

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

**Tuesday, 8th December, 1998**

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

## ORAL ANSWERS TO QUESTIONS

*Question No.750*

### PARTICIPATION OF PROVINCIAL ADMINISTRATION IN SECURITY COMMITTEES

**Mr. Speaker:** Mr. Muchiri, the Minister has informed me that the answer to this Question is on the way. So, we will come back to it.

**Mr. Muchiri:** Thank you, Mr. Speaker, Sir.

*Question No.370*

### ABUSE OF RESPONSIBILITY BY DISTRICT OFFICER

**Mr. Speaker:** Mr. Magara's Question will be deferred to Thursday.

*(Question deferred)*

*Question No.754*

### COLLAPSE OF COTTON INDUSTRY

**Mr. Speaker:** Mr. Kajwang is not here? Next Question, Mr. Kiunjuri!

*Question No.597*

### SUSPENSION OF KENYATTA UNIVERSITY STUDENTS

**Mr. Kiunjuri** asked the Minister for Education and Human Resource Development:-

(a) whether he is aware that 16 Kenyatta University students were suspended for one to four years and that one other student was expelled in February this year for questioning the sale of the university degree certificates; and,

(b) if the answer to "a" above is in the affirmative, whether he could order for the reinstatement of the students as a matter of urgency.

**The Assistant Minister for Education and Human Resource Development** (Mr. Awori): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that in the month of February, 1998, 16 students of Kenyatta University were suspended for one to four years. However, no student of Kenyatta University was expelled in February, 1998.

(b) Although the suspended students had contravened Kenyatta University Student Regulations which they had signed to uphold upon their admission, a special committee of the University Senate was set up to review their cases. The committee allowed seven of the students to resume their studies during the current semester. Suspension for other seven students was reduced to one year while the remaining two students were advised to

resume their studies in two years time.

**Mr. Kiunjuri:** Mr. Speaker, Sir, it has become a habit for the national universities in Kenya to abuse the natural law by suspending students whenever they feel like. Whenever a vice-chancellor feels that he is threatened by the students, he sends away the students. This case was in February and it was all about a noble cause. They were fighting against the sale of degree certificates in the university. It seems as if the Government is punishing these students for protesting the sale of the degrees. Why did it take all that long for the University Senate to sit down once again and review the cases? Could this Minister tell this House why it took that long to reinstate these students?

**Mr. Awori:** First of all, the students were not suspended because of the allegations made by the hon. Member, that is that they were protesting against the sale of degree certificates. The students were suspended because they contravened the Students' Regulations which they had signed to uphold at the time of admission. One of them participated in an unauthorised demonstration of preventing fellow students from going ahead with their studies, barricaded the main Thika Highway, stoned innocent motorists, looted and burnt their vehicles beyond recognition and so on. That was against the university regulations.

**Mr. Muchiri:** Mr. Speaker, Sir, the allegations levelled against these students are normal with the youths. On humanitarian grounds, could the Assistant Minister consider their cases so that those students can go back to the university?

**Mr. Speaker:** Mr. Muchiri, are you saying it is "normal" for students to burn cars?

**Mr. Muchiri:** That is correct, Mr. Speaker, Sir.

**Mr. Awori:** I think the hon. Member had not heard what I had said when I first answered the Question. I said that the suspension had been reduced and the students are going back to the university, but I cannot resist temptations to remind the hon. Member that looting and burning is not a "normal thing", not only for university students but for any well-brought-up child.

**Mr. Kathangu:** Ahsante sana, Bw. Spika. Yale ningetaka Bw. Waziri msaidiziajue ni kwamba watoto ambao hawajafikisha miaka 18 huwa wanasumbuka kwa sababu ya mafikira mengi. Kuna kemikali katika kila mtoto inayoitwa "tetesterone" ambayo inafanya kazi sana wakati vijana wanapofikisha miaka 15 mpaka 17. Ni kwa sababu gani Wizara ya Elimu haijagundua kwamba kemikali hii inasumbua watoto na kwamba kila kesi ya mtoto ichukuliwe kulingana na umri na vile anavyokua?

**Mr. Awori:** Bw. Spika, ni bahati mbaya sana kwa watoto kuwa na kemikali ya aina hiyo ambayo inaweza kuwafanya kuwa kama majambazi. Ningetaka mhe. Mbunge akumbuke kwamba hawa watu hawakuwa na hatia na walikuwa wanayaendesha magari yao kwa barabara na kupigwa mawe na hawa vijana mpaka mmoja akafa. Hiyo ni kemikali mbaya sana!

#### *Question No.691*

#### UNDERSTAFFING OF PRIMARY SCHOOLS IN MBEERE

**Mr. Ita** asked the Minister for Education and Human Resource Development:-

- (a) whether he is aware that Mbeere District has perpetually suffered from understaffing of primary schools teachers in excess of 150 teachers annually; and,
- (b) if the answer to "a" is in the affirmative, when the he will eradicate the serious understaffing of primary schools in Mbeere District.

**The Assistant Minister for Education and Human Resource Development (Mr. Awori):** Mr. Speaker, Sir, I beg to reply.

(a) Yes, I am aware that there are several schools which are understaffed, but it is not correct to state that in the whole area, they are understaffed by 154. They are understaffed, but they are understaffed by 84.

(b) The Teachers Service Commission (TSC), together with the Ministry, are doing the best they can to stabilise the question of distributing teachers in various schools. But I agree with the hon. Member that there is a serious case of understaffing, but not to the extent that the hon. Member has stated.

**Mr. Ita:** Mr. Speaker, Sir, I had talked to the Assistant Minister before. So, I will not take him to task. But I would want him to look at the way the Question is framed. It states that Mbeere District has perpetually suffered from understaffing. We are asking what the Ministry is doing to eradicate the serious perpetual understaffing in primary schools. The number he is refuting was confirmed by the District Education Officer. Is the Assistant Minister, therefore, going to confirm that we are going to have the perpetual understaffing corrected this year, instead of telling us that the TSC is doing something? They should give us enough staff this year

because they are doing the staffing now. Can the Assistant Minister confirm that he is going to correct the understaffing?

**Mr. Awori:** Mr. Speaker, Sir, I cannot help but repeat what I have stated. We are going to do the best that we can. It is not possible for me to give a serious undertaking here, that the perpetual understaffing is going to be eradicated immediately. But even though the hon. Member has used the word "perpetual", it is not confined to Mbeere District. I think this is a national problem that we are battling with. I hope that we will straighten it out.

**Mr. Ndicho:** Mr. Speaker, Sir, the Assistant Minister has admitted that the understaffing problem is all over the country. Currently, the Ministry is not recruiting trainee teachers in colleges. A college like Highridge in Parklands has no students. The Ministry has indicated that it is going to cut the number of intakes into the training colleges. If he is doing that, what is the Ministry's intention to reduce the cases of understaffing in the whole country, if at the moment, there are no teachers who are being trained? I have given the example of Highridge and some other colleges all of the country.

**Mr. Awori:** Mr. Speaker, Sir, the lack of intake into the teacher training colleges was brought about by the fact that the Ministry did not have adequate funds to pay the teachers. But when I talk of understaffing, I think I should have qualified my words. There are certain subjects where there is overstaffing. When I talked of the Ministry stabilising, I meant that we have got to harmonise, so that eventually, we eradicate the question of understaffing.

**Mr. Kiunjuri:** Mr. Speaker, Sir, I am surprised that the Assistant Minister is not loyal to the President. Just during the teachers strike, the President came out clearly and said that we have over 7,000 education trained graduates who are tarmacking, and are not yet employed by the TSC. He also went ahead and said that the Ministry will retire any teacher who is above 50 years. Could the Assistant Minister confirm that there are no graduate teachers who are tarmacking, and they are not employed?

**Mr. Awori:** Mr. Speaker, Sir, I do not know why it pleases the hon. Member to believe that I have no loyalty to my President. I am 100 per cent loyal to my President. As a result, I will not answer that question.

*Question No.637*

REPAIR OF AWACH BRIDGE

**Mr. Kariuki**, on behalf of **Mr. Sungu**, asked the Minister for Public Works and Housing:-

- (a) whether he is aware that Awach Bridge on the Mamboleo-Gita Road might be washed away by the current heavy rains now pounding Kisumu Town East Constituency; and,
- (b) if the answer to "a" is in the affirmative, what urgent measures he will take to save the bridge and the livelihood of 1,000 families using it.

**The Assistant Minister for Public Works and Housing** (Mr Khaniri): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that one of the approaches to Awach Bridge on the Mamboleo-Gita Road is partially washed away by rain floods. However, the necessary repairs will be implemented.

(b) The Ministry has set aside Kshs50,000 to facilitate backfilling and protection work on the washed away approach. The repairs will commence on the 28th December, 1998, and be completed by 15th January, 1999. The works will be done in-house.

**Mr. Kariuki:** Mr. Speaker, Sir, is the Assistant Minister aware that as a result of this road being closed, the inhabitants of the area are travelling an extra 30 kilometres, in order to cover the distance between Mamboleo and Gita; and that the Kshs50,000 the Assistant Minister is talking about is totally inadequate to be able to repair the bridge? Can the Assistant Minister assure us that he is going to increase the sum to, at least, Kshs500,000, so that they can repair the bridge effectively?

**Mr. Khaniri:** Mr. Speaker, Sir, I do not know what the hon. Member is basing on by saying that this money is not enough. We have done our research and we have established that the amount needed to backfill the bridge is Kshs10,000. This will be adequately enough because we are going to do the work in-house. This is mainly for buying the materials.

**Mr. Kariuki:** Mr. Speaker, Sir, I hear the Assistant Minister has even reduced the figure to Kshs10,000. He talked about Kshs50,000 before. I do not know which figure I will go by. But assuming that it is Kshs10,000, that is totally inadequate. More importantly, is the inconvenience that the inhabitants of this area are facing; having to travel and extra 30 kilometres. I would like to ask the Assistant Minister to speed up the process of repairing the bridge. If possible, he should do it within a shorter period than what he has suggested.

**Mr. Khaniri:** Mr. Speaker, Sir, first of all, I still maintain the figure of Kshs50,000. I said that Kshs50,000 has been set aside. This money has already been sent to the district treasury. I am also aware of the inconvenience that this bridge is causing to the residents. That is why I said that we have already set aside funds, and the work on the road will begin on the 28th of this month. We cannot do it earlier than that. We are scheduled to start on the 28th and complete it by 15th January, 1999.

*Question No.726*

SALE OF CONTAMINATED SODA BY COCA COLA

**Mr. Ndicho** asked the Minister for Industrial Development:-

- (a) whether he is aware that a condom wrapper was recently found in a bottle of soda, a product of Coca-Cola Bottling Company Ltd. and on which this Company was fined a paltry Kshs6,000 by a Kiambu Court;
- (b) if the answer to "a" is in the affirmative, what assurance he will give to Kenyans that Coca-Cola Bottling Company is not offering for sale such highly contaminated products which could be very harmful to Kenyan consumers of Coca-Cola products; and,
- (c) what further punitive measures he will take against Coca-Cola Bottling Company Ltd. for offering contaminated soda for consumption.

**The Assistant Minister for Industrial Development** (Mr. Kimkung): Mr. Speaker, Sir, I beg to reply.

(a) I am aware.

(b) To ensure that prescribed quality standards are maintained by industrial plants, the Kenya Bureau of Standards which operates under my Ministry conducts inspections of processed products on a regular basis. These random checks are designed to maintain quality surveillance on the daily production activities of factories. Further, the Coca-Cola Bottling Company which is an internationally reputed company is to upgrade its internal quality controls systems in all its Kenya plants to ensure the highest level of quality standards.

(c) The penalty already meted out to Coca-Cola constitutes the maximum penalty under our present laws. In view of this, my Ministry cannot initiate any further punitive measures.

**Mr. Ndicho:** Speaker, Sir, it is very serious to see these kind of things happening in this country. A condom wrapper was found in a Coca-Cola bottle and when the residents of that area took this company to court in Kiambu, only a paltry fine of Kshs6,000 was meted out on the Company. Many Kenyans are suffering from funny diseases because of taking contaminated products from this kind of international companies like Coca-Cola. Coca-Cola Bottling Company forced Pepsi Cola and Mirinda out of operation in this country and they are now fighting Softa company. They are all alone operating Coca-Cola products in this country and so they have all the time to clean up their bottles.

**Mr. Speaker:** What has that got to do with the Question?

**Mr. Ndicho:** Mr. Speaker, Sir, I am telling the Assistant Minister that this company should ensure that bottles are cleaned thoroughly because they have no competitors at all. Kenyans have a right to be protected. Other than the Kshs6,000 that was fined and the assurance given by the company, what other measures will the Ministry take to ensure that Kenyans are protected from contaminated products, not only from Coca-Cola, but even from beef imported into this country through the back door?

**Mr. Kimkung:** Mr. Speaker, Sir, the Kenya Bureau of Standards which is charged with the responsibility of surveillance and enforcement of laws relating to product quality is doing its work. As we know, there are already some companies operating and they want to compete with Coca-Cola Bottling Company. So, in order to ensure that there are no foreign objects in their products, every bottle used for soft drinks is examined visually and also by an electronic device after cleaning and prior to filling. Every precaution is taken to ensure that no foreign object can enter during the filling and sealing process. However, despite these precautions, as with any packed products in the food distribution chain, some foreign object may, on rare occasions, find its way into the product. It is also not impossible - and there has been a number of such cases in the past - for criminal elements to tamper with bottle closures once the product leaves the bottling plants. However, my Ministry will make sure that stringent measures are taken, at least, to make sure that whatever product is produced meets the standards required.

**Mr. Sifuna:** Mr. Speaker, Sir, arising from the reply given by the Assistant Minister, can he explain to this House how a condom wrapper found its way into a Coca-Cola bottle? How did it go into a bottle?

**Mr. Kimkung:** Mr. Speaker, Sir, I am not an expert in those matters!

**Mr. Gatabaki:** Mr. Speaker, Sir, Coca-Coca Bottling Company is known globally for being a first class manufacturer of first class drinks. Where it comes from in Georgia, USA, the standards are very stringent. Elsewhere in the world, the Coca-Coca name by itself sells the product. Could the Assistant Minister assure this House that this did not occur because of the condition that Kenya has declined to? As a result of corruption, everybody has disregarded Kenya and anything can be done in Kenya. Even terrorists can bring bombs in Kenya. It is because of these conditions that our country has become the place to harbour all kinds of activities such that a condom can appear in the Coca-Coca bottle.

**Mr. Speaker:** What is your question, Mr. Gatabaki?

**Mr. Gatabaki:** Mr. Speaker, Sir, my question is: Can the Assistant Minister assure this House that the Kenya Bureau of Standards works to maintain standards in Kenya and it is not part of the corruption which characterises this KANU Government?

**Mr. Kimkung:** Mr. Speaker, Sir, I have already answered that.

**Mr. Ndicho:** Mr. Speaker, Sir, this is a very serious matter. Could the Assistant Minister admit that, the reason why there is a fall of standards in the quality of these products is because of corruption at the Kenya Bureau of Standards where cases have been revealed like this one? For example, in this particular case, the Coca-Coca company prevailed upon me not to ask this Question which is a form of corruption. Can he agree and admit that it is because of corruption in the whole Government system, and particularly in the Kenya Bureau of Standards that these things are happening? We warn them that if we find impurities in Coca-Coca products, then we will advise Kenyans to boycott drinking their products from now onwards!

**Mr. Kimkung:** Mr. Speaker, Sir, I think I have already answered that question. I said KBS will make sure that this is done.

*Question No.596*

REFUND OF SHARE CONTRIBUTION TO MR. MASINDE

**Mr. Sifuna** asked the Minister for Co-operative Development:-

(a) if he is aware that Mr. Jackson Wafula Masinde, P/No.101676, former member of Ulinzi Co-operative Ltd. has not been refunded his share contributions as per his withdrawal letter dated 6th June, 1996; and,

(b) if the answer to "a" is in the affirmative, when the society will pay Mr. Masinde his dues amounting to over Kshs23,000 plus interests accruing as from 1994 to date.

**The Minister for Co-operative Development (Dr. Anangwe):** Mr. Speaker, Sir, I beg to reply.

(a) Yes, I am aware that Mr. Jackson Wafula Masinde, P/No.101676, former member of Ulinzi savings and credit co-operative society has not been refunded his share contributions as per his withdrawal letter dated 6th June, 1996.

(b) I am unable to indicate when the amount due to Mr. Masinde will be refunded because the society is insolvent. We have accordingly started the process of liquidating the society in order to determine the level of assets and liabilities.

**Mr. Sifuna:** Mr. Speaker, Sir, this is a very sad day. Kenyans are worried all over the country about the collapsing of various commercial banks. Now, co-operative societies have also started looting their members' money. Could the Minister tell this House who are these loanees who grabbed this money, which they were unable to pay back and as a result, this particular man and other people failed to get their dues?

**Dr. Anangwe:** Mr. Speaker, Sir, the fact that one society is having problems does not really suggest that the co-operative movement is facing difficulties and it is collapsing. In relation to the question, it is really during the liquidation that we shall be able to determine who the debtors and creditors are. Given that what we have on record is not up to date and indeed the society's books have not been audited recently, it may be very difficult for me to say exactly and to respond to the question which the hon. Member has asked.

**Mr. Sifuna:** Mr. Speaker, Sir, could the Minister tell this House how many members are there under Ulinzi Savings and Credit Co-operative Society who have not been paid their money and who are these major loanees that failed to pay back the money that they were loaned by the society? I just want to know the number.

**Dr. Anangwe:** Mr. Speaker, Sir, since the advent of the retrenchment programme, there has been a drastic reduction in the number of members and up to 1998 about 1,132 members had withdrawn from this particular society. Secondly, they have not had a very stable management committee and, therefore, their records

are not really dependable. So, I am unable, even at this particular point, to respond to that question.

*Question No.750*

PARTICIPATION OF PROVINCIAL ADMINISTRATION  
IN SECURITY COMMITTEES

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

- (a) whether he is aware that the Provincial Commissioners, District Commissioners and District Officers are chairpersons of security committees within their areas of jurisdiction; and,
- (b) if the answer to "a" above is in the affirmative, under what provision(s) of the law they operate as the chairpersons of the security committees in their jurisdictions.

**Mr. Speaker:** Mr. Muchiri, the Minister is not here. Because I have to go to Questions by Private Notice, can I defer this Question until tomorrow?

**Mr. Muchiri:** Mr. Speaker, Sir, you can do so.

**Mr. Speaker:** Very well. I defer the Question until tomorrow.

**Mr. Muchiri:** Thank you, Mr. Speaker, Sir.

*(Question deferred)*

*Question No.754*

COLLAPSE OF COTTON INDUSTRY

**Dr. Ochuodho**, on behalf of **Mr. Kajwang**, asked the Minister for Agriculture:-

- (a) whether he is aware that cotton farming and marketing has almost collapsed reducing the country to a net importer of cotton and cotton products when the country has the potential to become self-sufficient in cotton production; and,
- (b) if the answer to "a" above is in the affirmative, the steps he is taking to set up a fund to boost cotton production and to reverse the present dismal performance of the cotton sector.

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

(a) Yes, I am aware.

(b) In furtherance to the Government's policy of poverty alleviation, and in particular in arid and semi-arid areas where potential for growing cotton is high, the following measures are being taken by the Government to revive the industry. The Ministry is revising the Cotton Act, Cap 335. Through the Kenya Agricultural Research Institute (KARI) the Ministry is trying to develop high-yielding and disease resistant varieties of cotton, Bulking of the new release cotton varieties, namely, HAT, HART 89 and KAS 81, and orderly distribution of the same to the farmers will be ensured. The Ministry wishes to encourage private sector participation in the development of cotton industry in the country.

**Dr. Ochuodho:** Mr. Speaker, Sir, I am glad to hear the answer the Assistant Minister has given this House. However, going by the history of this Ministry, especially with regard to sugar and cotton cash crops, which are grown in the western parts of the country, I am a bit sceptical. Could the Assistant Minister specifically tell us when we can expect these seeds to be given out to the farmers? Could he also confirm or deny that it is the *mitumba* market which is killing the textile industry in this country, and hence the cotton industry?

**Mr. Karauri:** Mr. Speaker, Sir, it is true that *mitumba* importation has a negative effect on the production of cotton in this country. But more important is the fact that when the industry was not liberalised there were price control by the Government. The Cotton Board of Kenya (CBK) also did not pay farmers on time. That is why we think that after liberalisation, private sector participation will improve the industry.

**Mr. Kanyauchi:** Mr. Speaker, Sir, the Assistant Minister has conceded in his answer that part of the problem was the CBK, which was not paying farmers in time. Apparently, this is one of the reasons which led to the dismal performance of this industry. What steps has the Ministry put in place to ensure that the CBK will now pay the farmers promptly in order to enable them continue growing cotton?

**Mr. Karauri:** Mr. Speaker, Sir, after liberalisation of the industry, all the ginneries were bought by private sector. We expect that when the Act is revised an efficient body will be set up to handle the situation.

**Dr. Ochuodho:** Mr. Speaker, Sir, could the Assistant Minister tell this House on average how much

money we spend annually to import cotton into the country? Could he also tell us why we cannot utilise that money to revive the cotton industry?

**Mr. Karauri:** Mr. Speaker, Sir, I do not have an answer to that question right now, but if the hon. Member wishes to get the answer, then I can go and check and bring it before this House.

**Mr. Wamae:** Mr. Speaker, Sir, could the hon. Assistant Minister tell us why we have to continue importing cotton from Tanzania, while we can grow our own cotton and run our own mills? Are we not ashamed of importing cotton from Tanzania when we have black cotton soils in Western Province, parts of Kirinyaga, Embu and semi-arid areas where this crop can be grown easily?

**Mr. Karauri:** Mr. Speaker, Sir, I have already explained why farmers were discouraged from growing cotton. One of the reasons was that payment was not made promptly. I have also said that since the private sector has bought the ginneries and the market has been liberalised we hope that this will assist in the development of the industry.

**Mr. Gatabaki:** On a point of order, Mr. Speaker, Sir. The Assistant Minister is deliberately misleading the House. This is because the policy of this Government is to impoverish every farmer in this country, including coffee, tea and sugar cane farmers.

**Mr. Speaker:** Hon. Gatabaki, that is not a point of order. Mr. Gatabaki, please, next time rise on a point of order, because every time you have risen on a point of order you have expressed your own opinion.

### QUESTIONS BY PRIVATE NOTICE

#### PROCLAMATION OF BUDALANGI A HARDSHIP AREA

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

(a) Is the Minister aware that Budalangi Division is a disaster zone prone to frequent flooding and encircled by the Yala swamp?

(b) Is he further aware that civil servants in the area cannot discharge duties effectively due to the hardships in the division?

(c) If the answer to "a" and "b" above are in the affirmative, could the Minister declare Budalangi Division a hardship area so as to pay all the civil servants in the division hardship allowance?

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

(a) I am aware that Budalangi Division is a disaster zone due to frequent floods. Two weeks ago the project management unit dealing with *El Nino* Emergency Project sent consultants to carry out a site inspection and investigation in order to recommend immediate remedial measures that would be carried out under the *El Nino* Emergency Project. The findings of the site investigations suggested the following remedial measures: Raising the level of protection dykes by 2.5 metres for a length of 2 kilometres using 20,000 cubic metres of approved materials, reconstruction of 240 metres length using compacted uproot fill, reconstructing approximately 60 length using gabions and repairing the bridge parts of the dykes around the affected areas with an approximating total of 80,000 cubic metres. The cost of the above remedial works is estimated to Kshs48 million. The implementation documents and working drawings for these proposed works are under preparation and will be ready in a week's time. Therefore, the bidding process will commence immediately.

(b) I am not aware that civil servants in Budalangi Division cannot discharge their duties effectively due to the hardships in the division.

(c) Therefore, it would not be appropriate to declare Budalangi Division a hardship area solely because of the flooding problem.

*(Mr. Wanjala remained seated)*

**Mr. Speaker:** Let us move to the next Question.

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

**Mr. Speaker:** Mr. Wanjala, you remained seated and I thought that you were satisfied with the Minister's reply. Were you not?

**Mr. Wanjala:** Mr. Speaker, Sir, the Minister has given us an answer which he knows very well is not sufficient. Flooding is perennial in this division and five locations are encircled by water, 20 primary schools are

submerged and learning is a problem. Health centres have all collapsed and the movement of civil servants in that place is impossible, and as a result whenever they are transferred there they refuse to report. To make matters more worse, the people living in this area are bitten by mosquitoes during day time. So, I wonder why the Minister has refused that Budalangi Division should be declared a hardship area so that civil servants who are working there can be paid hardship allowance. The local District Development Committee (DDC) agreed that civil servants in the area should be paid hardship allowance, so that they can discharge their duties effectively. Could the Minister assure this House that the Government will pay civil servants in that Division hardship allowance?

**Mr. Ndambuki:** Mr. Speaker, Sir, the hon. Member is aware of the process of recommending payment of hardship allowances. So, I request him to go back to the DDC, sit down and make a recommendation to the Office of the President and it will be considered. In fact, we cannot consider Budalangi as a hardship area because of floods. They have to make a recommendation to my office.

**Mr. Kanyauchi:** Mr. Speaker, Sir, I am sure the Minister was listening when my friend was asking the Question. He said that they have sat down and the DDC has recommended that hardship allowance ought to be paid. What do you want the hon. Member to do by asking him to refer the matter back to the DDC when he has clearly said that a recommendation to that effect has already been made and forwarded to the Minister's office?

**Mr. Ndambuki:** Mr. Speaker, Sir, if it is there, we will look at it and advise the hon. Member.

**Mr. Wanjala:** Mr. Speaker, Sir, I wonder which one is more junior, is it the Parliament or the DDC? The DDC recommended that the civil servants working in that division have been travelling in canoes and they have even been seen doing so on Television. The Minister has come there twice always by helicopter. He could not come by vehicle. If he is still referring us to the DDC and yet it has made recommendations, can he stand up and tell us that all civil servants in the division of Budalangi are going to be paid this allowance?

**Mr. Ndambuki:** Mr. Speaker, Sir, until I see the recommendation I cannot just give a blanket approval.

#### IMPLEMENTATION OF MONTHLY AND BONUS PAYMENTS TO TEA FARMERS

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

(a) Which Kenya Tea Development Authority (KTDA) factories are paying farmers more than Kshs6 per kilogramme as agreed at a meeting held at Kilimo House on 6th January, 1998 between the Minister, Members of Parliament from tea growing areas, KTDA factory directors, board and management?

(b) Which tea factories have implemented the payment of bonus of second payment every six months since July, 1997 as resolved in the meeting stated in "a" above?

(c) Why have the directors of Kiamokama, Nyamache, Nyasiongo and Ogembe factories failed to comply with the decisions of the Kilimo House meeting and the resolutions of the farmers of respective factories on the monthly and bonus payments?

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

(a) First of all, let me clarify from the onset that there was no specific agreement to pay tea farmers more than Kshs6 of green leaf during the meeting at Kilimo House on 6th January, 1998. At the meeting I requested the KTDA to examine the possibility of making some additional payments to farmers in view of the good financial performance by the small holders tea factory companies during the 1997/98 year. However, KTDA had already raised their monthly payment from Kshs4.50 to Kshs6 per kilogramme with effect from 1st January 1998. Consequently, all the 45 KTDA managed tea factories are paying monthly payments for the green leaf at the rate of Kshs6 per kilogramme.

(b) Following my suggestion that KTDA board recommended payment of an interim second payment to tea farmers, the actual recommendation by KTDA provided for payment of 25 per cent of the surplus realised for the period of six months beginning June to December, 1997. The maximum interim second payment was, however, recommended to be Kshs5 per kilogramme of green leaf. Out of the KTDA managed tea factory companies 36 companies paid interim second payment. These are listed as Iriani, Ragati, Gitungi, Thita, Thinga, Gatuti, Thangaita, Loiten, Sangani Matara, Thomaita, Mungania, Rukiri, Mununga, Kinoru, Imenti, Githongo, Mitimukuru, Kigimop, Kigoi, Kaaba, Ndima, Ngere, Makomboki, Njinu, Ikumbi, Kinyuni, Githambo, Gatunguru, Kiru, Kagwe, Kapkoros, Kapset, Kiberigo, Tombo, Nyakora and Mogesiek.

**Mr. Speaker:** How many more, Mr. Mudavadi? Is that the end?

**Mr. Mudavadi:** That is the end.

(c) Kiamokama, Ogembo, Nyamache and Nyasiongo tea factories, like all the 45 company factories, are



paying monthly payments at the rate of Kshs6 per kilogramme. However, the four factories decided not to pay an interim second payment to their farmers. The decision was arrived at by the directors of the factory boards following consultation with the respective tea farmers. They made their payments towards the end as has been the practice in the past.

**Mr. Anyona:** The information the Minister has given us is erroneous. In the case of those four factories there was a resolution by the farmers that they be paid the interim bonus, but the directors refused. They were told that when the second payment comes they will be better off than the other farmers. After the final payment was made, they were worse than those who had been paid the interim bonus. Right now, there is a crisis in those four factories where the directors have been rejected by the farmers. Is the Minister aware of that fact and what is he going to do about it?

**Mr. Mudavadi:** Mr. Speaker, Sir, I am aware that those four factories did not pay their interim second payment like the other 36 factories that I have named. They opted instead to make sure that the payment comes towards the end. Indeed, I would also like to point out that if one was to look at the final outcome of the performance of those four factories except for Nyasiongo, which did much better, the other factories actually turned out to have poorer performance than earlier predicted. So, I would just like to clarify here that, indeed, the directors of these factories misled the farmers by giving some false hope when they had not seen the final outcome of the result.

**Mr. Murungi:** Mr. Speaker, Sir, I was one of those Members of Parliament who attended the meeting at Kilimo House on the 6th of January, 1998. What came out clearly in that meeting was that there is a lot of confusion in the tea industry because the Government has not come out clearly to state what the role of KTDA is. The Minister promised to come up with a Sessional Paper on the tea industry. Can the Minister enlighten this House as to how far he has gone in preparation of that Sessional Paper and when he is going to bring it to this House for debate?

**Mr. Mudavadi:** Mr. Speaker, Sir, it is indeed, true that I did at that meeting indicate that a Sessional Paper was being prepared and also proposed amendments to the Tea Act. I would like to confirm to this House that we have completed this exercise. It has also received Cabinet approval. It is now going through the publishers so that it can be ready for debate by this House.

**Mr. Anyona:** Mr. Speaker, Sir, I am glad that the Minister has admitted that the directors of the four factories did indeed, mislead the farmers. That is what has caused the crisis in those four factories and in some other areas of Kisii. The farmers are right now trying to remove those directors and the Provincial Administration is frustrating the farmers. Will the Ministry facilitate that process so that the farmers can, through a memo [Mr. Anyona]

process, carry out elections and change these directors who mislead them with regard to the bonus?

**Mr. Mudavadi:** I can only say that we will look into this matter. If the farmers are unhappy with any of the directors we would urge that proper procedure is followed, if they want to change the directors that they have elected. Let us do it procedurally so that there is nothing illegal being done in any of the factories.

**Mr. Wamae:** On a point of order, Mr. Speaker, Sir. Is it in order for the Minister to say that the tea farmers can choose the directors when in many cases the KTDA headquarters and the Ministry have been interfering when the farmers want to change those directors?

**Mr. Mudavadi:** Mr. Speaker, Sir, I said that there has to be a procedure to be followed. If it is done unprocedurally, naturally then it will not hold legally and, therefore, it will have to be revisited. If the procedure is followed and there is justification then the law has to carry the day.

#### EVICTION OF CIVIL SERVANTS FROM LEASED PROPERTIES

**Mr. Kihoro:** Mr. Speaker, Sir, I beg to ask the Minister for Public Works and Housing the following Question by Private Notice.

(a) Is the Minister aware that many civil servants who have been living in properties leased by the Government from the private sector have been evicted from these premises?

(b) Is he further aware that many more civil servants will be evicted from such premises when their leases expire?

(c) If the answers to "a" and "b" are in the affirmative, how many civil servants have been evicted under "a" and will be evicted under "b" and what plans does the Minister have for their rehousing or compensation?

**The Assistant Minister for Public Works and Housing (Mr. Khaniri):** Mr. Speakers, Sir, I beg to reply.

(a) I am aware that civil servants who are living in houses leased by the Government from the private sector and the rent payable exceeds 30 per cent of the officers' basic salaries will be requested to vacate the premises, as the leases expire in line with the Budget Speech for the Fiscal Year 1998/99 and the Treasury Circular No.6/98 dated 11th June, 1998. The first group will vacate the premises on 1st January, 1999.

(b) Yes, I am further aware that by the year 2002 some 3,307 civil servants who are occupying leased properties and the rent paid is more than 30 per cent of their basic salaries would have been evicted.

(c) (i) None of the concerned civil servants have been evicted, but some 1,400 officers have been issued with eviction notices.

(ii) The evictions will involve 3,307 civil servants. The civil servants have been advised to claim their house allowances entitlement as per the Civil Service Code of Regulations.

**Mr. Kihoro:** Mr. Speaker, Sir, it is clear that again the Government has moved to undermine the morale of civil servants and it has been very low through the years, and it is going to be undermined further. I would ask the Assistant Minister whether the Ministry is prepared to consider the civil servants who are being evicted to occupy Government houses so that they will not be privatised and put in the market when actually there are civil servants who are going to suffer under this Government policy?

**Mr. Khaniri:** Mr. Speaker, Sir, it is unfortunate, we cannot do as the hon. Member is requesting because we do not have enough Government quarters or houses to house all the civil servants, but, as I said, we are going to pay them house allowance.

**Mr. Parpai:** Thank you, Mr. Speaker, Sir. Is the Assistant Minister aware that, as a result of that, civil servants especially those working with the Kenya Revenue Authority, Immigration Department, Lands Office and those other vulnerable departments are likely to sell Government's secrets for gain to be able to afford houses now that the Kshs5,000 or Kshs6,000 which the Government is going to pay to them is not going to afford them decent houses as the ones they are used to living in?

**Mr. Khaniri:** Mr. Speakers, Sir, I personally sympathise with the situation, but as I said this was a directive from the Ministry of Finance. It was included in the Budget Speech, last June and approved by this House. There is very little my Ministry can do about that.

**Mr. Kariuki:** Mr. Speaker, Sir, if I heard the Assistant Minister well, he said that the Government does not have enough houses. The same Government is allocating houses to politically-correct people. One wonders how prudent it is that the Government which has no houses to allocate houses that are so few. Can the Government, therefore, through you, Mr. Speaker, stop allocating any further houses to anybody so as to house its own staff?

**Mr. Khaniri:** Mr. Speaker, Sir, I comply.

**Mr. Kihoro:** It is clear here that the Government is out to pay a house allowance which must be a token. Why do they not use the amount of money they are going to apply as house allowance so that they can actually ensure that they pay the rent of the present houses? If it is not a token, why can they not make sure that the house allowance they are prepared to pay, unless it is a token, or they just want to "get off-the-hook", because the promise of house allowance here, must be a ploy again?

**Mr. Khaniri:** Mr. Speaker, Sir, this Question would have been very appropriate to the Ministry of Finance. Our Ministry do not have funds of its own. We get our funding from the Treasury and we only give what we are given by the Treasury.

**Mr. Speaker:** Next Question, Mr. Raila. Mr. Raila is not here? The Question is dropped!

#### NON-PAYMENT OF BENEFITS TO MRS. MOHAMMED

**(Mr. Raila)** to ask the Minister for Labour the following Question by Private Notice:

(a) Is the Minister aware that M/S Trident Insurance Co. Ltd. has refused to pay redundancy benefits, provident fund and issue certificate of service to their former employee Mrs. Razia Sultan Mohammed?

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

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

*(Question dropped)*

**POINTS OF ORDER****MINISTERIAL STATEMENT: TARMACKING  
OF ROAD IN MACHAKOS AND MAKUENI**

**Mr. Munyao:** Mr. Speaker, Sir, I have risen on a point of order requesting the Minister for Public Works and Housing to make a serious statement to this House. The *Kenya Times* Newspaper on Friday and today, the headline had really shaken the few inhabitants of Machakos and Makueni districts due to the fact that that road which had been said was going to be tarmacked, it is now giving no hope at all to the Kambas of the two districts. There is also that threat which we are now told that the Government of Kuwait might even withdraw the funds. We are told there is a complicated saga in there and this House, the nation, and the Kambas from the two districts would like to know what is actually happening. We would like the Minister to clear the air.

## ADDITIONAL INFORMATION TO QUESTION

**The Assistant Minister for Education and Human Resource Development** (Mr. Awori): Bw. Spika, tarehe ishirini na tano mwezi uliopita, mhe. Mhadasi Toro, aliuliza Swali hapa kwa Wizara yetu kwamba, ni lini mjane wa mfanyakazi wa Shule ya Ikulu ya Upili, Nairobi atalipwa haki yake ya kustaafu? Nikamweleza kwamba Wizara yetu italipa karibuni. Nikamwahidi, vile vile, kwamba kama wanachelewa, mimi mwenyewe nitachunguza na nifuate ile hudi ya mjane.

Bw. Spika, nina furaha kutoa hii hudi hapa sasa, kumkabidhi Mhadasi Toro, ili aweze kumpelekea mwenyewe!

*(Applause)*

*(Hon. Toro stood to receive the cheque)*

*(Laughter)*

**Mr. Speaker:** Order! Order! I will not allow this House to be used as a post office! You can get in touch with him at your own good time, but do not turn the House into a post office! Last one Mr. Ndicho!

*(Applause)*

## CHILDREN DETAINED AT SCHOOL

**Mr. Ndicho:** Mr. Speaker, Sir, thank you very much. I want to raise a very serious matter here and I am directing it to the Assistant Minister for Education and Human Resource Development whose performance is excellent and should be promoted to full Minister. Two children have been held in a primary school called "One Can Academy", at Kahawa West. Since schools closed, these two children; Josephine Mwikali, seven years and Judy Mwongeri, four years, have been detained in the school because their parents have not cleared school fees for 1998. These children are crying every day and night and they have been fed with un-cooked food.

I am going to ask the Minister to make an order right now, that these children be released forthwith and the case of the school fees be sorted out instead of punishing these children. The Bible says that in the last days, people will be lovers of money more than themselves. This is a clear indication that these last days, the Headmistress of this school has loved money more than the children.

So, I am asking the Minister to give a directive that these two children be released forthwith, from that institution and they can sort out the money issue later. Thank you.

**The Assistant Minister for Education and Human Resource Development** (Mr. Awori): Mr. Speaker, Sir, I am really horrified to hear that there is somebody running a school, who would confine minors at school without care. I wish to give an undertaking that on return to Jogoo House, I intend to give a directive that these children must be released forthwith. I would ask the police to take the necessary action against the perpetrator of such infamy.

**Mr. Speaker:** Very well. Order, Members! Order! From now henceforth, we intend to proceed on the Supplementary Order Paper which I believe has been circulated to all Members. This Supplementary Order Paper

contains proposed amendments to the Bills that are the subject of the Committee in the next two Orders. So, I hope every Member has that, and if you do not have a copy I will ask the officers to avail them to you. But I am duly informed that hon. Members have been supplied with the Supplementary Order Paper.

Next Order.

### COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

*(Mr. Speaker left the Chair)*

#### IN THE COMMITTEE

*(Mr. Chairman took the Chair)*

#### THE COMMUNITY SERVICE ORDERS BILL

*(Clause 2 agreed to)*

#### Clause 3

**The Attorney-General** (Mr. Wako): Mr. Chairman, I beg to move:-

THAT, Clause 3 be amended:-

(a) In Sub-Clause (1), by deleting the word "two" wherever it occurs and substituting therefor the word "three";

(b) In Sub-Clause (3), by deleting the word "shall" and inserting the word "may";

(c) In Sub-Clause (5), by deleting the words "and consent to the making of the order".

All those amendments arose out of the debate here. The first one is to increase the term of imprisonment from two to three years so that anybody who would have been convicted up to three years imprisonment can benefit from the Community Service Orders. The amendment in Sub-Clause (3) is to give discretion to the magistrate to ask for a community officers report, rather than as it is now, mandatory. A number of hon. Members did say that if it is mandatory, it may take longer to get the report than it is warranted. So, this amendment gives the magistrate that discretion.

The third amendment in Sub-clause (5) is to remove the consent from the convicted person because he is being punished, and therefore, he should not give consent to the punishment.

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 3 as amended agreed to)*

**Mr. Gatabaki:** Mr. Chairman, Sir, in view of the fact that the Attorney-General is the custodian of the Constitution, and the statutes and laws therein; can he clarify what is appearing in the Press that he is a land grabber and, therefore, unfit to preside over the Constitution?

**Mr. Chairman:** Order! Order! Hon. Gatabaki, which Clause are you referring to?

*(Clauses 4, 5, 6, 7, 8, 9 and 10 agreed to)*

*(Clauses 11, 12, 13, 14, 15, 16 and 17 agreed to)*

*(First Schedule agreed to)*

*(Second Schedule agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

**The Attorney-General** (Mr. Wako): Mr. Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of the Community Service Orders Bill and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

THE CONSTITUTION OF KENYA REVIEW  
COMMISSION (AMENDMENT) BILL

*(Clauses 2, 3, 4 and 5 agreed to)*

Clause 6

**Prof. Anyang'-Nyong'o**: Mr. Chairman, Sir, I propose to move:-

THAT, Clause 6 be amended by adding a new sub-clause (6) after the words "Governmental Organisations Co-ordination Act, 1990", to read:-

"(6) A Commissioner shall serve in the Commission in the capacity in which he/she is nominated without any prejudice to the impartiality and independence required by the code of conduct as defined in the Third Schedule".

Mr. Chairman, Sir, I am moving this amendment, cognisant of the fact that, although the Commissioners will indeed, be impartial and independent as stated in the Third Schedule, they should nonetheless be conscious of the constituencies which send them to the Commission. And this amendment will make it possible for them to periodically consult so that their purpose in the Commission is served by regular consultation by those who nominated them to the Commission.

**Mr. Chairman**: Hon. Anyang-Nyong'o, do you mean Non-Governmental Organizations Co-ordination Act? Because there is no such Act as you have referred to in your amendment.

**Prof. Anyang'-Nyong'o**: Mr. Chairman, Sir, well, I am sorry if there is a typographical error or if there is that omission, then I believe that should be added accordingly.

*(Question of the amendment proposed)*

**The Attorney-General** (Mr. Wako): Mr. Chairman, Sir, I oppose this amendment, and I have already explained to the hon. Member why I oppose it, because it will alter fundamentally, the thinking behind the Constitution. Had he attended the Consultative Forum, he would have known that these are merely nominating bodies for persons to be Commissioners. Therefore, they cannot continue to represent the interests of the bodies which are nominating them. If we were to accept this, then it would mean that hundreds of organizations and interest groups would demand the right to sit on the Commission so that their interests are represented on the Commission. This is not a negotiating Commission for the Constitution. We want any person who is appointed a Commissioner to serve, not only in his own personal capacity, but to owe his entire and total loyalty to the people of Kenya and not to that group which may have nominated him. That is why, throughout this Bill, emphasis is "loyalty to the people of Kenya". We want Commissioners to seek the views of the people of Kenya. We want Commissioners to reflect accurately, the views of the people of Kenya, not only in their recommendations, but in their constitutions. We do not want Commissioners to go there with their own mind and ideas on what the Constitution should be, and to press those ideas on the Commission.

**Mr. Anyona**: Mr. Chairman, Sir, much as I would like to accept and respect the rights of hon. Members to put amendments of their liking, it is important to say that this Bill is put together by a certain "spirit of consensus" of give and take. The minute you begin to introduce extraneous amendments, you are going to destroy

that spirit. And it is that spirit we want to guide the whole process when it begins.

As a member of the Drafting Committee we went deeply in the merits and demerits of the Commissioners owing a certain loyalty to the nominating bodies. It was felt - the Attorney-General has articulated that spirit, he was not present - that, that would put the Commission in jeopardy and introduce controversy. If a particular nominating body was not happy with a certain aspect, they might begin to put pressure on that Commissioner to articulate views of that body rather than collect and collate the views of Kenyans.

Mr. Chairman, Sir, you can see the consequence of the proposed amendment in Clause 13. In Clause 13, there is a proposed amendment - I am just using that to illustrate the point I am making - where if you follow that to its logical conclusion, then, they are also saying that they have the right to withdraw a Commissioner once appointed. That they can recall and say: You are a Commissioner, we are not happy with you, we want to recall you. I think that will destroy the whole process of Constitutional Reform. If it were in my power, I would simply have proposed that we adopt the amendments proposed by the Attorney-General, as long as they---

**Mr. Chairman:** Order! Order, hon. Anyona, let us discuss the amendment as proposed by Prof. Anyang'-Nyong'o on Clause 6.

**Mr. Anyona:** Mr. Chairman, Sir, I am just offering an opinion to clarify why I take this position. That, the amendments proposed by the Attorney-General reflect the debate in this House. And the debate in this House reflects the consensus out there. Any other amendments at this late hour will endanger this process, and I would request the House to adopt a spirit of unanimity so that we can pass the amendments that would create the kind of spirit we want in the country.

I beg to oppose the amendment.

**Ms. Karua:** Mr. Chairman, Sir, I wish to join in opposing this amendment. If you look at the code of conduct of the members of the Commission; district and national forums and staff, which is on page 450 of the Act, unless if we were to strike out the entire code of conduct, then this amendment cannot fit in this particular Bill.

Mr. Chairman, Sir, in the Bill, it is intended that the Commissioners be independent, that they have security of tenure and that they perform their duties as Kenyans, not as members of the groups that appointed them. If this amendment is allowed, they will remain tethered to the appointing body, which would bring deadlocks in the Commission, not because the particular Commissioner believes in it, but because the group that appointed them is prodding. If you look at the code of conduct, sub-code 2, it stipulates that:-

"No member of the Commission, District Forum or the National Forum, may by his or her membership, association statements, conduct or in any other manner jeopardise the perceived independence of the member or in any manner prejudice the credibility, impartiality, independence or integrity of the Commission, the District Forum or the National Forum".

Now, if we reserve the power to the nominating body to be consulting with the Commissioners, the Commissioners will be breaching this code of conduct, we will also be breaching the spirit of the Bill, and actually, the Commissioners will no longer be independent, but a vehicle for the group nominated them. This will actually, greatly undermine the work of the Commission.

I beg to oppose those amendments on those grounds.

**Mrs. Sinyo:** Mr. Chairman, Sir, I stand to oppose the amendment that is going on. But I want to speak on sections (f) and (g).

**Mr. Chairman:** Hon. Sinyo, we have not got to that point.

**Prof. Anyang'-Nyong'o:** Mr. Chairman, Sir, I do appreciate the points of view expressed by hon. Members on this amendment, but I would like to draw the attention of the House to two erroneous assumptions by the two hon. Members who have spoken against the amendment. One assumption is that consultation between a Commissioner and a body that appointed that Commissioner is necessarily contradictory to the spirit of consensus in the Commission. I do not think it is necessarily contradictory to the spirit of consensus. Any erroneous amendment that can be allowed in this House and brought by the Attorney-General, demeans the dignity of the House and of the Members, because the House, if indeed, enjoins the Standing Orders in the Constitution, that the last court of decision on whether the Bill becomes law as it is or it is amended. So, I think the hon. Anyona has got the wrong end of the stick.

**Mr. Chairman:** Order! Order hon. Anyang'-Nyong'o. Hon. Anyona has expressed his opinion, so just advance your argument for the amendment.

**Prof. Anyang'-Nyong'o:** Exactly. I am trying to enlighten the House about the erroneousness of his opinion. Finally, I think it is important to understand that constitution-making is a very contentious process and it is also erroneous to assume that, that contentious process must also be arrived at by consensus by eliminating dissent. I think it is important at any time that, groups that have appointed Commissioners to the Commission feel

strongly about certain issues. Those points of view should be addressed by the Commissioners through a process that makes a point of reference between the Commissioners and the groups that have appointed them. I am afraid that although there is a move to the centre, almost by everybody in this House in the philosophy of so-called consensus, we shall be leaving a lot out by depriving ourselves of these amendments which shall leave room for consultations and for defence when it is necessary.

Thank you.

*(Question put and negatived)*

**Mrs. Sinyo:** Mr. Chairman, Sir, I beg to move:-

THAT the Bill be amended as follows:

- (i) in Sub-section 3(2)(f) by inserting the following words at the end "of whom at least one will be a woman with a disability."
- (ii) In Sub-Section 3(2)(g) by deleting the word "woman" at the end and inserting the following words "person with a disability and one a woman."

Mr. Chairman, Sir, I would like to commend those who drafted the Bill. I am aware that the spirit in Safari Park 3 and 4 was really pro-inclusion of persons with disabilities, and I know if there is any converted person in this House concerning the needs of the people with disabilities, it is the Attorney-General. But it is sad that when I proposed these amendments, they have not featured in the amendments put to the House today. My hue and cry is that there would be no guarantee that any of the Commissioners will be a person with a disability. It was taken so lightly that "regard shall be given." That is why I proposed that amendment that where there is a woman, where it says specifically "of whom at least one shall be a woman", it should also be specific that "and one shall be a person with disability." Pertaining to the women nominated by the Kenya Women Political Caucus, my contention is that the marginalised women of this country also need to have a share of the cake, and in this regard, if we included one of the women to be a woman with a disability, I can assure this House that representation of the marginalised women groups shall have been taken aboard. So, I propose that the amendments be put as I had suggested to the Attorney-General.

Thank you.

*(Question of the amendment proposed)*

**Mr. Muite:** Mr. Chairman, Sir, I am aware that the amendments proposed by the Attorney-General in the other clauses do in fact, touch on the disabled. But I think that the point raised by the hon. Sinyo is legitimate. She is asking that we should clarify, so as to ensure that out of the 25 Commissioners, we will have at least, one person representing the interests of the disabled. I do appeal to the House and in particular, the Attorney-General, to concede to this proposed amendment.

**The Attorney-General (Mr. Wako):** Mr. Chairman, it is very difficult to refuse the first request from my former Senior Principal State Counsel. This is the first request she has made to this House and I am just trying to see if it alters the structure of the Commission. I know that as far (f) is concerned, the Women Political Caucus will be taking that as a firm indication that, that is what is required by this House; that of the five women, they should endeavour to make at least one of them a woman with a disability. Under (g), it is quite clear, on the civil society, one of the persons nominated must be a person with disabilities. That is why we have said with special regards being given to the youth and the disabled. It complicates the issue, but I do not think it alters the structure that was agreed in Safari Park and, therefore, I have no objection.

**Mr. Obwocha:** Mr. Chairman, I rise to support this proposal on two grounds. First, the hon. Sinyo is asking for the amendment on (f) where five people are to be nominated by women organisations through the Kenya Women Political Caucus. That specifically, is five women and she is asking for one of them to be one with disability. Part (g), which the Attorney-General is conceding to, is a person who is disabled, who can be either a woman or a man. Therefore, the proposal by hon. Sinyo is more reasonable and specific, that we shall give the women, one with disability.

Thank you.

*(Question, that the words to be added  
be added, put and agreed to)*

*(Question, that the words to be left out)*

*be left out, put and agreed to)*

**Mr. J.D. Lotodo:** Mr. Chairman, Sir, I beg to move:-

THAT the Bill be amended:-

- (i) In Sub-Clause 3(2)(b) by inserting "in proportion to their numerical Parliamentary strength in the House" immediately after the word "Parliamentary Committee" in line 5.
- (ii) In Sub-Clause 3(2)(f) by deleting the words "through the Women's Political Caucus" in line 3 and inserting the words "in Kenya, ensuring that not more than one person shall come from the same province; of whom at least one shall be a disabled woman" immediately after the words Women's Organisations."
- (iii) In Sub-Clause 3(2)(g) by deleting the word "and" immediately after the word "disabled" in the sixth line and inserting the words "and the pastoralists in Kenya" immediately after the words "professional associations."

Mr. Chairman, Sir, we know definitely that during the last general elections and under the IPPG brokered deal, we agreed that the number of Nominated Members be given on the Parliamentary strength in the House. So, in that respect, I am moving the first amendment, so that the persons nominated by the political parties shall be in proportion to the numerical Parliamentary strength, of whom at least one shall be a woman. I think that should be the best way so that we can check the interests of all people. So, that is my amendment that I wanted to bring to the attention of the House.

**Mr. Chairman:** Go on with the rest of your proposals.

**Mr. J.D. Lotodo:** Mr. Chairman, Sir, I propose that Clause 6, Section 2 (f) be amended by deleting the words "The Kenya Women's Political Caucus" in line three and inserting the words "in Kenya, ensuring that not more than one person shall come from the same province; of whom at least one shall be a disabled woman".

Mr. Chairman, Sir, from the first part of the Clause, it was not shown very clearly where these five women come from and also the question of disabled women has not been taken into account. That is why I am trying to propose to delete those words such that that section should be "five women nominated by women's organisations in Kenya, ensuring that not more than one person shall come from the same province of whom at least one shall be a disabled woman". We also want to take care of the disabled women. The able women have got a share in those five women. So, with that section, I am trying to amend that section by including the disabled woman in the five women.

Mr. Chairman, Sir, I also want to move an amendment on Clause 6, Section 3 sub-section 2 (g) by deleting the word "and" immediately after the word "disabled" and inserting the words "and the pastoralists in Kenya" immediately after the words "professional associations".

Mr. Chairman, Sir, during Independence, the Constitution which was enacted during that time, you will realise that some of the communities did not participate in it. So, I beg that during this new Constitution, the pastoralists in this country should be give a chance to participate in the constitutional review exercise that is before us. So, that is what I wanted to beg; that the whole section should read:

"The four persons nominated by the civil society through the National Council of NGOs, particularly those regarding to the youth, disabled, professional organisations and the pastoralists in Kenya of whom at least one shall be a woman".

So, we are not trying to discriminate against women. I know pastoralists in this country do not recognise women but for us who are Members of Parliament know that the women have got a part to play in this country and, therefore, we are also trying to give them a place. So, with that, I would like to propose that amendment.

Mr. Chairman, Sir, on Clause 3 (4), I would like to point out that, the number of people proposed by the organisation on page 447 are too many. I think that Committee would be too big. For example, those who wrote the American Constitution were 55 delegates and so, why should we make the numbers here to be so huge and yet, all the organisations in the nation will be taken into account. I therefore propose that, we should delete the words "two representatives" in line one and insert in place thereof the words "one representative".

**Mr. Chairman:** Order! I think your amendments should end on Clause 6.

**Mr. J.D. Lotodo:** Mr. Chairman, Sir, so I proceed with Section 3?

**Mr. Chairman:** Section 3 (5).

**Mr. J.D. Lotodo:** Mr. Chairman, Sir, it was Clause 6 Section 3 sub-section 5. I wanted you to delete the words "The Women's Political Caucus" in paragraph three and inserting the words "Women's organisations in Kenya" so that it is open. Why should women be lumped into one organisation? How can one trust everything in one women's organisation? So, we want to give the women the freedom to choose amongst themselves and also give the provinces a chance. It is not now clearly stated in the Bill where these five women should come from. So,



I am not against the women as such or the Kenya Women's Political Caucus, but I am trying to suggest that we distribute these seats and one of them should go to the disabled.

**Mr. Chairman:** Order, hon. Lotodo. Do not repeat what you have already said. Now, for the sake of good order, we take hon. Lotodo's proposed amendments one by one. So, we shall go to his proposals under Clause 6 (1) which is an amendment to sub-clause 3 (2) (b).

**An hon. Member:** We can talk on them all?

**Mr. Chairman:** You can talk on all of them, but when I put the question, I shall do so one by one.

*(Question of the amendment proposed)*

**Mr. Obwocha:** Mr. Chairman, Sir, I want to start with one. What is being proposed here is, as if we are going to represent our parties in the Constitutional Review Commission. This is not the case. What has already been proposed, as the Attorney-General said is that, once a person comes from that political party, he will now be a Kenyan; to try and collect and collate views of what Kenyans are saying. So, the issue of trying to bring the proportion of their numerical Parliamentary strength does not make sense. The reason why we want these persons nominated from various parties irrespective of their proportions is that we want to cater for various interests and there is not going to be any voting. There is not going to be any partisan politics here. It is really Commissioners who will be committed to collecting and collating views of Kenyans and therefore, I strongly oppose these amendments.

**Mr. Michuki:** Mr. Chairman, Sir, this issue of representation at the Commission level was exhaustively dealt with at Safari Park and if I remember, it took three separate conferences to arrive at a consensus as stipulated within this Bill. Therefore, it appears to me that, in accepting the proposed amendments, we are going back to square one. And we are going back to square one without giving the parties that were adversely affected by the consensus reached at Safari Park, the opportunity to present their case.

Mr. Chairman, Sir, therefore, it seems to me that if these amendments are accepted, we are going to create dissensions which are completely unnecessary in constitution making, where all people concerned must move forward together. That is the first point that I want to make.

Mr. Chairman, Sir, the second point that I want to make is that, when for example a given group requires that it be represented within the Commission, these issues were dealt with in a very detailed manner. In (b), some of the issues raised in these amendments came on the floor during the four meetings that were held at Safari Park and they were deemed to be without merit because it was then stated: Do we also bring in the coffee farmers, tea farmers and the egg sellers because they are dealing with a particular commodity? We also found that all of these people came under one category or the other, as listed within the Bill. They were either Christians, women's organisations or they fell in a particular category which is stated here. Therefore, in this particular request as proposed in these amendments, it is being more specific and thus creates more problems because there are so many other specific institutions like pastoralists which can emerge, but whether a political party, a church or a given age or organisation, that is an entirely different matter.

Therefore, what I am saying is that we should not go back to square one. Personally, I feel that we should not be led towards that direction through amendments which were overwhelmingly rejected at the four fora that were held at Safari Park under the chairmanship of the Attorney-General. So, I beg to oppose the amendment.

**Dr. Kituyi:** My Chairman, it was very nice to listen to hon. Joseph Lotodo. I really had the privilege of listening to him. I want to thank him for one thing: He has shown concern for the disabled people. I think that is about the most important thing that he has suggested. But he had not listened to the immediate earlier amendments that were agreed to. The most important thing he is asking for has already been given by those amendments. Now, that having been taken care of, everything else he has proposed has no merit. The first proposed amendment---

**Hon. Members:** But, we are just on subclause (i) of Clause Six!

**Dr. Kituyi:** Mr. Chairman has said that we can talk on everything under Clause 6. Therefore, I am talking on Clause 6(i), (ii), (iii) and (iv).

**Hon. Members:** No!

**Dr. Kituyi:** Listen to Mr. Chairman.

**Mr. Chairman:** Order! Order! You can talk on all subclauses of the clause, but when we vote, we shall vote on them one by one.

**Dr. Kituyi:** Mr. Chairman, I understood you to say so. So, I will talk on all subclauses although I know that we will vote on them one by one.

Mr. Chairman, Sir, on the first part of the amendment, the intricate arithmetics at which we agreed to distribute the 13 political party appointments to the Commission was accepted and endorsed by the Leader of Government Business, who is also the leader of hon. Joseph Lotodo in this House. It is my understanding that the hon. Member has just failed to consult his senior, otherwise, he would not have raised the matter.

I have agreed with the second part of the amendment of this clause. There is nothing more to be added since the merited representation of the disabled people has already been taken care of. However, there is a problem with the proposed amendment in subclause (iii). We are giving non-governmental organisations (NGOs) and members of the civil society the possibility of appointing four people to the Commission, and we now want to define for them the three they must appoint. That is a very dangerous way of narrowing their leeway. The hon. Member cannot defend his point so long as there will be a youth, a disabled person and a pastoralist. We should allow a little leeway to the professional group and civil society in choosing their representatives.

Mr. Chairman, Sir, the last part of the proposed amendment is the most laughable. During the main debate on this Bill, Dr. Anangwe mentioned his desire to have the women participants in the process to be appointed by the Maendeleo ya Wanawake Organisation. He insisted that this should be done in Butere. In my response, I raised a pertinent concern. If women politicians belonging to different political parties, including the Chair Lady of Maendeleo ya Wanake Organisation, Mrs. Kittony, have accepted a certain network to facilitate their choice of representatives to the Constitution of Kenya Review Commission, what pains hon. male Members of Parliament to want to change the arithmetics for the women?

*(Applause)*

Mr. Chairman, Sir, this only suggests that some male hon. Members of this House are not happy with the use of the women political caucus to facilitate the appointment of women representatives to the Commission by women organisations. This is condescending to women, and an insult to the Gracious Ladies of this House. Since they seem to agree that it remains as it was, and since the Attorney-General seems to have seen the merits in the status quo in this matter and has, therefore, not tampered with the provisions of Safari Park Hotel, I totally reject the amendment as repugnant, and request that hon. Members of this House similarly contemptuously reject any suggestions to tamper with the mechanism to be used for appointment of women representatives.

**Mr. Chairman:** Thank, hon. Kituyi. Hon. Members, we cannot go on discussing this amendment for ever. So, I am going to allow only two hon. Members to contribute. I will have Beth Mugo and one other man, so that we can have a balance.

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

Order! Order! Hon. Kosgey, there is no way you can force Mr. Chairman to see you. Proceed, Mrs. Mugo.

**Mrs. Mugo:** Thank you, Mr. Chairman. I will be very brief, so that more hon. Members can comment on the proposed amendments. I am going to comment on subclause (iv) of the proposed amendment of this clause, which is about the women political caucus. I want to allay the fear of male hon. Members in this House, that the caucus is about one women organisation. Last week, a paper from the chairperson of the caucus listed down 43 national women organisations, which are members of the women political caucus. So, these organisations have taken care of the women nationally. Each of the representative of these organisations will have a chance to say who they want to represent them. The paper I am talking about was distributed to all hon. Members of this House. I would like to add that on the list are the Maendeleo ya Wanawake Organisation, the women lawyers organisation, the business and professional women organisation, the National Council of Women of Kenya, *et cetera*.

Mr. Chairman, Sir, putting "womens' organisations in Kenya" in the Bill is really creating confusion of untold level. How can women choose their representatives if each women organisation chooses its representative on its own? This is not possible. What the caucus has done is that it has brought all the women together. All of them, including the Maendeleo ya Wanawake Organisation, will have a chance to choose their representatives.

The caucus will make sure that women from all the regions in the country are represented. The caucus has no intention of picking women representatives from one area. So, we would like hon. Members to regard the women of this country as mature people. We know what is good for us. So, could hon. Members of this House let us have our own way? Some hon. Members spoke in favour of the Maendeleo ya Wanawake Organisation last week. I am also a chairperson of a Maendeleo ya Wanawake Organisation branch. So, I am part and parcel of the organisation.

*(Loud consultations)*

**Mr. Chairman:** Order! Order!

**Mrs. Mugo:** Mr. Chairman, Sir, I am not fighting the Maendeleo ya Wanawake Organisation. The organisation is very well represented here. Women from both the rural and urban areas have been adequately represented.

**Mr. Chairman:** Thank you, Mrs. Mugo.

**Mr. Munyasia:** On a point of order, Mr. Chairman, Sir. Since we have heard all the arguments that could be raised on this particular amendment, would I be in order to ask that you put the Question?

**Mr. Chairman:** Order! Hon. Members, please, be brief. Clearly, there is nothing new that is coming out. Proceed Dr. Ali!

**Dr. Ali:** Thank you, Mr. Chairman. I would like to comment on subclause (iii) of the proposed amendment to this clause, which is on the issue of pastoralists. It has been suggested that we put the words "coffee farmers" in the Bill. Let us be realistic here. Pastoralists just look after their animals out there. They are not members of civil society or any other organisation.

**Mr. Chairman:** Order! Order! I am going to be strict on the time we are going to spend on specific clauses.

**Dr. Ali:** Mr. Chairman, some hon. Members are failing to realise---

**Mr. Chairman:** Order! Order! Dr. Ali, you have one minute to finish making your comment.

**Dr. Ali:** Thank you, Mr. Chairman. I really do not know how I am going to express my problems in one minute.

**Mr. Chairman:** Try to do so.

**Dr. Ali:** What I would like to say is that we will request the House to give the pastoralists one chance. The pastoralists were not represented in the Constitution-making process in 1963, and that is why pastoralists are now backward. They are in the bush, and are uneducated. They know nothing, Mr. Chairman!

**Mr. Chairman:** Order! Order!

**The Assistant Minister for Co-operative Development** (Mr. Affey): On a point of order, Mr. Chairman, Sir.

**Mr. Chairman:** Order, hon. Affey! Hon. Members, please, do not repeat what has been said by other hon. Members. That hon. Member---

**The Assistant Minister for Co-operative Development** (Mr. Affey): On a point of order, Mr. Chairman, Sir. I do not want to repeat what other hon. Members have said. I want to express my opinion.

**Mr. Chairman:** It is all right. However, if you repeat what has been said by other hon. Members, I will stop you. You should stick to the proposed amendment!

**The Assistant Minister for Co-operative Development** (Mr. Affey): Mr. Chairman, I wish to comment on paragraph (iii). I would like to request this House to support the nomination of one pastoralist to the Constitution of Kenya Review Commission.

**Mr. Chairman:** Thank you.

**The Assistant Minister for Co-operative Development** (Mr. Affey): I have not finished, Mr. Chairman, Sir.

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

**Mr. Chairman:** Order! Order!

**Mr. Chairman:** Order! Order! Hon. Members, I know that you have a deep interest in this matter and I want to accord you as much time as possible to air your views. But if you interrupt Members on the Floor with points of order, that time is going to be lost. So, let us give Members an opportunity to be heard, even, if you do not like what they are saying. Just stand up and "catch my eyes" and I will give you the opportunity to make your contribution.

**Mr. Orengo:** Mr. Chairman, I will be very brief on what I want to comment on. I am going to start with Sub-Clause 3(2)(f) because this is something which has been agreed upon---

**Mr. Chairman:** Order! Order, hon. Members! I have said you will get your opportunity to contribute.

Order! Order, hon. Shill! None of you is raising a point of order, you are all asking questions.

**Mr. Shill:** On a point of order, Mr. Chairman. Is it in order that when a Member is making his argument, he is intimidated both by the Chair and the Members?

*(Applause)*

**Mr. Chairman:** Order! Order, hon. Shill! Your standing orders require you to be relevant to the topic on the Table. When a Member ceases to be relevant or becomes repetitive, it is the duty of the Chair to call that Member to order by asking him/her to resume his or her seat. Those are our Standing Orders, not mine. So, hon. Shill, there is no intimidation here, it is just a question of the Chair insisting on Members being relevant and not being repetitive.

**Mr. Shill:** What I was saying, Mr. Chairman---

**Mr. Chairman:** Order! Do not argue with the Chair! Proceed, Mr. Orengo.

**Mr. Orengo:** Mr. Chairman, if it is one minute, I want to raise a point on the basis of what the hon. Attorney-General said earlier on that this is a review process; it is not a bi-partisan process. We are not negotiating nor are we not fighting, we are going through a process of reviewing the Constitution. If that is the fundamental concept that this Commission is established upon, then, there is no need to have this proposed amendment; Sub-Clause 3(2)(f). I want to give an example from the other side, the fact that KANU was allowed to nominate six Members of Parliament and that the party chose two Tugens to be nominated Members of Parliament; we did not complain. It is in the process of trying---

*(Laughter)*

*(Several Members were on their feet)*

**Mr. Chairman:** Order! Order!

**Mr. J.D. Lotodo:** Mr. Chairman, we were trying to discuss about the Constitution of Kenya Review Commission Bill and we are not here to talk about Luos fishing in Lake Victoria or pastoralists wandering about. Is Mr. Orengo in order to intimidate that two Tugens were nominated by KANU as Members of Parliament?

**Mr. Chairman:** Order! Order, hon. Members! There were no two Tugens who were nominated here, but only two Kenyans from one part of the country were nominated.

**The Assistant Minister for Local Authorities** (Mr. Sasura): Mr. Chairman, Si, I am sure you appreciate the concern of the Members with regard to the proposed amendment in Sub-Clause 3(2)(g). This phrase which is referred to as "and the pastoralists in Kenya", I heard a Member asking the grounds on which to substitute "professional associations" with the "pastoralists in Kenya"; I think the grounds is very, very clear. It is very specific.

When we talk about pastoralists in Kenya, they are isolated in certain parts of this country, but the majority of pastoralists are in the North-Eastern Province. I do not want to repeat myself, but it is very clear that when the first Constitution was drafted, those people were not represented. Secondly, if the---

**Hon. Members:** On a point of order, Mr. Chairman.

**Mr. Chairman:** Order! Order, hon. Members!

**The Assistant Minister for Local Authorities** (Mr. Sasura): Mr. Chairman, considering the various levels of development in this country, for example, education, those are the least educated people in this country. When we talk about professional associations being represented, we have the least or even none in the professional associations.

I have not finished, Mr. Chairman----

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

**Mr. Koske:** Mr. Chairman, Sir, I want to comment on the first proposed amendment moved by hon. Lotodo. As we are all aware, it is a fact that we cannot run away from. An hon. Member mentioned here that those who are going to be proposed for nomination from any party will be serving Kenyans. But the fact remains that the persons being nominated by that party, at the end of it all, will actually serve the interests of their parties in the review process. That is why we in KANU are saying that as we nominate those 13 members from the different parties to the Commission, we will want our numerical strength to be reflected in the nomination because we also want to put our contributions on the Constitution. It is the wish of the party to put our interests into the Constitution by nominating more members based on the numerical strength of our party.

**Mr. Chairman:** If you spend time on points of order, then there will be no time to debate the actual subject before us. I would rather we spend time debating this Bill and the amendments.

**Mrs. Ngilu:** Thank you, Mr. Chairman, Sir---

**The Assistant Minister for Rural Development** (Mr. Sirma): On a point of Order, Mr. Chairman, Sir!

**Mr. Chairman:** Order, Hon. Ngilu! There is a point of Order!

**The Assistant Minister for Rural Development** (Mr. Sirma): Mr. Chairman, Sir, we heard a word from hon. Orengo. We want him to withdraw. This is a Luo also!

**Hon. Members:** Sit down!

**Mr. Chairman:** Order, hon. Members! Order, hon. Sirma! Proceed, Mrs. Ngilu.

**Mrs. Ngilu:** Mr. Chairman, Sir, I stand to speak on part (iv) of Clause 6. This is Sub-clause 3(5) which the hon. Member wishes to amend by deleting the words "the Kenya Women's Political Caucus" in paragraph 3, and inserting the words "women's organisations in Kenya".

Mr. Chairman, Sir, different women's organisations in Kenya met at Safari Park Hotel and agreed on the organisation that was to bring them together to convene at this Constitutional forum. The organisations picked the Kenya Women Political Caucus to represent them. Today, we are surprised that the people who are talking about the Kenya Women Political Caucus are not women themselves. So, we do wonder why anybody would like to start derailing this process by introducing "women's organisations" in this Sub-Clause. I would like the Hon. Member to note that the Bill states: "The Kenya Women Political Caucus means the Kenya Women Political Caucus existing at the commencement of this Act; being a network of Women's organisations, including, but not limited to those specified in part (c) of the First Schedule." This means that all women organisations are represented in the Kenya Women Political Caucus. Therefore, women do not want to have this change effected.

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

**Mr. Chairman:** Order, hon. Members! I will now put the Question.

*Clause 6.3(2) (b)*

*(Question, that the words to be added,  
be added, put and negatived)*

*(Clause 6.3(2)(b) negatived)*

*Clause 6.3(2)(f)*

*(Question, that the words to be left out  
be left out, put and negatived)*

*(Clause 6.3(2)(f) negatived)*

*Clause 6.3(2)(g)*

*(Question, that the words to be left out  
be left out, put and negatived)*

*(Clause 6.3(2)(g) negatived)*

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

**Mr. Chairman:** Order! Order, hon. Members!

**Hon. Members:** Division! Division!

**Mr. Chairman:** Order! Order, hon. Members! Since the hon. Members who have stood up in support for a Division are more than 20, we shall proceed for a Division.

**Hon. Members:** Yes!

*(The Division bell was rung)*

**Mr. Chairman:** Order, hon. Members! Please, resume your seats.

The names of the Tellers are as follows:-

**AYES:** Messrs. Obwocha and Musila

**NOES:** Mrs. Mugo and Mr. Kamolleh.

I will now read to you what the Standing Orders say in respect of a Division. Standing Order No.54(3) reads as follows:-

"After the end of five minutes Mr. Speaker shall direct the doors to be locked and the Bar drawn and no Member shall thereafter enter the House until after the Division has been taken."

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

"When the doors have been locked and the Bar drawn and the names of the tellers have been submitted, the Chairman shall put the question again and then direct the Ayes into the lobby on his right and the Noes similarly to his left and the doors of each lobby shall be locked ten minutes thereafter."

**Mr. Chairman:** I will now put the question again as proposed in Clause 6(ii):-

That the Clause be amended in Sub-clause 3(2)(g) by deleting the word "disabled" in the sixth line and inserting the words "and the pastoralists in Kenya" immediately after the words "professional associations."

Now, the Ayes will proceed to the lobby into my right while the Noes will proceed to the lobby into my left. The doors to the lobbies will be closed ten minutes after the lobby doors have been opened and Members start filing in. If you are not into the lobby until those ten minutes you will not vote. Fifteen minutes after the locking of the lobby doors, the Chairman shall call the House into order and any Member who shall not have voted then shall forfeit his right to vote. No Member shall be obliged to vote in a Division but those present but not voting shall record their names with the Clerk at the Table here. So, may we proceed into the Division, the Ayes to my right and the Noes to my left. Order! Those who have not voted, please proceed to the Lobbies because we are going to lock the Lobby doors in another one minute! If you have not voted, please proceed to the Lobbies because we are locking the doors in another five seconds.

Lock the Lobby doors now!

### DIVISION

*(Question put and the House divided)*

*(Question carried by 72 votes to 39)*

**AYES:** Messrs. Achuka, Affey, Ali, Dr. Anangwe, Messrs. Anyona, Awori, Badawy, Chanzu, Criticos, Donde, Dr. Galgalo G.B., Mr. Galgalo M.A., Dr. Godana, Messrs. Gumo, Kajembe, Kalulu, Kamolleh, Ms. Karua, Messrs. Khaniri, Kiluta, Kimeto, Kiptoon, Kirui, Dr. Kituyi, Messrs. Kochalle, Kofa, Kombo, Kosgey, Koske, Lotodo J.D., Madoka, Maina, Maitha, Marrimoi, Mbela, M.A. Mohamud, Mokku, Morogo, Muchilwa, Mudavadi, Mugalla, Ms Mwachai, Messrs. Mwakiringo, Nassir, Ndambuki, Ndilinge, Ndwiga, Ng'eny, Mrs. Ngilu, Messrs. Ngutu, Ntimama, Ntutu, Nyaga J., Nyenze, Odongo, Okemo, Osundwa, Parpai, Poghisiso, Ruto, Prof. Saitoti, Messrs. Sang, Sasura, Shaaban, Shill, Sirma, Wafula, Dr. Wamukoya, Mr. Wehliye, Mrs. Kittony, Mrs. Seii and Mr. Too.

Tellers of Ayes: Messrs. Obwocha and Musila

**NOES:** Messrs. Gatabaki, Ita, Kaindi, Kariuki, Karume, Katuku, Keriri, Kibicho, Kihoro, Kitonga, Kiunjuri, Maore, Mboko, Michuki, Muchiri, Mugeke, Mrs. Mugo, Messrs. Munyasia, Muihia, Muite, Murungi, Mutahi, Muya, Mwangi, Mwenje, Mwiraria, Nderitu, Ndicho, Ngure, Nyanja, Obwocha, Orenge, Toro, Wamae, Wambua, Wanjala, Munyao, Prof. Anyang'-Nyong'o and Mrs. Sinyo.

Tellers of the Noes: Mrs. Mugo and Mr. Kamolleh.

**Mr. Chairman:** Order, hon. Members! Clause 6(iv) was a consequential amendment on Clause 6(ii). Since Clause 6(ii), as you will recall was defeated, therefore, Clause 6(iv) is now redundant. Hon. Lotodo now knows that he has no amendment to move.

**Mr. J. D. Lotodo:** Mr. Chairman, Sir, I would like to thank all the hon. Members who participated in the Motion. A defeat of a Motion in this House is in accordance with the Parliamentary procedures. So, I would like to thank all hon. Members. I also have women in my Constituency and I hope they will participate in the constitutional review process.

*(Clause 6 as amended agreed to)*

*Clause 7*

**The Attorney-General** (Mr. Wako): Mr. Chairman, Sir, I beg to move:-

THAT, Clause 7 be amended in the proposed Section 4

(a) by deleting all the words appearing before the proviso to sub-Section (2) and substituting therefore the following:

(2) The Attorney-General shall, forthwith upon receipt of the names of the nominees submitted under Sub-Section (1), convene a consultative meeting of the nominating bodies specified in Sub-Section (2) of Section 3, to verify and ensure the compliance of the nominations with the requirements of this Act and the consultative meeting shall be reject any nominations which do not meet the said requirements and require compliance therewith within ten days:

(b) by deleting Sub-Section (3) and substituting therefor the following new Sub-Section -

(3) The Attorney-General shall within seven days of the consultative meeting convened under Sub-Section (2), compile and submit to the President a list of the nominees verified by the said consultative meeting, for appointment as commissioners.

The purpose of this amendment is really to make the Attorney-General to have power to convene a consultative meeting of all the nominating bodies so that they can verify and ensure compliance of the nominations with the requirement under this Act when it is enacted.

*(Question of the amendment proposed)*

**Mr. Murungi:** Mr. Chairman, Sir, we are supporting this amendment because it implements the consensus that we arrived at Safari Park and it satisfies two needs. I do not need to say more about it.

*(Question, that the words to be left out be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 7 as amended agreed to)*

*(Clause 8, 9, 10, 11 and 12 agreed to)*

*Clause 13*

**Prof. Anyang'-Nyong'o:** Mr. Chairman, Sir, I beg to move:-

THAT, Clause 13 be amended by inserting a new sub-section (i) after sub-Section (h) as follows:

"(i) is recalled by the body which nominated him/her, in accordance with the procedure employed in the nomination process, and through a written notification executed by the authorised and registered officials of that body to the Chairperson of the Commission."

Mr. Chairman, Sir, we were moving this amendment in accordance with the previous amendment logically so that those nominated to the Review Commission could be conscious of their delegated responsibility to the nominees. I know I have discussed this amendment extensively with the Attorney-General and while I do appreciate his concern for maintaining consensus, I do hope that this proposed amendment does not in any way contradict his concerns on consensus. But it does serve as an indicator to a Commissioner as it has been indicated in the code of conduct. The second one is about consciousness of the body that will nominate the Commissioners. This is because whether we like it or not that sense of representation cannot be wished away.

*(Question of the amendment proposed)*

**The Attorney-General** (Mr. Wako): Mr. Chairman, Sir, I stand to oppose this amendment on the same ground that I opposed the amendment to Clause 6. Actually, I would have thought that the hon. Members should have been gracious enough to withdraw this one after the other one was defeated. It is never too late to withdraw.

Thank you.

**Mr. Chairman:** Hon. Anyang'-Nyong'o, it does appear to me that this proposed amendment on Clause 13 is similar to, Clause 6 which was defeated?

**Prof. Anyang'-Nyong'o:** Mr. Chairman, Sir, I said earlier in the discussion that the House must be given the opportunity to hear the reasons why the amendment was proposed. While the law of logic does, indeed, demands that after the defeat of the previous Clause this one is redundant, that does not alter the fact that the House should listen to the reason why the amendment to the Clause was proposed. That is why I have stood up to explain it, notwithstanding the opinion of other hon. Members.

**Mr. Anyona:** Mr. Chairman, Sir, there is some internal logic in this work. The Committee went into great length to create that internal logic. In my earlier contribution, I did indicate that the ultimate logical conclusion of that earlier amendment was reflected in this one. If we will subject the Commission or the Commissioners to circumstances where at any given time, at the whim of a nominating body, they could be withdrawn then this Commission will no longer be in the hands of Parliament or the law. As indicated by the Attorney-General, I think hon. Anyang'-Nyong'o should be gracious enough to indicate that in order to maintain that internal logic, which, as I said earlier, is based on consensus we should agree to forgo this particular amendment, so that the consensus spirit is maintained through out the Bill.

Thank you, Mr. Chairman, Sir.

**Mr. Muite:** Mr. Chairman, Sir, most of the time I find myself on the side of my friend, hon. Anyang'-Nyong'o, but this is one of those rare instances where I cannot see the merits of the proposal he is making. It is very important, if the constitutional reform process will be successful once these Commissioners are appointed--- We have appealed to all the nominating bodies to look at the merit, ability and integrity. Once appointed, the Commissioners must leave behind their parties, appointing institutions and tribes. They should act as Kenyans in the best interest of Kenyans. Therefore, we must provide them with security. It would be contradictory for us to give power to the nominating party or body to recall the Commissioner. I appeal to the hon. Members to reject this amendment.

Thank you.

**Mr. Obwocha:** Mr. Chairman, Sir, I concur with hon. Muite and I have nothing useful to add on what he has said.

*(Laughter)*

**Prof. Anyang'-Nyong'o:** Mr. Chairman, Sir, I do not in any way stand diametrically opposed to the previous hon. Members who have been opposed to this amendment. But nonetheless, I would like to add a word of caution: I hope they will not live to regret any statement subsequently that there has been a breach of faith among the Commissioners who will represent various bodies. I do hope that the faith the hon. Members have in members who will be appointed to the Commission to exercise independence and integrity will, indeed, be observed not just by this side of the House, but also by the other side of the House. That is why I am saying that bowing to the law of logic I believe that this amendment cannot hold, if the previous one has been defeated. But, nonetheless, I am saying that the reason behind it is valid.

**Mr. Chairman:** Very well. Really, there is no reason for us to vote but in order to complete the process, I will put the Question.

*(Question, that the words to be inserted  
be inserted, put and negatived)*

*(Clause 14 agreed to)*

*Clause 15*

**The Attorney-General (Mr. Wako):** Mr. Chairman, Sir, I beg to move:-

THAT, Clause 15 be amended in the proposed Section 10 by deleting the words "facilitate the conducting of" appearing in paragraph (a) and inserting the words "conduct and facilitate."

So, the amended part will read: The functions of the Commission shall be to conduct and facilitate civic education.

*(Question of the amendment proposed)*



*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Question, that the words to be inserted in place  
thereof be inserted, put and agreed to)*

*(Clause 15 as amended agreed to)*

*(Clauses 16 and 17 agreed to)*

*Clause 18*

**The Attorney-General** (Mr. Wako): Mr. Chairman, Sir, I beg to move:-

THAT, Clause 18 be amended in the proposed Section 12A -

(a) by renumbering paragraphs (c) and (d) of Sub-Section (2) as (d) and (e) respectively, and inserting the following new paragraph immediately after paragraph (b)

"(c) two elected representatives of the major organisations of persons with disabilities in the district, of whom at least one shall be a woman";

(b) by inserting the following words at the end of Sub-Section 7 - "but shall be entitled to such nominal allowances to cover food and transport expenses as the Commission may determine".

(c) by inserting the following new Sub-Section immediately after Sub-Section (10)-

(11) Subject to Sub-Section (1), the words "county council" and "district" shall, for the purposes of this section, be construed to mean a county council or a district existing at the time of the 1997 general elections.

We are saying that those who will be entitled to form district forums will be the county councils and districts which were in existence at the time of the 1997 general elections. This will obviously also help the Commission. We do not want after it has began its work, more districts are created and maybe that becomes an issue that we should not form district forums in those new places. There must be a cut off point. I think the ideal cut off point is the 1997 general elections.

*(Question of the amendment proposed)*

**Prof. Anyang'-Nyong'o:** Mr. Chairman, Sir, we did discuss this amendment with the Attorney-General when I submitted my amendment. I do agree with him that his version is better than mine because it gives a date that would be more effective. I was thinking of the Financial Year, but I think moving the date to the 1997 elections is in order and I accept the proposal. It could have been better to push the date to 1992 because most of the new districts have been created since 1992. Up to 1992 the districts which were, there were those that were indeed, constituted constitutionally according to the Provinces and Districts Act. I do hope that the Attorney-General knows that all districts created since 1992 have been created illegally. I do not think they qualify to participate.

**Mr. Chairman:** It seems that elections cannot be included in his amendment because you have to give a written notice. Hon. Mrs. Sinyo, do you have anything to say on the amendment you had proposed?

**Mrs. Sinyo:** Mr. Chairman, the amendment I forwarded was about representation of the persons with disabilities at the district forum. I am one of those very happy people today because, as I said before, there is no one else as converted as the Attorney-General in this House and he has accommodated that interest. However, I had proposed the following amendment:-

THAT, Clause 6 be amended as follows:-

(i) In Sub-section 3(2)(f) by inserting the following words at the end "of whom at least one will be a woman with a disability".

(ii) In Sub-section 3(2)(g) by deleting the word "woman" at the end and inserting the following words "person with a disability a one a woman"

**Mr. Chairman:** We shall strike that out. Hon. Mugo, yours is a little bit different so we can begin.

**Mrs. Mugo:** Thank you, Mr. Chairman. My amendment is based, of course, mainly on the population of Nairobi. Throughout the debate in this House, all Members agreed that Kenyans must be given a complete chance to debate or give their views on what they want in their Constitution. When drafting the Constitution the governed

must be given a chance to say how they want to be governed. It is a contract with the Government. I feel that the four districts which are given to Nairobi do not give the Nairobi people a chance to fully participate. If we look at the figures alone of registered voters for the last election the whole of Wajir District had four constituencies with 615 registered voters. Dagoretti alone had 69,483. Mwingi constituency had two constituencies with 99,209 voters while Starehe constituency had 109,000. The whole of Isiolo district had a total of 23,699 which is one third of any given constituency in Nairobi. Turning to Coast Province, Kwale district with a total of 37,000 registered voters does not even amount to half of the 91,520 registered voters in Kasarani.

I feel that the Nairobi people have been given a raw deal. The population alone necessitates that the constituencies are used as districts because they match the numbers of districts. Whereas this House passed a Motion to have four districts in Nairobi those divisions have not been established yet. So, there is no way Nairobi people can come together and elect their representatives when you lump two constituencies together which have never worked together as a district. To be fair and to give everybody a chance to say what they want with their Constitution. I propose to this House that it loses nothing by giving Nairobi residents enough districts where they can work to say what they want with their Constitution. I propose that eight constituencies in Nairobi be upgraded as districts because they equal many districts in the country. Some of them only have a third of what each constituency has so that they can easily participate in the review and that they are not denied the opportunity to say how they want to be governed.

However I beg to Move:

THAT, Clause 18 be amended by deleting the proviso in sub-section 12(a) and insert the following new proviso:

"Provided that for the new purposes of this section, Mombasa District and Nairobi area shall be deemed to comprise two (2) and eight (8) districts respectively where the districts in the Nairobi area shall be determined through the existing constituency boundaries."

*(Question of the first amendment, that the words  
to be left out be left out, proposed)*

**The Attorney General** (Mr. Wako): The basis of my accepting, rejecting or leaving it to the House has always been that: Does it in any way alter fundamentally what was agreed at Safari Park? What I can inform this House is that this alters fundamentally what was agreed upon at Safari Park because we agreed there that Nairobi will only have four districts and Mombasa will have two districts.

**Mr. Obwocha:** Mr. Chairman, you will remember that this is an issue that was exhaustively discussed at Safari Park Hotel. In the original concept Nairobi was one district but we said it is not fair. When we deliberated upon the issue we said instead of making Nairobi one district let us give it four. We also increased for Mombasa. Therefore, doubling it from four to eight I do not think has--- The basis according to Mrs. Mugo is the population. But if we are going to do that we are going to alter fundamentally everything in the country. I think Nairobi should really accept the four positions reached at since this was a compromise at Safari Park.

**Mr. Chairman:** Order! I think the best way to proceed forward is to dispose of the amendment by the Attorney-General, then we can come back to hon. Mugo's amendment.

*(Hon. Orengo and hon. Nderitu  
walked out of the Chambers)*

Hon. Orengo and hon. Nderitu it is really out of order to move around when the Chair is addressing the Chamber. But anyhow, proceed.

*(Question of the first part of the amendment, that the  
words to be left out be left out, put and negated)*

**Mrs. Mugo:** It is just a small point, Mr. Chairman. I would like to remind hon. Members in this House that Mombasa is a District and Nairobi is a Province with a Provincial Commissioner. So, you cannot treat Nairobi as a district because it is a province.

**Mr. Muchiri:** I wanted to say that we should be given eight districts. Nairobi has a population of 3 million currently. Kasarani alone has got 44,000 people.

**Mr. Chairman:** Order! All that has already been explained to the House by hon. Mrs. Mugo.

**Prof. Anyang'-Nyong'o:** Mr. Chairman, Sir, notwithstanding what hon. Members have said with regard

to the logic that was arrived at in giving Nairobi four representatives, nonetheless, Mrs. Mugo, has a point. Nairobi is a Province and if we take the 1989 population census and we divide this figure district by district in respect to the population census, the figure we arrive at which could represent Nairobi fairly is seven districts. But since dividing it into seven districts will be important, the logic that Mrs. Mugo has used to reach the Constituency, even in terms of what was being reasoned, is quite fair.

*(Question of the Second part of the amendment  
that the words to be added be added, proposed)*

*(Question of the second part of the amendment,  
that the words to be added put and agreed to)*

*(Clause 18 agreed to)*

*Clause 19*

**Prof. Anyang'-Nyong'o:** Mr. Chairman, Sir, I am proposing that Clause 19(a)(2) be amended by deleting the full-stop at the end of the paragraph and adding the following words after the words "this Act", "Provided that the decision of the Commission and its Committees shall be arrived at by two-thirds majority of the Commissioners or Members present where there is no unanimity".

I was proposing this, just to be precise, since the deliberations to the Commission will be very important and those of its Committees. I think that this was a simple oversight not to specify how these decisions would be arrived at. The Attorney-General may reason that this kind of provision can be left to the rules and regulations that the Commission will establish itself, but I think that the matter of how the Commission itself makes the decision, should not be left to the chances or being included in the rules and regulations. This is the spirit in which I propose the amendment.

*(Question of the amendment proposed)*

**The Attorney-General (Mr. Wako):** Mr. Chairman, Sir, it was not by an oversight that this Clause was left out because the Commission was supposed to regulate its own procedures. It may very well be that there are some matters of purely administrative nature which a simple majority would do. I agree that with weighty matters two-thirds majority appears to be in order.

Therefore, I would like to appeal to hon. Members to leave it to the Commission to decide which of those matters should be two-thirds and which should be by simple majority and so on.

**Mr. Mwihia:** Thank you Mr. Chairman, Sir, I stand to second the amendment as proposed by Prof. Anyang'-Nyong'o, in the sense that we are talking about a very important Bill, making of history in this country. I think it will be unfair to leave it open in the leeway. Because Members of the Commission could be about four or five and a simple majority in that case would not be very popular to the decision.

I think this is in order for Members to agree with this amendment that those Commissioners who are present at the time of making of a decision, the quorum should be two-thirds of them who are present in that particular time.

**Mr. Murungi:** Mr. Chairman, Sir, I have heard what the Attorney-General has said about this, but considering our "litmus test", whether or not an amendment fundamentally affects the Safari Park consensus, I would think that the amendment proposed by Prof. Anyang'-Nyong'o, on this Clause, in fact, reinforces the consensus. We need a large measure of unanimity in the deliberations of the Commission and the other organs that we are setting up for the constitutional review process. I think on that basis alone, we should accept this amendment and not leave it to the Commission.

**The Attorney-General (Mr. Wako):** Mr. Chairman, Sir, I am only being persuaded, but the wording of this, since it is going to be an Act, should be such that it also includes some discretion to the Commission on the less important matters.

Two, it should be such that it cannot be abused. The kind of wording as it is now, it is capable of abuse because of the word "Members present". If there are 25 Commissioners and only 10 Members are present, they can make a decision. That may very well be an abuse on a very important decision that has been made by the Commission. Therefore, just some slight amendment, I would add, "Provided that important decisions of the

Commission and its Committees shall be arrived at by two-thirds majority of the Commissioners", and then I delete "or Members present".

**Mr. Anyona:** Mr. Chairman, Sir, when we were deliberating this particular issue, initially, the Commission did not have any discretion at all. It is later towards the end that we decided to give them some leeway where they can decide some matters under their own procedures.

But I think this issue has come up, what would happen if the Commission did not reach unanimity. Those of us who worked in the Committee did realise how difficult it was to reach unanimity in a lot of cases. And if that was to arise in the Commission itself, then it might not altogether disrupt the work of the Commission. So, I think to prescribe some kind of control in its way in the important matters of the Commission, I think that should not be again in spirit of Safari Park.

As I said, even the Committee, we are very conscious of that and we are hoping that the House maybe, will come up with this kind of solution. I will support that kind of amendment.

*(Question, that the words to be deleted  
be deleted, put and agreed to)*

*(Question, that the words to be added  
be added, put and agreed to)*

*(Clause 19 as amended agreed to)*

*Clause 20*

**The Attorney-General** (Mr. Wako): Mr. Chairman, Sir, I propose to move:-

THAT, Clause 20 be amended in Sub-Section 13A(2)(b) by adding the following words at the end: "With provisions for interpreters for the deaf".

**Mr. Chairman:** Order! Order! Only one person should rise!

**Mr. Muite:** On a point of order, Mr. Chairman. On the Order Paper, Clause 19, is on page 654. Logically, if Clause 20 is being amended, it should come immediately after Clause 19 and before Clause 22, not over the page.

**Mr. Chairman:** Order! Clause 19 which we discussed was a proposal which was also made by Prof. Anyang'-Nyong'o, and it is now finished. We are now going to Clause 20, as proposed by the Attorney-General. Proceed.

**The Attorney-General** (Wako): Mr. Chairman, Clause 20 is simply to ensure that the television, particularly, provides a sign language inset, or sub-titles in all newscasts, civic education programmes and in all programmes covering Constitutional Review process.

*(Question of the amendment proposed)*

**Prof. Anyang'-Nyong'o:** Mr. Chairman, Sir, I stand to strongly support this amendment, but only to remind the Attorney-General and the Chairman that, it is also important for the same instrument to be in Parliament, so that, as the Constitution is being discussed outside, when anything arises in this Parliament, people also have the same advantages in the Galleries.

**Mr. Chairman:** Hon. Sinyo, I think your proposals have been taken care of by the hon. Attorney-General, but you can say something about it.

**Mrs. Sinyo:** Mr. Chairman, I am really delighted that the Attorney-General has included those concerns in his amendments. My only concern at this point is whether there is a financial provision to cater for the interpretation services. If that is included in the amendment, then I will be very happy because the interpreters have to be paid. Thank you, Mr. Chairman.

*(Question, that the words to be added  
be added, put and agreed to)*

*(Clause 20 as amended agreed to)*

## Clause 21

**The Attorney-General** (Mr. Wako): Mr. Chairman, Sir, I beg to move:-

THAT, Clause 21 be amended by deleting Sub-Section (1) of the proposed Section 16 and substituting therefor the following new Sub-Section:-

16(1) The Commission shall:-

- (a) within two months of its appointment, set up its secretariat and appoint the officers and others staff thereof;
- (b) within four months of the establishment of the secretariat, facilitate the conducting of civic education in order to stimulate public discussions and awareness of constitutional issues;
- (c) within 12 months of the expiry of the period prescribed in paragraph (b), collect and collate the views of the people on proposals to alter the Constitution; and,
- (d) within six months of the expiry of the period prescribed in paragraph (c), compile its report together with a summary of the recommendations and on the basis thereof, draft a Bill to alter the Constitution.

What appears now on the Order Paper is to give a structured time limit on the work of the Commission. It will now be that, when the Commission is appointed, the first two months will be devoted to setting up the secretariat, dealing with district forums and generally, all the administrative work that needs to be done to enable it to start its work.

After the first two months, the next four months will be devoted to civic education and here, there is a slight amendment which takes into account what we earlier agreed under Clause 15, that, we use the words "to conduct and facilitate" instead of "facilitate the conducting of" civic education. I hope that is clear.

With that slight amendment, the next four months will be focused on civic education. Then the following 12 months will be focused on collecting and collating the views of the people on the proposals to alter the Constitution and then the following six months will be compiling the report together with the summary of recommendations and on the basis thereof, draft a Bill to alter the Constitution. I think the amendments are clear, I do not have to explain.

**Mr. Anyona:** Mr. Chairman, Sir, I had consultations with some of my colleagues on this side and also with the Attorney-General on this amendment under subsection (b) of Clause 21. I do remember that, in the Committee and at Safari Park Hotel, it was agreed that civic education should be for a minimum of four months before the process begins and thereafter, it should be continuous. But the way this particular one is worded, could make it one month, two months or three months. So, I am not quite sure whether the Attorney-General will not want to make that more specific so that it is a minimum of four months, not just any period within four months of the establishment of the Commission.

**Mr. Muite:** Mr. Chairman, Sir, I think there is an important point that the hon. George Anyona is raising here because we want clarity. When you look at the language employed here, it is purely a matter of construction. The amendment states:- "Within four months of the establishment---" The Commission could wait until the last month. Why can the Attorney-General not delete the word "within" and then substitute it with "for", so that it reads: "For four months following the establishment of the secretariat---" This is because it will then be clear that you establish the secretariat today, and the following four months you conduct civic education. So, when you say; "for four months following the establishment---" that brings out the objective that you have in mind, but with clarity.

**The Attorney-General** (Mr. Wako): Mr. Chairman, Sir, I just want to know whether the word "for" should also go to subsection (c) and (d), or can it be left as it is? I think subsection (a) can remain within two months, if they can do it earlier, well and good and the rest can be four and twelve. I accept that.

**Mr. Chairman:** Order! Hon. Attorney-General, you have to propose these amendments properly so that they can be recorded.

**The Attorney-General** (Mr. Wako): Mr. Chairman, Sir, the proposed amendments to the amendment are as follows:-

(b) delete the word "within" and substitute it with the word "for", and add the word "following" between "months" and "of".

(b) delete the words "facilitate the conducting" and insert the words, "conduct and facilitate".

(c) delete the word "within" appearing before the words "twelve months after the expiry of the period" and insert the word "for" in place thereof.

I think, with Sub-section (b), we can leave the word "within", because if we can complete the work

earlier, the better.

So, I propose those amendments.

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 21 as amended agreed to)*

*Clause 22*

**The Attorney-General** (Mr. Wako): Mr. Chairman, Sir, I propose that Clause 22 be amended in the proposed Section 16A(1), by inserting the words "who shall be ex-officio members" at the end of paragraph (b).

This is simply to make it clear that, as the Commission is the one which convenes the National Consultative Forum, and as the agenda, the National Consultative Forum is to consider the recommendations of the Commission, members of the Commission attending that National Consultative Forum, will be doing so in their ex-officio capacity. In other words, they will be there more to listen to what other people say about their recommendations.

*(Question of the amendment proposed)*

**Prof. Anyang'-Nyong'o**: Mr. Chairman, Sir, I stand to support the Attorney-General's amendment. One reason being that I proposed it to him and he accepted it. And I am grateful.

**An hon. Member**: Is it yours?

**Prof. Anyang'-Nyong'o**: No, we agreed it would be his in a "give-and-take" situation, and he is a friend of mine among other things.

So, I beg to support.

*(Question, that the words to be added be added, put and agreed to)*

*(Clause 22 as amended agreed to)*

**Prof. Anyang'-Nyong'o**: Mr. Chairman, Sir, I would like to propose an amendment:-

THAT, Clause 22 be amended in Sub-section 16A(6) by inserting "a" after (6) and adding a new sub-section 6(b) after therein as follows.

I would like to amend this in line with Clause 19, so that they are in tandem; so that the wording follows what the Attorney-General had proposed. So, I propose that it reads:-

"(b)", important decisions of the National Consultative Forum shall be arrived at by two-thirds majority of the members where there is no unanimity".

*(Question of the amendment proposed)*

*(Question that the words to be inserted be inserted, put and agreed to)*

*(Clause 22 as amended agreed to)*

**Mr. J.D. Lotodo**: Mr. Chairman, Sir, I would like to propose:-

THAT, Clause 22 be amended in Sub-section 16(1)(d), by deleting the words "two representatives" in the first line and inserting in place thereof the words "one representative".

Mr. Chairman, Sir, since you have heard that other members of the Commission have been selected

across the board, there was no need of having two representatives from each of the regions. We have so many representatives already from the other organizations which have been mentioned earlier, I would like to propose that this number be reduced to one, to make the Commission reasonable.

**Mr. Maore:** Mr. Chairman, Sir, I thought it is good when we have an hon. Member moving an amendment, there must have been some fundamental issue that was being addressed. Now, could the hon. Member elaborate why he wants this reduced from two to one? It seems that this is kind of moving a motion by proxy.

**Mr. J.D. Lotodo:** Mr. Chairman, Sir, Clause 22 reads:-

"Two representatives of each of the bodies specified in the First Schedule".

When I look at the First Schedule on page 446, it is so cumbersome that if we have two representatives, we will have 106 representatives. I do not care about the ethnic composition. So, we should only have a group which is small enough to work on something concise for Kenyans.

**Ms. Karua:** Mr. Chairman, Sir, the reason of putting two representatives is to try to make the process as inclusive as possible. You will recall that the number of Commissioners was reduced from 77 to 25. Even though organizations are coming together to nominate, getting two from each of the organizations who participated in the review process through Bomas and Safari Park will ensure inclusiveness. That is why there is even another clause allowing the Commission to allow other people who feel they are not represented to also ask for space in the National Consultative Forum. It would not be good to reduce that number. It is about all inclusiveness in the process and making it people driven.

Mr. Chairman, Sir, I propose that we leave the Clause as it is, so that everybody gets their space in this process.

*(Question, that the words to be left out,  
be left out, put and negated)*

*(Clause 22 agreed to)*

*(Clause 23 agreed to)*

#### Clause 24

**Prof. Anyang'-Nyong'o:** Mr. Chairman, Sir, I had submitted a proposed amendment to Clause 24. I was surprised that it does not appear on the Order Paper. But I think, I would like to proceed and propose my amendment.

**Mr. Chairman:** No, the reason why it was not put on the Order Paper was that it was found to be unconstitutional, because, it ended up nullifying a section of the Constitution. So, it could not be taken in that format.

**Prof. Anyang'-Nyong'o:** Mr. Chairman, Sir, would it not have been better for the Attorney-General to argue his case in court, rather than outside the court? I thought it was much better to enlighten hon. Members as to why it was not included. I think it would be contrary to the rules of the House.

**Mr. Chairman:** It is not contrary to the rules of the House, because Mr. Speaker, must accept amendments when they are put to him. Mr. Speaker, did not accept that particular proposed amendment.

*(Clauses 24, 25 and 26 agreed to)  
First Schedule*

**The Attorney-General (Mr. Wako):** Mr. Chairman, Sir, I propose:-

THAT, the First Schedule be amended by including "Kenya National Students Union".

This is because they participated at all the Safari Park Consultative Forums and it was purely by an oversight that they were not initially included.

*(Question of the amendment proposed)*

*(Question that the words to be added,  
be added, put and agreed to)*

*(First Schedule as amended agreed to)*

*(Second Schedule agreed to)*

*(Third Schedule agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

**The Attorney-General** (Mr. Wako): Mr. Chairman, Sir, I beg to move that the Committee of the whole House doth report to the House its consideration of the Constitution of Kenya Review Commission (Amendment) Bill (Bill No.10) and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

*[Mr. Speaker in the Chair]*

REPORTS, CONSIDERATION OF  
REPORTS AND THIRD READINGS

THE COMMUNITY SERVICE ORDERS BILL

**Mr. Omino:** Mr. Speaker, Sir, I beg to report that the Committee of the whole House has considered The Constitution of Kenya Review Commission (Amendment) Bill and approved the same with amendments.

**Mr. Speaker:** I thought we would go by the sequence. Mr. Chairman, can we begin with the Community Service Orders Bill?

**Mr. Omino:** Mr. Speaker, Sir, I beg to report that the Committee of the whole House has considered the Community Service Orders Bill and approved the same with amendments.

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

**The Minister for Agriculture** (Mr. Mudavadi) seconded.

*(Question proposed)*

*(Question put and agreed to)*

**The Attorney-General** (Mr. Wako): Mr. Speaker, Sir, I beg to move that the Community Service Orders Bill be now read a Third Time.

**The Minister for Agriculture** (Mr. Mudavadi): Seconded.

*(Question proposed)*

*(Question put and agreed to)*

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

THE CONSTITUTION OF KENYA REVIEW  
COMMISSION (AMENDMENT) BILL



**Mr. Omino:** Mr. Speaker, Sir, I beg to report that the Committee of the whole House has considered the Constitution of Kenya Review Commission (Amendment) Bill and approved the same with amendments.

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

**The Minister for Agriculture** (Mr. Mudavadi): seconded.

*(Question proposed)*

*(Question put and agreed to)*

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

**The Minister for Agriculture** (Mr. Mudavadi) seconded.

*(Question proposed)*

**Mr. Anyona:** Mr. Speaker, Sir, I did not have the opportunity to contribute to this particular Bill during the Second Reading, mainly because I felt that I had officiated enough in the drafting process. At this point in time, I would like to express and register my personal appreciation for the commendable job that has been done by this Parliament today. This is the most important exercise that this Parliament has undertaken in this first year of its existence. It is only unfortunate that, important matters of this kind do not capture the headlines. When you read the Press tomorrow, you will note Kenyans will not know that as we have been sitting here this afternoon, a historic move has been made, where for the first time, we have been able to agree unanimously that we need to review our Constitution and in harmony.

For the last 35 years, there have been a lot of amendments to our constitution, most of which were Controversial. This is the first process of the amendment of our Constitution that has been agreed upon in unanimity by both sides of the House. If there is one moment that demonstrates and marks the maturity of this nation and of this Parliament, I think this is it. We would like this same spirit to be extended during the actual review. If there are any ideas, however controversial they might be, they should be expressed within the spirit and the framework that has been established here today. I think Kenya will be all the happier and all the richer, when this process comes to an end and I do hope that this Parliament has done its duty and now we leave it to our people to be able to decide what kind of Constitution they want for the future.

Mr. Speaker, Sir, I beg to support.

**Prof. Anyang'-Nyong'o:** Mr. Speaker, Sir, I would like to add my voice to that of hon. Anyona in calling for attention of the nation to the importance of the Bill that we are passing today and it is in that spirit that, I would like to appeal to the Attorney-General on one issue that he has previously drawn his attention to. That is the organs of the review and particularly, the National Forum and the Review Commission which I think should indeed, be in existence at least one year after the commencement of the new Constitution to enable these organs to monitor the implementation of the Constitution.

Mr. Speaker, Sir, I know that with regard to the National Forum, arguments could be advanced that it maybe financially infeasible to have it in existence. However, at least, I think for the Review Commission, the financing would be modest enough to ensure the Commission exists to monitor how the new Constitution is implemented and to be a kind of an advisory body. If anything, it could act like an upper house to this house informally, in trying to ensure that what it has taken so much time to put into being, does indeed, see the light of the day by being fully implemented before we have our next elections.

Mr. Speaker, Sir, that is one contribution that I wanted to make and to add my voice finally, that I hope that this historic occasion will be marked by that particular observation by being put into practice.

**The Minister for Planning and National Development** (Prof. Saitoti): Mr. Speaker, Sir, I will indeed make very few remarks here. I did not have the opportunity at the time of the Second Reading to be able to give my own views here. However, I do want to give my views and also be able to be in a position to commend all the people in the forum at the Safari Park who actually made their recommendations. I think it is not only them to commend but also the President who as it may very well be recalled, there was a stalemate and it is him who actually broke the ice.

Mr. Deputy, Sir, my second remark here is an important observation. It is that, let us hope that those bodies that are going to be nominating the Commissioners will do so very diligently and very carefully to ensure

that the Commissioners or, for that matter those people who are going to be appointed to the Commission will be men and women of integrity; men and women who are patriotic, men and women who are not going to be partial but those who will put the interests of this nation ahead. That is, those men and women who will be able to bring a draft of the Constitution that is going to be able to serve the Kenyans in the 21st Century.

Mr. Speaker, Sir, I also want to add something by saying finally that, there is a great deal of interest in this Constitutional process that we have undertaken in, overseas. There is a lot of goodwill for this country now, that we have already embarked on an important democratisation process and therefore, let us hope that spirit that has brought us together will continue, so that our nation will be one nation and one people in the 21st Century.

With those few remarks, I beg to support.

*(Question put and agreed to)*

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

### BILL

#### *Second Reading*

#### THE NATIONAL INTELLIGENCE AND SECURITY SERVICE BILL

*(The Minister of State, Office  
of the President on 3.12.98)*

*(Resumption of Debate interrupted on 3.12.98)*

**Mr. Speaker:** Mr. Maore was on the Floor.

**Mr. Maore:** Mr. Speaker, Sir, I did have a little preamble before the time lapsed on Thursday.

Mr. Speaker, Sir, the issue at hand or the most fundamental issue is that, when we start enacting The National Intelligence Service Bill, the Government should gather courage, now that it has admitted its atrocities committed against Kenyans which included harassment, torture, maiming and so many others, to offer an apology to the Kenyan people for the evils committed by the Special Branch in the "dark" 28 years of its existence.

Mr. Speaker, Sir, it is in this spirit that the need arose for the Government to be gentle and give some reparations. It is noble and wise to put the past behind us. However, this has to be managed carefully, so as to make sure that nobody gets away with acts of human rights or criminal activities just because of the use of a Presidential charter. In this regard, I would like to quote the words of the Chairman when he was presenting the deliberations of the Committee. He said the following:-

"The Bill is going out to establish an intelligence service that will be people-friendly, pro-human rights, accountable for its actions, functioning under the control of the peoples' elected representatives, and yet thorough in its work, professional in its approach, effective in discharging its mandate, and patriotic in defending our territorial integrity and national sovereignty."

I would like to support and endorse these sentiments. It is in the spirit of the Constitution of Kenya Review Commission (Amendment) Bill, which we have just passed, that we would like all the institutions in this country to be subjected to scrutiny by the elected representatives of this Republic. They should never be subjected to the whims of the Executive. The National Intelligence and Security Service Bill talks about the security of tenure of the Director-General of the organisation it seeks to establish. However, Section 24 of the Constitution says the following:-

"Subject to this Constitution and any other law, the powers of constituting and abolishing offices for the Republic of Kenya, of making appointments to any such office, terminating any such appointment, are vested in the President." Until when we have both clauses deleted, the idea of a security of tenure of any constitutional office in this country remains a mirage. The operations of the people we have in our constitutional offices, who are purported to enjoy security of tenure, have been dimmed by the power of the appointing authority. We are now in a new spirit. When the Minister was moving this amendment, he had a vision of a kind of a new Jerusalem that we

are crossing over to. When we cross to this new "Jerusalem", we do not want to do so with the baggage of the past. The relevant Committee has put in quite some fundamental recommendations. There are two areas where it seems to have disagreed with the Minister. One, is with regard to the title "Director-General". The Committee wanted the title "director". When we bring in this amendment, we would like the Minister to be gentle and kind.

Mr. Speaker, Sir, there are times when the Committee went out of hand. For example, Sub-Clause 6(ii) says as follows:-

"The Director-General shall hold office for one term of six years, and shall not be legible for re-appointment."

I believe that those who have served in that service and those who drafted this amendment seem to have been wiser than the members of the Committee. It is important to go by what the Minister has presented rather than the Committee's presentation. The Committee wants the Director-General appointed for two five-year terms. Given what we are going through, there is danger that a lot of our peoples' thinking is dependent upon orientation. There are people who think that for every law we enact in this House, we have somebody in mind. It is important for people to have Kenya's future and posterity in mind, and not individuals. Regarding Clause 13, the Committee agreed that the words "Public Service Commission" appearing between the words "they" and "shall" on the first line be deleted, and the words "Directorate of Personnel Management" be inserted in place thereof. Everybody knows that the Directorate of Personnel Management is not a legal entity.

Mr. Speaker, Sir, everybody knows that the Directorate of Personnel Management (DPM) can force a Government that cannot be trusted to interfere with the operations of other bodies. The Public Service Commission (PSC) is the one that is a legal entity. But still over the same, there is reference to Clause 13 where "the PSC shall, in consultation with the Director-General, prescribe a scheme of service setting out the terms and conditions for appointment." If we allow that clause to pass the way it is, we shall be contradicting the Constitution. On the PSC, it says, "Subject to this Chapter, the Commission (PSC) shall in exercise of its functions under this Constitution not be subject to the direction or control of any other person or authority." If we pass this clause as stated, we are going to infringe on the Constitution and we will seek the indulgence of the Minister, when we come to the Committee Stage, to come up with some amendments and omit this one instead of creating any acrimony for no reason at all. Over the same, we would also not like the Director-General to be given any chance at all to pick the telephone and start calling the PSC. He will do so with another entity, but not the PSC.

Another issue, Mr. Speaker, Sir, that has been left out is the issue of the calibre of men and women to serve in the security service. It is important for the Minister to be overt in his presentation that when he is going to appoint, for example, the Director-General and his deputies, people of certain calibre or ranks and their educational background should be taken into consideration not where you pick a Member of Parliament who rushes to the Government to allege that he has some people who want to confess being members of a clandestine movement. The Government goes ahead to parade them in a public rally where they are pardoned. We want to have the office of the Director-General to advice the Government, in this case the President, on matters that touch on security and not political rumour-mongers who rush to the Government with rumours when they are broke to allege that there are some people taking oaths so as to be given some handouts. We want politics of rumour-mongers to be kept out of running of our public affairs.

When we go through the issue of salaries and allowances and other expenditures, the Office of the Director-General has been given sweeping powers. We would like just like all other branches of the Government, this office of the Director-General to be subjected to the Government auditing procedures. For example, the current behaviour whereby there are a lot of projects being carried out by the Special Branch, they are never authorised by Parliament; they are always under the vote of security; given the kind of collusion and corruption sweeping the country, there is no single sector that is left intact. That is why we are insisting on a vetting committee of Parliament to vet the Director-General and make sure that he is somebody who is competent enough to handle the heavy responsibility of that office.

Mr. Speaker, Sir, it is important to note that, if we had vetted and defined the office of the Director-General or the Special Branch; we would not have a lot of confusion going around in the holders of that office. For example, we should insist on a minimum standard of academic qualifications for the Director-General and his deputies because of the current practise not by law. It should be stated quite clearly that if the Director-General comes from one ethnic community, then his deputies and other officers should come from other ethnic communities. We have had a problem with the Liaison Division of the Special Branch. It was formed when the Director of Special Branch or Director of Security Intelligence, as currently known, was from a certain tribe and the Liaison Division has not been legalised by any charter. After it was incorporated although ambiguously and amorphously into the Directorate of Security Intelligence, there has been confusion. It is this Liaison

Department that has always been referred to by politicians as a Third Force in the Police Department. All the criminal activities by the police have been done by them. We want to insist that we should have a Security Intelligence Service which will be competent in running the security of the country, by not only knowing and detecting the dangers or threats to our national security, but also knowing about our potential.

Mr. Speaker, Sir, as we move into the enlightened age - you may even call it the age of enlightened despots, because democracy seems to be a mirage in our region - it is important to have a Security Intelligence Service that can be able to detect issues regarding industrial espionage, economic sabotage, and not only political sabotage. This is because if you read through the Bill, there is always the baggage of the past which we are carrying. We are more concerned with the security of the state, the President and the Government while we disregard the security of the nation. When we go to the question of the Director-General and his deputies as per this Bill, we should make sure that as we define the external and internal divisions, operations and administrations of the Service, we should think of the security of tenure for these officers, as well. If we could have a chance to vet the Director-General of the Security Intelligence Service, after the name has been presented, we would demand that he or she comes up with a proper budget to the Auditor-General, if not to Parliament directly. As we are sitting here, there are over-expenditures in an unknown project of an unknown value and we do not know who knows when and where those kind of budgets were arrived up. When we sit down and try to pass this Bill, because it is wise and good for the country that we do pass it, it is important that we start on a new clause whereby we ask the Director-General of the National Security Service to de-classify information, may be after 30 or 25 years. Such information should not remain in secrecy forever. All modern associations like the CIA, MIC and all the others which the Minister did quote here, have a period after which they de-classify information. It is not wise to allow these people at all, when they spend public money and are of public interest, not to de-classify certain classified information after a certain period. We have Cabinet Papers of 1960's being de-classified, for example, in UK, USA and other places.

Mr. Speaker, Sir, another issue that we need to put very clearly is the adoption of the recommendations of the Committee. The Committee members should resit and go through the Bill carefully because it seems the House does not have time to go through the Bill in its entirety. We should also not allow the Minister to ignore the reports of the Committee after he has discussed with them. He should not come up with the Bill as it is or try to force us "to fight the Bill." When that happens, we will be happy to have a Security Intelligence Service Bill that will not be a threat to the order and organisation of a modern country called Kenya.

Mr. Speaker, Sir, if we also allow the Commission to hear evidence as it is in Clause 26 Sub-section (iv), then it will be very dangerous. It states: "The Commission shall hear separately and in private such evidence---" The people who appear with complaints should be heard inter-party. For example, we had the issue of the Detainees Review Tribunal which was a farce because one appeared there and nobody knew what happened or what would have happened to you. In such a case, it is difficult to have a fair hearing for any reason.

#### ADJOURNMENT

**Mr. Speaker:** Order, hon. Maore! I am sorry we have to adjourn. We will hear you tomorrow.

Hon. Members, it is time for us to interrupt our business and the House is adjourned until tomorrow, Wednesday, 9th December, 1998, at 9 a.m.

The House rose at 6.30 p.m.