

## NATIONAL ASSEMBLY

### OFFICIAL REPORT

Thursday, 20th April, 2000

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

### PRAYERS

### NOTICE OF MOTION

ALLOCATION OF GOVERNMENT  
REVENUE TO CONSTITUENCIES

**Eng. Muriuki:** Mr. Speaker, Sir, I beg to give notice of the following Motion, sponsored by the Democratic Party of Kenya (DP):-

THAT, in view of the fact that Kenya is a developing country, cognisant of the fact that hon. Members of Parliament are responsible for effecting development in their individual constituencies, this House resolves that five per cent of the annual Government revenue be allocated to constituency-based development projects and that such development projects be presented to the Finance, Planning and Trade Committee by the elected hon. Member of Parliament for each constituency for eventually inclusion in the annual Government Budget.

*(Applause)*

### ORAL ANSWERS TO QUESTIONS

*Question No.014*

IMPLEMENTATION OF HIV/AIDS  
SYMPOSIUM RESOLUTIONS

**Dr. Kulundu** asked the Minister of State, Office of the President how far the Government has implemented the Members' of Parliament resolutions, made during the symposium on HIV/AIDS in Mombasa last year.

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

During the three days HIV/AIDS Symposium held from 25th to 27th November, 1999 in Mombasa, hon. Members of Parliament passed 14 resolutions to tackle the AIDS scourge in the country. The current status on the implementation of these resolutions is as follows:

On the participation of hon. Members, there has been an increased AIDS awareness among them. We have produced 424 video cassettes on AIDS. Already, five constituencies have submitted proposals of their Constituency AIDS Committees. The National AIDS Control Council (NACC) has constituted a committee that brings together the Parliamentary Health, Housing, Labour and Social Welfare Committees, Ministry of Health, Kenya AIDS Consortium, DFID, USAID, the World Bank, the European Union, DANIDA and UNAIDS in the mobilisation of resources for the Constituency AIDS Committees (CACs). A total of US\$200,000 from the World Bank will be used in the training of the CACs for effective change at the community level.

Mr. Speaker, Sir, on the legislation, NACC is in the process of recruiting a legal officer to facilitate the review of legislation to support AIDS control in Kenya.

The NACC has also embarked on a five-year national AIDS strategic plan and hon. Members will have an opportunity to discuss the plan before it is finalised.

On the resources mobilisation, the Government has disbursed Kshs1.5 million to NACC. The World Bank financed the STI Project in providing secretariat services to the Council. The Government intends to solicit for an

allocation of Kshs300 million during the Fiscal Year 2000/2001 to finance the NACC programmes. The Government, together with other stakeholders, have formed the Kenya HIV/AIDS Consultative Group to help in the mobilisation of resources for AIDS activities.

**Dr. Kulundu:** Mr. Speaker, Sir, let me thank the Minister for a very lengthy answer, but which contains very little to suggest that the AIDS scourge is a national disaster in the country. It is now four months since the HIV/AIDS was declared a national disaster. What he is saying here, basically, is a five-year plan. What is happening on the ground right now, in our fight against HIV/AIDS that makes us treat AIDS as a national disaster?

**Maj. Madoka:** Mr. Speaker, Sir, for us to implement the programme, we need funding. That funding has not yet come through and we are still making the necessary arrangements. Awareness has been created among our people. Many programmes are already going on, but the major one will be implemented when we get funds.

**Mr. N. Nyagah:** Mr. Speaker, Sir, I would like the Minister to explain the relationship between Parliament and NACC? This is because the Committee on Health, Housing and Social Services has absolutely no relationship with NACC since it was transferred to the Office of the President from the Ministry of Health. Therefore, we are unable to deal with NACC.

**Maj. Madoka:** Mr. Speaker, Sir, I do not think that is correct.

**Mr. Kibicho:** Mr. Speaker, Sir, could the Minister tell us what instructions he had given to the districts? This is because you will find that committees have already been formed by some people in some districts, and even elected leaders are not consulted. Then in that case, it will be unfair for us to form further committees, because the objective is the same.

**Maj. Madoka:** Mr. Speaker, Sir, as I did explain yesterday, we have already set up the organisational structure and I believe that some of the instructions have not got down as yet to the constituency level. But if I may repeat, we do have the Provincial AIDS Control Councils, District AIDS Control Councils and Constituency AIDS Control Committees. We hope to work through them once they are properly established and funds are secured, in order to make them operate effectively.

**Mr. Munyao:** Mr. Speaker, Sir, when we went to Mombasa for the HIV/AIDS Symposium for Members of Parliament, we spent a lot of money and reached some resolutions. By the time we left Mombasa, each Member of Parliament was given two video cassettes and it had to be followed by video machines and also to be facilitated by motor vehicles in order to try and assist in the HIV/AIDS awareness campaigns in their constituencies. At what stage was this plan changed and the current plan adopted? This is because we knew at that time that Members of Parliament would be at the forefront of the campaigns.

**Maj. Madoka:** Mr. Speaker, Sir, I do not think that we have changed the plan, because we have said we will have the Constituency AIDS Committees in which the Members of Parliament will be fully involved. The only thing we have not got at the moment are the funds which, if we have, we will provide the necessary transport and equipment.

**Mr. Kihoro:** Mr. Speaker, Sir, one of the resolutions from the Mombasa HIV/AIDS Symposium was that the Government will convert one of its penal institutions into an AIDS centre. Consequently, some of the prisoners who are in the Kenyan prisons and who are infected with HIV/AIDS will be converged there from across the country to prevent the spread of HIV/AIDS in our penal institutions. How much has the Government done to bring about this process of isolating prisoners who are infected with HIV/AIDS? That is very easy to do.

**Maj. Madoka:** Mr. Speaker, Sir, nothing has been done as yet, because all that still needs funding.

**Dr. Kulundu:** Mr. Speaker, Sir, could the Minister assure this House that he will go for constituency-based organisations rather than channelling the HIV/AIDS Programme through the Provincial Administration?

**Maj. Madoka:** Mr. Speaker, Sir, we have said that at each stage something will be done and most of the funds will be spent at the constituency level, where the Members of Parliament are closer to the people.

**Mr. Speaker:** Next Question, Dr. Ochuodho.

**Dr. Ochuodho:** Mr. Speaker, Sir, as usual, no written reply has been supplied to me. But nevertheless, I will ask my Question.

*Question No.046*

CRITERIA FOR PROMOTION OF  
CHIEFS/ASSISTANT CHIEFS

**Dr. Ochuodho** asked the Minister of State, Office of the President:-

- (a) what criteria is used for promoting chiefs and assistant chiefs;
- (b) how many chiefs in Homa Bay District have been promoted to Senior Chief over the past ten

(10) years; and,

(c) how many of those in part "b" above have been promoted in the past two months.

**The Assistant Minister, Office of the President** (Mr. Samoei): Mr. Speaker, Sir, I beg to reply and confirm that we have actually sent the written reply to the hon. Member.

Chiefs and their assistants are promoted to the next grade based on their ability to interpret and implement Government policy in their areas of jurisdiction and based on their demonstrated ability in the maintenance of law and order. We have promoted six chiefs to the post of Senior Chief in Homa Bay District in the last 10 years. In the last two months, we have not promoted any chief to that position.

**Dr. Ochuodho:** Mr. Speaker, Sir, it is very unfortunate that the Government tends to use the level of loyalty as a criteria to promote chiefs, rather than merit. However, Homa Bay District has got about 35 locations and, in effect, 35 chiefs. Is the Assistant Minister satisfied that promoting only six chiefs to the post of Senior Chief in the past 10 years is adequate?

**Mr. Samoei:** Mr. Speaker, Sir, I am very satisfied.

**Mr. Shill:** Mr. Speaker, Sir, could the Assistant Minister tell us which district has got the highest promoted chiefs in the Republic of Kenya?

**Mr. Samoei:** Mr. Speaker, Sir, I think that is a different question.

**Mr. Otula:** Mr. Speaker, Sir, you will find that in Homa Bay District, there are chiefs who have been promoted to the post of Senior Chief, but when you go to their areas of operation, they do not even have chiefs' camps. What method did the Assistant Minister use to promote these chiefs, when they do not even have chiefs' camps, or offices?

**Mr. Samoei:** Mr. Speaker, Sir, I think I have, indeed, said about the criteria we use in the promotion of chiefs and their assistants. It does not include chiefs' camps.

**Col. Kiluta:** Mr. Speaker, Sir, I think the Assistant Minister, who is a good friend of mine, read the written reply which he was given, but chiefs are promoted on the strength of whoever presents the case and not on merit. If you go to Machakos, you would find that about six of them are all in one constituency. Could the Assistant Minister consider spreading these chiefs to other areas so that at least we have one Senior Chief per constituency?

**Mr. Samoei:** Mr. Speaker, Sir, constituency, or geographical considerations are not part of the criteria we use.

**Mr. Shill:** Mr. Speaker, Sir, the Assistant Minister is misleading this House. As far as we know, those people who are very much loyal to KANU are mostly promoted and some districts have got more promoted chiefs than other districts in the Republic of Kenya. Could the Assistant Minister stop misleading this House?

**Mr. Samoei:** Mr. Speaker, Sir, I do not think it is true that I am misleading this House. In our code of regulations, we have not found loyalty as a crime.

*(Laughter)*

**Mr. Muchiri:** Mr. Speaker, Sir, could the Assistant Minister confirm whether it is true that majority of chiefs and their assistants in this country have all been KANU youth wingers and life members?

**Hon. Members:** Deny!

**Mr. Samoei:** Mr. Speaker, Sir, I deny.

**Dr. Ochuodho:** On a point of order, Mr. Speaker, Sir, I want to ask my last question.

**Mr. Speaker:** Order! I am sorry. Next Question, Mr. Mwakiringo!

*Question No.105*

UTILIZATION OF *EL NINO* EMERGENCY  
FUND IN TAITA-TAVETA

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

(a) how much money was allocated for repairs and maintenance of roads in Taita-Taveta District from the *El Nino* Emergency Fund during the year 1999/2000; and,

(b) which roads have been repaired and maintained from the said Fund in Taita-Taveta.

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

(a) Kshs15.7 million has been budgeted for repair and maintenance of roads in Taita-Taveta District under the *El Nino* Emergency Fund.

(b) The budgeted funds will be used to tarmac the Voi-Mwatate-Taveta Road under the *El Nino* Emergency Project. The project will be at a cost of Kshs80 million. It will also cover Voi Town.

**Mr. Mwakiringo:** Mr. Speaker, Sir, it is true that Voi Town benefited from the Kshs18 million for the 1.1 kilometre project. I also appreciate that Kshs15.7 million has been budgeted from the *El Nino* funds for the Voi-Mwatate-Taveta Road. However, could the Minister tell us when this project is going to commence?

**Mr. Nassir:** Mr. Speaker, Sir, after engineers complete their job and the tendering process is done, we will be able to tell when the project will commence.

**Mr. Parpai:** Mr. Speaker, Sir, is the Minister in order to mislead this House by saying that the one kilometre road which has been done in Voi Town was done through the *El Nino* Fund, when actually the funds were provided by the Urban Rural Project that is funded by a different organization altogether?

**Mr. Nassir:** Mr. Speaker, Sir, I agree with the sentiments of my colleague, but I think, the area Member of Parliament and I, know better than him.

**Mr. Kariuki:** Mr. Speaker, Sir, *El Nino* rains were experienced about two and half years ago, and the *El Nino* funds have not been used as yet. How long are we going to wait for those funds to be utilised? Is the cause of delay not the fact that the funds are being managed by the wrong Ministry; the Office of the President, rather than the Ministry of Roads and Public Works?

**Mr. Nassir:** Mr. Speaker, Sir, as a Member of Parliament, he can say anything he wants. The money that has been allocated to this Fund is being utilised. In fact, at the moment, we are repairing many roads.

**Dr. Ochuodho:** Mr. Speaker, Sir, the *El Nino* Fund is such an interesting Fund. Could the Minister tell us why they found it necessary to remove this Fund from the relevant Ministry to their own Ministry? Could he also assure this House, that come July, when the Kenya Roads Board will be in place, the funds will be transferred from the Office of the President to that Board?

**Mr. Nassir:** Mr. Speaker, Sir, the hon. Member must first understand what the *El Nino* Fund is, where we got the money and where it is budgeted from. This was a fund set up after the *El Nino* rains.

**Mr. Mwakiringo:** Mr. Speaker, Sir, apart from the Voi-Mwatate-Taveta Road, which is a highway that links Voi and the Tanzanian border, which other roads in the district are going to benefit from the *El Nino* Fund?

**Mr. Nassir:** Mr. Speaker, Sir, I am a Minister but not an angel to know everything. If the hon. Member forwards that as a specific Question, I will come and reply.

**Mr. Kihoro:** On a point of order, Mr. Speaker, Sir. Are you sure we are communicating? I do not think we are communicating.

**Mr. Speaker:** What do you mean?

**Mr. Kihoro:** Mr. Speaker, Sir, hon. Mwakiringo asked for a list of those other roads that are going to be done in addition to the one that is mentioned in the Order Paper. Could the Minister give us that list?

**Mr. Nassir:** Mr. Speaker, Sir, if the hon. Member does not understand my English, I will repeat it in Kiswahili. I have said that, the hon. Member should forward that as a specific Question, then I will answer it.

**Mr. Mwakiringo:** Mr. Speaker, Sir, part "b" of the Question specifically seeks to know which roads have been repaired and maintained from the said Fund in Taita Taveta District. Could the Minister table the list of other minor roads that are going to benefit?

**Mr. Nassir:** Mr. Speaker, Sir, I think, I may have to bring a whole book detailing the road works we are undertaking in Voi.

Mr. Speaker, Sir, the Voi-Mwatate Road was proposed by Taita Taveta District Development Committee, amongst others as the first priority to be repaired. As decision documents were being prepared, the Ministry of Roads and Public Works went ahead and advertised the same road for rehabilitation, charged to the Fuel Levy Fund. This involved processing and design of the road. A decision has to be reached between the *El Nino* Emergency Project, and the Ministry of Roads and Public Works as to what decisions were taken on that road. In view of the above, meetings were held between the *El Nino* Emergency Project and the Ministry. It was resolved that NIP goes to rehabilitate the last 20 kilometres of the road to the cost of Kshs18 million. The Ministry will rehabilitate---

**Dr. Ochuodho:** On a point of order, Mr. Speaker, Sir. You realise we are in a big dilemma. The issue of maintenance of roads in this country is a very serious issue. Perhaps we need some criteria and minimum requirements for hon. Members to be appointed Ministers. That notwithstanding---

**Mr. Speaker:** Order! First of all, I can tell you one criteria is that, you must be on the Government side. The other is that, you have to qualify to be a Member of Parliament. Therefore, Dr. Ochuodho you have no right at all to question the ability of your colleagues, unless you do that substantially.

**Dr. Ochuodho:** Mr. Speaker, Sir, I would like to request that in circumstances where there are serious Questions and the Minister is unable to answer, the Leader of Government Business undertakes to give a satisfactory answer.

**Mr. Nassir:** Mr. Speaker, Sir, I have answered the much I could. If the hon. Member is not satisfied, he

should wait for the time he will be a Minister to come and reply.

**Mr. Speaker:** Next Question, Mr. Muchiri

*Question No.098*

NUMBER OF PRISONERS SENTENCED TO DEATH

**Mr. Muchiri** asked the Minister for Home Affairs, Heritage and Sports:-have been sentenced to death since Independence;

(b) if he could inform the House how many have been executed, and how many have benefited from the Presidential Prerogative of Mercy; and,

(c) how many have been committed to life imprisonment in lieu of the death sentence, and if he could table the list.

**The Assistant Minister for Home Affairs, Heritage and Sports** (Mr. Sumbeiywo): Mr. Speaker, Sir, I beg to reply.

(a) There are 3,584 Kenyans who have been sentenced to death since 1963 to date for the offenses of murder and robbery with violence.

(b) Two hundred and eighty (280) prisoners have been executed from 1963 to 1987. For the rest of the period to date, no executions have taken place. A hundred and thirty five (145) prisoners have benefited from the Presidential Prerogative of Mercy, and have their capital punishment committed to life imprisonment.

(c) One thousand seven hundred and fifty five (1,755) prisoners have been committed to life imprisonment in lieu of the death sentence. Although, 1,411 of these are still awaiting their appeals in various courts in the country.

The list of those committed to life imprisonment cannot be tabled, because it will be prejudicial to the human rights and the confidentiality relating to their sentences and status while in custody.

**Mr. Muchiri:** Mr. Speaker, Sir, you have heard the Assistant Minister say that he cannot table the list of the names of the people who have been sentenced to death. I know that there is no provision in the law which prohibits him from tabling the list. There has been a lot of speculation in this country that people who have been sentenced to death have been released. For example, one Mr. Nahashon Isaac Njoroge, who was sentenced to death after he murdered the late Mr. Tom Mboya. Could the Assistant Minister confirm or deny that Mr. Nahashon Isaac Njoroge, Mr. Hezekiah Ochuka and Mr. Patrick Okumu Oteo were sentenced to death and executed and their remains cannot be released to their relatives and friends to be buried according to their customs?

**Mr. Sumbeiywo:** Mr. Speaker, Sir, I am not aware of that one.

**Mr. Muchiri:** On a point of order, Mr. Speaker, Sir. The Assistant Minister has not answered part two of my question?

**Mr. Speaker:** Order! If you really want to have the Minister answer the questions the way you want them answered, then you should be precise. I found it extremely difficult myself to follow your question.

**Mr. Shill:** On a point of order, Mr. Speaker, Sir. There is a serious allegation that has been made to this House. We know that it will hurt the family of the late Tom Mboya if the person who was sentenced for his murder has now been released. Could the hon. Member substantiate that claim?

**Mr. Muchiri:** Mr. Speaker, Sir, I said that there have been a lot of speculations and allegations in this country.

**Mr. Speaker:** Order! In other words, you are replacing the word "rumour" with "speculation", in which case, you are out of order. So, do not use the Floor of the House to spread rumours!

**Mr. Kariuki:** Mr. Speaker, Sir, realising that out of 3,600 people who have been sentenced to death, only 280 people have been executed, and realising that the civilised world has now opted from the capital sentence to life imprisonment, if the Government is not committed to putting people to the guillotine, could it come up with a Bill to remove the death sentence and replace it with life imprisonment?

**Mr. Sumbeiywo:** Mr. Speaker, Sir that is under consideration.

**Mr. Murungi:** Thank you, Mr. Speaker, Sir. We are pleased to learn that no Kenyan has been hanged in this country for the last 13 years. Could the Assistant Minister tell this House how many Kenyans are waiting to be hanged or have been waiting to be hanged for these 13 years? Do we really have adequate facilities at Kamiti Maximum Security Prison for keeping that number of prisoners?

**Mr. Sumbeiywo:** Mr. Speaker, Sir, in my first part of the reply, I gave the number of people who are awaiting execution. There is enough capacity to accommodate these people at the Kamiti Maximum Security Prison.

**Mr. Murungi:** On a point of order, Mr. Speaker, Sir. The Assistant Minister is misleading this House. He did

not give the figures of those people who have been awaiting execution, but he gave the figures of those people who have been sentenced to death. Could he now give the number of people who are awaiting execution for the last 13 years?

**Mr. Sumbeiywo:** Mr. Speaker, Sir, I do not have that figure at present. For the benefit of the House and the hon. Member, I can bring the figures any time.

**Mr. Muchiri:** Mr. Speaker, Sir, from the figures given, there are so many people whose death sentences have been committed to life imprisonment. Could this Government consider releasing these prisoners, taking into consideration that some of them have been in prison for more than ten years?

**Mr. Sumbeiywo:** Mr. Speaker, Sir, every case is considered on its own merit. These cases are continuously examined and if it is found necessary to release some of the prisoners, the Government will do that willingly.

*Question No.002*

ELECTRIFICATION OF EKALAKALA MARKET

**Col. Kiluta** asked the Minister for Energy:-

- (a) if he is aware that Ekalakala Market has not been supplied with electricity, and;
- (b) what action he is taking to provide electricity to the market.

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

- (a) Yes, I am aware.

(b) The Market will be supplied with electricity after the necessary recommendation from the Machakos District Development Committee (DDC), that the project is a priority for the district is made, and subject to the availability of the required funds.

**Col. Kiluta:** Mr. Speaker, Sir, I will need your assistance here. If you will remember, last week I asked a similar Question to the same Ministry and I got the same answer. The Ministry is either not serious or the Assistant Minister does not even know what is going on there. Last year, this project was prioritised by this Ministry and Kshs15 million was set aside to electrify Ekalakala Market. I can assist him with a copy of this information from his own books. Could the Assistant Minister tell us what happened? I was assured that this project would be done from June, 1999, and would be completed in December, 1999. Up to today, nothing has been done. Could he tell us what happened to the Kshs15 million?

**Mr. Chanzu:** Mr. Speaker, Sir, that should not prompt the hon Questioner to say that I do not know what is happening in the Ministry. The money that was budgeted for the district was K£1,008,000, but due to unavailability of enough funds, this project has not been undertaken.

**Mr. Karuki:** Mr. Speaker, Sir, this Ministry has been accused of discriminating against certain areas in the distribution of rural electrification funds. Could the Assistant Minister tell this House what criteria are used for the allocation of the rural electrification funds in this country?

**Mr. Chanzu:** Mr. Speaker, Sir, I think the first allegation is wrong because maybe the hon. Member's area has got more electricity than many other parts in this country. The criterion used is that we get requests from the districts through the DDCs. That is the basis on which the programmes are planned.

**Mr. Katuku:** Mr. Speaker, Sir, the Assistant Minister has told us that, the project will be undertaken when funds are available. That is what he told us the whole of last week and this week. You know very well that, the power comes from the Masinga Dam. It passes over Ekalakala, which is the market next to the dam. It is so unfair for those people not to be given power. Could the Assistant Minister consider, whether there are funds or not, securing some funds to supply those people with electricity? If they do not, we have consulted seriously and we will switch off the power there! Then, there will be no power here in Nairobi! Could the Assistant Minister assure us that, he will connect electricity to the market?

**Mr. Speaker:** Order! That is a threat and I will ask the Assistant Minister not to answer!

**Mr. Maundu:** Mr. Speaker, Sir, the market is just next to the dam. At that time, there was an allocation of Kshs16 million to hon. Ngutu. That was satisfactory. Could the Assistant Minister agree to make funds available as quickly as possible, so that there is no bias in the allocation of funds for the purpose of electrification? Could he make a commitment now that, he will supply power to that town, which is next to the dam?

**Mr. Chanzu:** Mr. Speaker, Sir, the programmes depend on availability of funds. I would like to give the assurance that, that market will be provided with electricity.

**Col. Kiluta:** Mr. Speaker, Sir, for the benefit of the Assistant Minister, Ekalakala Market is next to Masinga Dam. The people were displaced by the water from the dam. It is not fair because they have suffered enough! I lose

three people every year who are killed by crocodiles and hippos. I lose the people and, yet, I also do not get electricity!

Secondly, there was a two per cent revenue which we were promised when the dam was being constructed. They said the two per cent will be used to develop the local area. One way of development is to supply electricity! Could the Assistant Minister go back, because I do not think he was briefed correctly, and find out what happened to the two per cent that we were supposed to get? If the two per cent is still there, could he supply us with power in Masinga?

**Mr. Chanzu:** Mr. Speaker, Sir, I have assured the hon. Member that, arrangements will be made to supply the market with electricity. I think the same issue of two per cent was raised last week in a Question which was answered. It explained what happened to the two per cent revenue.

**Mr. Kariuki:** Mr. Speaker, Sir, Col. Kiluta asked a very specific question on the supply of electricity to areas near the dams. It is the same principle in Kiharu where Tana River electricity is near market places. One wonders: Could the Government not consider supplying electricity to those neighbourhood areas within installations where electricity is generated as a policy?

**Mr. Chanzu:** Mr. Speaker, Sir, those were some of the mistakes that were made in the past. They are being addressed to now.

*Question No.004*

CONSTRUCTION OF BRIDGES ALONG  
WAMUNYU-KALAWA ROAD

**Mr. Katuku** asked the Minister for Roads and Public Works:-

(a) whether he could inform the House the number of bridges/drifts to be constructed on the Wamunyu-Kalawa Road, currently under construction;

(b) whether he is satisfied with the construction work of the bridges/drifts; and,

(c) in view of the fact that the rivers are difficult to cross during the rainy season, whether he could consider constructing bridges on all the rivers along the said road.

**The Assistant Minister for Roads and Public Works** (Mr. Criticos): Mr. Speaker, Sir, I would like this Question to be deferred because I am not satisfied with the answer that I have here. We need to investigate more. I have only got information for one drift, instead of three drifts. So, I ask for the indulgence of the House, and beg that the Question be deferred to Wednesday next week.

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

**Mr. Katuku:** Mr. Speaker, Sir, I will be very happy if the Question is deferred to that day, so that I get a proper answer.

**Mr. Munyao:** On a point of order, Mr. Speaker, Sir. The Questioner has put a Question but it has been deferred. But you have deferred a Question uncorrected. What we know is that, there is nothing called Wamunyu/Kalava. Could we know whether it will go like that or it should be corrected?

**Mr. Speaker:** I do not know the place!

**Mr. Katuku:** Mr. Speaker, Sir, I am very grateful with the correction raised by hon. Munyao. Hon. Munyao comes from Kalawa and I come from Wamunyu. Actually, it is supposed to be Kalawa and not Kalava! Maybe, that is why the Assistant Minister has a wrong answer! But we have consulted with the Assistant Minister and there is no problem! He could come with a proper answer next week!

**Mr. Speaker:** It should be corrected to read Wamunyu/Kalawa Road. It will be rectified.

*(Question deferred)*

*Question No.062*

SUBDIVISION OF LAND BY THOME  
FARMERS COMPANY DIRECTORS

**Mr. Kiunjuri** asked the Minister for Local Government:-

(a) why the directors of the dissolved Thome Farmers Company Limited, using land surveyors who are not commissioned, subdivided a piece of land (Thome Number Four), which the company formerly owned, but surrendered to the Laikipia County Council in 1978; and,

(b) what immediate action he will take to stop this division, since the said dissolved company no longer owns the land, and the County Council has already subdivided the piece of land and issued it to the beneficiaries.

**The Assistant Minister for Local Government** (Mr. Affey): Mr. Speaker, Sir, I beg to reply.

(a) My Ministry is not aware that the directors of the dissolved Thome Farmers Company Limited are using land surveyors to subdivide a piece of land which the company owned, but later surrendered to the Laikipia County Council in 1978.

(b) Arising from that answer, the issue of taking action to stop the alleged survey of the land by the company does not arise.

**Mr. Kiunjuri:** Mr. Speaker, Sir, it is true that the Assistant Minister has answered the Question as if I asked it yesterday! I asked this Question last Session, and I asked the Clerk to reinstate it this Session. The truth of the matter is that, surveyors were there. They subdivided the land and today, the directors have title deeds to the land. Is the Assistant Minister aware that the directors formerly surrendered the land to the Laikipia County Council as required by the law?

**Mr. Affey:** Mr. Speaker, Sir, it is true that the Question was filed some time ago. We had prepared an answer but, unfortunately, the hon. Member was not in the House to listen to it.

But to answer the Question directly, the directors of Thome Four Farmers Company Limited surrendered to the Council 37 acres of land in 1979. However, the land was later surveyed and subdivided by the Council and allocated to the members of the public. It is also true that, in 1997, the directors of the company, which was supposed to be wound up after the land was subdivided and issued to the beneficiaries, tried to interfere with the piece of land which was surrendered to the Council. They issued a public notice directing plot owners not to develop them without the consent of the company. However, the Council then warned the directors that they had no business on the land since it had already allocated it to the same beneficiaries. Other relevant authorities, that is the police and the Provincial Administration, were informed accordingly. However, early this year, to the surprise of the Ministry and the Council, the Council became aware of the fact that, the Commissioner of Lands was issuing leases to individuals without any consent and knowledge of the Council.

Mr. Speaker, Sir, this is a very serious matter. The Council has already allocated the land to individuals. But it has also instructed its lawyers to take legal action against the Commissioner of Lands.

**Mr. Kariuki:** Mr. Speaker, Sir, could the Assistant Minister confirm or refute the fact that, among the reasons why unlicensed surveyors surveyed this land, is because the Institute of Surveyors of Kenya (ISK), has only licensed less than 100 surveyors, while there are 3,000 qualified Kenyans with masters degrees and above, with over 20 years of experience, who have been denied licences by the institute because of their vested interests?

**Mr. Affey:** Mr. Speaker, Sir, I deny that allegation.

**Mr. Kiunjuri:** Mr. Speaker, Sir, first, the Assistant Minister has accepted that really the directors surrendered the land. Secondly, that the directors are still interfering with the sub-division of the land. Thirdly, that the Commissioner of Lands has issued title deeds to the same directors. Now, the Assistant Minister says that he is investigating this matter. Who is he investigating? Is it the Commissioner of Lands or the Council? Now, that land is already occupied; the people occupying it have letters of allotment from the Laikipia County Council while the others already have title deeds. Can he clarify this matter? Who is the owner of the land? Are they those with the title deeds or those with the Council's allocation letters? Will he nullify those title deeds?

**Mr. Affey:** Mr. Speaker, Sir, I tried to explain the matter as much as we could as a Ministry to the hon. Member. The land belongs to the Council. The Commissioner of Lands, in view of the Ministry and the Council, has illegally allocated that land and we have asked the Council to take the Commissioner of Lands to court.

**Mr. Kiunjuri:** On a point of order, Mr. Speaker, Sir. We cannot get authority from the Assistant Minister himself who is seated here and he is the one who is the "ear" of the Government. Is he trying to tell us that the Government cannot protect the lives of the people of Laikipia? Now that these people have title deeds, is he telling this House that the Ministry cannot solve the problem? These people have the title deeds for the land and yet, the Council has issued letters of allocation for the same land to other people. Can he now take action and cancel the title deeds since he already knows they are on the offensive?

**Mr. Speaker:** Order! Mr. Kiunjuri, before you quarrel this Assistant Minister, he is in the Ministry of Local Government. He is not in the Ministry of Lands and Settlement.

**Mr. Kiunjuri:** Mr. Speaker, Sir, could you then give him time to go and negotiate with his counterpart, the Minister for Lands and Settlement, so that he can give us the position? Why should the Council waste time and money in courts? This is a case of the right hand cutting the left hand. This Minister for Lands and Settlement is the right hand and the Minister for Local Government is the left hand. Why does he want the Council which is not able to pay



its workers to waste its money in the High Court and all the other courts when he knows the actual position? Why can he not sympathise with the people of Laikipia and Kenya as a whole? Why can he not do that and come up with an answer in this House?

**Mr. Affey:** Mr. Speaker, Sir, I want to agree with the Member. That is a channel we are pursuing and we shall pick up the matter with the Commissioner of Lands.

**Mr. Speaker:** We go to Questions by Private Notice

### QUESTIONS BY PRIVATE NOTICE

#### TRANSFER OF KOCHIA WEST CHIEF'S CAMP

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

(a) Is the Minister aware that a senior civil servant is illegally transferring Kochia West Chief's Camp in Homa-Bay District from God Bondo to his own home area?

(b) On what basis is the said transfer being effected?

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

(a) I am not aware of any senior or junior civil servant who has caused the illegal transfer of the Kochia West Chief's Camp in Homa-Bay District to his own home area.

(b) Arising from my answer to part "a" above, part "b" does not arise.

**Dr. Ochuodho:** Mr. Speaker, Sir, there is a senior civil servant in my constituency who uses Mr. Raburu, "the Governor of Nyanza", to grab almost everything from wananchi. First, it was the Cotton Ginnyery. Second, it was the Women's Centre in Homa-Bay District. Third, several plots in Homa-Bay Town. Fourth, he has grabbed the new chief who is his brother. The latest is that he is now grabbing also the Chief's Camp. Is the Assistant Minister saying that we should ignore this?

**The Assistant Minister, Office of the President (Mr. Haji):** On a point of order, Mr. Speaker, Sir. Is it in order for the hon. Member to call a Provincial Commissioner a "Governor of Nyanza" and yet, we know we do not have a Governor?

**Dr. Ochuodho:** Mr. Speaker, Sir, I will ignore "Mr. PC" because during his time he was not a governor but this one is behaving like one.

**Mr. Speaker:** Dr. Ochuodho, by the way, did you say that this same fellow grabbed the chief?

**Dr. Ochuodho:** Mr. Speaker, Sir, he grabbed the seat because his own brother was appointed as the chief. Is the Assistant Minister saying therefore, that the transfer of the chief's camp which last week Mr. Raburu went to instal at the home of this said person null and void? The Assistant Minister knows who this person is. The wananchi are threatening to burn down that new structure over this weekend. Can the Assistant Minister tell us so that we go and tell wananchi that, that transfer is null and void?

**Mr. Samoei:** Mr. Speaker, Sir, the hon. Member does admit in his very lengthy question that this is a newly created administrative unit. Originally, the chief's camp, as he has put it correctly was at God Bondo. As a result of the new administrative unit being created, the local leaders, and not Mr. Raburu as the hon. Member alleges, decided that this chief's camp be moved to Kuoyo Kochia. That was not influenced by any particular person and it was the decision of the local leadership. As for the threat that the hon. Member seems to be advocating, that members of the public will burn down any structure, I would like the hon. Member to restrain himself from inciting members of the public. This is because I want to promise him that we are going to be very firm.

**Dr. Ochuodho:** Mr. Speaker, Sir, it is very unfortunate to hear the threats from the Assistant Minister. It is not me who is going to burn down the structure but the people themselves. However, what is happening is that Mr. Philip Okundi wanted to have police at his home. He wrote to the Office of the President requesting for policemen. However, he was advised that being an ordinary Kenyan, he cannot be given policemen. The only way he could get them was by grabbing the chief's camp and taking it to his home. This is the Ko Kochia the Assistant Minister is talking about. Can he tell us if this matter has ever been discussed at any Sub-DDC or DDC meetings as required by the law?

**Mr. Samoei:** Mr. Speaker, Sir, there is no law that requires chiefs' camps to be discussed at the DDCs. We do not have a Mr. Philip Okundi anywhere in our administrative structure and, therefore, we have not at any one time in the Provincial Administration taken instructions from any such person.

**Mr. Kariuki:** On a point of order, Mr. Speaker, Sir. My colleague has made very serious allegations about how the Provincial Administration is misusing its office for purposes of protecting certain people and misusing

Government resources and personnel to provide security privately. Is the in order?

**Mr. Speaker:** Who made the allegations?

**Mr. Kariuki:** Dr. Ochuodho.

**Mr. Speaker:** So, who are you asking now?

**Mr. Kariuki:** The Assistant Minister because the hon. Member has mentioned the name of Philip Okundi.

**Mr. Speaker:** So, what do you want me to do now? I do not know this.

**Dr. Ochuodho:** Mr. Speaker, Sir, I can assist the hon. Member. It is true, and the Assistant Minister can confirm, that Mr. Okundi wrote to request for police protection but he was advised that because he cannot be given police protection, the only way he can get it is if he had the chief's camp next to his home. So, for this reason, the chief's camp is being removed from the centre of the location where it has been from time immemorial since the colonial days to his home area which is in one end of the location. Can the Assistant Minister confirm those facts?

**Mr. Samoei:** Mr. Speaker, Sir, I am afraid those are not facts. They are allegations and I have nothing to say about that.

**Mr. Achola:** On a point of order, Mr. Speaker, Sir. Could Dr. Ochuodho declare his interest in this Question because the "Philip Okundi" he is talking about has got something about him, which he is not saying before he raises those questions?

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

**Dr. Ochuodho:** Mr. Speaker, Sir, I can declare my interest. He is an engineer like myself and so we have commonalities. However, a bigger question before I sit---

**Mr. Speaker:** Order! Again, yesterday, I appealed to the House for Members to have integrity and, I think, it is only fair that if a Member is challenged by another, be honest and come clean out of it. If you know you have an interest, say, yes. If you do not have any interest, say, no and then it will be up to him to show you. However, I will ask Members that when they deny a fact and it is pointed out correctly by their colleagues, the least they can do is really to feel embarrassed.

**Dr. Ochuodho:** Mr. Speaker, Sir, can I say that I have an interest in this matter because something belonging to my constituents is being taken away from them by force? But apart from that, Eng. Okundi's wife was the loser in the Rangwe Constituency elections, if that is what hon. Owino-Achola is interested in.

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

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

**Mr. Speaker:** Order! Order, the two of you! You must understand what is called "personal interest"!

Order! May I say, for example, no Member has a personal interest in the seat in Parliament. It is the constituents who have the interest. So, it is not your seat, it is the constituents' seat. So, you have no interest. If that is what is referred to that you have an opponent, that is not a personal interest.

**Mr. Achola:** On a point of order, Mr. Speaker, Sir. I think hon. Dr. Ochuodho has actually answered what was asked. Could I say what his personal interest is?

**Hon. Members:** Yes!

**Mr. Achola:** Dr. Ochuodho has a case in court with Mrs. Okundi, whom he apparently beat in the last elections and he is likely to be imprisoned because of the attack he actually inflicted on Mrs. Okundi. That is why he is trying to malign Mrs. Okundi's name!

**Mr. Kiunjuri:** On a point of order, Mr. Speaker, Sir. Is it in order for the two hon. Members of NDP, who are known to be rivals; one not supporting Raila and the other one supporting Raila, to come and settle their scores here in the House?

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

**Mr. Speaker:** Order! Order, hon. Members! Order, all of you! May I say this to hon. Members; this National Assembly, as you hear everyday when we come here, in the prayers, is for discussing and solving national issues, not for sorting out personal differences and not for settling personal scores. I do hope, earnestly, that hon. Members will not reduce the National Assembly to an arena where personal scores and prejudices are sorted out. I urge and appeal to all of you that, please, do not use this National Assembly to vent out personal vendetta.

**Dr. Ochuodho:** Mr. Speaker, Sir, choosing now to ignore the jokes of my good friend hon. Achola and refusing to reduce myself to his level, could the Assistant Minister---

*(Mr. Achola interjected Dr. Ochuodho)*

**Mr. Speaker:** Order! Order! I do not want that to continue again because this House is "all ears and eyes". Probably, people have already made a judgement between the two of you; who is really worthy being respected! Proceed!

**Dr. Ochuodho:** Mr. Speaker, Sir, given the seriousness of this matter, could the Assistant Minister tell us the correct procedure of relocating a chief's camp and whether that procedure was followed? The reason why I am asking this is that, the Assistant Minister should not hide under the fact that a new location was created. Indeed, there was a new chief appointed, but there was no new location created. So, that, therefore, is no reason for transferring the chief's camp. Could the Assistant Minister tell us the procedures that are normally used and whether those procedures were followed?

**Mr. Samoei:** Mr. Speaker, Sir, I did state that, the decision to move the chief's camp was reached in a meeting of the local leadership in the said administrative unit. I am satisfied that, that procedure was followed and that, the chief's camp is in the right place. I want to remind Dr. Ochuodho that he is not going to use my office to sort out his political problems in the constituency.

**Dr. Ochuodho:** On a point of order, Mr. Speaker, Sir. I thought that the Chair cautioned against personalising this issue?

**Mr. Speaker:** I thought so! Mr. Samoei, take note!

**Dr. Ochuodho:** Mr. Speaker, Sir, by the way is the Assistant Minister in order to---

**Mr. Speaker:** Order, Dr. Ochuodho! What is wrong with you? Do you know that this is Parliament? How do you just keep on standing there without being given permission? We do not run this House that way! Mr. Murathe!

**Mr. Murathe:** Mr. Speaker, Sir, this is a very serious issue that affects people in a given [Mr. Murathe] location. The location of a chief's camp must, of necessity, be convenient to the vast majority of the people or residents of that area. This is not a decision that can be taken by leaders in an administrative structure without involving the political leadership and the people themselves. Could the Assistant take this issue a bit more seriously and set a criteria here so that when we are also involved in these decisions of locating a chief's camp, we know how to go about these things?

**Mr. Samoei:** Mr. Speaker, Sir, I think I remember very well that, I responded to that question yesterday when I said that, the location of chiefs' camps and, indeed, the creation of locations and sub-locations, is done by considering recommendations made by leaders in locations and sub-locations.

Mr. Speaker, Sir, I have said that, the location of this particular chief's camp in question, was arrived at by the local leaders.

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

**Mr. Speaker:** Order! Order! Dr. Ochuodho, raise whatever point of order you want to raise and that should be a point of order.

**Dr. Ochuodho:** Mr. Speaker, Sir, you have heard the Assistant Minister repeatedly say that recommendations were made by a meeting of leaders. In a situation where the Member of Parliament and the various councillors are not involved; when was this meeting held and if it was held, was he satisfied that there were leaders? This is because he is talking about the wananchi and I am telling him that it is the wananchi who will burn that structure! When was this meeting held? Is Eng. Okundi and Mr. Raburu the leaders or the wananchi? Who are these wananchi he is talking about and who are the leaders?

**Mr. Samoei:** Mr. Speaker, Sir, if Dr. Ochuodho does not go to his constituency, I do not know what we are supposed to do because, as far I am concerned, that decision was made by the local leadership and Dr. Ochuodho would have done himself a favour by attending that meeting.

**Mr. Speaker:** Dr. Kituyi's Question will be deferred.

#### ROBBERIES IN KAMUKUYWA MARKET

**(Dr. Kituyi)** to ask the Minister of State, Office of the President:-

- (a) Is the Minister aware that there is a spate of systematic raids and robberies occurring in the neighbourhoods of Kamukuywa Market and Kimilili Town over the past fortnight?
- (b) Is he further aware that in one of the robberies, local vigilantes injured one of the raiders who turned out to be a Mr. Mok, an Administration Police Officer at the Chief's Centre in Kamukuywa?
- (c) What urgent action is the Minister taking to arrest the situation before it gets out of hand?

*(Question deferred)*

CAUSE OF CRASH OF KENYA  
AIRWAYS FLIGHT NO.KQ431

**Mr. Sifuna:** Mr. Speaker, Sir, before I ask this Question, I would like to make some correction. My constituency is "Bumula" not "Bumala".

Mr. Speaker, Sir, I beg to ask the Minister for Information, Transport and Communications the following Question by Private Notice.

(a) What were the circumstances that led to the crash of the Kenya Airways plane, Flight No.KQ 431, in Abidjan, Cote D'Ivoire, that claimed more than 169 lives?

(b) When will the Report be released?

**The Minister for Information, Transport and Communications** (Mr. Mudavadi): Mr. Speaker, Sir, I beg to reply.

(a) The Kenya Airways Flight No.KQ431 of 30th January, 2000, crashed into the Atlantic Ocean off the coast of Abidjan when the Aircraft, upon take-off, reportedly ceased to generate sufficient lift for a further climb out or even to maintain a level flight, resulting into loss of height and crashing into the sea.

The cause of the accident is still not fully known. This accident is being investigated by Aircraft Accident Inspectors from Cote D'Ivoire and Kenya and the Report will be released by the two Governments as soon as evidence and findings from the location of the accident and other investigation centres have been assembled and scrutinised to determine the cause and subsequently, the recommendations which would be useful in avoiding similar occurrences in future.

(b) As of now, the investigations are still in progress. However, we hope to receive a preliminary Report within the next ten days.

**Mr. Sifuna:** Mr. Speaker, Sir, could the Minister tell us the last time the aircraft had a major service?

**Mr. Mudavadi:** Mr. Speaker, Sir, as I have said, the investigations are still going on and I would not want to make any comments until I have a report.

**Mr. Ndicho:** Mr. Speaker, Sir, the Question has got nothing to do with the investigations whose results the Minister is still waiting for. When was the last major service done to that aircraft? We have got so much information for you with regard to this!

**Mr. Mudavadi:** Mr. Speaker, Sir, I still maintain that I would like to give a comprehensive report to the country and this House. That report will definitely include the kind of details that the hon. Members are seeking. So, I would not like to pre-empt anything by giving half-baked information.

**Mr. Anyona:** Mr. Speaker, Sir, this is a very important Question. Could the Minister tell us in whose hands these investigations are? There is the Kenya Government, the Cote D'Ivoire Government, the manufacturers of the aircraft and we also heard that the investigations were being carried out in Canada. Who is in control of these investigations?

**Mr. Mudavadi:** Mr. Speaker, Sir, in accordance with the International Civil Aviation Organization Convention, if an accident occurs - Article 26 deals with the investigation of accidents - the country in which that accident occurred takes the lead in the investigations. The authorities in Cote D'Ivoire are yet to give us the preliminary findings of their investigation. But I would like to inform this House that a team is now in Paris, led by the Government of Cote D'Ivoire. They have done some preliminary aspects in Canada, they have been in Kenya and until they give a full report as the investigating country, we are bound to wait because they are the ones who will release the report, which we will make available to the House.

**Mr. Sambu:** Mr. Speaker, Sir, the Minister did say at the beginning that the aircraft failed to generate enough power to climb which is an indicator - I am not an engineer by any means - to any layman that there was something amiss with the two engines. Could the Minister tell this House what they found out in the voice recorder and the black box data analysis? When they took them from there, they said it was going to take them ten days but it is now coming to 60 days. What is secret about an engine not generating enough power? There is more to this than what the Minister is saying.

**Mr. Mudavadi:** Mr. Speaker, Sir, the hon. Member did confirm that he is not an engineer. I think that is very fundamental and this is why I am emphasizing----

**Mr. Sambu:** On a point of order, Mr. Speaker, Sir! I am not an engineer but the Minister is not one either! Have we come here to discuss our professions? Let him answer the Question! Wacha ukora wenu! Watu walikufa!

**Mr. Mudavadi:** Mr. Speaker, Sir, as I said, I would like to give a detailed report and I can only give that

report once we have received it from the authority that is investigating the accident. I did say earlier that within ten days, we hope to receive the report from the Government of Cote D'Ivoire. So, until the report is there, there is nothing I can give to the Kenyan public at this time.

*(Several MPs stood in their places)*

**Mr. Speaker:** Order, hon. Members! I think I heard the Minister say that he is likely to receive the report within ten days. I will, therefore, postpone the Question for two weeks to enable him get the report. So, the Question will be deferred.

*(Question deferred)*

## POINTS OF ORDER

### ACCESS TO WATER IN RUBIRU SPRINGS

**Mr. Murathe:** On a point of order, Mr. Speaker, Sir. I would like to seek a Ministerial Statement from the Minister for Water Resources. Yesterday, when he was answering a Question about the springs in Kibwezi, it became apparent that some of these foreign-owned companies are frustrating Kenyans and denying them access to water resource in springs. In my constituency, Kakuzi Limited has denied the residents access to the Rubiru Springs after the World Vision International had donated more than Kshs15 million for the provision of water. Pipes and generators have been bought for this purpose. Could the Minister tell this House what he is going to do about some of these multinational companies which are frustrating our people and denying them access to this very essential life-supporting resource? Hon. Ndicho has given them 90 days to quit and I think we will be compelled to support him.

### INSECURITY IN MANYATTA CONSTITUENCY

**Mr. Ndwiga:** Mr. Speaker, Sir, I rise to seek a Ministerial Statement from the Minister of State, Office of the President.

Mr. Speaker, Sir, of late, there have been several cases of thuggery in Manyatta Constituency. Two weeks ago, two thugs invaded the house of a local councillor and two watchmen were killed. The following weekend, thugs invaded my parents' home and injured a watchman. During the same night, they invaded a neighbour's home. On Monday last week, thugs attacked and killed a policeman in Mbuvari Village in Nginda Location. The same night, the same thugs invaded Kibugu Market. They came in lorries and emptied all the shops in that market. While we appreciate the hard work that the police in Embu are doing, they are handicapped by lack of transport. There is not even one vehicle in Manyatta Police Station. The Officer Commanding Station (OCS) Embu has no vehicle. Though we may have adequate personnel, they cannot move. Could the Minister give us a statement on what he intends to do to curb this rising menace?

**The Minister of State, Office of the President (Maj. Madoka):** Mr. Speaker, Sir, I am aware of the incidents in question and I will make an appropriate statement next week.

### OUTBREAK OF CHOLERA AND MALARIA IN NYANZA

**Dr. Ochuodho:** On a point of order, Mr. Speaker, Sir. I would like to seek a Ministerial Statement from the Minister for Health with regard to the raging outbreak of cholera and malaria in Nyanza. In the recent past, we have witnessed a number of deaths. I would like the Minister to come here with a Ministerial Statement, stating how many people have so far died from cholera and malaria and what intervention the Government is putting in place to make sure that the two diseases are stemmed from the area?

**The Minister for Medical Services (Dr. Anangwe):** Mr. Speaker, Sir, I promise to give a Ministerial Statement in relation to that Question next week on Thursday.

**Mr. Ndicho:** On a point of order, Mr. Speaker, Sir. Hon. Murathe raised a very fundamental issue about a multinational company called Kakuzi Limited denying the people of Gatanga Constituency access to water and the Minister did not respond as his colleagues have done. Could you ask the Minister to state what he is going to do about it?

**The Minister for Water Resources (Mr. Ng'eny):** Mr. Speaker, Sir, I will make an appropriate Ministerial Statement in due course.

**Mr. Speaker:** Very well.

**Mrs. Ngilu:** On a point of order, Mr. Speaker, Sir. There is no time called "due course"; he has got to give us the time when he is going to make that Statement.

**The Minister for Water Resources (Mr. Ng'eny):** Mr. Speaker, Sir, I will make a Ministerial Statement next week on Wednesday.

### MINISTERIAL STATEMENT

#### DISTRIBUTION OF MEDICAL STAFF IN GOVERNMENT HEALTH INSTITUTIONS

**The Minister for Medical Services (Dr. Anangwe):** Mr. Speaker, Sir, I rise to make a Ministerial Statement on the distribution of medical staff in Government health institutions. As hon. Members will recall, I undertook to make a Ministerial Statement on the concerns raised in this House about the shortage of staff in Government health institutions. The concerns arose out of a Question by hon. Musila, Member of Parliament for Mwingi South, on Tuesday, 18th April, 2000.

Mr. Speaker, Sir, presently, there are 610 doctors, 1,605 clinical officers and 14,946 nurses distributed in about 3,000 Government health institutions throughout the country. For those who may wish to know the provincial distribution, the figures are as follows:-

<u>Province</u>	<u>Doctors</u>	<u>Clinical Officers</u>	<u>Nurses</u>
Eastern	106	197	2,729
Western	44	143	1,694
Rift Valley	135	439	3,477
Coast	96	150	1,231
Nyanza	76	156	1,990
Central	101	192	2,855
N. Eastern	8	45	212
Nairobi Area	44	93	758

The factors that have influenced the provincial distribution pattern have to do with the number of districts and health institutions, as well as the disease burden in the provinces. The factors are also historical. I am also able to show the distribution among the districts but the list is long. May I request that I table the district data for anybody who may wish to know the distribution of doctors, clinical officers and nurses amongst the districts.

Mr. Speaker, Sir, let me state categorically that doctors, clinical officers and nurses in Government health institutions are not enough in all the provinces and districts based on the standard staffing norm criteria. Indeed, there is a shortage of 397 doctors, 586 clinical officers and 1,600 nurses. The provincial shortfalls are also as follows:-

<u>Province</u>	<u>Doctors</u>	<u>Clinical Officers</u>	<u>Nurses</u>
Eastern	63	96	300
Western	74	73	85
Rift Valley	84	137	530
Coast	28	106	275
Nyanza	101	104	215
North Eastern	11	20	175
Central	50	50	20
Nairobi Area	2	Nil	Nil

Again, Mr. Speaker, Sir, I have data on shortfalls of doctors, clinical officers and nurses on district basis, but I shall table the list for those who may wish to pursue the matter.

Mr. Speaker, Sir, arising from this data, two major conclusions can be made. Firstly, Government health institutions have only 61 per cent of the doctors, 71 per cent of the clinical officers and 90 per cent of the nurses they require to deliver [The Minister for Medical Services] services to wananchi. However, the provincial disparities exist in terms of strength of the three cadres as follows:-

<u>Provinces</u>	<u>Doctors</u>	<u>Clinical Officers</u>	<u>Nurses</u>
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	Per cent	Per cent	Per cent
Eastern	66	67	90
Western	37	66	95
Rift Valley	62	76	87
Coast	77	60	82
Nyanza	43	60	90
North Eastern	42	69	90
Central	67	79	99
Nairobi Area	96	100	100

If the provincial averages could be a plausible basis for equitable distribution of the personnel, then there would be cut-backs or increases in the number of doctors, clinical officers and nurses on provincial basis as I shall show in this particular document. A similar analysis on district basis within each province has also been done to determine where cut-backs and increases are needed on the basis of district averages. The redeployment between provinces and districts is going to be a major exercise involving a large number of personnel with its implications. Therefore, I have duly instructed the Director of Medical Services (DMS) to effect these staff changes within a period of one year as a short-term measure, to ease invaluablely the medical staff shortage in the various parts of the country.

Secondly, Mr. Speaker, Sir, there is a need to recruit invaluablely more doctors, clinical officers and nurses in the long-term when funds become available. I have instructed my officers to plan for this recruitment in the next three years and seek the requisite authority from the Directorate of Personnel Management (DPM) and Treasury, in line with the on-going Civil Service Reform Programme. Thank you.

*(Dr. Anangwe laid the document on the Table)*

**Mr. Speaker:** Next Order!

### POINT OF ORDER

#### REMOVAL OF NAMES FROM THE SELECT COMMITTEE

**Ms. Karua:** On a point of order, Mr. Speaker, Sir. You will recall that, yesterday, I raised the issue of some hon. Members' names you had ruled that should be removed from the list of those who would compose the Membership of the Select Committee on the Constitution of Kenya Review Act. However, those names were not removed. I have had time to look at the HANSARD of 16th December, 1999, in particular, from pages 2972 to 2974; it is quite clear that you ordered the removal of those names. Is it in order for the House to continue debating the Report of this Committee when those names still appear therein as part of the Membership of this Committee, in defiance of your ruling of 16th December, 1999?

Mr. Speaker, Sir, another point I would like to raise is that the same Report contains statements of strangers; the Committee has included into this Report, things that transpired at a social meeting with the Press. Standing Order No.71 is quite clear on this matter; the proceedings of a Select Committee cannot be discussed, or shared, with anybody before the Report is brought to this House. In view of those two glaring breaches of the Standing Order, is it in order for this House to continue debating this Report before: One, the names of those hon. Members who declined to take their places in this Committee are expunged; two, the remarks of the strangers, which are contained in this Report, are removed?

*(Loud consultations)*

**Mr. Speaker:** Order; Mr. Mokku! Ms. Karua, when you raised that issue yesterday, I was not here. Now that you have raised those two issues, I will look at them. However, as far as I am concerned, I do not think that we are actually debating the names, as it were; we are debating the content of this Report. If I ordered that certain things be done, and I have not reversed that decision, that order will be implemented. I would like to assure this House that whatever I had directed will be done. If I said that those names should be expunged, and if that is what is in the HANSARD, it will happen. That is a very, very simple thing to do.

Regarding the second issue, I will revert to this House. However, for now, we shall continue debating the Select Committee's Report. If any hon. Member wishes that any particular part of this Report should be removed, he may move a Motion seeking to delete that particular part; that is the way we normally do it. That is how we proceed,

for example, when dealing with the Reports of the Public Accounts Committee (PAC) and the Public Investments Committee (PIC). Any hon. Member who is unhappy with any particular paragraph can move a Motion to have that paragraph deleted. If the House doth agree with such an hon. Members then, that paragraph will be removed. That is the way we deal with Reports like the one before the House. It is not something that I can do administratively.

Mr. Nyachae was on the Floor yesterday.

**Dr. Oburu:** On a point of order, Mr. Speaker, Sir. When hon. Karua raised this issue yesterday, the hon. Mover of the Motion on the Committee's Report was directed by you not to call out the names of those hon. Members who had

refused to take their places in this Committee. I remember that, following that directive, hon. Raila, carefully, left out those names as he presented the Report.

**Mr. Speaker:** Hon. Members, I remember saying that those names should be excluded from the resolution of this House.

**Dr. Oburu:** Mr. Speaker, Sir, I am sure that those names do not appear in this House's Verbatim Report of yesterday afternoon.

**Mr. Speaker:** Hon. Members, I think my instruction was picked by the HANSARD. I am directing the Clerk of the National Assembly to effect my earlier ruling on this matter. Proceed, Mr. Nyachae!

**Ms. Karua:** On a point of order, Mr. Speaker, Sir. I just need your clarification. I appreciate the fact that when an hon. Member is unhappy with any part of this Report, he may move a Motion to have that part removed. However, this is a matter on which the Chair had already ruled, but that ruling has not been effected. Is it proper for this House to continue debating this Report before those names are expunged? That is the simple question I have asked.

**Mr. Speaker:** Ms. Karua, I have already directed the Clerk of the National Assembly to effect my order, and it will be effected.

**Mr. Anyona:** On a point of order, Mr. Speaker. The hon. Member is misleading this House. All that is being raised here is in pages 1 and 2 of this Report.

**Mr. Speaker:** I have not even seen those names in the HANSARD Report of yesterday.

**Mr. Anyona:** Mr. Speaker, Sir, all that hon. Raila said was that these were the names which were nominated by the Select Committee---. When this matter was raised, what you said should happen happened. The Chairman of this Committee, while initiating debate on this Motion, went on to report to the House the names of those hon. Members who did not take up their positions in the Committee. That is all that the hon. Mover said.

**Mr. Speaker:** Order! Hon. Members, I will look into this issue, because two things will not happen. One, there is no way we can run away from a historical fact. Two, the record must reflect what happened in this House. If, for example, the Sessional Committee had recommended certain names to be constituted into the Membership of a House Committee and certain hon. Members refused to serve, all that must be part of the record of this House. We cannot make it blanket that, that never happened when, as a matter of fact, that happened. Therefore, I should be given time to look at the matter, and communicate back to this House.

Mr. Nyachae, proceed!

### MOTION

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

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.

*(Mr. Raila on 19.4.2000)*

*(Resumption of Debate interrupted on 19.4.2000)*

**Mr. Nyachae:** Mr. Speaker, Sir, as I was saying yesterday, the Report of the Select Committee has contributed a great deal in causing division among Kenyans, and this is one thing we must avoid. This country needs unity. Constitution making is a matter of concern to every Kenyan.

Among the 28 million people of this country, we have the political leadership, including Parliament. However, that does not mean that we should ignore the fact that we do also have leadership in various other fields of our nation. This leadership was recognised some two years ago, when we invited other stakeholders to talks, which led



to the enactment of this Act. We even recognised, at that time, the fact that Parliament is the supreme authority in matters of legislation. That authority of Parliament has not disappeared. But we accepted that we needed the participation as well as the interaction of all Kenyans in the review process, and that is why we incorporated leadership from other areas. Whether you call them stakeholders or whatever name you call them, there are leaders outside this House as well, who must join us in the constitutional-making. We need to carry those people we recognised the other time.

Mr. Speaker, Sir, when the Constitution is ultimately written, it will be the property of every Kenyan and not the property of Parliament alone. It will be the property of every Kenyan because it affects the life of every Kenyan. We are saying that we cannot create an impression, as a Parliament or as leaders who have been given responsibility of coming here to lead the nation politically--- The moment we get divided, we have divided the country out there. There is nobody who is seated in this House who does not have followers. When we see some of us marching out of this House, we must ask ourselves why they are doing that. It means that they have disagreed with something and we must find out how we can solve the problem. We should not brush them aside because if we do so we are actually brushing aside the whole lot of Kenyans who elected them. That is why we must make sure that we do not go out there to make a "case", that we are preparing the Constitution when, in fact, not all Kenyans are saying: "Let us go, march together and formulate a document for our nation."

Mr. Speaker, Sir, constitutional-making is not a matter for political or party wrestling, where one party says that they do not agree while the other one says that if you do not agree, we are the majority and, therefore, we will bulldoze the thing. This is not what we want for the Constitution. On policy matters and simple legislation, we can argue and defeat one another on party basis, but the Constitution is something we must get every Kenyan to go along.

I did a simple calculation on yesterday's walk out by hon. Members and found out that if we go by the number of people who say that this document is not acceptable, we will definitely get more than 40 per cent of people in this country disagreeing with this thing. I have not done enough homework, but if I go by the number of hon. Members---

**Mr. Ngure:** On a point of order, Mr. Speaker, Sir. Is hon. Nyachae now telling us that those "fellows" represent people while we who are here do not?

**An hon. Member:** They are not "fellows", but hon. Members!

**Ms. Karua:** What is his point of order?

**Mr. Nyachae:** Mr. Speaker, Sir, I am not arguing with anybody here, but I am drawing the attention of this House to the fact that constitutional-making must carry every Kenyan. If we are talking about 65 Members of Parliament having walked out and nobody is disputing that figure--- Just calculate the population of the constituencies that they represent and do not ignore the fact that they are leaders. In fact, that is why they were elected to this House. Suppose those people who elected them go along with them, then are we really formulating a Constitution for this country? This is the point. We are not talking about a Constitution for a party, two parties or three parties, but we are talking about a Constitution for Kenyans, whether they belong to political parties or not, they are Kenyans. That is what I am saying.

Mr. Speaker, Sir, I hope that the hon. Members who are here do realise that we cannot be divided on this issue and expect to have a Constitution belonging to Kenyans. Let us agree to go back to where we were before the Select Committee was formed. Let us now go back to Safari Park Hotel or any other place and tell the people who participated at that time: "Here we are as hon. Members of Parliament and we know that we are stuck..."

**Mr. Munyasia:** On a point of order, Mr. Speaker, Sir. Is hon. Nyachae in order to discuss what should have been brought in at the time that the Committee was being established here? This is because what he is saying is not relevant to this particular Report. He is bringing arguments that should have been brought against the establishment of the Committee. So, is he in order to draw this House back?

*(Applause)*

**Mr. Nyachae:** Mr. Speaker, Sir, this matter is not as simple as that; that I am not in order. The truth of the matter is that all of us were quite happy with the original Motion which was brought to this House by hon. Raila.

**Mr. Speaker:** By the way, that is already past.

**Mr. Nyachae:** Mr. Speaker, Sir, all that I am saying, because I am responding to a point of order, is that, that Motion did recognise the other stakeholders, but it was ignored by this House. I am saying that---

**Mr. Speaker:** Order, Mr. Nyachae!

**Hon. Members:** Aah! Aah!

**Mr. Speaker:** Order! When I say order, it is order. Hon. Members have no business sitting here and pretending that they can, by being disorderly, take over this House. You cannot! Mr. Nyachae, I am saying that there

was a Motion which was brought to this House. You remember very well that there was, in fact, an objection as to whether or not it met the rule of negation and the Chair did rule that it did not meet the criteria for negation. To the best of my knowledge, that ruling of the Chair has not been overturned by this House. Therefore, it stands and binds you. You cannot stand there now and debate the ruling of the Chair unlawfully. That is all I am telling you. Forget about that because I ruled on it.

**Mr. Nyachae:** Thank you, Mr. Speaker, Sir, I am not at any moment questioning the ruling of the Chair. All that I am saying is that we would not be in this state of disagreement had that Motion not been dropped. I am not even asking the Chair that we revive that Motion, I am saying that we are stuck. We are in a situation where we will not move. When we were faced with a stalemate, it was an internal problem, where the parties and other stakeholders had disagreed on the nomination of Commissioners. But now, because of this Report, the disagreement has gone beyond the stakeholders and the parties to the country. We have divided the country and that is what I am saying. I am saying that the Chairman of the Select Committee and his team should reconsider the presentation of this Report. My appeal is that we should revise the position of this Report rather than bulldoze it.

It is true that if the parties which are involved in supporting the Select Committee decide to bulldoze it, they can do so. They can go ahead and bring in the legislation which will go through by simple majority. They can go to that stage. They can present the names to the President. He can appoint them, but that will be the last stage. We will never have a Constitution in this country because when you go out there, there are certain areas where you will be listened to and others where you will not be listened to because the country is divided. On that basis you can bring here a report which does not have the support of all Kenyans. There will be a Constitution imposed on some Kenyans since others will be supporting it while others will not. Is that what we want? Is that the unity of the nation we are looking for? Is that how we are going to live? We are going to be divided by the recommendation of this Committee as a nation. Anybody who loves this country must stop dividing Kenyans. That is the message I want to convey today here, that; let us not divide Kenyans.

There is one thing that I would hate to see in this country and that is a massacre. Every Kenyan is valuable, but when we disagree and people become very emotional some will go to the streets. We are not going to end up with peace. We are going to end up with bloodshed and bitterness that is going to divide the country. That is my concern and I am sure it is the concern of all Kenyans. This is not a matter of bulldozing or just voting. Let us do some exercise and serious thinking on how we can embrace each other to create a united Kenya. Let us move our people together. Let us have a Constitution that is embraced by all Kenyans and one that every Kenyan will own. That is my message. In the absence of that, I reject this Report.

**Dr. Oburu:** Mr. Speaker, Sir, I rise to support this Report. I support it because it has gone through all the formalities necessary for a constructive debate in this House. As a Parliamentarian, I think it is my responsibility to stand up here and state my views. It is not my responsibility to run away from the discussion of such an important report involving the Constitution of this country.

A Constitution is a very important document for any country. It cannot be wished away nor be made partisan. It is something which cannot be decided by selfish interests. People must be serious about it. As representatives of our people, we feel pained that we are discussing it with only a part of this Parliament because another part has decided to run away. I do not think it is my responsibility to retain a Parliamentarian to discuss a serious issue like this because all of us are equal and we were elected on equal basis. Therefore, it is my responsibility to try and persuade my colleagues to support my point of view. If I fail to do so, I will only be doing this country justice if I also stand up and speak my view. Democracy demands that the majority have their way, but the minority must have their say.

If we must accept the will of a few people who disagree with us and then they refuse to participate in the debate, I think we shall be accepting what we should call "a dictatorship by the minority". This Parliament has a history where we have had minority opposition which have been very effective. They attracted the support of very many Kenyans because they stood their ground and spoke boldly without any fear or favour. I think this is the principle on which we should debate a serious issue like this one.

I remember when this debate on the review of the Constitution started, there were attempts by Members of this House to have everybody in an informal manner, to agree on a formula and decide whether we were going to support the Safari Park Meeting or the other forums which had taken place before. From the very beginning, there is a section of this House which took it upon themselves to mistrust the other Members and failed to attend any of the five meetings which were convened, specifically for informal consultation. I do not know what else we were supposed to do as Members, if we were looking for informal discussions. Even in Mombasa, when we went for the AIDS seminar, we sat there discussing the way forward because the Constitution process was stalled. There were some people who were taking beer when we were discussing the serious issue of the Constitution.

Mr. Speaker, Sir, I do not know if there is any other way called "accommodation, consultations or co-operation" - which some people do not like - which we were supposed to make in order to have this Constitution

process moving forward. When the matter came up before the House, I recall that the original intention of the Motion was actually to go back to Safari Park Hotel. All the Members had an opportunity to bring an amendment to that Motion, but there were people - I do not know whether to call them "cowards or whatever" - who decided to run away before the debate even started. They were even trying to obstruct the tabling of the Motion. I do not know again, what else we were supposed to do when some people decided to run away from the debate in this House before it even started. They never proposed any amendments or made any contributions to support the original Motion. From the very beginning, they ran away from the debate.

That notwithstanding, I would like to say that the Constitution is a contract between the governed and the governor. It is a contract between the people of Kenya and those who govern. Those who govern include this Parliament, the Executive and the Judiciary. We are all governors and none of us can take upon himself to impose a document which is a contract between him and the other people. That is why it is very important that a Constitution is made from the people's contribution. From this Report, I do not know anything which is nearer to the people than taking the forum for discussion of the Constitution to the constituency where every one of us has been elected. Therefore, when we talk about the "people-driven" or "non-people driven" processes, then I do not understand. If this Parliament was to sit here, draft a Constitution and take it to the Attorney-General - which can happen - would that be acceptable to the people? That is what happened in the original Constitution which we are doing away with. There was no Kenyan who was contacted when this Constitution which we are discussing was being made. This Constitution was made somewhere far away from Kenya, in London. Is the Constitution we are discussing today "people-driven"? No, it was not "people-driven". The one we want to make is "people-driven" because we are taking it to the forum of the people at the constituency level so that all Kenyans can participate in the discussion. Never, has this country had a Constitution which is people driven. This is the first time we are going to have a Constitution which is people-driven. I must say that those who are saying that they want a people-driven Constitution are only talking about a particular ethnic group which does not agree, with anyone unless it is their own people who are leading. We cannot be misguided. We are not going to accept tribalism to guide this forum. We must act as Kenyans. We are genuine Kenyans and although we are being called names that we are in KANU, we are not in KANU and we shall not be in KANU. We are in NDP and we are going to maintain our identity as NDP.

Mr. Speaker, Sir, I hope when this report has been adopted - I hope it is going to be adopted; and come to the stage of the Bill, some of our concerns will be taken into consideration, so that we have something that is acceptable to all the people. There has been a lot of suspicion in this country. This suspicion has developed as a result of some events which have taken place in the governance of the country. Some of these concerns have brought so much suspicion that when people hear of the term "Presidency", they just think that they will be marginalised and oppressed. Even in the last Safari Park meeting it was agreed that under the draft Bill which we are now trying to review, the appointment of all commissioners was to be done by the President. But when this particular report has said so in black and white, some people asking why the President should appoint the commissioners. They are forgetting even the Act which we are now reviewing also said it was the President who was going to appoint commissioners.

Mr. Speaker, Sir, to address some of these concerns, I feel that under the Bill, we should give the President 15 names so that he appoints the 15 commissioners instead of 21 names. This is my feeling. I also feel that the Commission itself should appoint their Chairman. The Chairman of the Commission should not be appointed by the President.

*(Applause)*

If that will satisfy those who are running away from us, I am sure they will come back. But I am sure that is what they want. What they want is to have this present Constitution amended because it is giving the Presidency so much powers. This is because they are hoping that they will come to power and use the same powers to oppress us. But whatever we tell them, I am sure, they will not come back. This is because they would like time to pass, so that by the time we come to the year 2002, there will be no change in the Constitution and all the powers of the President will remain intact. This is because in their own scheming, they think that, by that time, they will have gathered enough support. Some of them have told me that this is the end of hon. Raila because he is going to be very unpopular because of this report. So, they are going to come to power because the Select Committee Report will be very unpopular among Kenyans. This is day-dreaming. The process of constitutional making stalled and everybody went to sleep. So, when hon. Raila came up with the Motion calling for a meeting of all stakeholders, then all of them woke up. They are now saying Mr. Raila has conspired with KANU and he will be appointed Prime Minister among other things.

Mr. Speaker, Sir, we will not go by mistrust, rumours or vendetta in this process. This country must be ruled and governed by reason. People must reason together and discuss with each other. They must not throw words at each other, but should discuss with each other.

Mr. Speaker, Sir, I do not want to talk more about this process. I would not like to extend my contribution beyond this point. I just wanted to make a brief contribution.

With those few remarks, I beg to support.

**The Minister of State, Office of the President** (Mr. Nassir): Asante sana, Bw. Spika na Mungu akubariki. Katika maisha yangu yote nimeona Katiba za Sultani, Uingereza, Serikali huru ya Kenya na leo ninamuomba Mungu aniweke hai, ili nione Katiba mpya.

Bw. Spika, wahe. Wabunge ambao wameiasi Hoja hii, hawakufanya hivyo---

**Mr. Nyachae:** On a point of order, Mr. Speaker, Sir. The Sultan never had a Constitution.

**Mr. Speaker:** Mr. Nyachae, what was your point of order?

**Mr. Nyachae:** Mr. Speaker, Sir, is hon. Nassir in order to mislead the House that Sultan had a Constitution?

**Mr. Speaker:** I think you should have risen on a point of information. Anyway, you have made your point. Proceed, hon. Nassir.

**The Minister of State, Office of the President** (Mr. Nassir): Asante sana, Bw. Spika. Bw. Nyachae wakati fulani alikuwa mhe. Waziri kama mimi na sioni haja ya yeye kunikosoa.

Nilikuwa nikisema waheshimiwa Wabunge ambao wameiasi Hoja hii hawakufanya hivyo kwa sababu ya mhe. Raila wala Kamati Teule ya Bunge hili, lakini ni kwa sababu ya kuhifadhi mali yao. Iwapo Tume ya Katiba itawatambelea wananchi, basi itapata habari nyingi sana kuliko hizi ambazo zimewasilishwa mbele ya Bunge hili na Kamati Teule ya Bunge chini ya uenyekiti wa mhe. Raila. Mambo watakayoyapata ni mengi na ni Mungu mwenyewe ajuaye!

*(Applause)*

Kamati Teule ya Bunge imewashtua watu wote katika Kenya kabla ya Tume ya Katiba haijaundwa na kusikiliza maoni ya wananchi. Lakini wananchi wengi wanafurahia kazi ya Kamati hii. Hii ni kwa sababu Kamati hii ilijishughulisha na wananchi wa tabaka za chini na wala si matajiri wenye mashamba makubwa, magari mengi na nyumba nyingi. Ripoti hii inawahusu wananchi maskini ambao hawana hata senti moja ya kulipa karo za watoto wao. Ripoti hii inapendekeza maoni ya wananchi maskini yatiliwe mkazo katika Katiba.

Bw. Spika, ninawasuta sana viongozi waliodhani tunataka kubadilisha Katiba kwa manufaa yao. Ninafikiri walikuwa wakiota ndoto na kufikiria kuwa wangebadiisha Katiba jinsi watakavyo. Hawakujua kama kuna mambo mengi ambayo yangetokea. Wakati huu wanataka shughuli hizi za kurekebisha Katiba zikwame. Ninawasikitikia wale Wabunge wenzangu waliowafuata wenzao kuiasi Hoja hii bila kujua sababu za kufanya hivyo. Wangewauliza sababu za kutoka nje ya Bunge hili. Je, walitoka nje kwa sababu ya Ripoti ya Kamati Teule ya Bunge? Lakini wao maskini waliwaandama wenzao nao bila kujua sababu za kufanya hivyo. Hata hivyo, wakibadilisha nia tutawakaribisha wao hapa Bungeni kwa furaha. Pengine jambo lililowafanya watoke nje ya Bunge hili ni mabadiliko ambayo wanayaogopa.

Ikiwa Kamati Teule ya Bunge inaweza kusikiliza maoni ya wananchi kama vile walivyofanya, basi Kenya itajulikana ulimwenguni na sisi viongozi tutafahamu hali ya wananchi wetu waliotupigia kura.

Bw. Spika, namuomba Mungu aniweke hai mpaka siku ambayo Tume ya Katiba itakapomaliza kazi yake ya kusikiliza maoni ya wananchi na kuandika Katiba mpya. Hilo ni ombi langu.

Mimi nilipata taabu kwa sababu nilifungwa bure. Nilipgwa beti na nikawa sijui choo kiko wapi na nitakula wapi. Hiyo ndiyo sababu mimi nawapenda marehemu Ngala na Mtukufu Rais Moi, kwa sababu walimwendea marehemu Kenyatta na kumwelezea ya kwamba mimi ni mzee maskini na alinionea bure, na nikatolewa jela.

*(Laughter)*

Bw. Spika, mambo kama hayo hayakuwepo tena wakati wa uongozi wa Mtukufu Rais Moi, ijawapo utakwenda katika maofisi na ukute watu wengine ambao hawakuwepo zamani. Watu wote ambao wako Kenya, hata wale wenye rangi na nywele kama yangu,--- mimi pia ni Waziri katika Kenya ya leo.

*(Laughter)*

Hata watu wengine ambao wataka ule ubwenyenye, yaani ule ubwana mkubwa, vile vile watapigana mpaka mwisho, lakini ni kazi bure. Ukweli ni ukweli na watu wale hawatauona na watabaki hivyo hivyo. Kazi ya Kamati hii siyo inayosababisha watu kutoka nje ya Bunge hili. Lakini watakwenda nje ya Bunge hili siku watakaposikia maoni ya wale maskini wanaolala katika vijiji vya Mombasa na Nairobi; wakati watatoa maoni yao. Siku hiyo watu watakimbia kutoka Bunge. Hakuna haja ya hawa kukimbia leo, kwani leo tunajadilia Ripoti ya Kamati. Ninasema kutakuwa na

maneno na ninaomba wale watakoachaguliwa wayaleta yote, kwa sababu watu wengine wataleta maneno na wale watakorukaruka watakuja kuyasikia. Kama mtu hajui Kenya, atakiona siku hiyo. Kama mtu anakumbuka Serikali ya zamani na vile alivyokuwako yeye na mambo yake---

Kuhusu mambo ya ufisadi, hawa Wakenya hawatasema kwa mdomo. Watakuja kukuuliza wewe. Kwa mfano, watakuja kuuliza Mhe. Nassir: "Una nyumba tano na mshahara tunaujua, ilikuwaje? Mbona wewe una hekari 500 na hulimi na wenzio wapata taabu? Mbona nyinyi wanasiasa mnadanganya na mwapanda magari makubwa ilhali watu hawana chai asubuhi? Hayo ndiyo mtakayoulizwa. Sio mimi nitakuja kuuliza; ni wale Wakenya wenyewe watasema wanataka hii na hiyo; ikiwa wanataka Mhe. Raila au mwingine awe Waziri Mkuu--- Mimi sijui watakayemtaka, lakini nikisema namtaka mhe. Moi, usiseme: "Huyu analeta maneno yake." Si hivyo; ni watu nchini wanaosema hivyo. Watu wa Kenya wote ndio wanaosema ni nani afaaye kuwa Rais.

Bw. Spika, kwa hivyo, nasema kazi kubwa tunayo katika Kenya ni kuweka amani na umoja. Pia yafaa watu wapewe mipango. Hata nimesoma leo asubuhi katika Ripoti ya Kamati hii ya kwamba itakwenda kule mashinani, hata kwa wale wanaokunywa changa'a, na waone taabu yao. Leo watu hawaoni taabu inayowakabili Wakenya. Wakenya wana taabu nyingi. Mbunge ambaye anawafanyia kazi watu wake atajua ya kwamba akiketi nyumbani kwake atasikiza mambo ya wale ambao waliompigia kura. Mwanamke mmoja hana karo ya shule ya mtoto wake ingawa amepita vizuri mtihani; wengine hawana kazi na itakubidi uwaandikie barua, na kwa sababu wengine wamefutwa kazi ya makumpuni, itabidi uwaombe kazi nyingine. Hayo ndiyo mambo yanayofaa. Huwezi kusema "mtu wangu hakuiba". Wewe pia ulikuwa ukiiba na hukusema. Lakini taja mipango ya kufanya watu wa Kenya waishi vizuri ili nao waone raha.

*[Mr. Speaker left the Chair]*

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

Bw. Naibu Spika wa Muda, ninaishukuru hii Kamati. Kabla hii Kamati haijaenda nje, nataka kusema kwamba mipango yao iko sawa. Naomba wale wanaokimbia nje kutoka Bunge hili warejee kwa sababu ukweli ni ukweli na urongo hauna haja. Tabia ya kusema sana na kuwakosoa sana watu haifai Mkenya. Makosa yangu, kama ni ya ufisadi, kwa mwananchi wa Kenya anayelala kijijini kule Kibera na Mathare, hayatamwezesha kupata chakula, kazi au shamba. Hayo ni makosa yangu. Lakini ni heri watu wachokoze nyuki ili wasikie mlilo wake. Wenye kutaka kubadilisha Katiba tutakubaliana, lakini sio kwa uzuri wao, bali ni kwa uzuri wa maskini. Nataka Katiba hii ikija iitwe: "Poor People's Constitution." Hii ni kwa sababu walioitunga ni watu ambao wamepata taabu.

Nataka kumshukuru mhe. Raila na nimkumbuke marehemu hayati Jaramogi Oginga Odinga. Aliniambia hapa katika Bunge hili: "Wewe, Shariff wangu, chungu sana; watu wasije wakuue. Uzungumze taratibu." Nilimweleza Mzee Jaramogi: "Wacha niuawe, lakini ukweli usemwe." Leo, magazeti yanawaambia nini? Wacha waandike watakavyo. Mimi nitaandika katika gazeti langu huko Mombasa yote niliyoyasema hapa, na litanunuliwa bure. Kwa hivyo, watu wa magazeti wakitaka waandike mambo hayo, na kama wanavyoniambia: "Mpende mpende." Basi, unataka mimi nipende maoni yenu tu?

*(Applause)*

Bw. Naibu Spika wa Muda, mimi si mtu wa kusema sana; nataka vitendo. Wakati mhe. Raila na watu wake watakuja, watakaribishwa kwa nyimbo. Haifai kujificha hapa! Siku hiyo hawatajificha hapa katika Old Chamber; watakimbia mbio mpaka nyumbani mwao, kwa sababu kutatokea habari ya kutosha na kubakia. Lakini katika Kenya, unyonge lazima uondoke. Sio wengine wawe matajiri sana na wengine wawe hawana chai ya asubuhi ya kunywa, pesa za kumpeleka mtoto shule na hana kazi. Mimi naomba jambo la Katiba lifanywe haraka na mniombe Mungu niwe hai na niione siku hiyo. Wale ambao watakayoandika maneno yao siku hiyo, waandike ukweli; urongo uachwe.

Asante, Bw. Naibu Spika wa Muda.

**Dr. Omamo:** Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to contribute to this Motion.

First of all, I would like to congratulate the Parliamentary Select Committee appointed to review the Constitution of Kenya Review Act, 1997, for the work they have done for this House in a relatively short time. I would also like to thank the Chairman of the Committee for the very effective presentation of the Report to the House. I have noticed that Members of the Committee worked very hard, and reading the Report, there was an element of enthusiasm which has been very useful. In fact, you learn a little more than what was in the terms of reference; that is you educate yourself.

Mr. Temporary Deputy Speaker, Sir, I would like to say that I support the Report. Also, there are certain aspects which surround the Report and have personally alarmed me, and I must condemn them right here and now.

Mr. Temporary Deputy Speaker, Sir, long ago when our forefathers and great grand fathers were fighting among themselves, trying to create peace for their survival, they used weapons like rungas, spears, dogs and the rest to achieve their aim. That went on and on. But later on, civilised community changed the old tactics, so that when you are fighting for your people, use other weapons for fighting, to achieve the same purpose. Nowadays, wananchi choose leaders to come to the National Assembly to fight for their rights and defend the Constitution of Kenya. But they are warned, that rungas and spears are not going to be used, and even the dogs should not be brought here. The Speaker is very careful, that in case you are disabled, even the second leg has to be taken away so that you do not use it to fight. Here in the House, you are only allowed to use the word of mouth. The moment you leave this Chamber, you cannot be heard and so, you cannot fight for your people. That is why I would like to blame loudly, our colleagues who walked out when this debate was starting. By doing so, they cannot fight for their people. That is why, I would like to pat my daughter the gracious lady hon. Karua, on the back for staying back and said all she wanted to say, and hon. Nyachae who was prepared to stay and vomit out his dissenting views right here.

**Mr. Nyachae:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is Dr. Omamo not misleading the House, that I vomited?

**Dr. Omamo:** Mr. Temporary Deputy Speaker, Sir, I would like to withdraw the word "vomit" and say: He did let out his views. This was appreciated, because he brought out very important points, for example, that we should not bulldoze or do anything that is going to divide Kenyans. That was a very important point in my opinion. So, when the Bill is brought to the House and we come to the stage where we can introduce amendments, those are some of the points to be considered.

Mr. Temporary Deputy Speaker, Sir, in my opinion, this is about the right time. We are losing time. Almost every morning, I am reminded by one advertisement which I guess you must have heard. This is about a particular brand of tyre. This is supposed to be a very good brand of tyre, and one morning, a lady is asked: "How was your trip to Mombasa?" She replies: "Do not mention it, my dear. First of all, a flat at Makindu, and before I got to Mombasa, punctures! punctures! punctures!". That is what has happened to our Constitution. It has had punctures all along. I am glad the Select Committee noted, that since 1963, our Constitution has had 29 "punctures". The thing is old; it is in tatters. It is time for change.

Mr. Temporary Deputy Speaker, Sir, I would like to say, and agree with hon. Nassir, that with a change in the Constitution, Kenyans would expect much more to be effected for good governance and prosperity of Kenya. Let me give an example: When there was the one-party system in Kenya, the President of Kenya had a lee-way to form a Government of national unity, so that all provinces were represented. This happened during the administration of our late and current Presidents. But when multiparty came and many things came into play, without reviewing the Constitution, do you know that when you look at the present Cabinet of Kenya, you will find that some provinces are very thinly represented? This is not due to the President's fault, but because of the present Constitution. The Constitution does not give the President the lee-way to pick and choose Ministers from all areas and parties.

Mr. Temporary Deputy Speaker, Sir, can you imagine that a great community, alive, vigorous and kicking like the Kikuyu community has only one Minister in the Cabinet? Can you also imagine that a great nilotic community known as the Southern Luos, alive and kicking, with active hon. Members in the National Assembly, do not have a single Cabinet Minister or Assistant Minister? This is not because of President Moi's fault, but the present Constitution ties His Excellency's hands. We want this Constitution to be reviewed in such a way, that, for example, when Maj. Madoka is being appointed a Minister, he is made aware of that appointment after being consulted. And the day he leaves the Cabinet, he also knows, because he has been told so in advance. He does not have to wait for 1.00 p.m. or 7.00 p.m KBC news bulletin. Governance must be improved. I am stating some of these issues with some experience.

Mr. Temporary Deputy Speaker, Sir, I would like to point out that when the Committee Stage of the Bill comes up, we should go through it carefully. We have to recommend a line of action that would unite Kenyans. The Constitution must unite Kenyans. If it will not unite Kenyans because it lacks one recommendation, then the hon. Members here have the capacity to introduce an amendment. If that were done, I am sure that all the hon. Members would participate. We, individually and the National Development Party of Kenya (NDPK) as a party, shall participate. What I do not want is for Kenyans to be divided and to be seen by the world to be divided. We should shut our ears and eyes and say that we are not divided. We should talk because we have got the time to do so and the time has now come. We should support this Motion and move forward.

There is only one point which I would want to mention. Unfortunately, the Chairman of the Select Committee is not here, but hon. Members are here. This constitutional review matter is hot. This reminds me of the earlier days when we used to be given hot porridge in calabashes. This hot porridge was yours, but you had to cool it by shaking it right and left. In the process, some of the hot "horns" jumped up and rested on your hand thereby burning you. You did

not throw away the whole calabash, but you kept on shaking it to cool it while some of the "splinters" were burning you. Soon or later, this hot porridge cooled off and everyone was ready to take it, including yourself. That is the spirit with which we should handle this constitutional matter with, which is at present hot.

With those few remarks, I beg to support.

**The Minister for Foreign Affairs and International Co-operation** (Dr. Godana): Thank you very much, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to contribute to the debate on the Report of the Select Committee, which is before the House.

We need to thank God that at long last, the Eighth Parliament has found the wherewithal to retrieve the initiative in the constitutional reform; we have retrieved the initiative which we had very lastly got close to losing to an extra Parliamentary, extra constitutional, non-legal pretenders outside. It was a terrible mistake that we made in 1997. I had no doubt of it then. I said it and I was baptised as the conservative one in the Inter-Parties Parliamentary Group (IPPG). You cannot negotiate a Constitution on the streets. We are lucky that in this continent - it may have become monotonous, but it is worth saying and it has to be said even with the monotony because some people seem to have very short memories to forget or not to value what we should value - we have remained a constitutional state uninterrupted since Independence. Those who have criticised us, including hon. Members of Parliament, who have decided now to boycott the proceedings of the House, because they want these proceedings to take place outside and not in the House, know very well that this country is different from those whose examples they would want to throw down our throats.

We have been told of examples in Uganda, Ethiopia, Niger, Mali, Ghana, Benin and others in this continent. Do they want us to follow those examples, which are examples of states where the legal orders disappeared through military coups and revolutions? Those states had no constitutions when they had to constitute the constituent assemblies and National Conferences to create new constitutions. They were acting on the basis of a clean slate. We are not acting on a clean slate because we have a Constitution.

I beg to differ with my good old friend, hon. Dr. Omamo on one point that he made this afternoon. He said that the Constitution is in tatters: How far from the truth? Our Constitution is not in tatters. It is by and large a very good document which is a functioning Constitution. All constitutions of living societies, and ours is a living society, have to keep on changing in response to the changing needs of a society. A society is not static, and so the Constitution, as the basic document which embodies the values of that society, cannot be static either. Our priorities of the year 1999 or 2000 cannot be the same as the priorities of the year 1963. Our values in the year 2000 in many respects, are not the same as what we perceived to be our values in the year 1963. Surely, there are certain unchanging internal values which will run like threads throughout all the constitutional changes that we go through. But by and large, the basic framework is still there. When we come to actually drafting the new constitution, I would want to prophesy that, yes, we will make far reaching changes in certain respects, but certain core basic values and principles in the current Constitution will remain unchanged.

Mr. Temporary Deputy Speaker, Sir, it is unfortunate that the Select Committee, which did a sterling job, in my view, in terms of being open to the public and recording in a transparent manner the submissions before it both from supporters and opponents, as evidenced by the publication of the letter from Mr. Gibson Kamau Kuria, as the Chairman of the Law Society of Kenya at the far end--- I want to congratulate the Committee for that. It is really sad that that Committee has been ridiculed even before people read the Report. Immediately the Report was laid on the Table, some of the media houses were already writing diatribe in their editorials against it and some of our colleagues were already threatening to go to the streets. I am really amazed that even today, very educated people in this society, and supposedly very responsible people, for example, lawyers, can seek to intimidate Parliament out of its mandate by threatening to go to the streets, or even worse, threatening to form a parallel Government.

Mr. Temporary Deputy Speaker, Sir, we all say that we believe in the rule of law. Those of us who are in this House now or those who walked out, sing this daily. All those people in the National Council Executive Council (NCEC), the Law Society of Kenya and the civil society groups outside keep on singing it. You cannot open a newspaper on a single day without coming across the words "the rule of the law must be respected". The rule of law must be respected all round and respecting the rule of law means obeying the law. You can seek to change it, but respecting the rule of law means that the law must be enforced.

So, when individuals make statements that they should have a parallel Government, it is treasonable as hon. Kamotho and the others said. It is because they have imagined the worst in this regard. They have declared their disloyalty to the current Constitution and they have intimated their intention, if they can get away with it, to establish a replacement Government. What more? I wonder why those people have not been questioned on some of those things!

Mr. Temporary Deputy Speaker, Sir, likewise, we know the threat to go to street action. In the context of our ten year experience in the multi-party era, it can only mean a threat to street violence. I am glad that it has not materialised. I am glad that the people have learnt that the vast majority of Kenyans are tired of being deceived to go

to the streets. Particularly, there are some Kenyans who have been deceived for too long to go to the streets, when the real movement has been in the opposite direction. They have been used and dumped!

Mr. Temporary Deputy Speaker, Sir, one of the biggest mistakes that we made when we opted for the Act which ended us in a stalemate is that, we put together a package for law reforms, which involved entities outside Parliament. We designed the procedure for the selection of the Commissioners in such a manner that, the Commission could, but only be a group of partisan political activists. It was a terrible mistake to try and allocate positions in the Commission to political parties. That can only mean that each political party would put forward its strongest political activist. The next result would have been that; even if we had, by some miracle, arrived at a consensus on the 25 Commissioners, I have no doubt that the Commission would not have been worked because the Commissioners could be direct delegates of political parties, with firm instructions to go and take a certain position, and to be particularly intransigent on the other positions. So, I am glad that we have got out of this! We have decided to establish the Commission as recommended. We will establish a Commission which will be composed of men and women of integrity, without regard to their political loyalty and ethnic backgrounds, but with regard to their educational and professional competence, taking into account the diversity of the Kenyan society in terms of cultural backgrounds, religious faiths and so on.

Mr. Temporary Deputy Speaker, Sir, lies have been fabricated, and parts of the media have made it their singular duty to do this, as was evidenced by the story in the *Daily Nation* yesterday. It purported to report what transpired in the KANU Parliamentary Group Meeting. It decided to publish absolute falsehoods. Lies have been calculatedly created and peddled around to the effect that, the Members of Parliament as a group, want to sit and draft the Constitution without referring to the people of Kenya. We want to appeal to those in-charge of the media to, at least, have the courtesy to disagree with us. They are free not to like us. But they should have the courtesy and decency to report what is right correctly. They should not fabricate lies. It has never been the intention of this House, or even of the ruling party for that matter, to have a Parliamentary Committee such as hon. Raila's, to draft the constitutional reforms, and to adopt the Constitution without any role for the people of Kenya within it. You cannot! But on the other hand, we got to understand that when you say: "People-driven Constitution", this House is the only genuine representative of the entirety of the Kenyan people. This House is composed of the representatives of the Kenyan people, who are elected in democratic free and fair elections, under international observers. There is no other institution in this country, which can boast to be composed of people, who are elected by the entire population.

The so-called civil society groups ought to understand in a sense that, Parliament is the ideal civil society! This is because in this House, you will find representatives of each and every region of the country, representatives of each and every ethnic group, major political parties and members of all the principle religious faiths. You will find Members of this House whose ages range from the 20s to the 80s. You will find engineers, lawyers, architects, doctors and professionals of all backgrounds. What better representation of the diversity of the Kenyan society than the Parliament chosen by the Kenyan society?

Certainly, you will find that the National Convention Executive Council (NCEC), is a group of three or four nobodies, who seem to have only one mission in life; that is to bring down the Government of the day, and put themselves in the position of the Government. That is why they are calling for a parallel Government. That is not definitely the stuff that democrats are made off. Those are not democrats. That is the stuff of which dictators are made!

Mr. Temporary Deputy Speaker, Sir, we want to say it loud and clear that the Committee, as has always been our intention, has made it very clear that the Commission will constitute of competent people, who will be as depoliticised as possible, and certainly not a Commission which will be filled by all the rejects of the last political campaign, who have been campaigning to be nominated by their parties, to draft for us the Constitution, even after the people rejected them! Those are the people who have now gone to fall in the ranks. Those are some of the political rejects who have now gone to fall in the ranks of the so-called civil society groups. They want to come back to the position of constitutional making through the back door! That is not acceptable! But we want to make it clear that any Kenyan anywhere, once the Commission is appointed, as per the recommendations of the Committee, is given a door through which to enter and give his opinion in broad daylight. I would like to congratulate the Committee for that. Kenyans can do so as individuals or as in organised groups. In a sense, they welcome the ideas which are in the draft constitutional proposals of the Law Society of Kenya (LSK), which Mr. Gibson Kamau Kuria has decided to post to those of us who are lawyers in this House. I wonder! Do they not realise? If they do not, they should do so now! We actually want Kenyans to prepare those kinds of documents. They should prepare their position papers, be they the LSK, church groups, youth groups or Maendeleo ya Wanawake. Let them get together now to work in preparation for the Commission. They should prepare their positions, come and present those positions and argue them before the Commission, when it is in place.

Mr. Temporary Deputy Speaker, Sir, I would like to dwell on issues which demonstrate extreme



irresponsibility on the part of some of our colleagues. It is, of course, very sad that Members of the House had to walk out. The right of membership of this House carries the freedom to be in the House, or to be outside! But I say that it is saddening because among those who walked out, was a senior Kenyan, who, throughout the 60s and 70s, was in a position of influencing the direction of policy and development in this country. He was critical in designing some of those constitutional changes for the last 30 years. Then, when they were doing those things, whether it was banning the Opposition; whether it was introducing the single-party system and so on, they vehemently stood here and defended those changes and carried them forward. They never said: "Let us consult the people outside!" We are now saying that we will consult the people outside through the Commission. But in those days, they said: "We are the people! We do not have to consult them outside!" You know, you can cheat the people some of the times, and maybe cheat some people all the time, but you cannot cheat some of us all the time! We know that if you have not come from planet Mars yesterday, you cannot pretend that we are as gullible as to forget who you were in the 60s, 70s, 80s, 90s, and who you tell us you are today, in the year, 2000! We are not that gullible!

Mr. Temporary Deputy Speaker, Sir, finally, as I appeal the Members to support the Motion before the House, I want to make a comment on some sad statements which have been made of late in the press, in the context of this heated atmosphere around the constitutional debate. Irresponsible utterances by people, who are looked upon as leaders in a country such as this can have dire consequences. When a Member of Parliament calls for the violation of one of the most sacred principles in this Constitution, the sanctity of private property of individuals on racial basis or on the basis of xenophobia, it is obvious he has no idea how far those consequences can go. It is well and easy to talk of taking the properties of Europeans or foreign companies. You start some of these fires, but you will not be able to stop them because all people have memories in this country. This is why I wonder why people want us to go back to 1963. This is because when you say let us by-pass this Constitution and we do it as from a clean slate on the streets, you are, in fact, telling us to go back to 1963. Well, we could, but if we did, the floodgates will be difficult to control. All the historical injustices we have suffered as a result of land alienation have to be corrected now. I do not want to say some of them in details because I happen to be privy to information as a lawyer and not as a Minister, that some lawyers in this country representing some of the marginal groups are already trying to pursue this end. Do not forget that this is an age and era in which established legal systems have been thrown around by a simple constitutional decision by a court.

Mr. Temporary Deputy Speaker, Sir, in Australia, the High Court handed down a decade ago a judgment in which it said:

"When Australia was colonised nearly 300 years ago, it was no *terra nullis*. It was not land without owners. It was a land with a people and those people had rights, and over those 300 years, their land rights were taken away by British law against natural justice. They are entitled to compensation".

(Applause)

It is important that we stick to the values that we have established and go from what we know into the future.

Mr. Temporary Deputy Speaker, Sir, when President Numeiry of Sudan virtually breached such a law - he did not think he was doing so - there was a civil war which has been going on in Southern Sudan for the last 17 to 18 years. He did it by unilaterally abrogating the autonomy of the south. However, in the course of his address to the Sudanese National Assembly, he made one fateful statement, and I quote:

"True, we are cancelling the agreement of Addis Ababa, which gave autonomy to the south, but that agreement and the autonomy were man-made. They were not ordained by God and, therefore, they can be changed by man".

What those who have walked out of this House and their sympathisers outside are in effect telling us is that:

"We have a Constitution, yes. It has a laid down procedure that we must follow, yes. However, the Constitution was made by man and not by God. We can throw it around and start anew".

That is really the message. If you start on that premise, rest assured that you will have started a culture of no respect for any Constitution because any group in the future will be able to say: "So, what? They made it last time and we can walk out on it". It is important for us to respect the procedure laid down by the Constitution. We are bound to respect that procedure because we believe in the rule of law. We are bound as a Government and as Parliament to engage in an illegality.

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

**The Vice-President** (Prof. Saitoti): Mr. Temporary Deputy Speaker, Sir, let me at the very outset take this opportunity to thank the Select Committee which was appointed by this House in December 1999 with the express purpose of examining the Constitution of Kenya Review Act, 1997, which had become very difficult to implement.

Mr. Temporary Deputy Speaker, Sir, the Committee has done the work that it was mandated to do by this House. I think it is important for us to recognise the fact that the Select Committee which was chaired by hon. Raila Odinga was appointed in accordance with the Standing Orders of this House. It should also be appreciated that the Standing Orders of this House do emanate ultimately from the Constitution. Parliament is formed by the Constitution. The election of Members to this House is done constitutionally through a general election. This House conducts its business on the basis of the Standing Orders which the House and the hon. Members are mandated by the Constitution to form. I am dwelling on this point because as the Committee did meet from time to time, we did hear misinformation that the Select Committee was illegal. It could not be illegal and people need to understand the operations of Parliament and where Parliament comes from. It is established by the Constitution.

Mr. Temporary Deputy Speaker, that particular Select Committee was appointed by this House in accordance with the Constitution. The Committee has just brought us a report as required by the House. This report has now been read out here and it is the one we are now discussing. I want to thank once again the Committee because it worked a great deal even against distortions, abuse and misrepresentations, but the Committee stood up to its own obligation. We want to thank the Committee for bringing this report.

Mr. Temporary Deputy Speaker, Sir, I think as we debate this report, it is important to ask ourselves the following questions: Why are we discussing this report at this time? Why was it necessary, in fact, to have set up a Select Committee? I think this issue will be well treated if we go back a little bit, perhaps, to mid-1997. Hon. Members were here during the Seventh Parliament. We recall that towards the end of 1997 there was clamour for the amendment of the Constitution. There were discussions generally and, indeed, during that time, we then saw the emergence of a body called the National Convention Executive Council (NCEC). This is not the first time that we are hearing about Ufungamano. Ufungamano started way back in 1997. The same Ufungamano and NCEC, and especially the latter at that time, were at the forefront of the discussion. This discussion was that the Constitution needed to be reviewed or amended under the aegis of the Ufungamano group, away from Parliament.

Mr. Temporary Deputy Speaker, Sir, during that time, we then heard that Parliament cannot be trusted; that, Parliamentarians cannot be entrusted with the review process and that, the Parliamentarians do not represent the people of Kenya. We even heard of mass action! We still have the memories of those so-called mass actions. Mass actions were not really agitation for the pursuit of the reforms. When the mass action did take place finally, it generated into hooliganism, destruction of property, hurting of people; and untold suffering.

Mr. Deputy Speaker, Sir, to go back to this one here, it is a fact that, when the Members of Parliament saw that something sinister was taking place and that the role of Parliament was being taken away from this Chamber to where it does not belong, Members met and decided--- I want to say that, I was one of those who sat with them. As Members of Parliament, we then decided that we were elected to come to this House by the members of our constituencies. We fought for the General Elections and there are many other people who had fought for the general elections. But each one of us who came here, came here because he was elected. Each one of us was elected not to come and sit here and watch and not to surrender our role in this Chamber to the people whom we have defeated outside there. We said that, we had to do our job because we were elected here to make laws and represent our people in accordance with their aspirations. We then decided that we had to come here.

Mr. Temporary Deputy Speaker, Sir, at that particular time, a number of Members from different political parties got together under the Inter-parties Parliament Group (IPPG). There were a few of us who had gone to Ufungamano House. Those who went to Ufungamano House, were later to regret because by the time the Ufungamano meeting was taking place under the NCEC; the NCEC did not recognise the elected Members. Those who went there were disgraced; they were disappointed and they could not be incorporated because NCEC at that time, had already planned to establish an illegal Government without any representation. They were talking about it. I am not talking about something which was rumour-mongered.

Those of us who believe in Parliamentary democracy and the stated role for which we were elected here--- Nobody had decided to sit down and say:- "Let us look at the Constitution and the various legislations and see what is the least, that we can do" We then did that; we looked at the various legislative matters, looked at the Constitution and minimum constitutional amendments were effected. When our own colleagues found that they could not get their way into Ufungamano House, they joined us. It was during those deliberations that we did agree that, before going to the General Elections we should put a mechanism in place that will ensure that whichever party wins and forms the Government; there will be an Act of Parliament to ensure that a review of the Constitution would be put in place. That was the Constitution of Kenya Review Act, 1997.

After the General Elections in 1997, it was felt that, it was important to re-look at that particular Act. For some reason, I call it an accident of history--- That was a grievous mistake.

Initially, as I said in 1997, Parliament decided to assert its role. In 1998, when it came a time to review that particular Act; an Act which was the product of the deliberations of the Members of Parliament, we allowed for some

reason that particular Act to become a subject of everybody. But I want to say this; even as that particular Act became a subject of discussion at the Safari Park Hotel, it had actually been taken there under the Inter-Parties Parliamentary Committee (IPPC) which essentially could still be considered a Select Committee.

Mr. Temporary Deputy Speaker, Sir, those of us who attended the Safari Park Hotel meetings, will recall the recriminations, and the wrangling which took place before some amendments were referred into the 1997 Act. A tragedy took place and I am sure it will remain in the annals of the history of this country. Amendments to an Act of Parliament were made by non-Parliamentarians and it was agreed that, that particular Bill comes to this Parliament, and shamelessly, it be passed without any variation.

I wish most of hon. Members were here because I think the Parliament at that time abdicated its role. Parliament cannot take a Bill which is produced from outside, bring it here, fail to debate and examine that Bill exhaustively but just bring it here and pass it. Parliament is not a rubber stamp! What did that mistake or tragedy produce to us. It produced an Act; full of loopholes. Therefore, come 1999, various nominating bodies met; the political Parliamentary parties could not even agree on a formula on how to allocate among themselves the 13 Commissioners. There was no formula! There was no proviso in that Act which did say that, in the event of the nominating bodies disagreeing, how were they going to resolve that dispute? The Act was silent on this.

Mr. Temporary Deputy Speaker, Sir, even the religious bodies also disagreed because they were supposed have three commissioners; one for the Catholics, one for the Muslims and one for the Protestants. But the protestants could not agree on that one because they are a larger body. The Pentecostal Churches also wanted one; the Methodists wanted one, the ACK wanted one, PCEA wanted one and many others. They could not agree and that was a fact.

Parliamentarians from the various political parties met in County Hall - where I was one of the co-chairmen for hours - to find a way of implementing that Act. That Act, rather than being the way forward became an impediment for the constitutional review process. I attribute the absurdity of that particular Act to the fact that Parliament did abdicate its role at that particular time. The issue here is: The Constitution of Kenya Review Act (1997), irrespective of the manner in which it was done---The moment a Bill comes to this House, it becomes the property of the House. This House can then accept it the way it is or amend it. But until it is amended, it still remains an Act of Parliament. If an Act of Parliament is flawed, who is mandated to amend it? Is it an assembly of people who are not Parliamentarians? Can we take an Act of Parliament outside Parliament and call it an Act of Parliament? If you do so, then what is the role of Parliamentarians? If Parliamentarians, who are mandated by the Constitution to re-look at an Act of Parliament with a view to amending it---If we do not do this work and have it reviewed from outside, I want to submit that, that is a violation of the rule of law. I am not a lawyer, but I am sure that the lawyers present here will agree with me. If there is one symbol of the violation of the rule of law, it is when we allow people from outside Parliament to enact laws for this country. I do not think we can do that.

Secondly, I am of the strong opinion that if we were to submit, as some people have been saying, that this Act should be taken back to Safari Park---We should remember the old adage that once beaten twice shy. The Safari Park Forum created a confusion. If we were to take that particular Act there for scrutiny, we would open a Pandora's box. There would be endless debate, disagreement and wrangles. As a matter of fact, if we were to go there today, other nominating bodies, other than the ones in the schedule would present themselves. There are very many other people, who would go there and demand a place in the Commission. If we talk of the churches, even the street preachers would go there and demand a place. Safari Park would become a chaotic place! We would not have made any progress. Anybody saying that an Act of Parliament should be taken back to Safari Park is not for the constitutional review process. We cannot agree to that. So, there are two problems here. If we take that Act to Safari Park, Parliament will have abrogated its obligation. Secondly, we would be opening a Pandora's box because no progress would be made. If such an occurrence plunges this country into chaos who will answer to Kenyans? It is you the Parliamentarians who are here, including the other hon. Members, who walked out of this Chamber. You will be held responsible by the people of Kenya and the history of this country for having abdicated your duty. That is why I am properly persuaded intellectually and otherwise that we need to support this particular Report. By so doing, we are trying to avoid chaos. More importantly, we are creating a scenario leading to the resolution of the problem.

Mr. Temporary Deputy Speaker, Sir, we need to know what democracy is in general terms. Does it amount to forcing your opinion to be accepted by the other person? Does it imply muzzling the other person or not wanting to listen to the other person unless that particular person speaks only those words which please you? That is not what democracy is all about. I think Kenyans will have to appreciate one thing, that democracy is a very expensive undertaking and experiment. It requires tolerance of the views which you may not agree with. It requires you to accept that the person who is the holder of the views which you do not agree with has the freedom to express his or her views. In fact, to me, democracy is more about allowing the person who may not agree with you the opportunity to talk more rather than you taking the opportunity to express your views. That is what democracy is all about. More so, when it comes to Parliament, we are elected by our people to come to this Parliament. We are not elected to this House so that

we can merely be talked to, talk at, listen to somebody haranguing you and accepting it. Each one of us is elected by his constituents back at home. Everybody has a right to express his or her views. You do not walk away from the Chamber merely because you see that there is no way your views and wishes are going to pre-dominate. What kind of Parliament are we going to have if it means that any time there is a Motion in this House, rather than debating it, following Parliamentary democracy rules, you walk out because you know that you are going to be defeated and say you are going to incite those people in the streets. That is not the case, in a democratic country. That is not democratisation. Indeed, I would say, that is a mentality of dictatorship and we must deplore it. We must safeguard democracy and the rights of every individual to be able to express his or her views. In Parliament here, the rules of the debate should be pursued properly and clearly. I think, just as we did in 1997 by restoring legislation back to Parliament, let us stand very firm on this occasion. This is an important historical period when Parliament has reasserted its authority to legislate. I do not think we should ever allow that to go away. It will destroy this nation. But more important, we should not allow in this House people, if they find that they are the minority, either they have their way by force or they walk out--- We should never accept any threats at all. Let us follow the Standing Orders; let us debate.

Mr. Temporary Deputy Speaker, Sir, if our friends who walked away yesterday were courageous enough to sit here, debate and put their views, maybe, through the true parliamentary democracy, they could have come up with new ideas to improve on what we have. Perhaps, they could have persuaded us to be in a position to amend particular aspects. There is nothing wrong about it. But why did they walk away? Let me not dwell on that, but let me dwell on more important things.

Mr. Temporary Deputy Speaker, Sir, I think, our position has always been fundamentally clear; mainly that, when it comes to the review of the Constitution, that review itself must be people-driven. This particular Report presented here has not in any way contradicted that spirit of a people-driven Constitution. People-driven in-itself basically means, that all the people will be involved. Kenyans will be able to offer their views. They will be able to express their wish on what kind of a Kenya we want. What are we debating today? I hope that this can be understood clearly. First and foremost, we are not debating the Constitution, because this matter has been misrepresented. It was misrepresented that the Select Committee was on an exercise of reviewing the Constitution. Let it be made clear that the Select Committee was given the express purpose of looking at this flawed Act and come up with a Report. So, what we are looking at here, is a Report on how that flawed Act can be brought about so that eventually, it can be implemented. After passing this particular Report, the next stage is for the Attorney-General to bring an amended Bill to this House to amend that particular faulty Act. We will be in a position to discuss that.

Mr. Temporary Deputy Speaker, Sir, once that one goes through, we shall then go to the next stage. Once that particular Bill becomes an Act, the Commission will then be appointed with the terms of reference. The crucial bit is the third stage when the Commission sits down to review the Constitution of Kenya. I want to commend the Select Committee because, if one looks, for example, at page 14 of the main Report on the Commission and the structure of the review; first of all, it makes it clear that members of the Commission will be nominated by this House and presented to the President to appoint the required commissioners. I just want to pose one question here: Those who criticise these things, do they remember what the Constitution of Kenya says? It does give the power to the President to appoint any commission of inquiry. The President could easily have appointed a commission of inquiry to look into the Constitution.

Mr. Temporary Deputy Speaker, Sir, it looks like my time is gone.

I beg to support.

**Mr. Munyasia:** Mr. Temporary Deputy Speaker, Sir, I am grateful for the opportunity.

**Mr. Maundu:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I am not challenging your selecting the Member on the Floor to contribute. But will it not be proper to give Members who did not participate in the Committee for purposes of making their own contribution? The Member has already been in the Committee. Would you prefer somebody else?

**The Temporary Deputy Speaker** (Mr. Poghisio): Please, it is only on the basis of catching of the eye!

**Mr. Munyasia:** Mr. Temporary Deputy Speaker, Sir, I want to start by urging Parliament to adopt this Report because it has come from very honest work. I sat through almost all the sessions except the one at Norfolk Hotel when the Committee met the diplomats and the Press. But I can assure this House that the consultations with the diplomats and the Press were merely a public relations exercise. The Committee was explaining to the diplomats and the Press what its mandate was because, we were being misrepresented. So, we never used any of the statements that are recorded in the minutes in drawing up this particular Report.

Mr. Temporary Deputy Speaker, Sir, during the time we were working, it was alleged that this Committee had been bribed. Each of us was supposed to have received Kshs10 million before Christmas and we were going to get a balance of Kshs40 million each, after! It was then reported and this one says; "authoritatively", that each of us was

going to be paid Kshs450,000. Nothing of the kind happened. But members of the Press must be honest. They should not concoct stories so that they may disparage this particular Committee in the eyes of the public. We did a very honest job. This particular Report should be adopted as the work of an honest team.

*(Applause)*

Mr. Temporary Deputy Speaker, Sir, this Committee had been set up because of the stalemate. In 1997, we had drawn up an Act, that is: The Constitution of Kenya Review Commission Act. In 1998, that Act did not appear to be working and so, invitations were made for comments on how that Act could be made to work. A number of people and a number of bodies did write memoranda. When the memoranda were received by the Attorney-General, it was discovered that many of those people did not even understand what the Act was all about. Many of them were talking about the Constitution.

Mr. Temporary Deputy Speaker, Sir, therefore, it was decided that those people who had sent memoranda to the Attorney-General (AG) should be invited to a symposium at the Bomas of Kenya, to join Members of Parliament and discuss their ideas and see how we could make the Act work. Thereafter, we had two subsequent meetings at Safari Park Hotel. I am surprised that, after being invited to come and explain the memoranda they had written to the Attorney General, those people began adopting a status of an institution, and claimed that they were essential to the discussions of the constitutional review process.

I am a father of 12 children, most of whom are fairly young daughters and sons. I have observed one behaviour in children. Whenever you go home, a child runs towards you, and you have the tendency to hold him on your lap. If a certain child succeeds in reaching you first, and you hold him on your lap on one occasion, and then he succeeds again on a second time, there is a natural tendency for that child to begin feeling that he is more of your child than the other siblings. That is the behaviour that you also see even in adults. This child-likeness behaviour is already being seen in the so-called "stakeholders".

Because we invited those people to the Bomas of Kenya to discuss with us the way forward, after which we invited them again twice to come to Safari Park Hotel, they started feeling that they were more of "children" of this process than any other "child" and, therefore, if you have to discuss the way forward, you have to consult them. The World Bank and the United Nations write little pamphlets and bring about new terms, which are supposed to be ordinary terms. However, terms such as "stakeholders", "development partners", "people-driven", and others, have come from those pamphlets. Since those institutions know that the Kenyan society is mainly a follower society, they want to address or attach those terms to the Kenyan situation.

Mr. Deputy Speaker, Sir, those people call themselves stakeholders. We have said - and the Chairman of this Committee, ably, explained this yesterday - that, a stakeholder is a citizen of Kenya, and that we are now talking of 28 million Kenyans. There is no way you can call 28 million Kenyans to Safari Park Hotel. How do you do this? We sometimes talk to some of our colleagues, and explain to them who a stakeholder is in this regard. They accept that, indeed, the stakeholder in the constitution-making process is the Kenyan citizen. However, a few minutes later, they would forget that understanding. Even after some leaders from the Opposition have admitted that the citizens of this country are, collectively, the stakeholders in this process, they, again, begin saying: "No, we must call the stakeholders to a meeting at Safari Park Hotel".

When I used to teach, I used to have many students who were like these colleagues of mine. These are some of the problems that teachers face. You can explain something to such students until they understand it very well, but when you give them a test, they fail. I would have failed many of these colleagues here if they were my students. There are two simple words, namely, "people" and "driven", which are joined by a hyphen to come up with "people-driven". Our colleagues said that they want a people-driven constitutional review process, and we agreed with them. So, we asked them: "How do we do this? What do you understand by a "people-driven" process? Is it not what Parliament is doing?", to which they replied: "No, no, no! This Report is about an Executive-driven constitutional review process".

Mr. Deputy Speaker, Sir, this Report has been said to be pro-Executive-driven constitutional review process just because we have said that the Parliamentary Select Committee that will be set up to oversee this process will nominate 21 names after going through their curriculum vitae and being satisfied that they are people of integrity - from which the President will appoint 15 people to form the Commission. We would even have suggested that the first 15 names be chosen by lot. That would be possible since Parliament would select the 21 names, having been satisfied they are people who can serve on the Commission honestly. We would have suggested any method. However, this Committee agreed to allow the President to pick out any 15 out of the 21 people to be nominated by Parliament. We will already have approved that any of the 21 people can be a commissioner.

If the President picks out 15 of those nominees, how do they become servants of the President? How would the President's mere appointment of those nominees make the constitutional review process "Executive-driven?"

Therefore, "people-driven" should mean that the review process must reach the people. The people must have the opportunity to express themselves, and their views must be taken into consideration while drawing the draft constitution. That is what "people driven" should mean. In our Report, we have said: "This Commission should be neutral, and should go down to the people". We went further and said that there should be no structures that would prohibit, or prevent, anyone who is itching to air his views, from reaching the Commission.

In the original Act, which we are yet to review, it has been stated that we shall have district fora consisting of three people from each location. The Act says that two of the members of those fora shall be a woman and a youth, but it is silent on who the third member should be. I do not know whether the third member of such a forum was to be an old man, but each location was to be represented by three people, according to the current Act. So, we asked ourselves: "How would those representatives of each location be chosen? Would they be chosen through an election or would there be interviews? What process would be used to ensure that the three, actually, represent the views of the people?"

So, from the views that we received from Kenyans, we decided that, that would, unnecessarily, prevent many Kenyans from reaching the Commission. Therefore, we decided to make the process open to all Kenyans up to the constituency level. We have, thus, recommended that the Commissioners should go up to the constituency level, to receive the views of the people, for some days. If people in any given constituency happen to be anxious to give their views, the Commission can stay there for even a week.

Mr. Deputy Speaker, Sir, we have suggested that, after the process of collecting views from Kenyans, the Commission should draw up a draft Constitution, based on those views. The draft Constitution will then have to be taken back to the people for debate. So, we are not going to discuss anything, as is happening at what was at one time called "Ufungamano", and later on, "Central Province Assembly". Those people are discussing something that has not come from the people of Kenya, and they claim to be the ones for a people-driven constitutional review process. Which people did those at Ufungamano consult? Which people helped them to draw the documents they took to Thika for discussion at the newly established Central Province Assembly?

Mr. Temporary Deputy Speaker, Sir, that one aside, help me. I have been looking through this House and, indeed, I can authoritatively say, because you can also see, that there is no hon. Member from Central Province here. There is also no hon. Member from the Kikuyu community in this House. One would ask: "Have they gone to Central Province Assembly in Thika?" Why are they not here? These are the same people, who are saying that they are for a people-driven process. We are saying that there will be no constitutional draft made until a neutral Commission has gone round. We said that there will be no nominating bodies. Those who feel that they can be Commissioners will apply and they will attach their curriculum vitae (CVs). The so-called stakeholders insist that they must appoint Commissioners, and I am now reminded and I have got to warn the nation that when the Mau Mau Union representatives appeared before our Committee noted something.

**Mr. Keynan:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. Member to talk about a region instead of concentrating on the issue at hand? This is because I do not think that there is somebody here who represents Central Province, the Kikuyu community or anybody else. All of us here represent constituencies. So, he should talk about the issue at hand, which he knows. That is what we want to hear about. So, is it in order for hon. Munyasia to talk about regions?

**An hon. Member:** Go on!

**Mr. Munyasia:** Mr. Temporary Deputy Speaker, Sir, my friend was doing it for emphasis. He wants me to dwell on it a little longer.

*(Applause)*

**The Temporary Deputy Speaker** (Mr. Poghisio): No, Mr. Munyasia! I think he also meant that here in Kenya, we have provinces and constituencies and not regions.

**Mr. Munyasia:** Mr. Temporary Deputy Speaker, Sir, I do agree with you. I was only referring to what all of us have read that a Central Province Assembly was established last weekend. This is a historical fact now. It is there in place.

I was saying that when the Mau Mau Union representatives appeared before our Committee, they were very bitter. They warned Parliament and said: "We fought for Independence from the foreigners and shed blood to get Independence." They asked: "Why are you leaving it to foreigners again?" We told them that there are no foreigners, but they insisted that there are foreigners. We asked them to tell us who the foreigners were and they said that all the nominating bodies that we have put in the first schedule depend on foreign donor money. They said that most of those NGOs depend on donor money. They said that Prof. Kivutha Kibwana and other people lead comfortable lives. Watch them as they drive around with mobile telephones. Look at their sleek cars and, yet, they are not employed by people you know. They are merely heading NGOs. The Mau Mau Union representatives said that those people who depend on

foreign money are the ones who are pushing for representation. They want to chose Commissioners, who will have to serve those foreigners.

Mr. Temporary Deputy Speaker, Sir, indeed, do you think in this world there is anyone who gives out things for nothing? There is the principle of reciprocity; that when you give, you have certain things you expect in return. You expect either a "thank you", better relationship later on or something else because someone has got to serve you in return. We have been talking about neo-colonialism. The Ufungamano Group is now fighting to reinstate neo-colonialism in this country. We thought that we had succeeded to drive out this vice. At least, now, the Government can say that it is not working on any foreign money because it is not getting aid, because it is now going to these groups that are pressing for representation. They want us to go to Safari Park Hotel; they want us to give them the authority to appoint Commissioners so that they can put their own representatives. We have got to guard against this. This is not an honest group; they are serving foreigners.

Mr. Temporary Deputy Speaker, Sir, we have said that there should be a national forum. So, when the Commissioners have finished collecting and collating views from the constituencies and have drawn their draft, they will hold in every province and not just one province symposia, workshops and public debates. They can hold as many symposia, workshops and public debates as they can. They will hold them in Eldoret, Bungoma, Kitale, Nakuru and wherever they want to give people who aired their views earlier on at the constituency level an opportunity to see whether what they gave is reflected in the draft. Is that not a good opportunity? Is it not much better than what had been recommended in the Act that we were to review?

I would like to inform this House that after that has been done, we will have the national conference, which we have said will consist of people appointed from the local councils, Members of Parliament and the other bodies. Can anything be more people-driven than this particular process? I have been challenging many of them, but none of them has convinced or given me any better method. For them, Safari Park Hotel is people-driven. They are insisting that we should go back to Safari Park Hotel. That is being dishonest.

I would like to inform this House that we considered the issue of civic education. This education is necessary, but the criticism that was being made yesterday by one of us was that we should give a certain period with which this will be done. So, when the Commission starts its work, it should first of all set a period, for example, from one to four months or maybe six months. That is being very artificial. If you will be rigid like that then at the end of that period, you must have a mechanism to assess the work of that civic education and see whether people are now truly informed or not. The advice we have is that people do not necessarily have to come and say: "For Kenya, we want a Parliamentary Democratic Constitution." This is not necessary. It is not necessary for them to chose between Parliamentary democracy and Presidential democracy. For them, they talk about their problems and that is what the common man should be helped to express. They should tell the Commission the problems and then the experts will ask: "If these are the general problems that the people get, which constitutional provision should we have so that these particular problems are redressed?" That is what it should be. Sometimes, we think that when people insist on civic education, indeed, like one of the people who appeared before us said, they are doing it for themselves as a cash crop---

*(Laughter)*

This is because there are many families in this country that thrive on civic education. They get hard foreign currency from civic education. So, you must always talk well of civic education and give them opportunities. We hope that there will be an honest piece of job done and people will not use this opportunity as propaganda. We also hope that the Commission that will be established will have to regulate the kind of basic information the people will need. The bodies that will give this civic education should be vetted, but the Commission should be satisfied that they will not use it as propaganda.

Up to now we still feel that those who are agitating against this particular Committee's Report have some hidden agenda. They do not want to tell us what constitutional provision they want to see included because they fear it might not be popular and so they want to manipulate the process. I am surprised that a number of people should make the current President the issue. They are saying that this Committee is giving him a chance to stand again for the presidency, but I am saying that Moi can be beaten easily. In fact, we, in FORD (K) should be prepared. We have beaten him in the Kwanza by-elections and we can beat him in many other places. We beat him in Western Province during the last elections. Hon. Kibaki beat him in Kisii and Central Province. In Nyanza, hon. Raila beat him. President Moi is beatable; what do we fear about him? Why should anyone say: "We are fearing that Moi may stand the second time."

The other day I saw hon. Kibaki on Nation TV and I said: "Kumbe huyu ni mwoga." So, the only person he fears is Moi who we can defeat. Personally I would have wished that he stood again in 2002 because I know we would beat him. He has said he is not standing for the presidency and he has repeated it. The Constitution currently does not

allow him and so he will not stand again. What is preventing people from opening themselves up? They talk of a hidden agenda. Actually, I also had an ulterior motive in accepting to sit on that Committee because I believed then that these KANU people might want to sneak something in the Committee. I thought they would resist because they were more than us by just one Member, and a few other people boycotted. I thought they were going to say that we sub-divide the Committee into sub-committees so that each deals with different matters. We said we shall have all people who come to this Committee to appear before all of us, together and they accepted. So, I said: "Then they might not be having anything up in their sleeves."

Up to the end there was nothing that was sneaked into that Committee. This is an honest Report and I urge Parliament to adopt it and Kenyans accept this process. It is the best that you can have.

Thank you, Mr. Temporary Deputy Speaker, Sir.

**The Minister of State, Office of the President** (Mr. Sunkuli): Mr. Temporary Deputy Speaker, Sir, in support of this Report, I want to begin by congratulating the Chairman of the Committee in which I sat, hon. Raila Odinga. Hon. Raila comes from an opposition Party, but I admired the way he chaired the Committee. I also want to take this opportunity to thank the principled nature and stand of people like hon. Munyasia who, in spite of their own friends not wanting to sit on the Committee, did sit there as a matter of principle. I just do not agree with the latest comment that Moi is beatable. It is just that President Moi does not win battles. He wins the war. He could have been beaten in Nyanza and Central Provinces, but he did win the election.

We are here today because we want a new Constitution in Kenya. We cannot have a new Constitution in Kenya unless we resolve the stalemate which occurred. The stalemate can be resolved and there have only been three options so far. The option that I find most viable is the one of the Members of Parliament doing what they are doing here today. The option proposed by other persons including the hon. Member for Nyaribari Chache, is the one of going back to Safari Park Hotel. There is the option of non-parliamentarians meeting at Ufungamano just outside my former university room.

I want to discuss this question of the Safari Park meeting. There is a Christian song that says: "If I go to Heaven, I know whom I will find." I must say that if I go to Safari Park I know whom I will find there. I definitely know that people do not go to Safari Park to eat because we do that everyday. They go there to meet people who have referred to themselves as "Safari Park". When I go to Safari Park I will meet Mr. Maina Kiai, the head of the human rights organisation which he and his two brothers run. I will find another learned friend of mine - I do not know where she comes from - called Abida Ali. I will find another miscellaneous, nebulous group that has not been registered in any book in Kenya called the Women Political Caucus. I will find the group actually nominated commissioners with names that we had better analyze to understand where we are heading to.

There is no mystery behind Safari Park because it did produce some results and those were bad results. Who in Safari Park is so important that the process cannot go on if he is not invited? Who is so indispensable in Safari Park? Absolutely nobody. We Members of Parliament have been called elite and in a way, we are. There is a new elite group which has been unfortunately elected by nobody. That is the elite group that hon. Munyasia has just been discussing, called the NGO's. They are the people who are now called "civil society". By the way, there is a difference between Civil Society and civil society. Civil society with a small "c" means the society of the ordinary folks, or the man on the Kibera bus park, the man you meet when you go to Mathare; the man whom you meet in the ordinary streets forms the civil society.

There is also the man who has taken up the name in capital letters. That is the man like Prof. Kivutha Kibwana who has taken a sabbatical leave from the university to go, and earn - he has a new cash crop - hard currency, if I may borrow my colleagues words. It is nothing near the university salary. That man has certainly acquired a right to say how Kenya should be ruled and he is not elected by anybody. In fact, when his car got stuck in Machakos and some people asked him:

"Are you not Prof. Kivutha Kibwana?" He said: "No, I am not the one." He is afraid of the people. He had a chance one day to contest a by-election seat in Kibwezi, but opted not to do so. He is totally afraid of the people. Those are the gentlemen and ladies of Safari Park.

I know I will have occasion to discuss the people of Ufungamano. When people went to Ufungamano they said they wanted a "Wanjiku-driven" Constitution. In Ufungamano, there were only the parents of Wanjiku. The parents of Atieno, Cherono and even Sinthoiya from Maasailand were not there. Even the children of Zainabu from the Coast were not there. It is only the fathers and mothers of Wanjiku who were there. If they wanted a person from the church to speak, it was Bishop Gitari and Bishop Njue. When they wanted the women to speak, it was hon. Beth Mugo and Dr. Wanjiku Kabira. When they wanted the professionals to speak, it was Dr. Kamau Kuria. The *lingua franca* of that place was not Kenyan.

What option is Ufungamano? What option is Safari Park? This is the question that we need to discuss so that we understand why people should not tell us to go back to Safari Park. I know that hon. Nyachae does not believe in it.



I do not know if the time will allow me, but I intend to explain to this House why I do not think hon. Nyachae still believes that we should go back to Safari Park. We attended with him the KANU Parliamentary Group Meetings, and I want to tell this House, that in those Parliamentary Group Meetings, hon. Nyachae did, in fact, support the parliamentary method of resolving the stalemate. At no point did I hear, him say otherwise.

#### ADJOURNMENT

**The Temporary Deputy Speaker** (Mr. Poghisio): Order! Hon. Sunkuli, you will continue next time. Hon. Members, I have not received any request for statements for the zero hour. Therefore, it is now time to interrupt the business of the House. The House is, therefore, adjourned until Tuesday, 25th April, 2000, at 2.30 p.m.

The House rose at 6.33 p.m.