

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 19th April, 2000

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

## PRAYERS

## ORAL ANSWERS TO QUESTIONS

*Question No.009*

### IMPLEMENTATION OF DROUGHT RECOVERY PROGRAMME

**Mr. Achola**, on behalf of **Mr. Ojode**, asked the Minister of State, Office of the President, how much money the Ministry spent on the Drought Recovery Programme on dams or water-related projects in Ndhiwa Constituency.

**Mr. Achola:** Mr. Speaker, Sir, I have not received a written response. It would be a good idea if I had one so that I can ask a supplementary question.

**The Minister of State, Office of the President** (Mr. Nassir): Mr. Ojode has got the written reply.

Mr. Speaker, Sir, I beg to reply.

The Drought Recovery Programme is not currently in existence. This programme existed between May, 1993 and June, 1996, and covered only five districts, namely, Tana River, Mandera, Wajir, Marsabit and Turkana. Consequently, the Office of the President has never spent any money in funding dams for water-related projects under the programme in Ndhiwa Constituency.

**Mr. Achola:** Mr. Speaker, Sir, could the Minister explain to the House why in independent Kenya, we are unable to maintain even the dams that were built by the colonialists? How is it that now we cannot make money available for dams and water projects in Ndhiwa Constituency when, during colonial days, we had these programmes being carried out by the Government?

**Mr. Nassir:** Mr. Speaker, Sir, we give priority to those people who really suffer much more than the others. We have done so and, maybe, the next lot will be on his side.

**Mr. Sungu:** Mr. Speaker, Sir, the Minister has not actually answered the question put by the Questioner. May I just repeat it. In independent Kenya, there are taxpayers also in Ndhiwa. In the colonial times we used to have water dams which were being rehabilitated all the time. This time round, we are being taxed, but nothing is being done. Would the hon. Minister explain to us what is happening? Where is this money, which is meant to help the people of Ndhiwa, going to, when, in fact, Ndhiwa should actually be regarded as one of the drought areas in Kenya; in fact, a hardship area like any other place?

**Mr. Nassir:** Mr. Speaker, Sir, Ndhiwa is just like any other district in Kenya. We do not have that much money to cover the whole country at one time. We go according to priority, and as I said, we will go to this area soon.

**Mr. Achola:** The Minister said earlier that the Government has no money, and has no plans to take up any drought programmes in the constituency. Could he now consider putting such a programme in plan before the next financial year?

**Mr. Nassir:** Mr. Speaker, Sir, due to the friendly terms I have with the Nyanza people, that will be our priority number one.

*Question No.022*

### EXECUTION OF WORLD BANK/IMF AID CONDITIONALITIES

**Mr. Obwocha** asked the Minister for Finance:-

(a) if he could list and outline the foreign aid conditions attached to donor funding to Kenya by the International Monetary Fund (IMF) and World Bank; and,

(b) which of the above conditions have been fulfilled by the Government and which ones have not been fulfilled and why.

**The Assistant Minister for Finance** (Mr. Arap-Kirui): Mr. Speaker, Sir, I had consulted earlier with hon. Obwocha on this issue and he had accepted our proposal that this Question be deferred to Thursday, next week.

**Mr. Speaker:** Is that alright with you, Mr. Obwocha?

**Mr. Obwocha:** Mr. Speaker, Sir, while I agree with the Assistant Minister that a good answer should be prepared, I would like to tell him that this Question is very important for this country.

**Mr. Speaker:** Mr. Obwocha, the Question is not before the House yet. Are you agreeing or not?

**Mr. Obwocha:** Agreed, Mr. Speaker, Sir.

**Mr. Speaker:** The Question is deferred to Thursday, next week.

*(Question deferred)*

*Question No.085*

DISAPPEARANCE OF MR. BARARE MOKONGU  
FROM HOSPITAL

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

(a) if he is aware that an in-patient, Mr. Derclan Barare Mokongu, disappeared on 5th November, 1997, after admission to Kisii District Hospital on or about 30th October, 1997;

(b) if he is further aware that the matter was not reported to Kisii Police Station; and,

(c) what measures have been taken to establish his whereabouts.

**The Assistant Minister for Health** (Mr. Mukangu): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that an in-patient, Derclan Barare Mokongu, absconded from the mental ward in Kisii Hospital on 5th November, 1997.

(b) The case was reported to Kisii Police station and recorded in the occurrence book as entry No.OB35/5/111997.

(c) The police, Mr. Mokongu's wife and his brother were informed of the patient's absconding. So far, the hospital has not heard anything of his whereabouts.

**Mr. Anyona:** Mr. Speaker, Sir, this Question came up in the last Session and I got this same answer. When I produced some information here to prove that the answer was not correct, the Assistant Minister who answered the Question, hon. Criticos, requested the Chair to defer the Question so that on the basis of the new information, he would prepare an appropriate answer. It never came up until the House went on recess. In view of that, what does the Ministry have to say? It will be shown in the HANSARD that this is what happened. In any case, someone has gone missing.

**Mr. Speaker:** Very well, Mr. Anyona. I thought your Question was specific. You wanted to know whether there was a report to the police. You wanted to know whether there was a report to the police. He said "yes", and he quoted the OB number and the date. You also asked him what measures he has taken. I think he did say what measures he took. You can question him on those measures or even on the accuracy of the OB entry.

**Mr. Anyona:** Mr. Speaker, Sir, the information I provided was that the patient had a relative who was looking after him. The hospital staff chased away that relative, and then some unknown people took away that patient. That is the information the Ministry of Health was responding to. What does he have to say about this question now?

**Mr. Mukangu:** Mr. Speaker, Sir, the fact of the matter is that, that particular patient had a psychiatric problem. He overpowered the two watchmen who were manning the main gate. Even members of the public present there were unable to apprehend him. So, the only action we took was to report the matter to the area police station, so that they could investigate it.

**Mr. Anyona:** Mr. Speaker, Sir, what he is saying is not correct, but I do not want to have an argument about that. The patient disappeared in one way or the other from the hospital. Is it not the responsibility of the hospital, together with the police, to find out the whereabouts of that patient? Should I put this Question to the Office of the President in that case? We cannot have someone disappearing from the hospital and that is the end of the story.

**Mr. Mukangu:** Mr. Speaker, Sir, ours as the Ministry was only to report to the police station that, that patient had disappeared. So, we expected to hear from the police and the relatives of the patient. However, we have not received any information as regards the whereabouts of that patient.

**Mr. Anyona:** Mr. Speaker, Sir, the family had provided information to the hospital, according to the letters I brought here. So, what I am asking is: What action has the Ministry taken on the basis of the information in their letters, which I laid on the Table of the House? In any case, has the Assistant Minister found what happened from police? It is their responsibility.

**Mr. Mukangu:** Mr. Speaker, Sir, I will only advise hon. Anyona to go back and, maybe, consult with relatives of the patient, so that he can inform us, and we will take the necessary action.

**Mr. Anyona:** On a point of order, Mr. Speaker, Sir. Is it in order, when, for the second time, I have brought a Question to Parliament, for the Assistant Minister to ask me to go back and consult the family? The family wants this Parliament and the Government to have their relative traced. Is he in order?

**Mr. Speaker:** I do not think we are making any progress; are we?

**Mr. Maitha:** On a point of order, Mr. Speaker, Sir. At this juncture, could the Chair direct that this Question be referred to the relevant Committee, so that more attention can be given to it?

**Mr. Speaker:** I am not willing to do that! Next Question, Mr. N. Nyagah.

*Question No.026*

NHIF MONEY IN COLLAPSED  
FINANCIAL INSTITUTIONS

**Mr. N. Nyagah** asked the Minister for Medical Services:-

- (a) how much NHIF money is held in the collapsed financial institutions;
- (b) how much was spent on advertising for Nairobi Shows in 1998 and 1999, and how much was spent on the same for Nakuru Shows in 1998 and 1999; and,
- (c) how much money will be spent on the construction of the new NHIF headquarters.

**The Assistant Minister for Health (Mr. Mukangu):** Mr. Speaker, Sir, I do not have the written answer right now, but the Minister will be here in due course.

**Mr. N. Nyagah:** Mr. Speaker, Sir, we would like a ruling from the Chair on this matter. This is because the Ministry has sent a written reply to me. Since there is collective responsibility in the running of Ministries, could I pass this written reply to the Assistant Minister so that he can read it to the House?

**Mr. Speaker:** Mr. Mukangu, would you like to do it?

**The Assistant Minister for Health (Dr. Wako):** Mr. Speaker, Sir, I am sorry, I am the one who has the reply to the Question. Could I be allowed to reply?

**Mr. Speaker:** Very well. Proceed.

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

(a) A total of Kshs752,150,000 was held in collapsed financial institutions.

(b) A total of Kshs958,950.40 and Kshs585,780.20 was spent on advertising Nairobi Show in 1998 and 1999, respectively, while Kshs93,700 and 1,045,000 was spent on advertising for Nakuru Show in 1998 and 1999, respectively.

(c) A total of Kshs1,798,821,159.20 is being spent in constructing the new NHIF Headquarters, to be known as the Medical Centre.

**Mr. N. Nyagah:** Mr. Speaker, Sir, the NHIF has a Kshs30 billion industry. That is what it nets every year. That is why they are able to waste a lot of money in purchasing unnecessary things. Currently, they are only occupying eight floors of the new Medical Centre. I would like to find from the Assistant Minister whether there was any need for NHIF to construct a new building at a cost of Kshs1.8 billion with five basement floors? Was there need to purchase two plots at a cost of Kshs112 million without the authority of the board? Is the Assistant Minister satisfied that the previous board is justifiable in its action, or it should be taken to court?

**Dr. Wako:** Mr. Speaker, Sir, hon. Nyagah seems to have so many questions, but if I may answer the first question, I think NHIF is justified to invest in the new Medical Centre at a cost of Kshs1.8 billion. This is because it is a commercially viable venture. It will not only house NHIF, but also most of the medical practitioners, medical board, nursing and registration offices. The rest of the plots will be for Doctors' Plaza, so that it becomes very easy---

Secondly, I think, like hon. Nyagah has said, it is better for NHIF to invest in a viable commercial building like the Medical Centre instead of collapsed financial institutions. This is because NHIF will be raising more than Kshs198 million yearly.

**Dr. Kulundu:** Mr. Speaker, Sir, NHIF is a looters' den. In fact, the figures I heard the Assistant Minister quote are inaccurate. We have it on authority from our Departmental Committee that NHIF spent Kshs129 million in

preparation for 1999 Nairobi Show. It also bought a bus worth about Kshs12 million without authority of the board. It is sad that the bus collapsed after two weeks.

**Mr. Speaker:** Dr. Kulundu, have you filed those Questions? You are out of order.

**Dr. Kulundu:** Mr. Speaker, Sir, I am co-ordinating. Could the Assistant Minister confirm or deny that NHIF is spending money without authority of the board?

**Dr. Wako:** Mr. Speaker, Sir, Dr. Kulundu has filed a Question on the issue of money spent at the Nairobi Show, which is coming any time. I do not think it is wise for me to indulge in it right now. **Mr. Speaker:** Yes, you are right.

**Dr. Wako:** Mr. Speaker, Sir, secondly, the board has been authorising the expenditures.

**Mr. Wamae:** Mr. Speaker, Sir, could the Assistant Minister confirm that the reason for putting up such an expensive building is to get kick-backs? This is because they would have got more money had the Kshs1.8 billion been put in Treasury Bills; that is, they would get more than the rent they would get from the building.

**Dr. Wako:** Mr. Speaker, Sir, I do not think that there is much reason in getting kick-backs. The best reason was to invest the public money in a solid venture, like in the building, which will be there for the next 10 to 15 years.

*(Mr. N. Nyagah stood up in his place)*

**Mr. Speaker:** Yes, Mr. N. Nyagah. Could we hear your point of order?

*(Laughter)*

**Mr. N. Nyagah:** Mr. Speaker, Sir, I wish the Assistant Minister does not defend the ills of NHIF. It is a parastatal that had spent Kshs80 million in computerisation without authority from the Board. It has had no audited accounts since 1981 and they are spending that kind of money in constructing a new headquarters. Could the Assistant Minister tell this House, and the nation at large, as to the ownership of the Prudential Estate in South C, which consists of 48 maisonettes and which was acquired as a result of Kshs254 million being banked in the Prudential Bank by NHIF? That money went to the Chairman and the previous Managing Director of NHIF. When will that money revert back to NHIF?

**Dr. Wako:** Mr. Speaker, Sir, I am not trying to defend any misappropriation in NHIF, and whenever there will be one and it is proved, we will take appropriate action. Also, NHIF has been taking appropriate action. Regarding the maisonettes, it is an unfortunate case because Prudential Bank collapsed with the money of NHIF. But because they had a 24-storey building, which had some maisonettes, they wanted to pass them on to NHIF in return for a little more money to the tune of Kshs120 million. That amount is to compensate for the total purchase price of the whole estate.

**Mr. Achola:** Mr. Speaker, Sir, before I ask Question No.115, I wish to inform you that I have not got the written reply. I do not know the reason, but nevertheless---

**Mr. Speaker:** Order!

*(Messrs. Kamolleh, Kajembe and Jembe-Mwakalu in consultation)*

**Mr. Speaker:** Order, Messrs Kamolleh, Kajembe and Jembe!

*(Laughter)*

Now, I would like to direct the following to the Front Bench: You are actually duty-bound to supply written replies to Members, and you must do that so that they can also prepare to ask you supplementary questions. So, please, do that as a matter of course.

**Mr. Achola:** Mr. Speaker, Sir, could I ask Question No.115?

**Mr. Speaker:** Very well.

*Question No.115*

#### CONSTRUCTION OF MIGORI-MUHURU ROAD

**Mr. Achola** asked the Minister for Roads and Public Works when the construction work will start

on the Migori-Muhuru Road (C 13) which is currently in a deplorable state.

**The Minister for Roads and Public Works** (Eng. Kiptoon): Mr. Speaker, Sir, I am sorry if the hon. Member has not received his written reply, but I remember signing it last week. Since it has not arrived at this place, I am sorry. But I beg to reply.

Routine maintenance work on Migori-Muhuru (C 13) Road entailing drainage improvement, grading and spot-gravelling should be currently going on because we have already released funds to that district.

**Mr. Achola:** Mr. Speaker, Sir, I do not know whether to call that a lie or not, but this Minister is becoming notorious in this House for giving answers which are not correct. Only last week, he said that Kshs20 million---

*(A mobile phone belonging to Mr. Maitha rang)*

**Mr. Speaker:** Order, Mr. Maitha! Would you take that mobile phone out of the Chamber?

**Mr. Maitha:** Mr. Speaker, Sir, I have put it off.

**Mr. Speaker:** Order! I have ordered that you go and put it off outside the House.

*(Mr. Maitha withdrew from the Chamber)*

Proceed, Mr. Achola.

**Mr. Achola:** Mr. Speaker, Sir, could the Minister explain to the House what happened to the tender which was awarded to a firm last year in March? It is a year since that tender was awarded to completely construct this road to the standards of an all-weather road. Up to this moment, nothing has happened. Regarding those maintenance works which he claims are being carried out, there is nothing on the ground.

**Eng. Kiptoon:** Mr. Speaker, Sir, I wish to assure the Member that no tender was awarded to anybody, but we have already released an amount of Kshs5,214,916 for grading and spot-gravelling in the district. We have also released another amount of Kshs3 million for bridge repairs through the District Works Officer (DWO) of Nyanza, who should be in a position to explain to the Member whether that money has reached his place or not. But for all intents and purposes, the award of tenders which the Member is alleging did not go through the Ministry and, therefore, no tenders were awarded.

**Mr. Ochilo-Ayacko:** Mr. Speaker, Sir, perhaps, the Minister does not know where Muhuru Bay is. It has the most beautiful beach on the shore of Lake Victoria and 30 per cent of the fish that is harvested from Lake Victoria lands there. Could the Minister tell this House why the Government, or his Ministry, keeps on ignoring the only road to Muhuru Bay?

**Eng. Kiptoon:** Mr. Speaker, Sir, I am aware of where Migori-Muhuru Bay Road is. It was the intention of the Government to construct this particular road, but after we pre-qualified contractors and went into the process of actually analyzing tenders, we discovered that we did not have enough funds to carry out that work. But we hope that in future this particular road will be constructed.

**Mr. Achola:** Mr. Speaker, Sir, could the Minister give an undertaking as to when work will start on that road? This is because it is really a problem. We go home and voters are saying that we are doing nothing as Members of Parliament. When we came here, we voted funds for these roads to be maintained, but nothing has happened. But the voters blame us, when it is these Ministers who are to be blamed.

**Eng. Kiptoon:** Mr. Speaker, Sir, this particular road requires an amount of about Kshs232 million. It is true that it is an important road. My Ministry is programming that it be taken as a priority in the next financial year.

**Mr. Gatabaki:** Mr. Speaker, Sir, is it in order for the Minister to mislead the House that this Government is supporting development in Nyanza Province, when the only reason they are doing that is because they want to force or make hon. Raila move a Motion of amendment to the Constitution?

*(Laughter)*

**Mr. Speaker:** Mr. Minister, you can ignore that.

**Eng. Kiptoon:** Mr. Speaker, Sir, I think the hon. Member is not in order because we are not specifically developing Nyanza Province. May I assure the Member that currently, we are in the process of awarding tenders totalling about Kshs2.5 billion for roads in Central Province.

**Mr. Kihoro:** Mr. Speaker, Sir, it appears the Ministry is taking too long to process tenders for roads that have actually been in very deplorable conditions. Could the Minister assure this House that the road to Nyeri is going to be done as quickly as possible, along with the Migori-Muhuru Bay Road?

**Eng. Kiptoon:** Mr. Speaker, Sir, I would like to assure hon. Members that the Ministry has no intention of delaying the road works. Roads in Central Province, especially those in Nyeri, had their tenders opened on 24th of last month. We are in the process of taking them to CTB tomorrow. So, I hope, in the course of next month, we will have contractors on those roads.

**Mr. Speaker:** Next Question!

**Mr. Wambua:** Mr. Speaker, Sir, before I ask the Question, I would like to notify you that I have not received the written reply.

*Question No.116*

REVIVAL OF MBEMBANI WATER PROJECT

**Mr. Wambua:** Mr. Speaker, Sir, I beg to ask the Minister for Water Development:-

- (a) if he is aware that Mbembani Water Project, initiated from Thika River, stalled over ten years ago; and,
- (b) what immediate action he is taking to revive this project and provide a water pump and the necessary machines.

**The Assistant Minister for Environment and Natural Resources (Mr. Kofa):** Mr. Speaker, Sir, I beg to reply.

(a) I am not aware that Mbembani Water Project stalled. However, I am aware that the water project is operating below capacity.

(b) My Ministry has no funds to revive the project at the moment. However, my Ministry will purchase a new pump in the next two months in order to improve on service delivery.

**Mr. Wambua:** Mr. Speaker, Sir, I am very surprised to hear the Assistant Minister stating that this project is operating below capacity, while the pump broke down ten years ago. How can a project be functional when the pump broke down ten years ago?

Secondly, could the Assistant Minister tell us how much the Ministry intends to spend on this pump and when it is going to be delivered? At the moment, the project is not functional and people are not getting water.

**Mr. Kofa:** Mr. Speaker, Sir, the pump is supposed to service about 2,000 people. Since it broke down a nearby school took the responsibility of repairing it and they are using that water.

**Mr. Wambua:** On a point of order, Mr. Speaker, Sir. The Assistant Minister is misleading this House. Could I be allowed to take over and request the Assistant Minister to accompany me tomorrow morning to that project? There is nothing going on, on the ground.

**Mr. Speaker:** Mr. Wambua, what do you want to take over?

**Mr. Wambua:** Mr. Speaker, Sir, I meant that I will meet the cost of transporting the Assistant Minister to that project.

**Mr. Kofa:** Mr. Speaker, Sir, according to our source on the ground, it is true that, that institution has taken upon itself to repair the pump, and they are using it. The Ministry will deliver the new water pump in two months' time. The cost of the pump is roughly about Kshs200,000

**Mr. Katuku:** Mr. Speaker, Sir, you have heard the Assistant Minister misleading the House. This morning, the Minister for Water Development also misled the House on water issues in Ukambani. I think there is something wrong with the Ministry's office at Machakos where they are getting those answers. I would like to request the Assistant Minister to undertake to visit this project or send a team of engineers to go and inspect the project. It appears that the officers at Machakos are misleading them. Several Members of Parliament from Ukambani have brought to the House Questions about projects which have stalled, but we do not get satisfactory answers.

**Mr. Kofa:** Mr. Speaker, Sir, I undertake to do that.

**Mr. Kaindi:** Mr. Speaker, Sir, I think it has become clear from the Member of Parliament for the area that this project is really not serving the interest for which it was designed. Could the Assistant Minister explain to the House the capacity of that project at the design stage and implementation, and at the moment, so that we can establish the shortfall?

**Mr. Kofa:** Mr. Speaker, Sir, as to the capacity, I am not in a position to immediately state. All I can say is that it was supposed to service 2,000 people around the area. At the moment, only one institution is using the project.

**Mr. Speaker:** Next Question!

QUESTIONS BY PRIVATE NOTICE

SHOOTING OF KENDU BAY TOWN RESIDENTS  
BY POLICE OFFICER

**Dr. Awiti:** 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 a police officer shot dead one person and injured several people at Kendu Bay Town on 1st April, 2000?

(b) Is he further aware that police in the area have been protecting robbery suspects?

(c) What urgent measures will the Minister take to ensure that criminals in the area are arrested and charged in court?

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

(a) I am aware that one person was shot and several others, including eight security officers, were injured following the invasion of Kendu Bay Police Station by an angry mob which wanted to lynch a robbery suspect who was in police custody.

(b) I am not aware.

(c) It is not true that criminals are not taken to court. They are taken to court after arrest.

**Dr. Awiti:** Mr. Speaker, Sir, I very surprised by the answer given by the Minister on part "c" of the Question. I would like him to tell us how many robbers have been apprehended so far.

**Maj. Madoka:** Mr. Speaker, Sir, maybe, he should be more specific as to which period he is talking about.

**Dr. Awiti:** Mr. Speaker, Sir, in particular, I am referring to a case on 1st April, when the people of Kendu Bay wanted to beat up a robber who the police were protecting. This has been happening in this area because policemen are conniving with some of those robbers.

**Maj. Madoka:** Mr. Speaker, Sir, that is not correct because that person was arrested on 1st April, 2000 and charged on 6th April, 2000. So, he was taken to court.

**Dr. Ochuodho:** Mr. Speaker, Sir, the casual manner in which the Minister is handling this matter is very annoying. This particular matter of Kendu Bay could very well erupt into an ethnic clash today or tomorrow if they do not take this matter seriously. The police, apparently, are never in short supply when politicians are being chased, but when thugs broke into the neighbouring Kendu Bay Hospital, they operated for a good three hours next to the police station and the police never came to the rescue of the hospital. Could the Minister tell us, in a situation whereby one person is shot dead and six shot and wounded by the police, what compensation is the Government going to give to the families, and what assurance do we have that the police are not going to inflict injury on the Kendu Bay residents any more?

**Maj. Madoka:** Mr. Speaker, Sir, as far as that is concerned, I cannot make any comment. I do not agree with the hon. Member that police officers were just shooting. What happened in this particular incident was that a mob of wananchi in the area went into the police station wanting to get out this suspect and lynch him. He was, in fact, being protected when he was in the police custody.

**Dr. Ochuodho:** On a point of order, Mr. Speaker, Sir. Is the Minister in order to decline answering a legitimate question and tell us how much compensation will be paid to the family of the killed person and those other six people who were shot at and wounded by the police?

**Mr. Speaker:** I do not think the Minister is in a position to assess damages. That is the province of the court. You can as well advise the relatives of the deceased to sue the Minister.

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

Yes, Mr. Kariuki! Sorry, Mr. Kihara! What is your name?

**Mr. Kariuki:** Mr. Speaker, Sir, I am Mr. Ngenye Kariuki.

**Mr. Speaker:** I called you Mr. Kariuki but you refused to respond.

**Mr. Kariuki:** Mr. Speaker, Sir, I thought you called me Mr. Kihara.

*(Loud consultations)*

**Mr. Speaker:** I called you Mr. Kariuki and you declined the offer, so I called you Mr. Kihara.

**Mr. Kariuki:** Mr. Speaker, Sir, the hon. Minister should help this House to clarify what the Government policy is on suspects. Are the police officers supposed to shoot to kill or to shoot to maim? It has become a pattern of

the policemen to shoot to kill. Could the Minister confirm what the policy is on this issue? We seem to be in darkness and we do not know exactly why the policemen are behaving the way they are. Is it under the instructions of the Minister, or is it on their own volition?

**Maj. Madoka:** Mr. Speaker, Sir, it depends a lot on the circumstances. If a gangster is shooting at a policeman and the policeman shoots back and kills him, so be it.

**Mr. Ndicho:** Mr. Speaker, Sir, the law provides that a police officer should only open fire on a victim who is equally holding a gun and is threatening to shoot the police officer. But today, there are so many killings in the streets. We are informed that after police officers kill a suspect, they look for another gun and place it next to the victim and then they say that, that gangster was armed. Could the Minister now clarify whether the police should kill somebody unless he is armed? The police seem to be enjoying pulling the trigger and shooting everybody on sight on suspicion that they are robbers, when the real robbers are left free.

**Maj. Madoka:** Mr. Speaker, Sir, I am not sure I quite followed the question.

**Mr. Ndicho:** Mr. Speaker, Sir, if police officers shoot a suspect at a corner and then discover that they shot the wrong person, they come with a gun, place it beside the suspect and then claim that, that suspect was an armed robber. I am asking the Minister to declare here that unless there is a real threat to the police officers, the police officers should shoot the suspect in the leg and should not kill him. Could the Minister make that declaration here Buton behalf of the Government?

**Maj. Madoka:** Mr. Speaker, Sir, police officers are not supposed to shoot at any suspect. But, obviously, if they are confronted by an armed suspect, then they respond with fire. I must advise the hon. Members that even if you try and aim at the leg of a suspect and you are panting and all that, sometimes the bullet goes astray.

**Dr. Awiti:** Mr. Speaker, Sir, the Minister has not been briefed well on what happened. The Karachuonyo people are peace loving people, and particularly those of Kendu Bay. Why they operated the way they did was because the Officer Commanding Station (OCS) plus the police officers in Kendu Bay Police Station have been conniving with these robbers over a period of time, and many cases of theft have been reported in the constituency in the last two years. So, when people reacted like this, I would request that the Minister really investigates the matter to establish what is going on there. People have lost confidence in the police officers in Kendu Bay.

**Maj. Madoka:** Mr. Speaker, Sir, I will try and find out on the claims made by the hon. Member to establish whether there is any truth, and report accordingly.

#### ARREST OF SUSPECTS IN MUMIAS TOWN

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

(a) Could the Minister explain why the following people were arrested by the police in Mumias Town on 28th March, 2000, at 10.00 a.m., and have not been charged in any court of law:- Messrs. Job Mutobera; Rodgers Wamukoya; Kenneth Mulama; Joseck Okwako; Indumuli Otino; Frederick Maloba; Mayabi Simba; Odwori Wafunde and Jackson Maloba?

(a) When will they be charged or released?

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

(a) The nine people were arrested on 28th March, 2000, at about 10.30 a.m., after the police found them holding an illegal meeting comprising of about 300 people at Nabongo Market in Mumias Township. The rest of the people managed to escape when the police arrived at the venue of the illegal meeting.

(b) The nine suspects appeared before the Senior Resident Magistrate Court, Mumias, on the same day at 3.15 p.m., charged with taking part in unlawful assembly and incitement to violence. Mumias court reference file No.925/194/2000 and court file No.365/2000 refer.

**Mr. Osundwa:** Mr. Speaker, Sir, before I can pursue the Minister on this Question, you have made a ruling in this House that we should be supplied with written answers. In this case, I have not received any written answer from the Minister. Could he explain why the written answer has not reached me?

**Maj. Madoka:** Mr. Speaker, Sir, I do apologise. I was made to understand by my officers that the written answer had, in fact, been supplied. So, I will try and follow it up.

**Mr. Osundwa:** Mr. Speaker, Sir, the people referred to in this Question are members of the Sugar-cane Growers Association. On the material day, these people were arrested at 9.00 a.m.---

*(Loud consultations as Mr. Wamae  
stood up in his place)*



**Mr. Speaker:** Order! Order, Mr. Matu Wamae! We cannot transact business this way. We cannot hear what is going on. Those hon. Members who are not interested in what is going on, please, let those who are interested communicate. That is the whole idea! Proceed!

**Mr. Osundwa:** Thank you, Mr. Speaker, Sir. The people referred to in this Question are members of the Sugar-cane Growers Association who were holding a licensed meeting in Mumias Town. They were arrested at 9.00 a.m. and they were never seen in Mumias until seven days later. I do not understand why the Minister has said that they appeared in court on the same day. Is he not misleading the House? Could he consider compensating these people because the law requires that these people should be charged within 24 hours? In this case, they were not charged. Could he consider compensating them for illegal arrest and detention?

**Maj. Madoka:** Mr. Speaker, Sir, unless the hon. Member has any other information, I said that these people were charged and taken to court the same day.

**Mr. Sambu:** On a point of order, Mr. Speaker, Sir. Considering that the Public Order Act, Cap.56, was amended by the Inter-Parties Parliamentary Group (IPPG), where did the police officers get powers to arrest people who are meeting in an orderly manner, particularly when it is a trade union, a co-operative society or a company limited? From whom did the police officers get the powers, considering the effect of the IPPG on Cap.56?

**Maj. Madoka:** Mr. Speaker, Sir, on this particular issue, I am not aware that these were members of any trade union. So, I will have to find out. But the report I have is that, that was a group of 300 people who were meeting.

**Mr. Sambu:** On a point of order, Mr. Speaker, Sir. Is the Minister in order to mislead the House when he is perfectly aware these were members of Mumias Sugar-cane Outgrowers Union? Where did the police officers get the powers from to arrest them, considering the IPPG amendments to Cap.56?

**Maj. Madoka:** What I said is that I will have to find out whether those people were members of the union. The information that I have is that they were just a group of people. So if indeed, they were members of the union, it was wrong for the police to disperse them.

**Dr. Ochuodho:** On a point of order, Mr. Speaker, Sir. The issue of policemen dispersing meetings by farmers and politicians is a chronic problem in this country. In the last Session, you directed the Minister to bring to the House copies of the circular that instructed policemen not to disperse meetings, when the organisers have notified the police as per the IPPG requirements. To date, that directive remains unanswered.

Could you, once again direct the Minister to avail the circular to us? Could the Minister tell us why the circular has never been availed to hon. Members and to the districts, so that the police do not unnecessarily harass the people?

**Mr. Speaker:** Dr. Ochuodho, you forgot you stood on a point of order and relapsed to asking a question! So, you are out of order!

**Mr. Osundwa:** On a point of order, Mr. Speaker, Sir. I wanted clarification as to whether Members of Parliament, or any other wananchi require a permit to take part in any assembly. I am holding a letter from the Officer Commanding Station (OCS), Mumias, cancelling my rally! So, do we require permits? I would like to table it!

**Maj. Madoka:** Mr. Speaker, Sir, as far as I know, they do not require any permit. They just need to notify the police officers.

*(Loud consultations)*

**Mr. Speaker:** Order! If you want to talk about hon. Osundwa, put the question about him! As far as we are concerned, we are talking about fellows who were arrested there. I am sure the Minister was dealing with the question of the nine people! We cannot divert that Question now and personalise it! I think it is even in bad taste for the hon. Member to bring his own problems into his constituency. I think you should have given more attention to your constituents!

**Dr. Ochuodho:** On a point of order, Mr. Speaker, Sir. Is the Minister in order to ignore the directive of the Chair to give hon. Members the circular instructing policemen not to disperse our meetings? Is he in order?

**Maj. Madoka:** Mr. Speaker, Sir, I do apologise for that. I had given instructions to my Permanent Secretary, and I thought that the circular had gone out. If that is not the case, I will certainly follow the matter up.

SECRET SESSION OF MAKUENI DISTRICT  
EDUCATION BOARD

**Mr. Munyao:** Mr. Speaker, Sir, I beg to ask the Minister for Education the following Question by Private

Notice.

(a) Why was the Makueni District Education Board Meeting that was scheduled for 28th March, 2000, and postponed to 3rd April, 2000, later held in secret on 28th March, 2000?

(b) Could the Minister rescind any resolutions that were made during the meeting, and order a fresh meeting to be held within two weeks?

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

(a) The Makueni DEB meeting of the 28th March, 2000 was appropriately convened, held as scheduled and properly conducted. There was no decision to postpone it and it was not held in secrecy.

(b) The meeting's resolutions were legitimate. I have no reason, therefore, to rescind them or order for a fresh meeting.

**Mr. Munyao:** Mr. Speaker, Sir, that answer is embarrassing and ashaming! On the 27th of last month, we had a District Development Committee (DDC) meeting. At the end of the DDC meeting, we learnt that there would be a meeting of the DEB the following day, which was also the opening day of Parliament. We asked the Chairman of the DEB, who is also the District Commissioner and the Chairman of the DDC, to postpone the meeting. He said: "Since tomorrow is the opening of Parliament, which will be opened by the President, can the DEB meeting be postponed to another day because Members of Parliament ought to attend?" Hon. Mboko was there and the DC himself stood up and said: "I will postpone this meeting to the 3rd of April." On the 3rd of April, hon. Mboko and I went there and we were told that the meeting went on as earlier scheduled. Could the Assistant Minister note that we are in a good mood today? We are breathing peace! Could he direct that the DEB meeting be held again? I can see the senior Minister looking at me well!

**Mr. Karauri:** Mr. Speaker, Sir, hon. Munyao himself has admitted that he was asking for a postponement only a day before the meeting. All Members of the DEB had been served to attend the meeting on the 28th. When he asked for the postponement in the DDC meeting, nobody agreed to it. So, all the members attended the meeting on the 28th of March, 2000, and their deliberations were quite legitimate.

**Mr. Mboko:** Mr. Speaker, Sir, I would like to inform the Assistant Minister that the members of the DEB Makueni, especially the District Education Officer (DEO), are very notorious for not inviting Members of Parliament to any DEB meeting since 1998.

**Mr. Karauri:** Mr. Speaker, Sir, hon. Munyao has not said that he was not invited. He only asked for a postponement. The meeting was attended by all other members of the DEB, including the Provincial Director of Education.

**Mr. Munyao:** Mr. Speaker, Sir, again, it is most ashaming and embarrassing because Kenyans are listening! We had a full DDC meeting and the DC himself stood up and agreed that since the following day was an opening day of Parliament, he would postpone the meeting to the 3rd of April, 2000. The Assistant Minister is now denying this, knowing very well that he is just reading a message which was written for him from there!

**Mr. Karauri:** Mr. Speaker, Sir, it is hon. Munyao who is misleading this House! The members of the DEB do not necessarily come from within that vicinity. Now, postponing a meeting which was supposed to take place the following day, was not proper. It was not postponed!

**Mr. Munyao:** On a point of order, Mr. Speaker, Sir. I would rather change the veil! What I am saying is that on the 27th of March, 2000, the DC himself stood up and announced that the DEB meeting would be postponed! How come that the Assistant Minister, who was not there, and knew nothing of what transpired, still insists that I did so?

**Mr. Karauri:** Mr. Speaker, Sir, I insist because on his own admission, he asked for a postponement only a day before. He must know that there is a difference between the DDC and the DEB. So, the DDC would not have postponed that meeting, which was to take place the following day!

**Mr. Katuku:** Mr. Speaker, Sir, you have heard that there was a DEB meeting which was constituted illegally. In the DEB meeting, they came up with some levy whereby each pupil in Makueni District is supposed to pay Kshs15 for the operations of the DEO's Office. Since this was done without consulting the politicians and other elected leaders, could the Assistant Minister consider suspending the collection of that levy until all the leaders are consulted?

**Mr. Karauri:** Mr. Speaker, Sir, in order to promote education in this country, many districts do give prizes and trophies once a year. So, the matter was raised in the DEB meeting and it was agreed that, in order to fund the prizes and trophies, students will be levied Kshs10 and not Kshs15.

**Mr. Speaker:** Order! As a matter of fact, it is time out for Question Time. Mr. Onesmus Mboko!

INTERFERENCE WITH WATER SOURCE BY  
UMANI SPRINGS CAMP PROPRIETORS

**Mr. Mboko:** Mr. Speaker, Sir, I beg to ask the Minister for Water Development the following Question by Private Notice.

(a) Is the Minister aware that the proprietors of Umani Spring Camp in Kibwezi are denying the residents of Kibwezi access to water from the Umani Springs?

(b) Is he further aware that this is the only source of water for the people of Kibwezi and the surrounding areas?

(c) What urgent measures is the Minister taking to restrain the proprietors of Umani Springs Camp from further interference with the water source?

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

(a) I am not aware.

(b) I am not aware that Umani Springs is the only source of water for Kibwezi residents. However, I am aware that it is the major source of water for Kibwezi residents and the surrounding areas.

(c) In view of my answers to parts "a" and "b" above, part "c" of the Question does not arise.

**Mr. Mboko:** Mr. Speaker, Sir, Umani Springs is correctly the major source of water in Kibwezi. Surrounding the springs, a certain Mzungu by the name Simons has a camp there for tourists. He is restraining members of the public from harvesting water from that source and even denying the Ministry of Water Development officers from cleaning the water intake from the springs. Mr. Minister, what action are you taking on that Mzungu?

**Mr. Ng'eny:** Mr. Speaker, Sir, first of all, I would like to congratulate the residents of Kibwezi for looking after that spring very well for many years. They have a beautiful water scheme using that spring. The truth of the matter is that nobody prevented the residents of Kibwezi from tapping water from the spring. The only thing which they were requested to do is that they should strictly follow the rules of conservation of the environment. This is because, as you know, the environment is one of the most crucial issues today. Without looking after the environment properly, we shall have huge problems of water supply in future.

**Mr. Wambua:** Mr. Speaker, Sir, I am very surprised to hear the Minister saying that, of course, these people should conserve water. If the Wazungus are the ones who are making this water not to be adequate for the people of Kibwezi, the alternative is to allow us to chase away these Wazungus. What other action can you take to make sure that, of course, these rules which you are saying are being followed by these Wazungus?

**An hon. Member:** Chase them away!

**Mr. Wambua:** Chase them away like what happened in Zimbabwe!

**Mr. Ng'eny:** Mr. Speaker, Sir, I would like to assure the House that there is enough water for everybody, so long as we use and utilise it appropriately, according to the requirements.

**Mr. Kiunjuri:** Mr. Speaker, Sir, it is common knowledge that these days, water is becoming---

*(Loud consultations)*

**Mr. Speaker:** Order! We are in business. Can we be in business? Proceed!

**Mr. Kiunjuri:** Mr. Speaker, Sir, it is now common knowledge that water has become private property and only a few Kenyans have access to it. Even for the river water, you will find that only a few individuals are tapping it. Now, before a war erupts, because other people will claim their right to water, could the Minister consider repealing the Water Act so that we can make recommendations on how we should share the water?

**Mr. Ng'eny:** Mr. Speaker, Sir, I thank the hon. Member for bringing up that issue because, in fact, we are considering bringing to this House the question of looking into the review of the Water Act. Meanwhile, the Water Act, as it is now, is still very effective and there is no question about that. There is no single individual that has been granted the express permission to use water to the exclusion of others. Water is a very important resource and, therefore, the Government will ensure that it is available to everybody equitably.

**Mrs. Ngilu:** Mr. Speaker, Sir, the issue of water in Ukambani is very serious and the Kibwezi Member of Parliament is saying that there is a particular individual, a Mr. Simons, who is denying Kibwezi residents water. This needs to be looked into. Can the Minister assure this House that this Mr. Simons is going to be compelled to let Kibwezi people get water immediately, notwithstanding whatever rules that they may have put in place?

**Mr. Ng'eny:** Mr. Speaker, Sir, I would like to assure the hon. Member that the Ministry is going to look into

that issue as quickly as possible, and if there is anything to be corrected, we shall do so.

**Mr. Speaker:** Next Order!

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

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

**Mr. Mboko:** Mr. Speaker, Sir, this Mzungu, Mr. Simons, is even practising poaching using that water source and selling game meat in this town. That is why he is refusing the residents of Kibwezi to go to the water source in order for them not to interfere with his other business of selling game meat in Nairobi. Last week, he even put some chemical in the spring water which was later found down in Kibwezi Town. It was a kind of coloured chemical, and we do not know what it was. Can the Minister provide a security fence around those springs to deny this Mzungu access to the springs?

**Mr. Ng'eny:** Mr. Speaker, Sir, I am in charge of water affairs.

**Mr. Katuku:** On a point of order, Mr. Speaker, Sir. A serious allegation has been made here by hon. Mboko that Mr. Simons even poisoned the water the Kibwezi residents were drinking. It is a serious issue and the Minister is treating it as a light issue. Can he undertake to investigate this matter since the issue of poisoning water is a not a light issue?

**Mr. Speaker:** Order! Indeed, yes, I think the statement by the hon. Member that the issue of water and the distribution thereof is a crucial issue to the lives of Kenyans and much more so when it is alleged that there is poisoning. I think the Minister must take it a little more seriously than he is doing. The Minister knows, in my view, that there are a lot of problems with water harvesting upstream and he does not seem to take it very seriously. Mr. Minister, why do you not take it seriously?

*(Applause)*

**Mr. Ng'eny:** Mr. Speaker, Sir, I did say that I am going to look into that issue more seriously. If there is anything which should be corrected, we shall do it immediately.

**Mr. Speaker:** Next Order!

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

**Mr. Speaker:** Order! Mr. Matu Wamae, Question Time is up!

### POINT OF ORDER

#### SESSIONAL PAPER ON THE REPORT OF DAVY KOECH COMMISSION ON EDUCATION

**Mr. Wamae:** On a point of order, Mr. Speaker, Sir. My point of order is on the Report of Dr. Koech's Commission on Education, which has been out for some time and the Minister for Education has commented on it. The Chairman of KANU has also commented on it a number of times and the Minister for Education has asked the country to comment on it and give their views.

Mr. Speaker, Sir, I think it will be in order to request the Minister to lay copies of that Report on the Table of this House and to let us know when he is going to issue a Sessional Paper on it, so that we can discuss it and the Departmental Committee on Education can discuss it.

**Mr. Speaker:** Mr. Musyoka, would you like to say something?

**The Minister for Education** (Mr. Musyoka): Mr. Speaker, Sir, I want to thank hon. Matu Wamae, who is a Member of the Departmental Committee on Education.

The hon. Wamae recalls that I made an appearance before the Committee hardly two weeks ago, during which I promised that I will be making pronouncements with regard to the Dr. Koech Report. Since then, it was unfortunate we could not get the hon. Wamae, but we got hon. Achola, the Chairman of the Departmental Committee on Education, who was able to be with us when we were making the Report public.

Mr. Speaker, Sir, I want to assure this House that we will make copies available to the Members so that they can all make intelligent comments.

Thank you.

**Mr. Speaker:** Very well. Next Order!

**Mr. Wamae:** On a point of order, Mr. Speaker, Sir. When can we expect the Sessional Paper from the Government on this Report?

**The Minister for Education** (Mr. Musyoka): Mr. Speaker, Sir, the issue of the Sessional Paper does not arise at this stage for the simple reason that, it is expected that after the debate, the matter will have to go before the Cabinet and we are not yet into that.

**Dr. Ochuodho:** On a point of order, Mr. Speaker, Sir. I thought my colleague, hon. Wamae, was asking for the Report to be tabled in the House, not copies to be given to hon. Members. When is the Minister going to table the Report in this House?

**The Minister for Education** (Mr. Musyoka): Mr. Speaker, Sir, I stand guided on the Standing Orders with regard to this matter. The matter is now entirely public. This Minister has no problem making copies of this document available to the Clerk of the National Assembly which is the same as laying it on the Table of the House because the matter is public.

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

**Mr. Speaker:** Order! Order! I think you people are differing over a very simple issue. If the Minister tables the document here, it does not mean that they are approving it. So, maybe, for the information of the hon. Members--- As you know, education is a very crucial aspect of our national life, and since you are asking hon. Members to debate your Report, and also taking into account my encouragement to hon. Members, last year, to make use of the Floor of the House to launch these documents and policy papers, I would advise you to table the Report. There is no harm in you laying the Report on the Table of the House.

*(Applause)*

**The Minister for Education** (Mr. Musyoka): Mr. Speaker, Sir, I shall oblige.

**Mr. Speaker:** Very well. Next Order!

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

*(Applause from the Government side)*

*(Several hon. Members from the Opposition side withdrew from the Chamber singing the National Anthem in Kiswahili and waving placards)*

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

**Mrs. Ngilu:** On a point of order, Mr. Speaker, Sir. Thank you, Mr. Speaker, Sir. We just want to register our disappointment that this Report has eventually come to the House. I am saying that we, Members of the Social Democratic Party---

**Mr. Speaker:** Order! Order, Mrs. Ngilu! Order! If you do not like something, wait until you get an opportunity and say all the bad things that you do not like about it. But do not take a forum that is not yours! There is nothing before the House.

Proceed!

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

**Mr. Speaker:** Order! Order! Nothing is before the House yet! Proceed, Mr. Raila.

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

**Mr. Kathangu:** Bw. Spika---

**Mr. Speaker:** Order! Order, Mr. Kathangu! It does appear to me that certain Members here unlawfully want to stop a Member from lawfully presenting a Report.

**Hon. Members:** No!

**Mr. Speaker:** Order! Understand that you will not control me! Proceed!

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

**Mr. Speaker:** Refused! What is it, hon. Kathangu?

**Mr. Kathangu:** Asante sana, Bw. Spika. Kusikilizana kuna maana kubwa sana. Ninajua kwamba---

**Mr. Speaker:** Order! Let us hear hon. Kathangu!

**Mr. Kathangu:** Asante, Bw. Spika. Kusikilizana kuna maana kubwa sana--

*(Mr. Ndicho moved as he consulted with hon. Members who remained in the Opposition Benches)*

**Mr. Speaker:** Order, Mr. Ndicho! Mr. Ndicho, you know, you love being sent out. So, please, do not incite me to do that! Proceed!

**Mr. Kathangu:** Bw. Spika, ninasema kwamba kuna maana kusikilizana kwa sababu nchi hii si ya mtu mmoja au upande mmoja.

**Mr. Speaker:** Order! Members must understand the procedure of the House. If you want to access the House, use the correct procedure.

Mr. Kathangu, I want you to tell me under what Standing Order you are raising your point of order.

**Mr. Kathangu:** Bw. Spika, Kanuni ya kwanza katika Kenya ni kudumisha amani katika nchi hii, kuwe na vitabu ama kusiwe na vitabu!

Bw. Spika, utakataa, lakini shida itakapotokea, itakuwa juu yako!

**Mr. Speaker:** Order! Order, Mr. Kathangu! There are two things that must happen. It does appear to me that two basic things must be present in this House. One is intellectual honesty.

**An hon. Member:** Yes!

**Mr. Speaker:** Hon. Members must have intellectual honesty. If you are asked by the Chair to [**Mr. Speaker**] quote the Standing Order you are relying on, your intellectual honour demands of you to either state it, or to say: "I do not know."

Secondly, this House will not be turned into a ruleless House in my speakership. I will not allow it; I will not be cowed and I will not be threatened!

*(Applause)*

If you want to access the House, get the law right and then you will access it. If you cannot get it right, you will not access it.

**Mr. Kathangu:** Asante sana, Bw. Spika, kwa kuniruhusu kusimama mbele yako na mbele ya Wabunge hawa ambao wamechaguliwa nchini. Umetumia uwezo wako kunipatia ruhusa ya kusimama hapa.

**Mr. Speaker:** Order, Mr. Kathangu! There are two things that happen here which are completely contradictory to each other. I find it absolutely difficult to understand the attitude of Members because hon. Members go all over the place saying that Parliament and Parliamentarians must be respected, when they do not respect Parliament and themselves. It is very incongruent! I think hon. Members must decide it one way or the other; either you remain hon. Members or you declare to the world that you are not honourable, because you do not want to follow any rules. Mr. Kathangu, for the third time, can you tell me which Standing Order you are referring to?

**Mr. Kathangu:** Bw. Spika, kwa Mbunge yeyote kusema kwamba hajui, ninaweza kusema huo in ujinga. Nimechaguliwa; sikuja hapa kutapatapisha mdomo na wewe ama na mtu yeyote.

**Mr. Speaker:** Order, Mr. Kathangu! You are not allowed to insult the Chair. In fact, you are not insulting me as Mr. Kaparo; you are insulting the House, which you are not capable of! This House is composed of 224 Members and you can multiply them by the number of votes which each received. So, you are insulting so many Kenyans if you insult Parliament. Please, if you want to be respected by the Chair, you must begin by respecting the Chair and the rules.

**Mr. Kathangu:** Bw. Spika, mimi sikutukana Kiti. In fact, I have insulted myself, not the Chair, by saying, "kutapatapisha mdomo". Those are not your lips; they are mine! Anybody who thinks I am misusing my lips here is wrong. Hii ni kwa sababu nimekuja hapa kwa niaba ya watu wengi. Katika Kifungu cha 45---

**Mr. Speaker:** How many languages are you using?

**Mr. Kathangu:** Ninaweza kutumia lugha nyingi. Hata juzi, tulipitisha utumiaji wa lugha nyingi, ikiwepo Kiambu.

**Mr. Speaker:** Order, Mr. Kathangu! I do not know whether you understand the difference between a Motion and Standing Orders. I apply Standing Orders and not Motions; and the Motion has no effect until it has found its way into the Standing Orders. So, will you now be properly advised?

**Mr. Kathangu:** Bw. Spika, singependa kupoteza wakati wa Bunge hili. Ikiwa sijui jambo ninalolisema, inafaa nielekezwe katika mwelekeo mwema. Nchi hii itahitaji amani, mpende msipende. Mnzungumzia mambo

ambayo yataleta farakano. Ninaweza kuwa ninafahamu Standing Orders ama sifahamu, lakini ni lazima amani iwepo katika nchi hii! Kama kuna mtu yeyote kati yenu ambaye hataki amani, itakuwa juu yenu na si juu ya Standing Orders!

**Mr. Speaker:** Order, Mr. Kathangu! Unasema kwamba unapenda amani katika nchi hii na wewe unatatiza amani Bungeni? I will not entertain any further harassment from you. Mr. Raila, proceed!

**Mr. Muihia:** On a point of order, Mr. Speaker, Sir. I am standing under Standing Order No.45 to seek your guidance---

**Mr. Speaker:** Order, hon. Muihia! Those hon. Members who think that they can gang up against the Chair are completely misdirected. In any case, how many of you can force me to do what the law says I cannot allow? Nobody will! I did give Mr. Kathangu enough time to raise his point but he refused to do so. What is it Mr. Muihia?

**Mr. Muihia:** Mr. Speaker, Sir, I stand under Standing Order No.45 to seek your guidance. The Social Democratic Party (SDP) has been very consistent. I would like to seek your guidance as to whether you can give us leave to be absent for the rest of the period of this debate?

**Mr. Speaker:** Order, hon. Members! Except under the Constitution of Kenya, you are not obligated to attend every sitting of the House. So long as Members of the SDP can go away and return within eight days, I have no problem.

*(Applause)*

You have my leave; you can go now!

**Mrs. Ngilu:** Mr. Speaker, Sir, the SDP wanted to register the disappointment that they have with regard to the Raila Committee Report. As we have said in the past, we are not going to participate in this constitutional review as long as it is not going to involve the people of Kenya. The National Development Party and KANU are not Kenyans. I think the time has come for the two parties to realise that Kenyans want to be involved.

**Mr. Speaker:** Order, hon. Members! I think you have made your point, albeit illegally, because none of you was actually within the rules in making these contributions, but you have made your point. But as far as I am concerned, to be able to sit in this House, qualification number one is that you must be a Kenyan. So, every Member who is present here is a Kenyan, unless somebody can tell me that there is a different definition that makes the whole of the Government side and the National Development Party to be Ethiopians!

*(Laughter)*

*(SDP Members withdrew from the Chamber)*

**Mr. Speaker:** Order! Proceed, Mr. Raila.

## MOTION

### ADOPTION OF REPORT OF SELECT COMMITTEE ON CONSTITUTION OF KENYA REVIEW ACT

**Mr. Raila:** Mr. Speaker, Sir, I beg to move the following Motion:-

THAT, this House adopts the Report of the Select Committee on the Constitution of Kenya Review Act, 1997, that was laid on the Table of the House on Thursday, 6th April, 2000.

*(Applause)*

Mr. Speaker, Sir, it is, of course, a repetition of what we have already seen before. As I said last time, it is unfortunate that hon. Members of the House choose to refuse to debate. I said the other time that the Eighth Parliament prides itself as the House that has the highest number of intellectuals per head since Independence. This House has got more professors, doctors, engineers, lawyers and economists than any other House that this country has had. Intellectuals are known to engage themselves in intellectual debates. That is the reason why it is unfortunate that people who have been elected to be Members of the House, and to represent their people, should run away from debate in the same House. Some of the people who have walked out are themselves lawyers, and they know that the law of natural justice says that every person has a right to be heard. A very famous politician said: "I may not agree with what you have to say, but I shall defend unto death your right to say it."

As Members of Parliament, we do not only come here to have our way; we do not come to this House just to debate in order to have our way. Sometimes we come here only to make points. I want to give an example of the

1960s when we had the Kenya Peoples Union (KPU) as the only Opposition Party. KPU had only seven Members of Parliament here, but they never walked out of a debate in this House, even if they knew that they were going to lose. They moved a Vote of No Confidence Motion on the Government of the day at that time, knowing very well that they were grossly outnumbered. But they knew that they were making a point and they wanted to go down on record that they disagreed with the Government of the day.

*(Applause)*

Mr. Speaker, Sir, in 1969, when there was oath-taking following the assassination of Thomas Joseph Mboya, Thomas Okello Odongo moved a Motion here to discuss and censure the Government. Although the Motion itself was defeated, those who spoke for it went on record. I was in the gallery here in 1966 when the Preservation of Public Security Motion was moved here. It was moved by the Attorney-General and seconded by the late Thomas Joseph Mboya. The KPU, which was the Opposition party at that time, opposed it very strongly. They lost the Motion but they went down on record that they opposed it. So, 30 years later, Kenyans can read and see what the Opposition said. That is why it is wrong for the Members of Parliament who disagree with the Report that I am about to present here to run away. This is because 20 years from now, a new generation will have come and they will not know that some Members walked out of the debate. When they will go to the HANSARD records, they will only find those who spoke for the Report. They will not find anybody who spoke against it. So, I would say that it is misguided for those Members to have walked out of this debate.

*(Applause)*

Mr. Speaker, Sir, I want to say that the majority of Members who are in this House represent millions of Kenyans and, therefore, I am not worried at all with the walkout of those Members who have walked out.

**An hon. Member:** You will be worried some day!

**Mr. Raila:** Mr. Speaker, Sir, some have said that this country is in a crisis. If that were true, it is at the times of crisis that a country needs leadership. It is at the times of crisis that the country requires guidance, and you do not give that kind of leadership by running away from problems, or by wishing problems away. Last year---

**Ms. Karua:** On a point of order, Mr. Speaker, Sir. Is it in order for the hon. Member to move away from moving his Report and to concentrate on talking about other Members? Could he continue and go straight to the point?

**An hon. Member:** Which other Member?

*(Loud consultations)*

**Mr. Speaker:** Order! Order! Did you just hear what Mr. Raila said a few minutes ago, quoting some politician, that I may not agree with what you have to say, but I shall defend unto death your right to say it? Why are you denying Ms. Karua her right to say what she feels?

**Mr. Raila:** Mr. Speaker, Sir, sometime last year, this House passed a Bill establishing a Parliamentary Service Commission. That Bill was hailed as historical because it was seen as giving this Parliament its independence. With the passage of that Bill and the establishment of the Parliamentary Service Commission, this Parliament has now become autonomous of the Executive.

**Mr. Speaker:** What relevance is that debate to your Motion? I think you had better be relevant now.

**Mr. Raila:** Mr. Speaker, Sir, I am moving to that. I am happy to move this Report at this time when Parliament has now acquired its autonomy.

The Parliamentary Select Committee that I had the privilege to chair, was constituted on 15th December, 1999, by a resolution of the National Assembly. The text of the resolution as adopted is as follows:-

"THAT, while noting that the Constitution of Kenya Review Commission (Amendment) Act, 1998, received Presidential Assent on 24th December, 1998, with a commencement date of 30th December, 1998; cognisant of the fact that the implementation of the Act has been hampered by the disagreement of the nomination of commissioners among some stakeholders; and concerned that the review process is now behind schedule as a result of the impasse; and in order to facilitate consensus building necessary to resolve the stalemate amongst the bodies specified in the First Schedule of the Act, the formation of a Review Commission and the co-ordination of the constitutional review process; this House resolves to establish a Select Committee comprising of 27 Members to review the Constitution of Kenya Review Act according to the wishes of Kenyans and facilitate the



formation of the Review Commission."

Mr. Speaker, Sir, the terms of reference of the Select Committee as drawn from the above resolution are:-

"(i) To review the Constitution of Kenya Review Act, 1997, as per the wishes of Kenyans.

(ii) To facilitate the formation of the Commission to review the Constitution.

(iii) To co-ordinate the review process."

Mr. Speaker, Sir, the following Members were appointed by the House Business Committee to serve on the Committee:-

The Hon. Raila Odinga, MP - Chairman

The Hon. Musalia Mudavadi, MP

The Hon. Stephen Kalonzo Musyoka, MP

The Hon. Julius Sunkuli, MP

The Hon. Joseph Kamotho, MP

The Hon. George Anyona, MP

The Hon. Mwai Kibaki, MP

The Hon. John B. Munyasia, MP---

**Ms. Karua:** On a point of order, Mr. Speaker, Sir. To my recollection, during the Motion that led to the formation of this Select Committee, certain hon. Members objected to their names being included into the Membership of the Committee, following which the Chair ruled that those names be expunged. How come, then, that the name of hon. Mwai Kibaki is being read out as one of those hon. Members proposed by the House Business Committee to the membership of that Committee, whereas it was obvious that he was not consulted, and he had not consented? The Chair had given a specific ruling on that issue. Why should we listen to something that is inaccurate?

**Mr. Raila:** Mr. Speaker, Sir, we discussed this matter at length in the Committee. We realised that no amendment was moved on the Floor of this House to remove the names of those other Members from the Committee.

*(Applause)*

We realised that, under Section 121 of the Constitution, those hon. Members who objected to their names being included in this Select Committee were required to write a letter, specifically, to the Speaker of the National Assembly---

**Mr. Speaker:** Order! Order! Mr. Raila, I think it will save the House a lot of time, and that we will make progress, if you proceeded on the basis of the authority given to you by this House. The authority given to you by this House concerns the hon. Members who accepted to take their positions in this Select Committee upon being elected by this House. That is the Committee we are dealing with. Those hon. Members who did not take up their positions in this Committee are not Members of this Committee. So, leave them alone.

**Mr. Raila:** Mr. Speaker, Sir, the ninth Member of this Committee is hon. S.R. Shakombo, MP. The other Members are hon. Edan Keynan, MP; hon. Joseph Kiangoi, MP; hon. Justin Muturi, MP; hon. Otieno Kajwang, MP; hon. Mohammed Affey, MP; hon. Jembe Mwakalu, MP; hon. Ramadhan Kajembe, MP; hon. Isaac Shaaban, MP; hon. Ziporah Kitony, MP; hon. Zephania Nyang'wara, MP; hon. Paul Sang', MP; hon. Fidelis Gumo, MP; hon. Chege Mbitiru, MP, and hon. Steven Ndicho, MP. Hon. Ndicho attended only one sitting of the Committee, while hon. Mbitiru withdrew from the Committee after 24 sittings.

It is now my pleasure to present to this House the Report of the Committee. But before I go into the specific proposals, allow me to give the background of the events that culminated in the establishment of this Committee, which I had the privilege to lead. Constitutional amendments in Kenya are not new. Since Independence, we have had 29 constitutional amendments. Some of those amendments were very well-intentioned. However, in some cases, some of the amendments were, basically, introduced to serve political expediency. It has been said that the Independence Constitution has been amended so many times that it is now hard to identify its original texture; that, there has been so much patchwork that the patching on the original "clothing" outnumbers it and, that, therefore, there is need to, now, design a completely new Constitution.

Mr. Speaker, Sir, allow me to make a few remarks about the situation in other African countries and the world, generally, which have a bearing on our own situation in Kenya. The final two decades of the 20th Century have witnessed one of the most dramatic upheavals in the political history of Independent Africa. As the wind of change blew in Eastern Europe, so has it also blown throughout the African Continent. In the process, it brought down some former single-party regimes as well as some military regimes. The dramatic changes that Africa has undergone over the last two decades have been described as the second liberation. It has been said that if the first liberation was against the colonial rule, this new crusade has been for African democracy; and that, if the first liberation effort was for political independence, this second liberation is for wider human rights. These changes have rejuvenated party politics in most parts of the African Continent.

The fathers of the Independence struggle had since introduced single-party systems in the African Continent. Here, we can quote Leopold Sedar Senghor of Senegal, the late Kwame Nkrumah of Ghana, and the late Mwalimu Julius Nyerere of Tanzania. Those great African leaders, at that time, argued that the African traditional society did not know these adversarial systems of governance. This meant that the gigantic task of nation building required consolidation of efforts, and that a multiparty system of politics was a luxury that independent African countries could ill-afford. So, out of very genuine concern for development of their countries, those leaders introduced a single-party political system. The development, 30 years down the road, has shown that these systems have not worked to the benefit of the African people. That is the reason why we are now experiencing re-introduction of multiparty politics.

Mr. Speaker, Sir, throughout the world, in countries where conflicts have existed, constitutions have acted as mediators between opposing sides. For example, the Magna Carta of 1215; the Petition of Rights of 1628, and the Bill of Rights of 1688/89 resolved the disputes between the English Kings and their subjects. After the successful overthrow of a tyrannical monarchy, the French adopted a constitution of which the declaration of human rights and the rights of man and the citizens formed an integral part to avert possible future conflicts between the ordinary citizens and the state. Likewise, when the Americans declared their Independence from England following a dispute on taxation, they drew up a constitution, setting up authority of the state and the rights of the people, and established a supreme court to resolve constitutional disputes between the citizens and the state.

Therefore, Africa is not unique in this exercise. A democratic constitution heralded the end of apartheid in South Africa, while Uganda is in the process of implementing a new Constitution after years of military dictatorships. In our own experience in Kenya, we re-introduced multiparty politics in 1991 after the repeal of Section 2A of the Constitution, which had, hitherto, made Kenya a *de jure* one-party State. We have also organised two multiparty elections, in 1992 and 1997. So, our challenge now lies in reforming our country's Constitution to reflect the multiparty character of our new political dispensation.

Mr. Speaker, Sir, in 1995, the President in his New Year message, said that, that year was going to be the year of constitutional reform, and that he was going to invite foreign experts to come into the country to help with the writing of the new Constitution. That announcement was supported by all Kenyans, and both sides of the House. Members of the diplomatic community offered to provide foreign experts to come and help us with the writing of our new Constitution. It is, therefore, a contradiction in kind that five years later some people can come here and say that it is wrong for us to consult foreign experts. Some of these people have forgotten what they said five years ago when the President announced that he was going to invite foreign experts to come and help us in writing our Constitution.

*(Applause)*

In 1997, we said that we wanted to have constitutional reforms before the elections, and we came up with a movement of "No reforms, no elections". The IPPG was quickly brokered and meetings were held in County Hall. We, in the NDP, refused to join the County Hall group and remained at Ufungamano. I would like to inform this House that the group at Ufungamano abandoned us there and ran to County Hall. We were abandoned at Ufungamano even by the clergy. We said that the IPPG was too little, and too late; that it was introduced to sustain the reform process and that it would not produce the desired results. We were described by the media as extremists; as people who were unreasonable and did not want to bend, while the package was hailed as history being made. So, when the time came for us to nominate the 10 additional members who had been introduced by the IPPG package to the Electoral Commission of Kenya (ECK), we, in the NDP, were not allowed to nominate a single commissioner on the ground that we could not be expected to reap from where we did not sow. That is what we were told. I am saying that we, in the NDP, have been consistent right through in what we say and do. Those people who talk about consistence are consistent only in one thing; they are consistent in their inconsistency.

*(Laughter)*

After the elections, when we decided that the time had come for both sides of the political divide to come together and negotiate a settlement, we came up with the policy of co-operation among political parties. We said that this is not just a KANU/NDP co-operation, but it is a co-operation among all political parties. In order to avoid misunderstanding, we bought space in the newspapers and reproduced our position on the policy of co-operation. We said that a time comes when a people must come together to negotiate. We can give many relevant examples here. In Mozambique, the Frelimo and Renamo fought for many years, but a time came when they had to negotiate. Both of these groups went to Rome, negotiated a settlement, a new constitution was produced, and elections were held in Mozambique. I worked as a consultant in Mozambique, training political parties that had been established, including

Renamo which had come from the jungle on how to do political campaigns. They went to an election and the results were very close. Renamo refused to take their positions in Parliament. I was again invited to go and talk to them and persuade them to take their positions in Parliament, which I did. I told them that the results were too close. There was only a seven-seat difference between Renamo and Frelimo. I told them that they had made a lot of progress; 49 against 51. I urged them to consolidate the gains that they had made and press for concessions. I told them to reflect on what had happened just the other year, when they were being regarded as terrorists in the bush. The Government would send its troops out there, kill them, and come and announce that it had killed so many of those terrorists. I told them that they were now going to be paid money to sit in the House and oppose the Government.

(Applause)

Therefore, I told them that they should consider that to be a victory and take their seats, which they did. Four months later, when I met them, they were very grateful to me for having advised them to take their positions in Parliament.

Mr. Speaker, Sir, Namibia was bleeding for many years; SWAPO against the Boer regime. In the end, they had to sit down and negotiate a settlement. The same thing happened in South Africa, after very many years of bloody conflicts in that country, where the ANC and other political parties were in the bush. Ultimately, through the pressure that was mounted internally and externally, the Boer regime agreed to release political prisoners and unban all the political parties that had been banned, such as the ANC, the PAC and so on.

When Mr. Mandela came out of prison, he told his people that the time had come to negotiate with the Boers. They asked him: "You want to talk with the Boers after 27 years of imprisonment?" They told him that he had become senile in prison. They further told him that the Boers who had killed so many of their people brutally--- They told Mr. Mandela that the medicine for a Boer was a bullet; one Boer, one bullet. But Mr. Mandela told them that the fastest way to stop bloodshed in their country was by way of negotiations. He told them that they should try and throw an olive branch to the Boers. I would like to inform this House that he has recorded all these in his book. He said that when they threw the olive branch, they found that this is all De Klerk and all his people had been waiting for. It was like throwing a rope to a drowning man. I would like to inform this House that the Boers quickly took it and negotiated a new settlement. They went to Kempton Park and negotiated the parameters of constitutional reform. I would like to inform this House that CODESA was formed and finally, a new Constitution was formed, elections were held, the ANC won and Mr. Mandela became the President.

Mr. Speaker, Sir, I am saying that if the ANC could agree to negotiate with De Klerk and his people, what is the crime of the NDP, the DP or any Opposition party in Kenya negotiating with the ruling party? What is important is that you negotiate from a position of principle, but you do not compromise your principles. This is what is important. We must agree that the only way forward for this country is for Kenyans to agree that there is no solution unless we come together as a people.

Several years ago, a renowned world leader said:

"Leaders who arrogate to themselves the monopoly of wisdom often lead their countries through a short-cut to chaos."

The examples are there and I can quote them. An example is the great city state of Carthage where its leaders who, believed that Carthage was the whole world, carried out three wars. After the third war there was no Carthage. We know about the German experience with "the Fuhrer" Hitler, whose word was sacrosanct and they would greet each other like this: "Hail Hitler". We know where that path led Germany to. We know what the actions of Ceausescu and his intellectual wife led Romania to.

Mr. Speaker, Sir, we should not arrogate to ourselves the monopoly of wisdom that we are the only people who know, and that we are speaking on behalf of the people. We were told recently in our Committee by a judge from Nigeria that vocality is not synonymous with popularity. There is a group of few elite intellectuals who are able to shout very loudly because they have access to the media. They are vocal. Therefore, they think that they are speaking on behalf of the silent majority. This is an illusion that we must remove. Somebody stands here and says that he is speaking on behalf of Kenyans. On behalf of which Kenyans are you speaking?

We have said that the manner in which a constitution is developed and adopted by the people is very important in demonstrating its legitimacy, popularity and acceptability. A constitution that is imposed on a people cannot be the basis of a stable, peaceful and democratic governance of the people. I want to quote here, Prof. Nwabueze, who is a very famous professor of Nigeria. In his book entitled: *The Presidential Constitution of Nigeria*, he says:

"To achieve this understanding and acceptance, a constitution needs to be put through the process of popularisation with a view to generating public interest in it, that everybody has a stake in it; that it is the common property of all. The people must be made to identify themselves with the Constitution.

Without this sense of identification and attachment a constitution will always remain remote and artificial with less real existence than the paper on which it is written."

It is important that the people should be involved. This is what will confer legitimacy to the document. It should also be mentioned that such a democratic and popular method of evolving a constitution serves to explore the misconception commonly held that the power to govern means the exclusive power to make constitutions. The constitution is the supreme law of the country. No law can contradict it. Parliament and all other governing bodies are subordinate to it. The right to change the constitution, therefore, must always remain with the people because the people must be sovereign. Jawarhalal Nehru, a very great leader of India and the world, who was a constitution expert, said this:

"This cannot be done by the wisest of lawyers sitting together in conclave. It cannot be done by small committees trying to balance interests and calling that constitution-making. It can only be done effectively when political and psychological conditions are present and the urge and sanctions come from the masses."

It is important that a clear understanding is reached on the term "people-driven". It has become so fashionable to dismiss whatever is being discussed, particularly in this House, as "Parliament-driven." Those who are opposing the report that we are presenting today say that it is "Parliament-driven" as opposed to the Ufungamano initiative, which, according to them, is "people-driven". They fail to recognise the fact that both Bomas of Kenya Forum and the Safari Park Consultative Meetings were convened by the Inter-Party Parliamentary Committee (IPPC), which consisted of 25 Members of Parliament. The IPPC was for all intents and purposes a Select Committee of the House. The Attorney-General merely chaired it on behalf of other Members of the House.

Those people opposed to my Select Committee say it is "Parliament-driven". Out there in County Hall, very many Kenyans appeared before my Committee. Members of the First Parliament; people who went to Lancaster House; trade unionists; Mau Mau veterans; religious leaders; the disabled; university students and women leaders all came before my Committee. I have said that the group of Kenyans who appeared before my Committee far outnumbers the group that assembled at Ufungamano House. That cannot be considered to be more "people driven" than the Select Committee. The days of the ancient Greek city states, when the people gathered together in a baraza to deliberate and decide on issues affecting them directly are long gone. Tacitus "Germania" describes the first century Germanic Assembly as follows:

"About money matters, the chiefs confer; about major matters all. Yet even that which is decided by a common people is dealt with by the chiefs as well. They convene, unless something accidental and unexpected befalls, on regular days. Presently, a king or a chief is heard more on account of his persuasive influence than his power to command. If displeased with his views, the assembled multitude murmur disdain. If pleased, they brandish their spears."

This is a case where people come together, sit there, discuss and resolve matters together. That is what is called the direct democracy. Applied to the present-day Kenya, this would mean that over 28 million people would gather at a public stadium somewhere to deliberate and agree on a constitution. In French, we call that "mission impossible." That is nearly impossible. It cannot work.

Mr. Speaker, Sir, in modern times, direct democracy usually means the institution of referendum. The electorate decide on specific issues by voting, instead of leaving decisions to the elected representatives. It should be noted that throughout the world, direct democracy is exceptional rather than the rule. Indirect democracy is now the general rule. There also seems to be a general agreement. That means, to some extent, it is a necessity in any modern society.

The United Kingdom recently reviewed its Constitution very comprehensively. They ended up with a Scottish Parliament and a Welsh Assembly. They have also removed voting rights from the hereditary peers. But a lot of this was discussed and approved in the House of Commons and the House of Lords. That is why I take great exception at the High Commissioner of the United Kingdom to Kenya, coming to tell the Select Committee of Parliament to go and meet with a lobby group in Ufungamano. Why could he not say the same things for his Government, where the House of Commons discussed and agreed, first, to decentralise powers to the regional Assemblies in the Welsh and the Scottish Parliaments? Now they are talking about an English Parliament. Why was the decision to deprive the hereditary peers the votes in the House of Lords not taken to the people? I asked him: If the House of Commons set up a Select Committee to review the Constitution and the Archbishop of Canterbury did the same thing; could he compare the two and say the committee by the Archbishop of Canterbury and the Select Committee should meet together and agree?

By saying this, I did not say that what is happening in Ufungamano is not relevant. I have said, and I want to repeat it here, that what is happening in Ufungamano is very healthy for democracy and in a constitutional review process. This is because the people who are assembled there, the clergy and civil society have a role to play in

reviewing our Constitution. But I am saying, ultimately, when they have done whatever they are doing in collecting views of the people; carrying out civic education, and even drafting their constitution, that must be made available to a commission that is going to be set up when we are through with the process that we are engaged in.

Mr. Speaker, Sir, we, in my Committee, sat down and considered who are the stakeholders. This is another term, just like "a people-driven process." Who is a stakeholder in the constitutional review process? Who is a stakeholder in a Constitution? The multitudes who came and appeared before the Select Committee in County Hall were in unison on one thing; that stakeholders in a constitutional review process are the entire citizenry of Kenya; all the people of Kenya.

*(Applause)*

Therefore, no one has more right to constitution-making than the other. I cannot go and form an NGO with my wife and my children; register it, and then go to Ufungamano or Safari Park and say I am a stakeholder.

**An hon. Member:** Say it again!

**Mr. Raila:** Mr. Speaker, Sir, we are being told about 54 stakeholders at Ufungamano. Why should 54 groups that were gathered in Ufungamano feel that they are representatives of Kenya? One would ask: By whose mandate? Who elected them to go and sit in Ufungamano where they are talking about a democratic and people-driven constitutional review process? You can only go and talk on my behalf, if I have asked you to go and represent me.

So, I discussed this with my friend, hon. Cyril Ramaphosa, who was the Chairman of South African Constitutional Review Committee, and he said that they tried to do that sort of thing in South Africa. The pressure groups tried to hijack the process and they wanted to be represented in the constitutional review process, but we said: "No; that is not your role. Your role is to carry out civic education and lobby representatives of people, but when it comes to writing the Constitution and legislation, that is the role of the Parliamentarians." So, we are seeing a situation here where some people want to hijack the process in the name of being the stakeholders. This is something over which clear understanding is required.

*[Mr. Speaker left the Chair]*

*[Mr. Deputy Speaker took the Chair]*

Mr. Deputy Speaker, Sir, you will certainly recall that we were in a stalemate last December when Parliament passed a resolution to establish a Select Committee with the following terms of reference: "To review the Constitution Review Act as per the wishes of Kenyans; facilitate the formation of a Commission to review the Constitution, and to co-ordinate review process". You will also recall that there were some acrimonies. I want to say that compromise is the key to the success of every negotiation. This is only possible if there is trust. The problem we have in this country is lack of trust among leadership and the people of this country. Experiences in other countries show that the basic tenet of mutual co-operation is respect for one another. There is need for acceptance of one another. Therefore, there is need for people to recognise that we are all equal Kenyans. So, attitudes like "the Kenyan people and Parliament", will not work. This is because these people are trying to draw a distinction between the representatives of the people and the people, as if there was a civilian coup. When we presented the report here, the following day somebody read it and then rushed to Chester House to say Kenyans are going to resort to mass action. You have not even consulted your own wife at home and you are going to tell people at Chester House that Kenyans are going to resort to mass action. Which Kenyans? On behalf of which Kenyans are you speaking?

*(Applause)*

Mr. Deputy Speaker, Sir, do these people deserve headlines treatment in major dailies, when we know that these people are speaking on behalf of nobody? We have made certain proposals which we hope would be acceptable to the House.

I would like to pay tribute to hon. Members of the Select Committee who actively participated in the deliberations, culminating in the production of this report. They endured long sitting hours and they had a determination in salvaging a cause which, at times, appeared doomed, and exhibited an admirable and patriotic disposition. In addition, I would like to thank all Kenyans who presented written memoranda and oral submissions to the Committee. Their suggestions and support were invaluable to the Committee, and by offering to be part of a solution and not a problem, they exhibited a high degree of patriotism, which was a challenge and a source of inspiration to the Committee. We also benefited from the experiences of other hon. Members of this House who were

also involved in some similar negotiations in other countries. I want to mention here, hon. Mark Too who, with his friend, were involved in the negotiations for the settlement of the Mozambican conflict. We were able to benefit from his experience. He is known here as "Bw. Dawa".

Mr. Deputy Speaker, Sir, we have wasted more than three years talking at each other rather than talking to each other. There has been a lot of mistrust and suspicion amongst the bodies which were listed in the Act. This has created confusion amongst Kenyans in general. This must be overcome. Indeed, if you have any dreams and aspirations of building a strong democratic and prosperous nation, we have to communicate directly by creating consensus and rapport. It is only in this way that you will discover that there are more things that unite us than those that divide us. In fact, having sat through all the Committee's meetings with the legal experts, the freedom fighters, political veterans and Kenyans of all walks of life, it is my humble submission that there is nothing that should divide us.

Mr. Deputy Speaker, Sir, we interpreted our terms of reference to mean that we were mandated by the House to review the Act as per the wishes of the people of Kenya, and facilitate the formation of a Commission to review the Constitution. Thirdly, we were to co-ordinate the review process. The task before us was, therefore, not only to review the Act and form a Commission, but also co-ordinate the review process. So, the Committee, having met several groups, agreed to move forward and come up with the following theoretical and philosophical basis of the review process. We considered that the new constitutional order should be responsive to Kenya's potentially vulnerable geographical position. Two, that the new constitutional order should come to terms with Kenya's multi-ethnic and cultural diversities. Three, the new constitutional order should come to terms with Kenya's past and present, and should be sufficiently flexible to meet internal and external challenges and people's aspirations for the future. Four, that the new constitutional order

should be so devised as to enable Government to govern effectively and democratically. Five, that there should be such a balance of forces in the new constitutional order that no single force or group should establish its hegemony to the extent of flouting the established democratic principles. Six, no social force or group should be politically marginalised as evidenced by Kenya's historical experience. Seven, the new constitutional order should ensure that major controversial issues are resolved through democratic discussions and where necessary, national referenda. Eight, the new constitutional order should ensure that constitutional structures are viable and flexible, coherent and integrated to promote a culture of constitutionalism.

Mr. Deputy Speaker, Sir, the Committee held 38 sittings and received written memoranda from 70 groups and individuals. A prominent deficiency which emerged after analyzing the memoranda was that the majority of the people who initially responded to our invitations were under the impression that the Committee was actually reviewing the Constitution. It is only after we put adverts in the newspapers that we received relevant recommendations regarding the Act. The Committee received views and opinions from vibrant groups of Kenyans ranging from religious sects, the Kenya Mau Mau Union, the civil society and personalities who were at Lancaster House. The Committee also benefitted from the expert advice of the following constitutional lawyers: Prof. J.B. Ojwang' of the Faculty of Law, University of Nairobi; Dr. Kenneth Kiplagat, a lecturer in law at the university of Nairobi, who is also a legal practitioner; and Mr. Mutakha Kangu of Moi University. Others were Mr. Lee Muthoga, a legal practitioner, Mr. Patrick Lumumba of University of Nairobi and a legal practitioner and Mr. P.M. Mwambua, a legal practitioner and lecturer at the School of Law. The Committee also had an opportunity to interact with Justice Akinola Aguda, a Nigerian national who is also a former Chief Justice of the Republic of Botswana. We also had the benefit of interacting with Justice Benjamin Odoki, who was the Chairman of Uganda's Constitution Commission.

After these very broad-based consultations and interactions with Kenyans and other interested parties, the Committee made the following observations and recommendations. Regarding the framework and the timetable of the constitutional review process, the Act which we were reviewing had given 36 months as the timetable for the review process, and we came up with very clear deadlines for certain activities to take place. We received recommendations to the effect that a constitutional review process should not be tied to an event, for example, like an election. A constitutional review process should be allowed to flow naturally. There were also concerns about the elections that will be held in the year 2002. We were told that Kenyans are used to this event of elections after every five years and if you tell them that you will postpone elections so that the constitutional review process is undertaken, many of them will be very worried.

Mr. Deputy Speaker, Sir, therefore, having discussed with people who have been involved in the constitutional review process elsewhere, and examined the evidence that was available before us, we felt that it is possible, with co-operation and understanding, to complete this review process within 24 months. However, we said that in the event that the Commission is not to conclude its work within 24 months, a provision should be made for interim amendments to the current Constitution, which will allow for elections to be held while the constitutional

review process continues beyond the coming elections. These interim amendments are aimed at levelling the playing field before the elections are held. So, they will not only be constitutional amendments, but they will also be statutory amendments in order to amend certain laws; for example, the electoral, media, security and administration laws.

About the Commission itself, and that is what has caused all the hullabaloo about the Committee's Report, we have not removed any powers of the Commission as stipulated in the Act which we were reviewing. We have retained all the powers as they are. If anything else, we have strengthened and added more powers to the Commission. The worry appears to be only about the appointment of the Commissioners to the Commission. If you ask anybody, even the Members who walked out, what is wrong with this Report, they would only tell you about how the Commissioners will be appointed to the Commission. I have said that if one disagrees with what we have suggested, he or she should tell us how he or she wants it to be, or move an amendment to the Motion.

Mr. Deputy Speaker, Sir, we said in our Report that one of the major reasons for the constitutional stalemate, which we are trying to resolve, was because the bodies which were mentioned in the Act as stakeholders did not agree on the appointment of the Commissioners. The political parties, the Kenya Women Political Caucus and some religious groups could not agree. We, therefore, said that we need to have a radical departure from what is prescribed in the Act. That is why we said that we should give this responsibility to Parliament because all shades of political opinions are represented in there. All political parties are represented in Parliament and they have always agreed on the composition of various House Committees, be it the House Business Committee, the Public Accounts Committee, the Public Investments Committee, or all the other Select and Departmental Committees. We have said we should leave the responsibility to a Select Committee of the House, which will shortlist 21 Kenyan men and women of integrity and then bring that list to the House. Then the list shall be discussed and approved by the House. Once it is brought before the House, if anybody disagrees with any name that is on that list, he or she is free as an hon. Member of the House to move an amendment. If you have your way, that person is done away with. After the House has approved the 21 names, the list will be submitted to the President, who will then appoint 15 Commissioners out of the 21 persons.

Mr. Deputy Speaker, Sir, the charge has been that the powers have been taken to the President. I think I that is being guilty of reverse reasoning because the President is being presented almost with a *fait accompli*. He cannot choose any other person from outside that list of 21 persons. So, the onus lies with the House to make sure that the people they nominate are men and women who are all capable of becoming commissioners. Once that is done, the President will have to pick from that list. We have also suggested that if you disagree with this method that we are proposing, you should tell us how you want it to be, instead of saying that the President has been given powers. This is simply a report and not a blueprint.

Mr. Deputy Speaker, Sir, we also drafted a Bill, which is with the Attorney-General. We thought that we could not present the report together with the Bill because, that would be taking the House for granted. We wanted the House to discuss this Report and then any amendments would be reflected in the Bill which the Attorney-General shall publish. So, by walking away without telling us what you disagree with in this Report, you are not doing this country any justice.

Mr. Deputy Speaker, Sir, we have recommended that seven of those commissioners must be qualified lawyers and, preferably, constitutional lawyers, with at least five years of experience. Secondly, we recommended that the remaining eight should be people with knowledge in public affairs; men and women of integrity, and that, one should be from each of the eight provinces of Kenya. We have also recommended that there shall be not more than two of those commissioners coming from one province. We are trying to satisfy the geographical provinces.

Mr. Deputy Speaker, Sir, we have recommended that the Secretary of the Commission shall be nominated by the Committee of Parliament. We have not given the President the powers to nominate the Secretary. He or she shall be nominated by Parliament and appointed by the President. Under the current Act, those so-called stakeholders were also just nominating, and it was the President who was to appoint. So, I do not know why there is hullabaloo about this.

Mr. Deputy Speaker, Sir, on the structure of the review, the original Act had a three-tier structure; the District Forum, the National Forum and the Commission. We have been accused in the media of having done away with the three-tier, structure yet they had this Report to read. We have retained the structure by removing the local forum from the districts to the constituency. So, instead of the district forum, we are going to have a constituency forum. In the current Act, the District Forum consists of three representatives from each location. It was going to have three people from each location, who were going to go to the district and interact with the Commission. We have decided to take it to the constituency and allow Members of Parliament, the councillors, religious leaders, women leaders---

**Mr. Munyasia:** On a point of information, Mr. Deputy Speaker, Sir. I wish to inform hon. Raila that bringing the Commission from the district level down to the constituency level is what we call, in common political parlance, bringing the Commission closer to the people.

**Mr. Raila:** Mr. Deputy Speaker, Sir, I am very grateful to hon. Munyasia. So, even individuals will be free to go and interact with the Commission and present their views. If this is not "people-driven", then I do not understand

what a "people-driven" review process is. The other Act was "stakeholder-driven".

Mr. Deputy Speaker, Sir, we have also said that once the Commission has gone around the country and collected views from the people at the constituency level, it shall prepare a preliminary report and a draft constitution, which shall be published and circulated widely. It shall be made available at all public libraries and printed in the newspapers. It shall be available at the DCs, DOs and even the chiefs' offices, so that Kenyans can access it, read it and understand it. Then, at the national level, we have the National Consultative Forum. It is a mere consultative forum. There is no vote to be taken. People are simply going to talk there, and that is going to be the end of it. We have divided it into two and introduced a national debate.

After the Commission has prepared its preliminary report and published it, we shall subject it to a national debate by going to the provinces and holding seminars, workshops and public hearings, so that people can now discuss this document, because, in the first trip, they were coming empty-handed to collect the views from the people; in the second trip, they are coming with a document, and people will be able to input into this document. After that, the Commission shall now prepare another report, which is now enriched by the views received from the people in the provinces. Then it will take it to the next stage of the national forum, which we have now called the National Constitutional Conference.

Mr. Deputy Speaker, Sir, some other people have been calling for a national conference, and we have now introduced it. The document will be discussed at the conference and adopted. We have widened the scope of participation at this conference. Under the Act which we are now changing, the Consultative Forum was going to consist of three representatives from each district; a woman, a youth and a man, plus Members of Parliament. We have brought in the local authorities. So, we have now said that every county council shall nominate three people. One of them must be a woman, one a councillor and the third one a man but a non-councillor. The woman and the other person must be non-councillors because we have been accused of handing it over to councillors. Only one of the three nominees will be a councillor. Then, we have also introduced the municipal councils. Every municipal council shall also nominate three representatives. Then, we have also introduced the town councils. Every town council shall nominate one person each. This will be now a much broader and a more representative assembly. Then, together with the hon. Members of Parliament, we have said that the Commission shall have the authority to invite representatives from religious groups, disabled people groups, minority groups, professional groups and the business community. Our own must be not more than ten per cent of the whole group. I want to be told why this is less representative than the forum which we are seeking to replace it with?

*(Applause)*

Then this conference shall debate this other document, adopt it and then the Commission shall hand it over to the Attorney-General, who shall bring it to Parliament here for debate and adoption.

The other thing which we have added here is a Standing Committee of the House. This is because of the concerns expressed during the stalemate; that the current Act did not provide a mechanism for conflicts resolution. That is the reason why we wasted nearly one year; the various stakeholders could not agree on the numbers of the representation. So, we have said that we need to have a Standing Committee of the House that shall act as an arbitrator in the event that there will be any kind of disagreements amongst the Commissioners. This Committee should not control the Commission. The Commission can provide prepared reports to that Select Committee, so that the Select Committee will have to know that the Commission will be working according to the timetable.

Mr. Deputy Speaker, Sir, we have said that the role of the Attorney-General was completely downplayed in the other Act, and although the Attorney-General was being blamed for not using his offices to resolve the stalemate, he had no powers at all to do so under that Act. It was none other than the Justice from Nigeria who came and told us that this Act is very faulty because we had completely excluded or marginalised the State Law Office. How can you do it without the State Law Office where the expertise in this particular field resides? How can you do it without involving that office? The Commission will not be able to do it without using the Attorney-General's office. We have, therefore, decided to restore the position of the Attorney-General properly in the Act.

With regard to the civic education, this is very important in constitution-making. This is because people can only make useful recommendations to the Commission if they are informed. That is the reason why the people need to be educated. We said that civic education is an on-going process. It started more than two years ago and it is still going on. But we said that it must be somehow regulated because if it is not regulated, some other groups will be giving contrary education and instructions to the people. So, we said that it should be co-ordinated by the Commission. As has happened in other countries, for example, Uganda, South Africa and Mexico, we said that the Commission should have the powers to accredit all the bodies that will be involved in the civic education. This is also for transparency and accountability. If we look at the current Act, it is very stringent in as far as the Commission is



concerned. This is with regard to how the Commission accounts for the money and gifts that it receives. It is very elaborate in specifications, but it is completely silent about monies that will be received by other bodies that will be involved in civic education. If we demand accountability of the Commission, we must also demand accountability of all the other bodies that will receive money from outside to conduct civic education.

*(Applause)*

Mr. Deputy Speaker, Sir, we have, therefore, said that the media should be required to also provide a service. We are now in a liberalised market where the State-owned media is not the only media that is available. We decided to borrow from practices in other countries where even the privately-owned media houses, for example, radio and television stations, are required by law to devote a certain amount of time for civic education purposes. So, we said that the Commission shall look at practices in other countries and adopt them, so that these other media houses also play their constitutional role in educating the people of Kenya.

Those are the major changes that we have introduced here. There have been a lot of criticisms of our report as having marginalised Kenyans; having handed over the power of the constitutional review to the incumbent Government, and as having surrendered power to the President. I would like to submit that the opposite is the case because, once the Commission will be established, it shall be independent and it shall enjoy all the powers that are there in the current Act. We are of the view that this process has taken too long and it needs to be concluded.

In conclusion, I want to say that when we began the process of trying to create dialogue and engagement amongst political parties, we knew that we would be misunderstood. We knew that there would be charges of betrayal, compromise and people would say that we have been bought. But when you are doing something out of conviction, and when your conscience is clear that this is right, then you will just do it and you will not be deterred.

*(Applause)*

We know that a human being is a conservative animal; that it uses the beaten path. This is the beaten path that it is used to. If you try to change direction and go this way, you will receive a lot of resistance. So, the beaten path that we know is bashing across the divide, but that will not help this country. Time has come for Kenyans of all different political persuasions, religious groups, business community and the civil society to come together in the realisation that Kenya is greater than all of them. Demonizing groups or individuals will not help. We are together in this boat called Kenya, and we should not allow somebody to drill a hole in it. We will be mad to see somebody drilling a hole in it and laugh when we know that when we begin to sink, we will all sink.

Mr. Deputy Speaker, Sir, I would like to say that we should not, in debating this Motion, try to condemn anybody, even those who have walked away. They are no less Kenyans than the Kenyans who are here! There have been calls for mass action, but we know that there were times for mass action. Mass action has its time; it is the time when people cannot negotiate. That is the time for people to be involved in mass action. We were involved in mass action. We were on the streets! When the police came out, we could pour our boys on the streets. When they threw tear gas, we threw stones! But the time has now come for Kenyans to negotiate! I have been saying that the theatre of change in this country has shifted from the streets to the negotiating table in Parliament! It is here in Parliament where people should come and demonstrate their skills by coming and saying: "We disagree with this Report because of a, b, c and d!" If they convince us, we are all reasonable people and we will agree with them. But if they stay away, in the misguided belief that in doing so they are working in the interests of the people that they represent, I am saying that they are doing injustice to not only the people that they represent, but to all the people of Kenya.

Mr. Deputy Speaker, Sir, we want this process to begin. We want this Report to be passed so that the process could begin. I would like to urge hon. Members to discuss this Motion and Report very objectively, without any kind of acrimony. I would like this Report to be approved by the House.

With those few remarks, I beg to move, and request hon. Musyoka to second.

**The Minister for Education** (Mr. Musyoka): Thank you, Mr. Deputy Speaker, Sir. I would like to prefix my remarks by thanking the Almighty God for this opportunity. I think that the time and moment for reckoning has come! I know that this morning, in a room above where Dr. Omamo sits now, there was a prayer that things will go well. I want to thank our Moslem brothers who have also been praying for the success and work of the Committee. I also want to thank those who meet in temples, and those who generally wished this Parliamentary Select Committee well. I believe that their prayers will not have been in vain.

Mr. Deputy Speaker, Sir, there is a basic principal of natural justice, which hon. Raila alluded to. It simply states that: "No man shall be condemned unheard!" Our wish was that our hon. colleagues, who, I believe, sang the National Anthem vainly and walked out could have been of benefit staying on and listening to the Report so ably

presented by hon. Raila. Hon. Raila Odinga has acquitted himself on the work of the Committee. I want to, straightaway, say that hon. Raila should not be condemned singly. He did not represent himself, neither did he represent the party that he leads; that is, the National Development Party (NDP). This was a Parliamentary Select Committee. It was a Committee of this House! It was not a Raila Odinga Committee! We have to make it absolutely clear so that in trying to isolate and demonise a Member of the Committee, I believe our colleagues have been acting very unfairly! I know that you, Mr. Deputy Speaker, Sir, was able to do some exorcism of those demons! Hon. Raila should know that, all of us in the Committee, who spent so much time listening to so much wisdom from a cross-section of Kenyans, came out the wiser! We were literally lectured for hours on end on the concept of people-driven constitutional reforms. Nobody can claim to have a monopoly of knowledge! It was very clear to all of us in the Committee, and now we are presenting our Report before the House, that the people of this country want a new constitutional dispensation. There can be no excuses about that fact! The people of this country have been taken for a ride by people who, unfortunately, have not taken the time to read the Report that is now properly before the House!

Mr. Deputy Speaker, Sir, I would like to take this very early opportunity to thank His Excellency the President. Again, the same forces of distortion and confusion, in anticipating debate today, tried to grossly misreport the proceedings of the KANU Parliamentary Group Meeting that took place yesterday. They wanted to tell our brothers and partners on the other side of the House that: "Look, you have been taken for a ride! KANU has already said that out of the 21 seats, they would want to keep 11 seats!" I would like to confirm before this House that, no such discussion took place during the KANU Parliamentary Group Meeting. Indeed, the beauty of this Report is in the fact that, on the 21 commissioners, out of whom 15 will be selected, there was no mention of which party they belong to. That is out of question. This House will agree on 21 names of commissioners regardless of which party they come from. I think this is the beauty of it! Another thing is that we have been able to agree, after long hours of deliberations, on the fact that we need to be able to jump-start this process. We have spent nearly two years now talking about the structure. What Kenyans want is to be given the opportunity to dwell deep into the issues. They know exactly what kind of constitutional dispensation they want. Why do we not give them the opportunity? What are the people-driven constitutional reforms? I think our Chairman, page by page, paragraph by paragraph, was able to read what we agreed. We took time and looked at all the issues.

Mr. Deputy Speaker, Sir, the whole thing started at the Bomas of Kenya. We went to the Bomas of Kenya and I do remember that most of my colleagues on this side had accompanied His Excellency the President to Cairo. Kenya was then joining the Group of 15 nations in Africa. That was a very important thing, and most of my colleagues left. I was asked to speak on behalf of the Party. I remember saying at the Bomas of Kenya then, that what the people of Kenya wanted was not to discuss this structure in perpetuity. This is because others wanted to dwell on the issue of the structure; of who was to be a stakeholder. That was going to take a very long time. We have all been witnesses to that fact.

May I then suggest that we seriously look at this Report. What the Chairman has gone through were not his own words. Those were the collective wishes and wisdom of Kenyans, including hon. Munyasia! I thank him very much! We got bogged down at some stage with the people-driven consensus. One other thing that we discovered was that, it was inappropriate to talk about a people-driven process in vain! In Japan, for instance, what happens is that, the people's sovereignty is exercised through the representatives of the people. Today, Japan is a member of the Group of Seven, one of the highly industrialised countries of the world. We were able to be told, for instance, what happened just within the East African family. President Ben Mkapa of Tanzania, in exercise of his constitutional authority, was able to appoint a Presidential Commission which has since made its report. Although the Chairman of the Law Society of Kenya (LSK), Mr. Gibson Kamau Kuria, does not like the Ugandan example, we know that our friends in Uganda went into great detail and emerged with a Constitution. The chairman of the Constitutional Commission of Uganda was able to address us at length. He even went to the extra extent of addressing a symposium because we realised that we were at every stage governed by the Standing Orders of this House and we could not at any stage attempt to divulge evidence or information brought to us as a Select Committee of the House. Therefore, it was easier for some of our visitors, like the Justice from Nigeria and the chairman of the commission from Uganda, to be able to talk to the intelligentsia of this country. The Committee made sure that every opportunity was provided for that purpose.

Mr. Deputy Speaker, Sir, what has come out very clearly is the fact that there have been distortions at every step of the way. What happened after Bomas of Kenya was that we, in the spirit then of IPPG at that time, decided that: "Okay, let us get some act together". We then decided to go to Safari Park. I was a participant at Safari Park and I know that, that is where we made the gravest of the mistakes, and today, even our friends who have walked out of this Chamber will agree that the final product of Safari Park was flawed. Bishop Sulumeti, and God bless him, tried very hard as the chairman of the Drafting Committee to put sense into it, but we realise that the most serious flaw was the fact that everybody at Safari Park tried to ignore the present Constitution. This Constitution simply says in Clause 2: "This is the supreme law of the land. Anything else that is inconsistent with the provisions of this Constitution is

deemed be void to the extent of such inconsistency". What does Section 23 of the Constitution tell us? It vests the executive authority of the Government in the person of the President. It matters not, and this, I think, has been the confusion. Those others who have been wanting to demonise His Excellency the President have not read the contents of the current Constitution. This is because this Constitution specifically spells out the procedure to be followed in coming out with a new constitutional dispensation.

Mr. Deputy Speaker, Sir, this has been the problem, and the extend of the mistrust that was displayed at Safari Park was, in fact, evident right through up to the time when this House decided to form the Select Committee. We are now suggesting, and very humbly so; indeed, even prayerfully, that our friends who have been misunderstanding the work of the Parliamentary Select Committee, we hope that today and tomorrow as this debate gets underway, will be able to know the truth. After all, even the Bible says that we shall know the truth although the truth is actually the person of Jesus Christ. I quote extensively from the Bible because I know that even the religious community has been taken hostage, and I mean it. This is because I know that a lot of them are very innocent about these matters but because they want to be able to win international appeal, they say that it is respectable if we are seen to be working with the church. I think the time has come for the church in this country and the religious society in general to be able to extricate themselves from the very evil machinations of people who actually do not want to see this Constitution reviewed.

Mr. Deputy Speaker, Sir, it is my humble submission that our friends who have walked out today, if they have the best interests of this country at heart, will do well to come back and be able to differ, for after all, as the chairman has said, we did not present this as a *fait accompli*. This House has the powers to amend, tear part, make comments and to do whatever they want with this Report. It cannot be a final thing. This Report is now the property of this House. Under Section 23 of the Constitution, since the executive authority of the Government is vested in the President, why is it that a number of Kenyans choose to mislead themselves and those of their audience by saying that you can actually come up with a new constitutional dispensation to the exclusion of the leader of this country who is not there by himself? He is given specific powers under the Constitution. We thought it is important to make that clarification.

Mr. Deputy Speaker, Sir, may I also suggest this to our friends in the Opposition who are not with us, and who are in opposition to this very honourable work of the Committee, that I purposely chose to wear this badge. It was given to me by one, Dr. Paul Viter(?) who is a representative of the United Nations Secretary-General in this country and in this Eastern part of the continent. This mercifully happens to be the UN decade for peace and, therefore, when hon. Raila Odinga says that extremism, mass action and intolerance belong to the last century, it is actually in keeping with the new spirit of the United Nations family.

(Applause)

Mr. Deputy Speaker, Sir, the world has become a global village today and it will not look favourably at those of us who choose to belong to the last millennium and century, and who want to practise student activism. I was grateful the other day when the students of the University of Nairobi invited me to talk to them. They asked me to talk to them on student diplomacy and activism, and I think we came out all the wiser. This is because there is now the new age of dialogue. This continent is bleeding from wounds. I spent the last five years, before my colleague, hon. Dr. Godana came over to the Ministry of Foreign Affairs and International Co-operation, trying to deal with actual life conflicts in our sub-region. The serious conflict now afflicting our brothers and sisters in the Sudan, which has been on-going for a long time, is actually prefixed on the simple question of State versus religion. Both the NIF government and our brothers in the south cannot agree on the fact that what this country agreed on at Independence so very swiftly, much to the advantage of all of us; that this country shall be a multi-cultural and multi-racial society--- They are not able to agree on that.

Mr. Deputy Speaker, Sir, in 1994, our brothers in Rwanda bled to death in their millions. They continue to bleed. I know that hon. Raila Odinga has just returned from Bujumbura, and they continue to fight. It is not in vain that His Excellency the President has reminded all of us in this country that we need to guard the freedom and the peace that is common amongst us and, therefore, we cannot guard this peace if we continue to go at each others' throats.

Mr. Deputy Speaker, Sir, I have a copy of a very nicely written document of one of the countries in Africa. It is, indeed, surprising to me because if this had been a Kenyan Constitution, I know that our friends would be screaming. They scream at any kind of thing, including treason, and yet, this Constitution of the friendly people of Cameroon is actually quoting a great act that took place in Nairobi in the 1990s. If I may just, for the benefit of my colleagues, read, they begin by saying: "We, the people of Cameroon....."; and we are saying: "We, the people of Kenya". It is amazing to me how we are so loud about the people-driven process when, indeed, every Kenyan is speaking the same language. We, in this House believe in a people-driven Constitution but prefixed on the need to recognise the institution that has so painstakingly been put in place since Independence.

Mr. Deputy Speaker, Sir, Dr. Gibson Kamau Kuria recognises the Parliamentary Select Committee. He says that:

"The only good thing about the Parliamentary Select Committee is that, they faithfully reproduced everything, including the letter of protest that I sent to them."

Mr. Deputy Speaker, Sir, we realise that when we talk about the supremacy of this House, we are serious and we have to give guidance. The moment has come, and I am so proud of this day, that this House, in exercise of its supremacy, and in further consideration of the principle of separation of powers, an independent Judiciary and the Executive are willing to take leadership and call the bluff on what our friends have been saying.

Mr. Deputy Speaker, Sir, do you believe that there are Kenyans who still believe that at the end of the day, what we intend to do is to appoint hon. Raila Odinga the Chairman of the Commission that will go round the country collecting and collating views; the hon. Achola and the hon. Shakombo to be Members, and hon. Kalonzo Musyoka finds a place and that we shall be able to go round the country collecting and collating views? There are people who still believe in that. I believe that the time has come to call that bluff so that Kenyans everywhere will know that we intend to do under our mandate is to put in place a Commission not comprising Members of Parliament. Although, of course, we heard evidence to the effect that--- Since I am now able to disclose everything, we heard evidence from some Kenyans who were so fed up with the procrastination that they said, "let this Committee get on with the work", but, of course, wisdom prevailed and we said: "No, no! Our mandate was to make a report before the House", which is what we are doing.

In accordance with the United Nations Decade for Peace, I want to suggest that all of us in this country adhere to that noble objective by the hon. Secretary-General of the United Nations. I was trying to quote from the Cameroonian example. It is not a gospel truth, neither is it persuasive.

Mr. Deputy Speaker, Sir, when we imported the English Common Law, we started by saying that we are importing it wholesale, and at some stage, when we became a Republic, we said, English Common Law, whatever it is, can only be of persuasive value to this country; it is no longer binding. So, I want to say that this Constitution cannot even attempt to be persuasive. Perhaps, whatever it is---

*(Mr. Musyoka displayed the  
Cameroonian Constitution)*

If you imagine that this constitution of the people of Cameroon has the President's photograph and it is in two versions because the Cameroonians speak both French and English--- On the French version, President Paul Biya's photograph is affixed because he is the one who promulgated it. On the English version the same photograph of President Paul Biya appears promulgating the constitution. But the amazing thing, if I can read, it says:-

"Yet, beyond these different points, the key element of the new version of the Cameroonian Constitution is a solemn declaration and the vigorous defence of human rights, hence, incorporation of two additional texts in this publication: The Universal Declaration of Human Rights adopted and proclaimed by the General Assembly of the United Nations on 10th December, 1948, and the African Charter on Human and People's Rights adopted by the 18th Conference of Heads of States and Governments of the Organisation of African Unity in June, 1981, in Nairobi, Kenya."

Mr. Deputy Speaker, Sir, if people in Cameroon can recognise the great act that took place under the chairmanship of His Excellency the President. I dare ask, why is it that Kenyans themselves are so suspicious of His Excellency the President when he says he means well?

I want to thank His Excellency the President for issuing a clarification during the 1.00 p.m. news, that we never discussed those issues that were contained in the *Daily Nation* issue of today. That, indeed, it was a distortion aimed at making hon. Kajwang, who was able to stand up against the allegations or the statements by the Chairman of the Law Society of Kenya, Dr. Gibson Kamau Kuria--- That he was meant to feel scared; it was meant to be "you are a sellout NDP; you are a sell-out FORD(K)" What is it? I think that, that bluff now has been called off by His Excellency the President and, therefore, we are now able to discuss this report in an atmosphere befitting of the fact that we do recognise the supremacy of parliamentary democracy; that we recognise that our friends on the other side are here not by their own will.

Indeed, His Excellency the President is on record very many times saying to all of us--- He will single you out and say: "Hon. Dr. Bill Omamo, you got about 20,000 votes from your constituency; you are people-driven in this House." I think this is the clearest example of the fact that this is a people-driven Parliament! We are saying that notwithstanding, we are willing to go back to the people because we recognise that sovereignty resides with the people.

Mr. Deputy Speaker, Sir, may I then say, very politely, that I received a letter from the Chairman of the Law Society of Kenya (LSK). I want to thank him for recognising that I am actually a valid member of the LSK, along with

other colleagues here, like Dr. Godana, the hon. Julius Sunkuli, the hon. Kiangoi, the hon. J.B. Muturi; the hon. Kajwang, although based on tribalism, they tried to deal very unfairly with hon. Kajwang'.

*(Laughter)*

Mr. Deputy Speaker, Sir, it came out very clearly, and I want to read the letter because Dr. Kamau Kuria likes to read all the letters. I cannot remember one time when the Chairman of the LSK--- I forgot to mention my learned sister, the hon. Martha Karua; she is a member of the LSK. I want to say that, what Dr. Kamau Kuria did when he came before the Committee, on behalf the LSK, was to say, "this is the position of the Law Society". He never had the decency, like he now has, of calling the members of the Law Society to a general meeting where we could agree.

**Ms. Karua:** On point of order, Mr Deputy Speaker, Sir. Is it in order for the hon. Member to malign a person who is not in this House and who cannot defend himself?

*(Loud consultations)*

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

**The Minister for Education** (Mr. Muysoka): Mr. Deputy Speaker, Sir, I thank hon. Martha Karua who is my junior sister. I want also to say this---

*(Laughter)*

**Ms. Karua:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the hon. Kalonzo Musyoka, who went to the Law School earlier than me, but got admitted long after me, to refer to me as his "learned junior sister", when he is, in fact, my learned junior on the wrong?

*(Laughter)*

**Mr. Deputy Speaker:** Order! Order, hon. Members! That can be done outside this House, at least, so that I can score you points.

**The Minister for Education** (Mr. Musyoka): Thank you. Well, I take all that, but the truth of the matter is that I was admitted to the Roll of Advocates in September, 1979, and I believe the hon. Martha Karua was still in school.

Mr. Deputy Speaker, Sir, I want to say that the reason why I mentioned the Chairman of the LSK, Dr. Gibson Kamau Kuria, is because he has actually demeaned the dignity of this House. In a letter that he addressed to me, for instance, he has even the courage to challenge the ruling of the Chair. He actually says--- I do not want to misquote him since he is not in this House, but this is a document that I am prepared even to lay on the Table of the House. He says:-

"The very setting up of the Committee was unconstitutional. It was also illegal as it was done pursuant to an illegal resolution of the National Assembly passed in contravention of Standing Order No.41, which prevents an amendment to a pending Motion, where the amendment contradicts its original principle"

I wonder where Dr. Kamau Kuria would have seen a copy of the Standing Orders. Hon. Raila Odinga's original Motion called upon the Attorney-General to convene a meeting of all the 54 stakeholders who were named in the Constitution of Kenya Review Act, so that they might collectively identify the amendments which ought to make the Act operational. I will go on as follows:-

"On 15th December, 1999, KANU successfully moved an amendment which called for the formation of a Select Committee comprising of 27 Members."

I want to say that the whole thing is holding this House in contempt; it was not KANU that moved the amendments; it was hon. Raila Odinga's Motion that went through, and it did not contradict the original intention of the Motion. The whole idea was to jump-start the constitutional process, and that is what the House has done. Therefore, much as I hate to imagine that I can talk about a colleague who is not before this House, he has himself even dared to challenge the ruling of the Chair. Where does that leave us?

If, on the other hand, because, is a fairly detailed letter, he goes on to make proposals, because he does not even agree with the Ufungamano Initiative---

**Mr. Deputy Speaker:** Hon. Kalonzo Musyoka, you are now disadvantaging all these Members here because they are not privy to that letter. Are you going to table it?

**The Minister for Education** (Mr. Musyoka): Mr. Deputy Speaker, Sir, I want to table this document before the House because it is really self-explanatory.

*(Mr. Musyoka laid the letter on the Table)*

In fact, the Chairman of the LSK goes on to say that "the LSK is very proud of the fact that, you, one of the Members, are serving our nation with distinction as a legislator at a time when the country is in urgent and great need of a statesman."

I want to say that this country has got a national leader under the current Constitution. So, this kind of thing cannot be allowed to happen. I am sorry I differ with the Chairman of the Law Society of Kenya and I want to hold this letter with the contempt it deserves. I will have occasion to write exhaustively to him in reply to this, because he is basically lobbying this House to accept a third initiative. We are not talking about the Ufungamano or the Law Society of Gibson Kamau Kuria because that is not the Law Society of Kenya which I belong to. He is urging this House to debate a separate Act altogether; what he calls the Review Act 2000.

With those remarks, I beg to second this Motion.

*(Question proposed)*

**Ms. Karua:** Mr. Deputy Speaker, Sir, I rise to oppose the Motion. Both the Mover and the Seconder of this Motion are preaching water and drinking wine. If one looks at the introductory remarks of the Mover of the Motion and the conclusions of this Report, they are at great variance. The Mover of the Motion quoted Prof. Nabwese in page five of his Report as follows:

"To achieve this understanding and acceptance, a Constitution needs to be put through the process of popularisation with a view to generating public interest in it, in that everybody has a stake in it and that it is common property of all. The people must be made to identify themselves with the Constitution. Without this sense of identification of attachment, a Constitution would always be remote and artificial with less real existence than the paper on which it is written."

Mr. Deputy Speaker, Sir, I wonder how the Mover of this Motion, its Seconder and, indeed, the Members of the Committee expect the review process, which a majority of Kenyans are opposed to, to have any legitimacy. Looking at the terms---

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

**Ms. Karua:** Mr. Deputy Speaker, Sir, may I request the hon. Members to have the courage to listen to a dissenting view. May the cowards leave the House and let the debate continue!

**Mr. Deputy Speaker:** Order, hon. Members! We must accord hon. Karua the same respect we accorded hon. Raila when he was moving the Motion. Please, let us hear her in silence.

**Ms. Karua:** Mr. Deputy Speaker, Sir, those heckling me will have their time.

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

**Mr. Deputy Speaker:** Are you raising a point of order on the Chair's ruling or what?

**Mr. Munyasia:** I am rising on a point of order on what she is saying.

**Ms. Karua:** I am not "she" but an hon. Member!

**Mr. Munyasia:** Mr. Deputy Speaker, Sir, our Standing Orders state very clearly that every hon. Member is responsible for the accuracy of the statements he or she makes in this House. Hon. Karua says most of the Kenyans are against the Report of the Parliamentary Select Committee. I suppose that she has carried out some survey. So, could she tell this House how she arrived at the conclusion that most Kenyans are against the Report of the Parliamentary Select Committee?

*(Applause)*

**Mr. Deputy Speaker:** Order, hon. Munyasia! Hon. Karua has every right to hold an opinion no matter how misguided or inaccurate it is. That is her opinion and she is entitled to it.

**Ms. Karua:** Mr. Deputy Speaker, Sir, I am grateful for your enlightenment to those who lack information.

Mr. Deputy Speaker, Sir, I do not know how the Committee and the Mover of this Motion expect Kenyans to support a review process which they do not subscribe to. The Constitution of Kenya Review Act (1997), which this Report proposes to amend, was arrived at as a result of the consensus of a majority of Kenyans. Hon. Members will recall that the Attorney-General advertised in both the print and electronic media that all Kenyans who are interested in

the review process in 1998, should write and send memoranda to him. It is as a result of those memoranda that we ended up with 54 stakeholders. Those who question how the 54 stakeholders were arrived at seem to have a very short memory. Those are the people who expressed interest. This being a free country, people who did not respond could not be dragged into the review process. It is, therefore, incorrect to state that 54 stakeholders do not represent Kenyans. They are the Kenyans who came forward at that time to contribute to the review process.

Mr. Deputy Speaker, Sir, the quotation relied on by the Mover of this Motion calls for dialogue, especially the quotation from the former President of South Africa on reconciliation, which is a path which those advocating for the adoption of this Report have completely refused to follow. It is not enough to just quote great statesmen or stateswomen when taking a completely opposite path. If the Act is faulty indeed, which I do not believe it is, then we should have gone back to the same stakeholders who negotiated it. It is an act of cowardice on the part of hon. Members of this House to run away from the people with whom they negotiated the Act and to come and propose amendments on their own. They should have been ready to face the 54 stakeholders---

**Mr. Raila:** On a point of order, Mr. Speaker, Sir. I hate to interrupt the hon. Member, but is she right to say that the stakeholders were excluded when, in fact, my Committee wrote to each and everyone of the stakeholders, and they all refused, including herself to come and talk to the Committee?

**Ms. Karua:** I refused to appear before the Committee because I did not recognize its legitimacy, and I still do not.

**Hon. Members:** Then walk out! Why are you debating its Report then?

**Ms. Karua:** You are cowards! Give me time to present my views! The Committee was inviting the 54 stakeholders as lesser beings!

**Mr. Muturi:** On a point of order, Mr. Deputy Speaker, Sir. Is hon. Karua in order to continue her contribution on the Report of this Committee when she clearly says that she does not even recognize its legality as a Committee of the House of which she is a Member?

**Ms. Karua:** Mr. Deputy Speaker, Sir, I will ignore that. I am a Member of this House---

**Mr. Deputy Speaker:** Quite frankly, your statement is contradictory. You cannot say you ignore this Report and, at the same time, say you are challenging the legality of the Committee that produced it. So, you must choose one position. If you dispute the legality of the Committee, then you have no business discussing its Report.

**Ms. Karua:** Mr. Deputy Speaker, Sir, I believe I can legitimately say why the Committee is not legitimate and continue in this House to give reasons why. I know of no Standing Order that can make the Chair force a Member to contribute in a particular manner. Without challenging the Chair, may I be allowed to utilise my time in the best way I can?

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

**The Attorney-General (Mr. Wako):** On a point of order, Mr. Deputy Speaker, Sir. As the titular head of the legal profession to which the hon. Member belongs, I would appeal to both sides of the House to give her the opportunity to state her case. I do believe in what she has done by being present here when her Party has walked out, and, in fact---

**Mr. Deputy Speaker:** Order, hon. Wako! What is your point of order?

**The Attorney-General (Mr. Wako):** Is it in order for Members of Parliament to interrupt the Gracious Lady when she has upheld the best ideals of parliamentary democracy?

*(Applause)*

**Mr. Deputy Speaker:** Order! Order! Hon. Members are perfectly in order---

**Ms. Karua:** Mr. Deputy Speaker, Sir, while thanking my colleague, I am quite capable of holding my own ground. I require no assistance.

**Mr. Deputy Speaker:** Order, hon. Karua! Hon. Members are perfectly in order to stand on a point of order to interrupt other Members on the Floor. Hon. Members, please, let us allow hon. Karua to make her contribution. It is only fair that she be given a chance.

Proceed.

**Ms. Karua:** Mr. Deputy Speaker, Sir, if it is the intention of those who support this Motion not to let any divergent views, then there would be no need of debating it. If they are cowardly and they do not want to listen to divergent views, let them say so.

**Mr. Anyona:** On a point of order, Mr. Deputy Speaker, Sir. I really admire the hon. Karua---

**Ms. Karua:** I do not want your admiration; take it home!

*(Laughter)*

**Mr. Anyona:** But I think, in fairness to the House and in fairness to the country, either we are debating a legal Report or an illegal Report. Parliament cannot do that. I think it is the authority of the Chair to determine whether the business before the House is legal or not. I do not think there can be an argument about that. I think that is one issue we must put to rest. The rest, everybody has the freedom to reject or ignore. So, I think that point must be clarified.

**Mr. Deputy Speaker:** Order! Order, hon. Members!

**Ms. Karua:** Mr. Deputy Speaker, Sir, I will be enumerating in what manner it is illegal.

**Mr. Deputy Speaker:** Order! Order! The business before the House is the Motion. Once a Motion has been moved, seconded and the Question proposed, that business is legitimately before the House. So, shall we proceed?

**Ms. Karua:** Mr. Deputy Speaker, Sir, this House still has a chance to reject a Report that has been illegally arrived at. Personally, I do not recognise the legitimacy of the Committee or even the Report before us. I will give full reasons, if this House wants to hear them.

Mr. Deputy Speaker, Sir, this Report is a farce. On the 16th December, when the names were floated on the Floor of this House, after objection, Mr. Speaker ruled, and the HANSARD will bear me witness, that names of those who did not want to become Members of the Committee should be expunged. Those names were not expunged. They appear in this Report as though they are part of the Committee. You have a duty to uphold your ruling. Until those names are expunged, this Report cannot even be said to be a legitimate Report. It challenges the authority of the Speaker, the very foundation of parliamentary democracy. You will find that on pages 17 onwards of the HANSARD of the 16th December, 1999.

**The Assistant Minister, Office of the President (Mr. Samoei):** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for hon. Karua to insist that the Committee did present the names of those who declined, while there is a rider there, that there are some cowards who did not take up their positions in the Committee?

*(Laughter)*

**Mr. Deputy Speaker:** Order! Order! Hon. Samoei, you are not referring to hon. Members as cowards; are you? Hon. Members are never cowards. They may have refused to take up their positions, but they are not cowards. So, would you withdraw that word?

**The Assistant Minister, Office of the President (Mr. Samoei):** Mr. Deputy Speaker, Sir, I said it was an act of cowardice.

**Mr. Deputy Speaker:** No, you said they are cowards. Mr. Samoei, please, withdraw that word.

**The Assistant Minister, Office of the President (Mr. Samoei):** I withdraw, Mr. Deputy Speaker, Sir, but they feared.

**Ms. Karua:** I am glad Mr. Deputy Speaker has distinguished Parliament from clubs such as YK!

Mr. Deputy Speaker, Sir, I have indicated that names that had actually been ordered removed by Mr. Speaker are still appearing on the Report.

**Mr. Ochilo-Ayacko:** On a point of order, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Hon. Ochilo-Ayacko, you will get the opportunity to contribute.

**Mr. Ochilo-Ayacko:** Mr. Deputy Speaker, Sir, you have just ruled that the use of the word "coward" be withdrawn by hon. Samoei. I have been in this House and I have heard the hon. Karua use the word "cowards", referring to Members who are debating here. Can the same ruling apply to hon. Karua's use of the word "cowards"?

**Ms. Karua:** It cannot apply retroactively, and my learned junior ought to know that. He should have raised it when it did occur.

Mr. Deputy Speaker, Sir, the other point of this Report, which is totally against parliamentary practice, is the inclusion of the conversation with strangers as part of the Report; strangers who were not even called as witnesses; strangers who were not properly before the Committee but strangers who met the Committee in a social gathering. I am referring to the Press reports which have referred to the meeting with diplomats. It is quite clear that under Standing Order No.71, a Report of a Select Committee cannot be divulged to anyone before it is laid on the Table of this House. It is clear, from the document we have, that Members of this Committee decided to spend some social time with diplomats and include the off-the-cuff remarks with the diplomats as part of this Committee. That is not only in contravention of Standing Order No.71, but it also contravenes Cap.6, The Powers and Privileges Act. Unless, those sections are expunged from the Report, then, this Report cannot be properly admitted in this House.



Mr. Deputy Speaker, Sir, the mandate of the Committee is in a resolution of the House that purported to set up this Committee. The Committee was asked to review the Constitution of Kenya Review Act, 1997, according to the wishes of Kenyans, and facilitate the formation of the Review Commission. They were not asked to repeal the Act, but they have actually repealed the Act through the backdoor, and I will substantiate. The main feature of this Act was the appointment of the commissioners by the various stakeholders named in the Act. It was also supposed to make recommendations on the appointment of those commissioners without any reference to the Executive. The proposals we now have are making the constitutional review process Executive-driven. Those of us in the Opposition aspire to be in Government one day, and we also aspire to hold the post of President of this country. But whether held by us or by any other person, there is no justification whatsoever, to tailor-make a Constitution according to the wishes of the Chief of the Executive, who is the President. What is being proposed by this Committee is that the President appoints the commissioners from a team of 21 nominated by Parliament. The Secretary of the Commission, who was also going to be an independent person hired by the Commission itself, is now again being given over to the President to appoint. This is a total departure from the basic spirit of the Act, which was providing for---

**The Minister of State, Office of the President** (Mr. Sunkuli): On a point of order, Mr. Deputy Speaker, Sir. The hon. Member is misleading the House, because the Report does, in fact, say that the Secretary of the Commission shall be appointed by Parliament itself and not by the President.

**Ms. Karua:** Mr. Deputy Speaker, this Committee's recommendation is that the names of the Commissioners should be nominated by Parliament, for appointment by the President, if I may remind my learned friend, who is a junior. The President is being given the role of appointing every person in the Commission, which is a major departure from the provisions of the original Act, where we had removed the President from playing any role in the review process. As a Member of Parliament, the President could go to his constituency and offer his views to the Commission.

**Mr. Raila:** On a point of order, Mr. Deputy Speaker, Sir. The hon. Member should, really, read the current Act. The Act states that the stakeholders, such as the religious groups, the Women Political Caucus and others, shall nominate members to be appointed to the Commission by the President. So, I would like the hon. Member to note that even under the current Act, the President is the appointing authority of the Commissioners.

**Ms. Karua:** Mr. Deputy Speaker, Sir, I do not understand the hon. Member's point of order. In the Act that is being sought to be amended, the President has no room for manoeuvre whatsoever. Each stakeholder was to give the exact number of commissioners; there is nothing like nominating, say, 21 names from which the President is to appoint 17 commissioners. The current Act provides that the President shall be given the exact number of names required for appointment to the Commission. The Act does not give the President authority to determine which name to drop and which one to appoint to the Commission; that role is being reversed. Also, giving the role of nominating the persons to be appointed by the President to the Commission is restricting the number of Kenyans who have a role in appointing the Commissioners.

Mr. Deputy Speaker, Sir, also, it is not correct to claim that when the Commissioners are appointed by Parliament, they will not be partisan in discharging their duties, or that they will not lean towards any party. Parliament is made of political parties. We are now debating here as political interests, with the National Development Party (NDP) with its "marriage" with KANU on one side, and the other parties on the other side. We have even shown in this very debate that we are partisan. When it comes to the appointment of the Commissioners, these very interests---

**Mr. Kajwang:** On a point of order, Mr. Deputy Speaker, Sir. I just want to know when the so-called "marriage" between KANU and NDP was consummated.

*(Laughter)*

**Ms. Karua:** Mr. Deputy Speaker, Sir, the key players in that "marriage" are the only ones who can confess when it occurred. We are mere spectators and, therefore, I do not know when the "marriage" was consummated.

Mr. Deputy Speaker, the other major feature contained in the current Act is civic education, which is almost altogether, being removed by the proposals before the House. The proposals before the House are that civic education is not necessary before the review exercise starts. On the one hand, one of the so-called "experts" invited by this Committee, a Professor Jackton Ojwang' - I have no doubt that he is a scholar in constitutional law - said that the masses would not understand constitutional review because it is too technical. If that expert made that remark, then, on what basis did the Committee recommend the removal of civic education, which would then facilitate the ordinary person to fully participate in the review process?

*(Applause)*

I said that the Report before this House is a farce; it does not even follow what the Committee's own-

appointed experts recommended. The provision for giving the masses civic education should have been left intact as contained in the current Act, so that there can be a period for civic education before the people's views are collected. The Mover of the Motion said that no one group should claim to have a monopoly of wisdom in review of the Constitution. Then, why does the Committee he leads purport to have a monopoly of wisdom in matters of reviewing the Act, and exclude other Kenyans who are interested in reviewing this Act? We might say that those Kenyans were invited to give their views to the Select Committee.

However, that is not the point; they were invited to be lorded over by a Committee, contrary to the way the initial talks happened at the Safari Park Hotel meetings.

Mr. Deputy Speaker, Sir, what about the role of the Attorney-General (AG)? The stakeholders at Safari Park, carefully, considered and decided to remove the AG from the review process as much as possible; they gave him only the facilitative role of tabling the Act in Parliament. What has happened now? The process, again, has been taken back to the AG's Chambers. The motive in doing this is clear. When the AG was given that very minor role, by the current Act, of convening the stakeholders, all of us here can remember how the entire Cabinet moved into that meeting and made it impossible to start. The AG is being preferred in this case because he can be intimidated by the bigwigs, so that he can rule in favour of the ruling party.

I very much agree with some remarks made by one of the experts, who gave his views to the Select Committee, one Dr. Kenneth Kiplagat. He opened his remarks to the Committee by saying: "There is nothing wrong with the current Act. The only quarrel is that some political interests felt that they were not adequately catered for". When pressed a little, he went further to say that it was KANU which felt that its interests had not been adequately catered for. What truth, Mr. Deputy Speaker, Sir! That is why, in the proposals before the House, the process is being given, on a silver platter, to the President and the ruling party. The proposal to form a Committee of Parliament of 27 Members, just like in the proportion of the membership of the Raila Select Committee, is giving KANU over 14 Members.

The Constitution is so important that not any single party, however mighty, should be let to control the review process; that is what even the ruling party appeared to have agreed to at the Safari Park Hotel meetings. That is why it was agreed that the appointment of the commissioners would be done in such a way that no single stakeholder, be it a political party or a religious group, would have a majority in the Commission. The tables have been reversed, just like the Report of this Committee, which has adopted the pro-KANU consultant's recommendations fully. Prof. Jackton Ojwang's recommendations are what this Committee has taken full-scale. A constitutional review process that is dominated or controlled by the Executive will bring out only the wishes of the Executive and the ruling party, and not the wishes of Kenyans. I know that one day, some Members of this particular Select Committee will regret; history will judge them harshly for having reversed the gains that Kenyans had made.

Mr. Deputy Speaker, Sir, there has been criticism of the intention by some stakeholders to organise mass action, to force the Government make the constitutional review process all-inclusive. Just as we have recognised the fact that the Constitution belongs to the people, even the Government belongs to the people. If the Government and the ruling class do things contrary to the wishes of the people, the people have an inalienable right to express their disagreement. One of the ways acknowledged in democracies the world over is the right to free expression. Why do we, then, want to demonise mass action in this country? Let the people take to the streets; let them show whether they agree or they do not agree with this Report. I know that there will be voting against this Report. Anybody who wants reconciliation, and any Government that, actually, wants to rule a country that is governable, would not do something that is totally contrary to what the people want. This Report will be the greatest shame of the Eighth Parliament, in my view. You may not agree with that view.

I looked at the experts who were called by this Committee, especially the women experts. What a coincidence that the very two persons who took the Women Political Caucus to court at the instigation of the ruling party were the experts who appeared before this Committee to give their views? I am referring to Dr. Margaret Kamar alias Kiwott, and Ms. Orié Rogo. Those are the two women who took the Women Political Caucus to court, and who lost that case. Also, they are the women experts this Committee could find. The recommendations of another lady expert, hon. Phoebe Asiyo, for whom I have a lot of respect, that one-third of all the people to be appointed to the Constitutional Review Commission should be women, was not adopted; it was not even given a place. Of the 15 proposed Commissioners, only three are to be women. The calculation on the percentages has been worked out by this Committee, and that does not amount to one-third. One of the basic structures of the current Act was to give 50 per cent of the population of this country a voice in the constitutional review process. I have heard a professor say that three out of 15 is equal to one-third. That is one-third in KANU's mathematics; it cannot be one-third in the conventional mathematics, as we know it.

Mr. Deputy Speaker, Sir, another notable feature of this Act is that the Kenya Broadcasting Corporation (KBC) is obligated by the Act to give one hour of free air time on both radio and television in English and Kiswahili.

Now, we are being told that the Communications Commission of Kenya (CCK) will allocate the time. This is leaving matters in a nebulous state, where Kenyans will not have the Report of the Commission verbatim, and it gives room for subverting the wishes of Kenyans, if they are not briefed of the review process. That is why I am saying that this Report amounts to a repeal of the Act through the back door. The Committee had no mandate to repeal the Act. The Committee also gave itself an extra mandate to co-ordinate the review process. However you read the resolution of this House, that Committee has no mandate to co-ordinate the review process.

I beg to oppose.

*(Applause)*

**Mr. Nyachae:** Thank you, Mr. Deputy Speaker, Sir. I am not supporting the Report and I am not doing so because I have any hardfeeling on the Select Committee. I recognise the supremacy of this Parliament and, therefore, that is not my area of concern. However, my area of concern is where we are really directing our nation to. When we reached a stalemate, we had found ourselves disagreeing because of the selection or nomination of commissioners. We had that problem because the Act had an omission of the mechanism of dealing with conflicts. In my view, this should have been sorted out by the Select Committee by merely creating a subsidiary legislation to be attached to the Act dealing with the mechanism. But what are we seeing here? First of all, we are creating an impression to all Kenyans that we are ignoring other Kenyans.

It is extremely embarrassing for those of us who were in the Seventh Parliament, started the IPPG, come 1998 and we agreed and accepted other Kenyans whom we recognised as leaders to join us in debating on how we should move forward to formulate a new Constitution for this country. We accepted and recognised them. We went to the Bomas of Kenya with them and ate with them; we went to Safari Park Hotel, ate with them, discussed with them and agreed. In fact, we went to the extent of including them in the Drafting committee. The people whom we are now saying have nothing to do with the constitution making are the same people--- One of them was the Chairman of the Drafting Committee. What have we realised now? Why have we left out these Kenyans? Nobody has given us the reason why the people we worked with and recognised as stakeholders have been left out. Now you have turned round saying that you do not recognise them. You are saying that you do not want them to work with you because you think they are not representatives of people.

Mr. Deputy Speaker, Sir, I would like to say, although I have repeated this very often, that every Kenyan owns the Constitution of this country. I would like to say that it is among those Kenyans that we have some leaders. The leaders in this country come in various forms. We are political leaders and we help the whole nation to finally endorse the Constitution. But we must take the views of all Kenyans. If there are channels to obtain the views from the people, then let us use them because we recognise those channels. We cannot deny that we invited the church leaders. These are leaders and you accepted them. It is extremely embarrassing that you can now turn round and say that they are not leaders when you recognised them before. What I was saying is that--

**Mr. Raila:** On a point of order, Mr. Deputy Speaker, Sir. I have a lot of respect for hon. Nyachae, but in the Report, we have said that religious leaders, civil society, the minority groups, business community and professionals will all be invited to give their views to the constitutional conference. Is he in order to say that we are excluding them?

**Mr. Nyachae:** Mr. Deputy Speaker, I am saying that I would not have opposed this document if it stated that we should go back to Safari Park Hotel and discuss the issue with other Kenyans. But he is presenting a document here, giving us a procedure on what needs to be done and ignoring the other people. Well, that is not my greatest worry; my biggest worry is that Kenyans are getting divided by the trend that we are seeing now. We cannot have a Constitution which is not acceptable to all Kenyans because that will be a futile exercise. This is because a time will come when those people who have not been included in the constitution making will say: "We do not accept that Constitution." This will happen after we have spent billions of shillings to formulate the Constitution. I would like to appeal to this House to find a way of getting all Kenyans to agree on the way forward. I am not arguing about the mechanism, but let us get Kenyans saying: "This is the way this thing should be done." The moment you have problems---

**Mr. Odoyo:** On a point of order, Mr. Speaker, Sir. Would it not be in order for the hon. Member for Nyaribari Chache Constituency to tell us that way rather than raise further questions to this House? We want to hear his views on what he wants to be done.

**Mr. Deputy Speaker:** Order! Hon. Members, you have a very specific Motion before you. That Motion requires you to accept, adopt or reject the Report of the Select Committee, which was set up as a result of another Motion which this House passed. So, we cannot go beyond the passage of that Motion. We started with that Motion which set up the Select Committee, which has now brought its Report. Concentrate on the Report. If you want to accept the Report, you accept it, but if you do not want to accept it, you reject it. So, really, let us be a little more

relevant.

Proceed, hon. Nyachae!

**Mr. Nyachae:** Thank you very much, Mr. Deputy Speaker, Sir, for that intervention, because this is just deliberate interruption. I would like to say that what matters to this country is unity. We must find a way of uniting Kenyans so that we can work together. We must find a way of getting rid of suspicion because, right now, Kenyans do not trust one another. I would like to say that as long as we mistrust one another, even if the intentions of hon. Raila are good, they will be suspected.

#### **ADJOURNMENT**

**Mr. Deputy Speaker:** Order! Hon. Members, it is now time for us to interrupt our business. The House stands adjourned until tomorrow, Thursday, 20th April, 2000, at 2.30 p.m.

The House rose at 6.30 p.m.