the Act is unconstitutional. That is the bottom line. The Constitution of Kenya Review Commission (CKRC) (Amendment) Act 2004, was debated in this House and passed. It received Presidential consent and it is now an Act of Parliament. Where a Bill, on the face of it, appears to violate the Constitution, the Speaker has got the mandate under Standing Order No.40 to stop debate on that Bill. But once the Bill has gone through this House and all the three

stages and becomes an Act of Parliament, the issue of the constitutional validity of that Act of Parliament, is not a matter that can be argued in this House.

Mr. Speaker, Sir, if anyone wishes to argue that an Act which is already an Act of Parliament is unconstitutional, that is the function of the court. The time for raising the argument which Mr. M. Kilonzo is raising, is long gone. This is because the Motion is now brought here pursuant to the express provision of that Act which is now an Act of Parliament. In fact, the Motion is citing Section 27. It is within the authority of---

Mr. Speaker: Can we be precise again?

Mr. Muite: Mr. Speaker, Sir, I am saying that the Motion is within the Act that was enacted, and which is an Act of Parliament. So, the issue of the constitutional validity of the Act and the Motion, is no longer a province of this House or the Chair. That now belongs to the courts and the Constitutional Court.

As late as yesterday, very properly, the Constitutional Court said courts will and must respect the division of power between the Legislature and the courts. They said they will not injunct Parliament from debating or enacting any law. If Parliament proceeds to enact a law which is unconstitutional, then the court will declare it thereafter, unconstitutional. So, this debate cannot be stopped on the basis of the argument that Mr. M. Kilonzo is raising. On the question of Section 42 setting up the Electoral Commission of Kenya (ECK), there is a proviso that the ECK will carry out such other functions as may be given to it by law. This CKRC Act conferred that other function of conducting the referendum to the Electoral Commission of Kenya.

Mr. Speaker, Sir, finally, no people of any given country need the authority of the equivalent of Section 47 to re-write their constitution. That right is inherent in the people of any given country. The CKRC Act is purely regulatory to enable the Kenyan people re-write their Constitution. It is not the Act which is giving the right to re-write the Constitution or even take it to the referendum.

Thank you.

Mr. Speaker: Mr. Muturi, be very brief. You must understand I am not judge.

Mr. Muturi: Mr. Speaker, Sir, I will be very brief. Do not be intimidated by the volumes that I am carrying. I know you are incapable of being intimidated.

Mr. Speaker, Sir, I will go straight to the issue of the Motion before the House. Section 27 of the Act which Mr. M. Kilonzo and Mr. Muite have referred to requires that the following be debated: A draft Bill as adopted by the National Constitutional Conference on 15th of March, 2004. Secondly, the House should also debate - in terms of Section 27 - a report by the CKRC. The same section of the Act also requires that we debate the report of the Select Committee on the Review of the Constitution of Kenya. All the reports are here.

Mr. Speaker, Sir, nowhere under the same section of the law is it contemplated that we will discuss this draft constitution by the Select Committee. To the extent that I am aware that there have been proposed amendments to this document, which is a document not contemplated by the law; an Act that is actually strange to this House, it is a violation of the said Act which we are relying on.

Therefore, I want to urge you to rule that any debate under this Motion which touches on this document which has been circulated to all hon. Members, titled "Parliamentary Select Committee on the Review of the Draft Constitution of Kenya, 2005", must not proceed.

Mr. Speaker, Sir, in a case filed in the High Court, Miscellaneous Application No.309 of 2004, by three applicants against the Attorney-General and the Constitution of Kenya Review Commission, whose orders were given on 22nd March, 2004, the court provides an order of prohibition directing the CKRC from compiling, preparing and or presenting its report on the draft of a Bill to alter the Constitution of Kenya on Chapter 11 on the Legislature, Chapter 12 on the Executive, Chapter 14 on Devolution, Chapter 15 on Public Finance and Chapter 21 on Transitional

of the Zero Draft. That is the same report which has been filed here.

This matter was before the High Court as late as yesterday and the High Court fixed further hearing of that application on the 22nd of November. I am inviting you to find that there is so much violation of the law that purports to guide this review process that we must stop at this stage. We must go back to the drawing board and come up with a proper framework within which to enact a new Constitution.

Mr. Speaker: Mr. Muturi, were you a member of the PSC?

Mr. Muturi: Mr. Speaker, Sir, fortunately, for avoidance of doubt, I had resigned after 2003. Therefore, I was not party to that arrangement.

Mr. Speaker: Order! I have not seen your resignation.

Mr. Muturi: Mr. Speaker, Sir, the record speaks for itself. My place was taken over by Maj. Madoka.

CONSIDERED RULING

THE HOUSE SHOULD PROCEED TO DEBATE MOTION ON PSC REPORT ON HARMONISATION OF
CONTENTIOUS
ISSUES IN DRAFT BILL

Mr. Speaker: Very well! Hon. Members, I want your undivided attention on this matter. Hon. Members of this House ought not to be strangers to the whole debate and saga involving the road to the Constitution review process in this country. Every hon. Member here and all Kenyans ought to know the very rough terrain that this process has travelled since it was first agitated for at that time by the hon. Members sitting on my right hand side and opposed at that time by hon. Members sitting on my left hand side or the great majority of them. How times change!

Hon. Members must also recall that the Constitution of Kenya Review Act taking into account its lifespan from the time it was first enacted, to today, probably ranked as the most highly amended Act to the extent that you can almost not recognise its original form. This is an indication of the various shifting political positions, loyalties and conveniences. Most of you hon. Members in this House have been at some stage or another, part of that shifting of political loyalties, conveniences and exigencies.

This is not a simple issue. Hon. Members will recall that hon. Members of this House, in the Eighth Parliament, on the Floor of this House and in public fora, including some hon. Members who are now stating that Parliament must now take back the Constitution making process, stated in this House that Parliament has no power to make the Constitution. You convinced Kenyans that you had no role to play. You convinced Kenyans and they agreed with you. Why not? Kenyans agreed with you. So, what happened? It went to Bomas Delegates Conference. This House facilitated the working of the Bomas Conference through the Constitution of Kenya Review Commission (CKRC) Act. You made those provisions there. If I may jog your memory, amongst the provisions that you made is: Once the Bomas of Kenya has made a decision, a draft will be brought to Parliament. It will be taken to the Attorney-General who will make a Bill, which will be brought to Parliament. Parliament will have no authority to amend it. Those were the hon. Members speaking. You! Then, it was good for you because the political circumstances suited that fact. When the political circumstances changed, you changed and changed the law.

(Laughter)

I will tell you the following: In January, last year--- I want to respond to the hon. Member

on Section 47 of the Constitution. In January and February last year, this House will recall that, I called the notorious Speaker's *Kamukunji* on Section 47 of the Constitution. I told you then - that is in January 2004 - that, according to how the law was at that time, the Attorney-General bring a draft to the Parliament, which would be adopted without amendment. I told you: that you needed to change Section 47 of the Constitution to allow that to happen. You threatened to sack me!

(Laughter)

Those are facts, my friends! Again, the third fact is: The parties that took that position against the Chair for pointing out Section 47 are the same ones who now want Section 47 to be changed.

Hon. Members: Ruto! Ruto!

Mr. Speaker: Hon. Members, let us be consistent! What did you do, as a House, between January 2004 and now? In November, last year, the Parliamentary Select Committee on the Constitutional Review, where Mr. M. Kilonzo served--- He is the same hon. Member who is urging me to do various things. Mr. Muturi---

Mr. Muturi: No! No!

Mr. Speaker: Okay! Not you! Even your leaders served there. Mr. Marende and others served in that Committee. What did that Committee do through the so-called Consensus Act? In November, last year, if I may borrow a terminology from the Ministry of Roads and Public Works, you created a "by-pass" out of Parliament.

Under Section 27 of the Constitution, you decided that once the report has come to the House with the recommendations of the PSC as guided by what you called the Naivasha Accord, it goes directly to the Attorney-General and never returns to this House. That is the "by-pass". After that, it goes straight to a referendum.

You are the architects of that mischief, and not the Chair. You created that "by-pass" and because of that, the process is cascading at full-speed, leaving you in dust.

(Laughter)

I was neither a member of the PSC nor the voting House. At the time you brought this Bill to this House, members of that PSC - and I appeal for honesty - at least for intellectual honesty! When various members of that PSC - and you are the drafters of this Consensus Bill - brought it to this House, I remember very well, although I was not sitting in the Chair, that you debated and passed that amendment in a record time of one afternoon. It was passed unanimously. Nobody at that time raised any constitutional problems.

Hon. Members: Including, Mr. M. Kilonzo!

Mr. Speaker: Order, hon. Members! Those pointing fingers at Mr. M. Kilonzo are no better! The whole House is in the same boat. This is an act of this Parliament! It is not an individual issue. So, hon. Members, you are now complaining about a baby that you, yourselves, sired, brought forward, initiated and now you are telling me to kill it! Under the Constitution of Kenya, the power to interpret the

Constitution and any other law are vested in courts. I am glad that Mr. M. Kilonzo has admitted that much. It is not vested in the Speaker. If this House passes an Act of Parliament that may be unconstitutional, then the only open area is to proceed to the High Court and have it struck out. Until it is struck out, it remains the law. That is the law.

Hon. Members, do you want me to tell you honestly what I thought in those infamous *Kamukunjis*? If you did not create that by-pass, that Constitution would never have gone through

unless you attended to Section 47. I still believe in it. But you created a by-pass. If the thing has left Parliament, why are you asking me to bring it back, and you are the ones who took it away? Amend and repeal that Section, then I will answer you and take charge. Until you repeal it, I cannot do anything.

Finally, on the question of what to do when there is a bad law, unlike ordinary citizens, you have all the powers to amend any Act of Parliament, including the Constitution. You have all that power. In deed, you do not require the consent of the Speaker. In fact, you do not even consult him, unless you require a Motion, as a Private Member, to seek the authority of the House. I normally give that without any hinderance.

So, you can amend whatever law you think is wrong. You can also create a law that does not exist, if you think it is necessary to do so! You have that power! You do not share it with me because I do not vote. I do not even contribute to debates in the House! Let me now turn the tables on you! Why have you not addressed those illegalities, if they exist?

An hon. Member: Intellectual negligence!

Mr. Speaker: Order, hon. Members! This is a very serious matter! I invite this House to do the following: First, let us be honest to ourselves because, apparently, we are not. We have been shifting as political circumstances shift. I do not want, as Speaker, to do what I was not employed to do. I was not employed to be a judge of the High Court, but as Speaker.

According to me, the Motion before the House is very straightforward. It is derived from Section 27. The hon. Muturi was worried about the wording, and so was hon. M. Kilonzo. They were worried about the words "A Draft Bill." Their argument is that Bills must come to this House. But look at Section 27 which you, yourselves drafted and passed, it talks about a Draft Bill coming to this House for consideration and onward transmission to the Attorney-General. Look at Section 27! Is that not the position?

So, if you, as a House, have decided that, that is what you want to do, why do you ask the Speaker to overrule you at this very late stage? I decline the offer to overrule you.

(Applause)

I wish to say that taking into account all the various problems that have been precedent to and continuously accompanying this process, I have had my doubts and misgivings like everybody else on the various ways of this process. My views have not been sought. I have, in fact, volunteered to you in *Kamukunjis* which you, very unkindly, declined. I cannot force my views on you. I think the only view I have now, I may have to keep to myself.

But just for the record and benefit of the country, I believe this process should and can go through the "by-pass" you created. But I also truly believe that ultimately, you need to have a Constitutional amendment to allow the President to make the final proclamation. That is an opinion. That is free advice I am giving for whatever it is worth. But for the time-being, hon. M. Kilonzo and the other hon. Members, you created your own baby and you must suckle it.

The Motion proceeds!

(Applause)

The Minister for Environment and Natural Resources (Mr. Musyoka): Mr. Speaker, Sir, thank you for allowing me at a moment like this, and in a very sober atmosphere, to speak on your ruling, without challenging it in any way.

A time comes when a people must stand together. Throughout this process, I have advocated

for dialogue. I congratulate the hon. Nyachae for the zeal with which he has undertaken this responsibility. But for the sake of this country, and for the sake of the President who has sworn to uphold the current Constitution, I want to plead with all Members of this august House to take seriously the facts as they truly and barely are before us.

Mr. Speaker, Sir, even if we have to amend this particular Act, let us do so, but we must proceed in a constitutional manner.

Mr. Speaker, Sir, all of us have sworn to uphold the current Constitution. Now, the Chair is inviting us, through his ruling, to do the unconstitutional thing. The Chair is urging us to proceed in violation of our own oath of office. Ultimately, as the Chair has pointed out, if this process goes through the referendum, which is a flawed referendum in my view, what is there to prevent a group of Kenyans from agitating? The moment the President will sign into law a constitution which will come out of a flawed referendum, what is there to prevent Kenyans from saying that the President has committed an act of treason?

(Applause)

That is why there is a lot of wisdom in what the Chair is saying, that we have to be sober and talk to each other. I see all of us resemble each other and we do not need this hostility. I was privileged, as the House knows, to try and do something in our region in terms of peace making and peace building.

At this particular time, Kenyans are being harmed in our streets and yet, we cannot make a constitution in an atmosphere of hostility.

Mr. Speaker, Sir, I want to urge the Leader of Government Business and the Mover of this Motion, for whom I have great respect, to allow all of us time so that we can go back and do the constitutional thing. I cannot see how I will participate in an unconstitutional process like this one.

(Applause)

Mr. Speaker: Just a moment. For the record, I have a lot of respect for my colleague and fellow scout, the Minister for Environment and Natural Resources. What constitutional provision have I urged you to break? I said you, yourselves, created the "by-pass".

Can you address yourself to the "by-pass"?

The Minister for Environment and Natural Resources (Mr. Musyoka): Yes, indeed, Mr. Speaker, Sir. This particular "by-pass" and I wish it was the Likoni one which---

An hon. Member: It is a fly-over.

The Minister for Environment and Natural Resources (Mr. Musyoka): Mr. Speaker, Sir, Section 3 of the current Constitution says that the Constitution is the supreme law of the country, and that anything else that is inconsistent with the provisions of the Constitution will be null and void, to the extent of that inconsistency. Therefore, we are talking about a Draft Bill which is clearly unconstitutional.

Mr. Speaker: Very well.

Mr. M. Kilonzo: Mr Speaker, Sir, with utmost respect, I cannot challenge your ruling. But I dare say this; as you have correctly used the phrase "by-pass", although it is used by engineers on roads, it is also used by doctors in heart patients.

Normally, if a by-pass is done on a heart patient in an irregular manner, the patient dies.

(Applause)

Mr. Speaker, Sir, I plead with the Chair to apply that phrase away from roads and instead, to a heart patient. The Chair made a brilliant ruling. But you did not remember the court cases I produced. Could you make a finding on them?

Mr. Speaker: Sure! I am always available to meet the various demands you want. I have not seen the court cases, but I will try. I agree with you on the issue of the by-pass that if you have to by-pass to the correct place, you have to be very careful. But you know the architect of the by-pass is not the Speaker, it is you. I am watching from a distance. So, you, Members of Parliament, should deal with the by-pass in the best possible manner.

As for the court cases, I think there have been many of them. I do not know whether the courts can stop Parliament from doing its business. I think there are not less than five cases filed against me personally, as the Speaker. In all the cases, the court has always ruled that it will not stop the business of the House. In the like manner, this Parliament will not interfere with the business of the courts.

I am reminded of the situation that arose in 1966, where there was one of the major constitutional changes in this country. The Speaker then, Mr. Slade, said: "I will be bound by a conclusive decision of the court, but until that decision is made, Parliament will continue". I am unaware of a judgement that has been made that I have disobeyed.

I am, in fact, aware of a judgement that has been of a lot of controversy, which I have not heard any of you refer to, which is the Ringera Judgement. None of you has referred to it. It is a judgement of the court and it is binding on everybody, including Parliament. So, I will be bound by any decision made by the court. For the unconstitutional Acts of Parliament, which my colleague and fellow scout was referring to, that is the business of the court. I fully agree with the content of Section 3 of the Constitution, but it is not my duty to interpret the Constitution. I have no such powers. The power is only vested in the High Court of Kenya, sitting as a constitutional court. I will respect whatever decision is made. So, that is my final ruling on this matter. Shall we now proceed on the substantive matter?

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

Mr. Speaker: I hope you are not taking us back.

Mr. Samoei: Mr. Speaker, Sir, I am not taking you back. Without referring to the issues that you have already addressed yourself to, I want to raise two issues on which I want to seek your clarification and ruling. First, we proceed with the business of this House on the basis two documents; the Constitution and the Standing Orders as established under the Constitution. You are the custodian of the debate and the conduct of the business of this House.

To my understanding, we must comply with both the Constitution and the Standing Orders. I am not a lawyer and, therefore, I will not be, maybe, as clear as I should be. However, we are proceeding to debate, on the Floor of this House, business as recommended by hon. Nyachae, where we are going to debate a Draft Bill. On the basis of what section of the Constitution or Standing Order is Parliament permitted to conduct business and debate Draft Bills as is being required of us by hon. Nyachae?

Mr. Speaker: Order!

Mr. Samoei: Mr. Speaker, Sir, let me make my case. I know there is this law. Is this Parliament subject to direction by the law which is inconsistent with the Constitution?

Mr. Speaker: Order, Mr. Samoei! Take your seat! As a matter of fact, you are repeating what I have already ruled on. As **[Mr. Speaker]** a matter of fact, Section 27 of the Consensus Act was drafted under your Chairmanship and you

piloted it through this House. You cannot be heard to say anything further.

Can we now continue?

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

Mr. Speaker: I have ruled that we are in order! Is any hon. Member interested in contributing?

Mr. Samoei: On a point of order, Mr. Speaker, Sir. You have touched on my integrity and you have the onus to give me a chance to respond. Under my Chairmanship, there was a report that my Committee made, which none other than yourself, frustrated. I want to be on record---

Mr. Speaker: Order! If the intention of the hon. Member is to go personal on the Speaker and, therefore, make the Speaker to be drawn into wars, you are actually wasting time because I am not going to be annoyed. I am not going to be annoyed! Sit down, please.

The Attorney-General (Mr. Wako): On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order! After I have made my ruling, I do not even seek the services of the Attorney-General. If he wanted to help me, he should have stood up earlier. I want to plead with hon. Samoei not to be personal. The law is that I never allocate business. It is allocated by the House Business Committee. Hon. Samoei, I think you need to apologise to me.

Mr. Samoei: Mr. Speaker, Sir, I apologise. However, in my report, we had recommended to this House that Section 47 of our Constitution be amended, so that the Consensus Act would be entrenched in the Constitution. That is the subject of debate in the House as we are talking.

Therefore, Mr. Speaker, Sir, I want to set the record straight that under my Chairmanship, we recommended that Section 47 of the Constitution be amended, so that whatever else we want to do, as a House, is constitutional. Lastly, let us not bury our heads in the sand. We are discussing a constitutional Bill---

Mr. Speaker: Order! These are not personal things, indeed. In fact, on the records of this House, you tabled the report of the Parliamentary Select Committee (PSC) which you chaired. It is a fact the report has not been discussed. I can also confirm that among the things you recommended was the amendment of Section 47. Those are facts.

I want this House to understand the following: I go out of my way to attempt to state facts as they are and I never try to put them under the blanket. If an hon. Member has a fact to his credit, I will give that credit. So, that is true.

Is any hon. Member interested in contributing?

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

Mr. Billow: On a point of order, Mr. Speaker, Sir. Since this is a legal matter, it does not make sense for me to apologise. However, with regard to the ruling that you made where you mentioned that if a judgement has been made by the court, then, as with the case of Justice Ringera, it would be binding on the House.

Mr. Speaker, Sir, I want to table here a ruling by Justice Ransley of 22nd March, 2004. He, among other things, gave an order of prohibition directed to the Constitution of Kenya Review Commission (CKRC) and the Attorney-General, prohibiting the Commission from compiling, preparing and presenting its report of the Draft Bill to alter the Constitution, and prohibiting the Attorney-General from receiving or accepting that Bill to be presented to Parliament. Justice Philip Ransley gave this order on 22nd March, 2004.

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

Mr. Speaker: There is a difference between the Attorney-General and Parliament!

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

Mr. Billow there is no, and will not be, a stand-off here! There must be one person who makes the decision and I have made it. Is there any hon. Member interested in general debate?

(Loud consultations)

Order! Order, hon. Members! The following shall not occur: That a ruling made by the Chair shall be the subject of discussion, instead of the debate itself. That will not happen! So, is there any hon. Member who is interested in contributing to the debate?

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

There is no point of order!

Proceed, Mr. Minister!

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Thank you, Mr. Speaker, Sir. Time has come for us to---

(Loud consultations)

Mr. Speaker: Order, hon. Members! I am aware that some hon. Members do not want to listen today. Please leave! If you want to be forced out, do not make me do it; I do not want that. Listen to what the Minister is saying, oppose it and give your ideas. You can do whatever you want.

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

Mr. Speaker: No!

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Speaker, Sir, I think time has come for us to decide whether we want to have a new Constitution for this country or, whether we want to make noise. During this time---

Mr. Speaker: Order, hon. Members! order, Messrs. Billow, Moi and Keter. You must now put yourselves in order. I am being firm. Be orderly, or I will order you out!

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

Proceed, Mr. Minister!

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Speaker, Sir, the Government unreservedly supports this Motion. The Government will provide all the necessary resources to facilitate the completion of this Constitution by the end of this year. It does not matter how loud hon. Members shout or how many of them stand up. Kenyans will have a new Constitution.

*(Loud consultations as
Mr. Keter and Moi
stood up in their places)*

Mr. Speaker: Order, hon. Members! My ruling was that we can only have one hon. Member on the Floor at a time. Messrs. Moi and Keter, this is the second caution from the Chair, which is the final one.

Proceed, Mr. Minister!

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

Mr. Keter, I have known what you have been looking for. Further urging on your part will be obliged by the Chair. That is the final chance!

(Laughter)

Proceed, Mr. Minister!

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Thank you, Mr. Speaker, Sir. Kenyans have been debating this Constitution for the last 15 years. It is time we recognised that Kenyans are getting impatient waiting for the new Constitution.

*(Mr. Billow stoop up
in his place)*

Mr. Speaker: Mr. Billow, why do you want to disrupt the business of the House?

Mr. Billow: On a point of order, Mr. Speaker, Sir. With all due respect to you and the Chair, could you please, allow us to raise the issues we have? I had not finished raising my point of order---

Mr. Speaker: Order, Mr. Billow! As much as you have a right to raise issues, so do the ones who are opposed to you! You must listen. If you cannot listen, you will go out! Mark you, we cannot have hon. Members blocking debate.

Proceed, Mr. Minister!

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Speaker, Sir, I would like to appeal to hon. Members of this august House to support this matter, which is before us. The people of Kenya are tired of waiting for a new Constitution. We should not allow our side-shows and egos to frustrate the people of Kenya.

(Applause)

Mr. Speaker: Order, hon. Members!

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

Mr. Speaker: I hope you are not taking us back to what I have already ruled on!

Mr. Kajwang: Mr. Speaker, Sir, today, I have been unusually quiet because this is a very heavy matter! I have looked at the Motion and especially part two of it which says that, the Attorney-General publishes a Bill entitled the "Constitution of Kenya Bill, 2005." I hope that is the

Bill which will supposedly go to a referendum. But I have looked at the Consensus Act itself, and I have not seen anywhere where it says that the Attorney-General will publish the Constitution of Kenya Bill, 2005. Where does the Attorney-General get the powers to publish what the Act does not specifically give?

Mr. Speaker: Order, hon. Members! You know that there are certain issues which you can raise on a point of order, but some that you raise during a debate and vote against them if you think they are wrong.

Proceed, Mr. Minister!

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Speaker, Sir, I would like to commend the Parliamentary Select Committee on the Review of the Constitution of Kenya (PSC) and the Constitutional Consensus Group (CCG) for the excellent work they have done in putting this Motion together and the recommendations which will go to the Attorney-General for publication of the final Constitutional Bill. There is no doubt that these two groups have worked under extremely difficult conditions. We would like to commend the Chair of the PSC, hon. *Mzee* Nyachae, for the determination with which he has led this process.

(Applause)

Wherever Mr. Nyachae goes---

*(Applause from the
Opposition side)*

We thank the hon. Members on the other side for continuously applauding me.

Mr. Speaker: Order, hon. Members! Order! We have heard that kind of applauding before. You can ask them. They did as you are doing and the world goes on!

*(Mr. Moi walked to
the Table)*

Order! Mr. Moi, you are becoming unruly. You must now leave!

*(Mr. Moi withdrew from
the Chamber)*

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

Order! order! You either sit down or follow Mr. Moi. You can raise points of order but you cannot disrupt the business of the House.

Proceed, Mr. Minister!

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Speaker, Sir, under the Consensus Act, the role of Parliament was to look---

Mr. Keter: On a point of order, Mr. Speaker, Sir. I wish to seek your guidance. You asked us what we were doing from last year until now. In the report that was tabled by Mr. Samoei, the recommendation was to amend Section 47 of the Constitution, which you did not allow us to do.

Mr. Speaker: Mr. Keter, you are assaulting the Chair. Go out!

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

He must go out!

(Mr. Keter withdrew from the Chamber)

Proceed, Mr. Minister!

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Speaker, Sir, with regard to Section 47, the law is very clear. The judgement of the Constitutional Court in the Njoya case says that it is not necessary for us to amend Section 47 or any other section of the current Constitution for the people of Kenya to replace it with a new one. That judgement of the Constitutional Court is binding on this Parliament.

Mr. Wario: Jambo la nidhamu, Bw. Spika. Ninasimama kuomba mwongozo wako. Tunazungumza juu ya mambo ya Katiba, na kila mmoja wetu akisimama, unamfukuza kutoka Bunge. Je, tunazungumzia juu ya kesi ambayo iko kortini? Tunazungumzia mambo mengi ya kisheria. Kwa nini tusipewe fursa kuzungumzia mambo haya?

Mr. Speaker: Order, Mr. Wario! You are unwilling to speak. We have just opened debate. In fact, this opportunity should have come to the Official Opposition, but nobody showed interest. However, that does not allow you to assault the Chair. It does not also allow you to block the business of the House. You will have the opportunity to contribute. You never showed interest!

Proceed, Mr. Minister!

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Speaker, Sir, the recommendations have been made by the Parliamentary Select Committee (PSC) on the Constitution Review after broad consultations. They represent the national consensus on the contentious issues. We appeal to hon. Members to adopt these recommendations.

Mr. Twaha: On a point of order, Mr. Speaker, Sir. Is it in order for the Minister to mislead the House that Kenyans are waiting for the Kilifi Draft to be presented to this House, when they are, in fact, waiting for the Bomas Draft?

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Speaker, Sir, anybody who was listening to me will bear me witness that I have not uttered the word "Kilifi". The hon. Member must be day-dreaming!

Mr. Speaker: Order, Mr. Minister!

Mr. Kipchumba: On a point of order, Mr. Speaker, Sir. While you have made a ruling on all the arguments advanced by the various hon. Members, you have not made a ruling as requested by Mr. Muturi. As detailed in Section 27, there is no provision for us to discuss the Draft Bill on the Constitution of Kenya as tabled by Mr. Nyachae.

Mr. Speaker: You may sit down! I do not think you have followed whatever has been going on here.

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Speaker, Sir, the draft containing the recommendations to the PSC is the best in this region. We are urging hon. Members to support these drafts so that the Attorney-General can use them to draft the Bill for a new Constitution.

(Loud consultations)

Kenyans are going to know those who support the new Constitution and those who have consistently blocked the new one.

With those few remarks, I beg to support.

Mr. Speaker: Is anybody from this side of the House interested to contribute?

Hon. Members: No! What for?

Mr. Speaker: You are not interested? That is all right! Prof. Kibwana, are you interested in contributing?

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

Order, Mr. Sirma! Very clearly, you have said that you are not interested in the debate, and proceedings of the House are not a point of order. If you are not interested, please, just sit!

Proceed, Prof. Kibwana!

Hon. Members: *Ametusaliti!*

(Loud consultations)

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs (Prof. Kibwana): Mr. Speaker, Sir, thank you very much for this opportunity to contribute on this very important Bill. I have sat here patiently and I have listened to all the comments that have issued forth from my hon. colleagues.

As some hon. Members of the Official Opposition sang a song, I personally feel doubly lynched. In 1997, most hon. Members who are sitting on the opposite side lynched us when we were looking for a constitution. Up to now, some of the hon. Members who are trying to block this debate are also lynching some of us who have been sitting here patiently.

Mr. Speaker, Sir, it is true that this process has had many problems. From 1997, when we had first the Constitution of Kenya Review Commission Act, those problems started. I cannot say today that this process is free from problems. However, I want to state that it is very clear that from 1997, my colleagues who are in the Opposition drove this process of constitution-making, and they did not at that stage say that Section 47 had to be amended. That is a fact!

Mr. Speaker, Sir, if you look at the Bomas Draft, it does not have provision for replacing it with a new Constitution. This is so because constitutions do not provide for alienating them. They only provide for amendment. That is why, when you look at Sections 302, 303 and 304 of the Bomas Draft, you will not see any procedure apart from an amendment. If you look at Section 28(3) of the Bomas Draft, you will also find that it acknowledges there can be rights which are not in the Constitution itself. That is why the right for a people to make their own constitution is an inherent right. It is a right which is not normally recognised explicitly within the Constitution.

I really wish that all of us, if we are faithful to Wanjiku and if we care about Kenyans, talk about the content that is before us. Before us, there is a content which says that the women of Kenya are going to be participants in Kenya, where about a third of them are going to be in our representative bodies. That is a fact!

Mr. Speaker, Sir, if we are really faithful to Wanjiku and to Kenyans, let us consider the content. In that content, we have more human rights than any other constitution in Africa apart, perhaps, from the South African Constitution. I wish that, that is what we are talking about. There is recognition of the youth and older members of our society. There is also recognition of marginalised people. If we are representatives of the people, and if we are faithful to Wanjiku, I wish that, that is what we are debating.

It is a fact, in terms of devolution that, at least, there is a district Government that will be

elected. The chair will be elected by the people in the district. That is a positive aspect. There will be legislation to say that you can now have a village or other types of government.

Mr. Speaker, Sir, it is a fact, and this is something that I will critique, that the powers of the Prime Minister are not the powers that were anticipated so that there could be a Prime Minister who is different from a Minister. That is an aspect that we can look at.

Mr. Speaker, Sir, truly, that is an aspect that we need to look at. We should go through this draft clause by clause. When I got this draft, I had the opportunity to look at it as a constitutional lawyer. I am persuaded that this could be a very important constitution for our people. Of course, there are a few problems. For example, what about the views of the secular, religious and civil groups? It is true that we have not incorporated their views in the final stages. But as we discuss this draft, I do not think the door has been closed. The Attorney-General and the Select Committee on the Review of the Constitution of Kenya (SCRCK) can still socialise those important segments, so that there is more consensus.

Mr. Speaker, Sir, let us not ask: "What does this Constitution have in terms of guaranteeing ourselves power? What are the provisions within it which support our people?" That is my appeal to all hon. Members. Even when many people say that Kadhi Courts should not be in the Constitution, I think that has been taken on board because we want to be inclusive. We have also taken on board commissions. For example, commissions on corruption, teachers and so on, are within the Constitution. So, if we really want to interrogate the Constitution and the provisions which are there for our people, and then bring on board the secular and religious societies, we will have done our country proud. Sitting here as somebody who got involved in 1997 in terms of this Constitution, I really felt very sad because we are behaving as if we do not want to confront the content of the draft Constitution in terms of what there is for "Wanjiku." Instead we want to do shadow boxing and stop something that is good for our people.

Mr. Speaker, Sir, as I conclude, in all humility, let us look at this draft and its content. Let us fault it. As I said, I have faulted the provisions of the Prime Minister. I think we could have done better in those provisions. But let us not ask ourselves: "What is in it for our people?" Let us, please, conclude this exercise because we can go on forever and not conclude it.

Let us bring on board the other sectors. We should do more consultations with them, so that as we conclude this exercise, they are part and parcel of it.

Mr. Speaker, Sir, as a member of the civil society and now a Parliamentarian, I again ask that our people out there, who even do not know the content of this draft Constitution, be treated humanely. We should not arrest them and take them to court because they just want to be part of this constitution-making process.

I support this Motion and I urge all of us to stop---

Mr. Billow: On a point of order, Mr. Speaker, Sir. I am sure the Chair has heard the Assistant Minister say that our people should not be hurt for expressing their views. Is he in order to shed crocodile tears when he is an Assistant Minister of a Government that is brutally killing and attacking Kenyans simply because they are opposed to this fraudulent activity of writing another Constitution? This is fraudulent and he cannot purport to shed tears!

Mr. Speaker: Order, Mr. Billow! What has got into you today? Mr. Billow, you are warned by the Chair to be civil to your colleagues. You are increasingly becoming very harsh on your colleagues!

Mr. Wanjala: He is a warlord!

Mr. Speaker: Order! Hon. Members, who is calling Mr. Billow a warlord? Will you apologise to the hon. Member? There is no warlord in this House! Was it you, Mr. Wanjala, or is this a false accusation?

Hon. Members: It was Mr. Wanjala!

Mr. Speaker: Mr. Wanjala, will you apologise?

Mr. Wanjala: Mr. Speaker, Sir, I apologise and withdraw that remark.

Mr. Speaker: All right! Proceed, Prof. Kibwana!

The Minister of State, Office of the President (Mr. Michuki): On a point of order, Mr. Speaker, Sir. Is it in order for us to allow an hon. Member of this House to say untruths? This afternoon we were told that a man had been shot dead when, in fact, there is nothing of that sort. I would like to assure this House that there is nobody who has been killed by the police in this country as a result of what is going on in the streets. The hon. Member should withdraw and apologise for that!

Mr. Speaker: Prof. Kibwana, just proceed!

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs (Prof. Kibwana): Mr. Speaker, Sir, I wish Mr. Billow could be kind to the people of Mandera Central and not also cry crocodile tears for them! I pray to God to help Mr. Billow to be kind to his people!

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

Mr. Speaker: What is happening? Mr. Billow, what is it?

Mr. Billow: Mr. Speaker, Sir, is Prof. Kibwana in order to accuse me of being unkind to my constituents? In what way am I unkind to them? I am fighting for the rights of my constituents who voted for the Bomas draft---

Mr. Speaker: Order, Mr. Billow! For the final time, could I ask hon. Members to cool down and relax? Please, do not accuse one another again.

Prof. Kibwana, you have your constituents in Makueni Constituency and Mr. Billow has his in Mandera Central. They are the ones who brought him here. You cannot be a judge of his constituents. So, please, let us respect one another!

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

Mr. Speaker: Mr. Mwandawiro, we must continue with the debate.

Prof. Kibwana, proceed!

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs (Prof. Kibwana): Mr. Speaker, Sir, I urge all of us to debate the content of this draft Constitution. I urge all of us to be faithful to "Wanjiku" and not necessarily being faithful to ourselves.

I urge all of us, when we look closely at the provisions of this draft Constitution, to consider seriously the part on the Prime Minister in terms of the Executive, so that it can be reviewed.

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

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

Mr. Speaker: What is it?

Mr. Mwandawiro: Mr. Speaker, Sir, is it really in order for the hon. Members on the Government side to defend the police? We have been told that the police have not killed anybody. As I speak, the police are stopping members of the public from even coming to listen to this debate! These hon. Members are shedding crocodile tears! They should do something about the violence in the streets and free Kenyans from their dictatorship!

Mr. Speaker: Proceed, Mr. M. Kilonzo!

Mr. M. Kilonzo: Mr. Speaker, Sir, I think it is about time you heard a voice opposing this Motion. I stand to oppose. My reasons are rights conferred on me---

Not only myself---

Mr. Kajwang: On a point of order, Mr. Speaker, Sir. When we started this debate, I mentioned that we are operating in darkness because we have not allowed the public to come and

watch us debate, and listen to us.

An hon. Member: They are there!

Mr. Kajwang: Those are policemen with guns. Is it really in order that when we are talking about a new constitutional dispensation, expansion of human rights and freedom for Kenya, inside this House, we are barricaded by guns and dogs?

Mr. Speaker: Order! Can I have your attention? It is right and proper that when we discuss this thing, our people also follow it. I repeat that I have not ordered members of the public not to be in the galleries.

An hon. Member: Where are they?

Mr. Speaker: Order! How do I know where they are?

An hon. Member: Michuki knows where they are!

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

Mr. Speaker: Overruled! Proceed, Mr. M. Kilonzo!

Mr. M. Kilonzo: Mr. Speaker, Sir, I would like to urge this House to reject this Motion for the following reasons. First of all, this Motion does not represent the views of Kenyans as expressed in the Constitution of Kenya Review Commission Act.

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

Mr. Speaker: Can you give the hon. Member on the Floor the opportunity to speak? What is it?

Mr. Osundwa: On a point of order, Mr. Speaker, Sir. The Minister in charge of internal security is here. It is common knowledge that *wananchi* have been locked outside! They are very far from this Parliament. We want an explanation from him because you said that you did not order *wananchi* to be barred from coming here. Let him tell us why policemen are barring *wananchi* from coming in!

Mr. Speaker: What is your response, Mr. Minister?

The Minister of State, Office of the President (Mr. Michuki): Mr. Speaker, Sir, you ordered yesterday that I should issue a Ministerial Statement tomorrow.

Mr. Speaker: No! No! Not on that! I am talking about ordinary Kenyans who would like to visit the galleries lawfully and peacefully. Are they under your command not to come?

The Minister of State, Office of the President (Mr. Michuki): Mr. Speaker, Sir, we have kept nobody from coming to the galleries. What we have done is to stop processions and demonstrations which are being conducted in total disregard of the law.

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

Mr. Speaker: Order, Mr. Sirma! It does not help! What I would say here is that any lawful Kenyan wishing to lawfully listen to the debate of this House and makes the application, is at liberty to do so and that will happen. We will not stop debate because of it.

Mr. Sirma, you must sit now!

Proceed, Mr. M. Kilonzo.

Mr. M. Kilonzo: Mr. Speaker, Sir, with your kind permission, I would like to open my arguments by referring the House to page 197 of the document that was been tabled on 19th July, 2005, by the Minister. It is called the Final Report of the Constitution of Kenya Review Commission. At page 197, the people of the Republic of Kenya said the following in paragraph 13.4.4:-

"(i) With respect to the system of Government, we must ensure that the organs are totally independent of each other.

(ii) The Constitution should adopt a Parliamentary system of Government with a Prime Minister as Head of Government and, largely, a ceremonial President to be

the Head of State."

That was suggested by the majority of the people.

I beg to pose this question: Who gave the National Assembly of Kenya the right to depart from that wish of the people of the Republic of Kenya? If you look at the document that has been presented and the document that we are being urged to adopt, that has totally been neglected, removed and confined to the dustbin of history, and yet that is the history of our people.

I dare say that, for that reason alone, this document and this Motion must be rejected.

Mr. Speaker, Sir, let me refer you to page 201 - the Cabinet. At page 201, this is what the people said:-

"The Prime Minister should be the Chief Executive - Head of Government and leader of the Cabinet."

Where did we get the authority to change that, such that the Prime Minister is appointed by the President in the manner proposed in this so-called draft? These are extremely important issues and must be addressed.

At page 201, the people also said that the Prime Minister should be responsible to Parliament. He or she should be the leader of the largest political party in Parliament or a coalition of parties represented in Parliament. Is it fair for the Minister and Chairman of the Parliamentary Select Committee (PSC) to come to this House and pretend that he collected alternative views from the people of Kenya? Who gave him those views? Where did the views that appear in the draft that is being so guarded, including by you Mr. Speaker, such that you have thrown out Members of Parliament from the Floor of this House to stop them from contributing---

Where did that power come from?

Mr. Kembi-Gitura: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order! What is it, Mr. Kembi-Gitura?

Mr. Kembi-Gitura: Mr. Speaker, Sir, you have made an important ruling. You have asked us to debate this very important Motion soberly. You have also referred us to the PSC. I want us to be honest and truthful, both to ourselves and the people of Kenya. Is it in order for the hon. Member on the Floor to mislead the House by quoting the report when, at the Naivasha Retreat where he sat, they changed the report from Bomas? It is the basis of what we are now debating in this House!

Mr. Speaker: Order! I prefer that opposing views must also be heard. Even if you do not want to hear them, let him say his piece, then, you can rebut it!

The Assistant Minister for Finance (Mr. Katuku): Mr. M. Kilonzo spoke about you!

Mr. Speaker: About who?

The Assistant Minister for Finance (Mr. Katuku): On a point of order, Mr. Speaker, Sir. Mr. M. Kilonzo, while contributing, alluded to the fact that Mr. Speaker was part of the conspiracy because he sent out Members of Parliament to stop them from contributing. Is that in order?

Mr. M. Kilonzo: Mr. Speaker, Sir, I never said anything of the sort. I simply said that the honourable Speaker - in his own right, of course - sent out hon. Members from this side of the House, and yet they wanted to express their views. Now, I stand before you expressing views of opposing this Motion, and all of a sudden, hon. Members from the other side want to shut me down. I am asking a simple question. At what point---

Mr. Speaker: Order! Let us get this right! Did you cast aspersion against the Chair?

Mr. M. Kilonzo: No! No, Sir! I am incapable of that! I did not.

Mr. Speaker: Order, hon. Members! I have a lot of respect for the hon. Member and I will rely on his word.

Proceed!

Mr. M. Kilonzo: Thank you, Mr. Speaker, Sir. I am much obliged. I have touched on the

Cabinet. In fact, if you look at the final draft, together with the document that they have presented, they have gone further and put in things that we never contemplated, like appointing Ministers. We wanted a limit. The people of this country wanted a lean government.

How long is it going to take us to tell the Government that the country wants a lean Government? We wanted 20 ministers and recommended so. But all of a sudden, that provision has been removed. Who gave Parliamentarians that power to overrule the Republic of Kenya?

Mr. Speaker, Sir, let us deal with our lovely women. We went to Bomas and in recognition of the role played by the women of this country--- In the rural areas, they are the ones who travel long distances to fetch water, cook food, wash children and send them to school.

[Mr. Speaker left the Chair]

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

Ultimately, they are there in *barazas* of politicians and chiefs. It is these women who ultimately decide the destiny of this country. As a matter of fact, they are the ones who bear us. Without our women, we would not be here. What did we do at Bomas of Kenya? On the recommendations of the Republic of Kenya and the people, they said that one-third of Members of Parliament should be women. Now, tell me: Where did we get the power to change that provision? It has been adulterated and changed beyond recognition. This is beyond mutilation!

The Minister for Justice and Constitutional Affairs (Mr. Murungi): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for hon. M. Kilonzo to continue misleading the Members of this House and the public that we have removed the one-third rule in this draft? Could he read the clause that he is talking about?

Mr. M. Kilonzo: Mr. Temporary Deputy Speaker, Sir, it is not possible for me to become the teacher at this very late stage of the hon. Minister. He can read the document for himself!

The Temporary Deputy Speaker (Mr. Ethuro): Order! Mr. M. Kilonzo! You have raised an issue and you have been challenged, and it is only fair that you respond to it. Nobody is asking you to be a teacher.

Mr. M. Kilonzo: Mr. Temporary Deputy Speaker, Sir, I have very limited time and I am not going to start ploughing through this document for the benefit of the hon. Minister. Please, protect me. I am the only one who has stood on this side to oppose this Motion and I am being interrupted such that I cannot continue.

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. M. Kilonzo! I wish I could protect, but you have to protect yourself. The Chair has challenged you to quote that clause. If you cannot quote that clause, just apologise and proceed.

*[The Temporary Deputy Speaker
(Mr. Ethuro) left the Chair]*

[Mr. Speaker took the Chair]

Mr. M. Kilonzo: Mr. Speaker, Sir, that is not a point I am willing to apologise on. Those who want me to apologise should talk to our women and they will be told that the wishes of Kenyan people regarding the women have been ignored.

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs

(Prof. Kibwana): On a point of order, Mr. Speaker, Sir. Is it in order for hon. M. Kilonzo, who was my senior in secondary school and university, to mislead this House by saying that the one-third clause for women representation has been removed, whereas in the appendix, Article 122 says clearly that: "Parliament shall consist of such number of Members as may be required to ensure that not more than two-thirds of all Members of Parliament are of the same gender"?

Mr. Speaker: Order, hon. Members! Let the debate flow. You will have your time to respond.

Proceed!

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

Mr. Speaker: Order, Mr. M. Kariuki! If it is that you want to stop the Opposition from contributing, I will stop that. You must listen to them.

Proceed!

The Assistant Minister, Office of the President (Mr. M. Kariuki): On a point of order, Mr. Speaker, Sir. I am trying to defend the dignity of the Chair. Before hon. Ethuro left the Chair, he asked hon. M. Kilonzo to apologise and he was defiant. He said that he will not apologise. Now, is that the way we are going to conduct business here?

Mr. Speaker: What was it?

Mr. Ethuro: On a point of order, Mr. Speaker, Sir. I was on the Chair and hon. M. Kilonzo raised the issue that the one-third provision had been deleted and he was challenged by hon. Murungi that he was misleading the House since that provision was still there. The Chair directed him to either specify the clause that demonstrates that the one-third provision was deleted or withdraw. Hon. M. Kilonzo said that he was not going to respond even after being directed to do so by the Chair. The integrity of the Chair must be upheld.

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

Mr. Speaker: Order, all of you! Mr. M. Kilonzo, if that is the position, you have to obey the Chair.

Mr. M. Kilonzo: Mr. Speaker, Sir, I have no doubt in my mind that these are efforts to merely take away my time. I am pointing to the report of hon. Nyachae as presented, and you will see that in it, on the issue of women and disadvantaged groups, they have recommended the idea of what they are calling affirmative action. If you look at the report on the appointment of the Prime Minister, there is the representatives of the people.

Mr. Speaker: Mr. M. Kilonzo, can I help you?

Mr. M. Kilonzo: Yes, Mr. Speaker, Sir.

Mr. Speaker: Look at page 51 of the report.

Mr. M. Kilonzo: Mr. Speaker, Sir, it does not have 51 pages but 46 pages and this is the document that I was given in Room No.8. Why should I be derailed?

Mr. Speaker: Order, hon. Members! I want to help the hon. Member so that we can participate in this debate. Now, the one I am looking at is the Draft Constitution as tabled here.

Mr. M. Kilonzo: Mr. Speaker, Sir, but it is an illegal document!

Mr. Speaker: It was laid here yesterday!

Mr. M. Kilonzo: No, Mr. Speaker, Sir! Let me repeat that, under the Act, according to hon. Muturi, and I agree with him, the only document we can discuss is the Bomas Draft Constitution. This other document has no legal validity!

(Applause)

Hon. Members: Yes!

Mr. Speaker: Order, hon. Members! I think it pays for us to be systematic in what we are

doing. Yesterday, you saw various documents tabled by hon. Nyachae and if you look at the Constitution of Kenya Review Commission (CKRC) Act, it orders several documents to be tabled before the House; in fact, three of them. First, it is the Draft Constitution from Bomas.

Second, it is the Report of the Commission on the Bomas II and Contentious Issues. I think those were the documents which were tabled yesterday and among the documents tabled is this one which, as I said and I pointed to the hon. Member's attention, is page 51.

I think also, on the report on the contentious issues, there is something about it. Maybe you will wish to look at it again.

Mr. M. Kilonzo: Mr. Speaker, Sir, I have actually now, finally, seen page 51, but it is in the Draft Constitution. With your kind permission, I was referring to the report that has been tabled called the "Report of the Select Committee on the Review of the Constitution of Kenya", page 16.

Mr. Speaker: What does the wording say?

Mr. M. Kilonzo: Mr. Speaker, Sir, it says here at page 16, paragraph 26, Chapter 11 on the Legislature, IV:

"Other consequential changes due to the removal of the Senate are set out in Part Two of this report.

The Committee recommended inclusion of affirmative action for women and other marginalised groups and that the particulars be in an Act of Parliament. By saying that it be in an Act of Parliament, they are removing it from the Bomas Draft. Why am I being harassed?

(Applause)

Mr. Speaker: What is your response? But I wanted to get off the issue of hon. M. Kilonzo. What do you have to say? Did you raise a point of order? What were you saying, Mr. Raila?

The Minister for Roads and Public Works (Mr. Raila): Mr. Speaker, Sir, there is confusion here and we need clear guidance from you. I have not spoken since we started this afternoon. Hon. Nyachae laid several documents on the Table, but we have the Bomas Draft here which is what is referred to in the Consensus Act, and then there is the report of the Committee. The Consensus Act did not say that the Committee had the powers to prepare another Draft Constitution.

(Applause)

So, this document contravenes the Consensus Act itself. We are supposed to be dealing with the Bomas Draft and its proposed amendments, and not another Draft Constitution!

(Applause)

Mr. M. Kilonzo: Mr. Speaker, Sir, to add to that argument, it is standard practice; thank you!

Mr. Billow: On a point of information, Mr. Speaker, Sir.

Mr. Speaker: You must sit down, Mr. Billow! You are becoming troublesome, if I may use that word. You cannot let the hon. Member on the Floor continue?

What is it, Mr. Billow?

Mr. Billow: Mr. Speaker, Sir, accept my apologies. Mine is a point of information and the hon. Member has accepted it. It is very clear in the Bomas Draft that a specific number of seats are reserved for women, and I want to read Article 123 on the membership of the National Assembly:

"The National Assembly shall consist of:

- (a) One member elected from each constituency as it may be provided by law;
- (b) One woman elected from each district".

That is why we concluded that women must get at least 73 seats, which we said represent one-third of the 300 constituencies as decided in Bomas of Kenya.

I want to read what they have said in this Draft Constitution here---

Mr. Speaker: Order, Mr. Billow! Are you---

Mr. Billow: All right.

Mr. Speaker: Order! Mr. Billow, even on your own argument, you are absolutely wrong because 72 is not one-third of 300! What mathematics is that?

Ms. Ndung'u: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Can I listen to Ms. Ndung'u?

Mr. Billow: Mr. Speaker, Sir, the point is, in this revised document---

Mr. Speaker: Can you give way? What is it, Ms. Ndung'u?

Ms. Ndung'u: On a point of order, Mr. Speaker, Sir. Is it in order for hon. Raila to state that there is a new Draft Constitution in front of the House when, clearly, if you look at Section 27, it states that the Committee was supposed to lay several documents on the Table as follows: (1) The Bomas Draft (2) The Report from the Constitution of Kenya Review Commission (CKRC) (3) The Committee's report; and, (4) The recommendations of the Commission? It is clearly stated in the report of the Committee in paragraph two on page 13: "This House adopts recommendations of the Committee as proposed in the appendix entitled The Draft Constitution of Kenya, 2005".

Therefore, this House is asked to approve these recommendations and there are no extra documents.

(Applause)

Therefore, the hon. Member should apologize to this House for misleading us.

An hon. Member: No!

Mr. Speaker: Order, hon. Members! Order! I will not have the voice of the Opposition drowning each other on points of order. Let them have their fate. Hon. M. Kilonzo, you must, nevertheless, satisfy the House, through the Chair, that, indeed, what you have stated is true.

Hon. Members: It is true!

Mr. M. Kilonzo: Thank you, Mr. Speaker, Sir. As a matter of fact, I try very hard and if you do not think I am convincing you, it is probably my fault. But you see the point I am making here is very simple; I raised the issue of our women. My arguments have been derailed but I would like to address it firmly. As a matter of fact, if you look at the so-called Draft Constitution--- I call it "So-called" because the Act has no provision---

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

Mr. Speaker: Order! I am in trouble! I am trying to protect the Opposition from the Government, and now the Opposition is drowning its own voice. What is it, Mr. Samoei?

Mr. Samoei: Mr. Speaker, Sir, we have made about five attempts to request you to make a ruling on the documents before this House. If we are operating on the Consensus Act, we must stick to it. The Act envisages three documents, and it is there for everybody to read. The Bomas Draft---

An hon. Member: Why can you not just read it?

Mr. Speaker: No, please, Mr. Samoei, I do not want to hear it from your voice; read it!

Mr. Samoei: This is what Section 27(a) of the Act says:-

"Within 90 days after this Section comes into operation, the National Assembly

shall: (1) Debate the Draft Bill as adopted by the National Constitutional Conference on 15th---

Mr. Speaker: That is document one?

Hon. Members: The Bomas Draft?

Mr. Samoei: Yes!

"(b) Submit to the Attorney-General the Draft Bill and recommendations only on contentious issues as identified and recommended by the Parliamentary Select Committee on the Constitutional Review for approval by the National Assembly".

So, there are three documents which are envisaged; First, the Draft Bill as adopted by the National Constitutional Conference in Bomas of Kenya on 15th; second, the report of the CKRC, which we all have here in print in blue; and third, this report of the Committee which recommends---

Mr. Speaker: Order! You have left one more: The recommendations of the House!

Mr. Samoei: This is it, Mr. Speaker, Sir; the report of the Committee on contentious issues, and it is written here! Yet, the Committee has gone to do another document called the Draft Constitution, which is not envisaged in Section 27 of the Consensus Act. That is why we are seeking your clarification on that document, because it is a strange document in this House and it should be considered as such.

(Applause)

Mr. Speaker: Can I hear from the Chairman of the Committee about those documents?

The Minister for Energy (Mr. Nyachae): Mr. Speaker, Sir, the position is very clear to our Committee. This document they are calling strange actually contains our comprehensive recommendations. That is what it is, and if you refer to the statement I made earlier, the so-called strange document is an annex to our recommendations.

Mr. M. Kilonzo: On a point of order, Mr. Speaker, Sir. Is it in order for the Minister to mislead the House? Whenever this House is charged with a document that has been amended, the amendments plus the originals are shown. But if you look at the document the hon. Minister is talking about, and if you go through it section by section, you cannot tell which is the Bomas Draft and which are the recommendations.

Mr. Speaker, Sir, I am daring anybody in this honourable House to look at it; you cannot tell which is the original Bomas Draft and which are the recommendations. That is why I speak with certainty that it is an illegal document, and I join my voice with that of hon. Samoei and to the voices of those who are saying that it is a document that ought not be on the Floor.

(Applause)

May I continue with my contribution, Mr. Speaker, Sir?

Mr. Speaker: No.

Mr. M. Kilonzo: Could you give us a ruling?

Mr. Speaker: Order! Order! Yes, what is it, Mr. Raila?

The Minister for Roads and Public Works (Mr. Raila): Mr. Speaker, Sir, your ruling will be informed by information from an hon. Member who was a Member of the Parliamentary Select Committee.

Mr. Speaker, Sir, in the Committee, we agreed that the document that was going to be discussed would be the Bomas Draft. The Committee was supposed to go and deliberate on the contentious issues and then propose amendments clearly, just the way amendments are proposed to Bills when they come before the House here.

(Applause)

The Committee was also supposed to bring a report, annex those amendments and show how those chapters are to be amended. We must go through them; amendment by amendment. This a completely new draft Constitution! Nobody asked the Committee to go and draft another Constitution when we already have one.

(Applause)

Mr. Speaker: Order, hon. Members! As I understand it, all we have to do is actually operate under the Act that you made, and such documents that are required to be tabled before the House must be tabled.

As I understand the complaint from Mr. M. Kilonzo, Mr. Samoei and the Minister for Roads and Public Works it is that there has been a surplus of documents. I will deal with the ones that are correctly supposed to be before the House. So, refer to those.

An hon. Member: Which ones?

Mr. Speaker: Refer to documents that are supposed to be before the House. These are the Bomas Draft, the Report of the Constitution of Kenya Review Commission (CKRC) and the Report of the Parliamentary Select Committee on the Constitution (PSC) recommending amendments.

(Applause)

The Minister for Transport (Dr. Murungaru): On a point of order, Mr. Speaker, Sir. The Chairman of the PSC, Mr. Nyachae, has explained very clearly that, indeed, what the PSC sought to do, in accordance with the Consensus Act, was to consider the contentious issues and actually recommend the amendments by inserting them in the correct sections of the Bomas Draft. Indeed, for two days in Mombasa, what Mr. Nyachae, as Chairman of the PSC and Mr. Wetangula, as the Chairman of the Technical Committee of PSC, did was to take Members through the Bomas Draft chapter by chapter and clause by clause.

Hon. Members: How?

The Minister for Transport (Dr. Murungaru): Of course, if you were not there how can you know? This draft Constitution is part of the report---

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

Mr. Speaker: Order! Order! First of all, I really do not know what is agitating the House. You asked for three documents and you have got four. In fact, you have got a bonus. So, if you do not want to look at the fourth document, do not do it. Look at the ones you want to look at.

(Loud consultations)

Order, hon. Members! Ultimately, what we will do is what the law says. What the law says is: We look at the Bomas Draft, the Report of the CKRC and the Report of the PSC, with the recommendations of the amendments it wanted to give. I think that is what we will do. So, what are we quarrelling about?

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

Order! Time is up! I think all of you require a very restful night, which I proceed to wish each one of you.

(Laughter)

ADJOURNMENT

Mr. Speaker: Hon. Members, it is now time for the interruption of business. The House is, therefore, adjourned until tomorrow, Thursday, 21st July, 2005, at 2.30 p.m.

The House rose at 6.30 p.m.