

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 25th November, 1998

The House met at 2.30 p.m.

*[Mr. Deputy Speaker in the Chair]*

### PRAYERS

### PAPER LAID

The following Paper was laid on the Table:-

The Report of the Departmental Committee on Administration, National Security and Local Authorities on the National Intelligence and Security Services Bill, 1998.

*(By the Chairman, Departmental Committee  
on Administration, National Security  
and Local Authorities)*

### NOTICE OF MOTION

#### ANNUAL BUDGET IN KENYA SHILLINGS

**Mr. Muriuki:** Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion:-  
THAT, in view of the fact that the Kenya Pound is not in every day use as a designation of the Kenya currency; considering that all transactions in Kenya currency are in shillings, and not pounds, including payments by the Kenya Government; noting that even the Kshs20 does not bear the word pound; further, considering that both the Members of Parliament and members of the public have to keep converting the figures stated in the annual estimates from pounds to Kenya shillings in order to clearly grasp the magnitude, this House resolves that the next annual Budget and all subsequent Budgets be presented in Kenya shillings.

### ORAL ANSWERS TO QUESTIONS

*Question No.569*

#### SALE OF GOVERNMENT VEHICLES IN ISIOLO

**Prof. Anyang-Nyong'o** asked the Minister of State, Office of the President:-

- (a) what happened to tender No.ISL/24/97-98 for sale of Government motor vehicles in Isiolo in December, 1997; and,
- (b) if he could give the details on how many vehicles were involved, to whom they were sold, and at what price.

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

(a) The tender was deliberated upon by the District Tender Board on 23rd December, 1997, and the vehicles were sold accordingly.

(b) Nine vehicles were sold as follows: GK 164 WL which is a Land Rover 109, long-wheel base, had a reserve price of Kshs10,000 and was sold at Kshs20,000 to Dr. A.W. Summer. GK 196 GB Bedford Tipper had a reserve price of Kshs100,000 and was sold at Kshs120,000 to Dr. Adams Bicker. GK 993 Bedford flat bed had a reserve price of Kshs80,000, was sold at Kshs81,000 to Messrs Veta Engineering Enterprises. GK 982 Isuzu Diesel Tanker, had a reserve price of Kshs200,000, but was sold at Kshs200,000 to Messrs. Arimi Transporters. GK 17V, Land Cruiser 45 at a reserve price of Kshs70,000 was sold at Kshs70,000 to Messrs. Yusuf Pereira. GK 997 Land Rover, 109 hard top at a reserve price of Kshs30,000, was sold at Kshs38,000 to Messrs. Sebastian

Rutere. GK 424 Land Rover, 110 at a reserve price of Kshs10,000 was sold at Kshs12,000 to Messrs. Eutacus Mureithi. GK 375 Land Rover, had a reserve price of Kshs8,000, was sold at Kshs10,000 to the same Eutacus Mureithi.

**Mr. Muchiri:** Mr. Deputy Speaker, Sir, could the Assistant Minister tell this House why Government vehicles are not sold in a public auction instead of tendering?

**Mr. Sunkuli:** Mr. Deputy Speaker, Sir, one of the ways of selling vehicles legally is by open tender where it is sold to the highest bidder.

**Prof. Anyang'-Nyong'o:** Mr. Deputy Speaker, Sir, I did not receive a written answer to this Question, so I have no access in a written way to what the Minister is reading. Nonetheless, it is known that Government vehicles, whether sold through tender or through auctions, usually go at throw-away prices to well-connected individuals, especially in the North Eastern Province where the Government feels that the people have no voice and they can be taken for granted any time public vehicles and other things are sold. I have a list here of the vehicles that were sold through that tender, only about a quarter of which the Assistant Minister has mentioned, and all of which, in my list were sold to District Commissioners, District Education officers, District Co-ordinator of Elections, District Drought Recovery Programme Officer, District Criminal Investigations Officer and so on. All these are Government officials who got these vehicles in spite of the tender.

I would like the Assistant Minister to explain in detail, why he is giving a partial list of the vehicles that were sold and secondly, why all these vehicles went to Government officials in that district in spite of the so-called open tender which was "never open" any way?

**Mr. Sunkuli:** Mr. Deputy Speaker, Sir, one fact I must admit and one that the hon. Member has actually said, is that, some of the vehicles were, indeed, sold to some Government officials. But one fact must be taken into account, that they are not also excluded from bidding. However, they are not the only ones. In fact, it is not true that most of them were given to Government servants. It is a very small fraction that got them. I do not know whom the hon. Member would regard as well connected in the list that I have just given.

**Prof. Anyang'-Nyong'o:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Assistant Minister to contend that the individuals who got those vehicles were not well-connected when we know that even from the list that he has read, all those people either got those vehicles after they were sold to the Government officials or they were fronting for those Government officials? According to the original schedule, these vehicles were first sold to the Government officials until I raised this Question in April.

**Mr. Sunkuli:** Mr. Deputy Speaker, Sir, those are very strange facts to me.

**Mr. Ndicho:** Mr. Deputy Speaker, Sir, this is a very serious matter and it is going on even now. I would like to inform the Assistant Minister that in Nyeri, one of the lorries that was tendered had no wheels and tyres but what happened is that--

**Mr. Deputy Speaker:** Order! Order! Ask your question.

**Mr. Ndicho:** I am asking whether he is aware, but I am giving him a preamble, that a former Thika DC took off tyres from a JICA project vehicle--

**Mr. Deputy Speaker:** Order, hon. Ndicho. That is not information that will help.

**Mr. Ndicho:** Mr. Deputy Speaker, Sir, I am asking him whether he is aware of that and you are not giving me time as you have given---

**Mr. Deputy Speaker:** Order! You are also making a very wild allegation.

**Mr. Ndicho:** But you have also given Prof. Nyong'o---

**Mr. Deputy Speaker:** Order! I am talking about what you have just said.

**Mr. Ndicho:** But why are you giving others much time---

**Mr. Deputy Speaker:** Order, hon. Ndicho.

**Mr. Ndicho:** Mr. Deputy Speaker, Sir, I am giving the Assistant Minister some information which he does not have.

**Mr. Deputy Speaker:** Order! You are making an allegation against another individual who is not in this House to defend himself. Now, I am going to ask you to lay on the Table the proof which you have, but you do not have it.

**Mr. Ndicho:** I have it.

**Mr. Deputy Speaker:** Lay it on the Table then.

**Mr. Ndicho:** Mr. Deputy Speaker, Sir, I never---

**Mr. Deputy Speaker:** Now!

**Mr. Ndicho:** This is very unfair. I think---

**Mr. Deputy Speaker:** Lay it on the Table.

**Mr. Ndicho:** Do you want me to ask the question or not?

**Mr. Deputy Speaker:** I want you to ask the question, but not by making wild allegations against other people who cannot defend themselves. So, if you have information and you want to lay it on the Table, lay it now and then you can ask your question.

**Mr. Ndicho:** Mr. Deputy Speaker, Sir, this is a matter that has been in the Press for several days.

**Mr. Deputy Speaker:** The Standing Orders say you shall not use the Press as substantiation.

**Mr. Ndicho:** Is the Assistant Minister aware then, that a former District Commissioner has exchanged new tyres for a JICA lorry in Nyeri and put them in a bonded vehicle which he bought at Kshs50,000 and the former DC is now with the Assistant Minister as a messenger in his office after doing all that mess?

**Mr. Sunkuli:** Mr. Deputy Speaker, Sir, I have only had one messenger in my office and he has never been a DC.

**Hon. Members:** Answer the question!

**Mr. Deputy Speaker:** Order! Order! Hon. Assistant Minister, the question was not about your messenger but about the vehicle. So, answer the question about the vehicle.

**Mr. Sunkuli:** Mr. Deputy Speaker, Sir, I think hon. Ndicho really needs to be grateful to you because he is also heaping irrelevant matters on top of a very important question. But it is not possible for me to know what lorry the hon. Member is describing, unless he gives me the registration number.

**Mr. Ndicho:** Mr. Deputy Speaker, Sir, would I be in order to seek your indulgence for me to bring that information on Tuesday, next week? I am seeking your indulgence to bring the name of the DC, the registration number of the JICA vehicle and even the GK vehicle. Would I be in order to bring that information on Tuesday?

**Mr. Deputy Speaker:** You want to bring it on Tuesday?

**Mr. Ndicho:** Yes. I want you to order me to bring it.

*(Laughter)*

**Mr. Sunkuli:** Mr. Deputy Speaker, Sir, in response, the trouble is that when hon. Ndicho equipped himself to come to Parliament today, he definitely knew he was coming to make those allegations. Why should he be given time? Why can he not be ordered to do so now?

**Mr. Deputy Speaker:** Order! Order, hon. Members. Actually, hon. Ndicho knew he was going to raise this question and I asked him earlier if he had the information to lay it on the Table. He cannot do it now and really, I cannot ask him to bring it on Tuesday. You bring it under a different matter and I will entertain you. But for the time being, you do not have to put any onus on the Assistant Minister to answer your question.

**Mr. Ndicho:** That is a cover-up!

**Prof. Anyang'-Nyong'o:** Mr. Deputy Speaker, Sir, I would like to see justice done. Could the Assistant Minister explain to this House, of the eight or ten vehicles that were tendered--- His list differs from mine, but let us say the number is eight or ten. Can he explain to this House how many of those vehicles were sold to Government officers and how many were sold to private individuals, not in any way connected to the Government?

**Mr. Ndicho:** Do not cover them.

**Mr. Sunkuli:** Mr. Deputy Speaker, Sir, I would not like to cover-up anybody. From the list of the nine vehicles that I have just read, I see nobody whom I recognise as either a Government servant or a member of the Government. I will lay this list on the Table for the hon. Member to peruse.

*(Mr. Sunkuli laid the list on the Table)*

**Mr. Ndwiga:** On a point of order, Mr. Deputy Speaker, Sir. This Question is very important and would I be in order to perhaps request the Chair to order the Assistant Minister to--- Because right now he is hiding behind a pack of names and says that he would not know who the civil servant there is. The Question by the hon. Member is very clear. This is what has been happening throughout this country and some of these DCs have committed criminal offences---

**Mr. Deputy Speaker:** Order! Hon. Ndwiga, you stood on a point of order. Hon. Members, you cannot resolve such an issue at Question Time. There are other times when you can raise and debate it properly. But Question Time is limited to one hour and we have already extended 15 minutes. So, next Question?

STATUTORY RETIREMENT AGE  
FOR TOP CIVIL SERVANTS

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

- (a) what the statutory retirement age for top civil servants on Job Group "P" and above is;
- (b) whether there are civil servants in this category who have achieved retirement age and are still in the service; and
- (c) if the answer to "b" above is in the affirmative, whether he would Table the list of the officers and state why they have not been retired.

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

(a) The Pensions Act, Cap.189 of the Laws of Kenya does not prescribe any age at which an officer must retire, but under section 8 of the Act, an officer may be required to retire from the service of the Government at any time after attaining the age of 50 years. The service regulations however, provide for mandatory retirement of any officer attaining the age of 55 years.

(b) Yes, there are civil servants in the category of Job Group "P" and above who have attained the retirement age and are still in the service.

(c) The list of such officers is attached as Appendix to this note. The officers have been retained in the service because their retention was considered to be of public interest.

**Mr. Kombo:** Mr. Deputy Speaker, Sir, I do not have a written answer and I do not know what is on the list. So, I cannot even ask a supplementary question. Where is the list? I have no written answer, so I have no list.

**Hon. Members:** Where is the list?

**Mr. Deputy Speaker:** Order! Hon. Members, you are cultivating this very bad habit of ordering other Members to do what you are not in a position to enforce. Only the Chair can. Hon. Minister, can you lay the document on the Table?

**An hon. Member:** Read it out.

**Mr. Ndambuki:** No, it is too long, I cannot read it. If you want to read it, it is here.

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

**Mr. Kiunjuri:** Mr. Deputy Speaker, Sir, is the Minister aware that there are a lot of university graduates already in the streets and have no employment and yet, these people are still occupying the offices and there are people who can do this work and they are not retired?

**Mr. Ndambuki:** Mr. Deputy Speaker, Sir, I am very much aware that there are so many graduates who have no jobs. But the number we are talking about is so small, even if we took that into consideration, it would not make any difference. But some of these people are kept on their jobs because of experience and there are no immediate persons to take up their jobs.

**Mr. Kombo:** Mr. Deputy Speaker, Sir, I have just had a quick glance at the list, but two names which I thought should be there are not there. Can the Minister confirm that the Permanent Secretary, Energy and the Commissioner of Lands have gone beyond 55 years because they are not on the list?

**Mr. Ndambuki:** Mr. Deputy Speaker, Sir, I can check those names and add them to the list if they have been omitted.

**Mr. Ndicho:** On a point of order, Mr. Deputy Speaker, Sir. This is a very, very serious issue because I find it very strange that the search that hon. Kombo has instituted has only identified two people who happen to be Kikuyus. Is this a scheme to make sure that Kikuyus are removed from the Civil Service?

**Mr. Deputy Speaker:** Order! Order! That was not a point of order and hon. Ndicho, really we all have to come from some tribes.

**Mr. Ndicho:** But why Kikuyus?

**Mr. Deputy Speaker:** Order! Hon. Ndicho, you must not be getting the habit of arguing with the Chair, even if you are a Kikuyu chief; and hon. Members, we rally must not tribalise issues like this. Hon. Kombo merely said that there are two names which came to his mind.

**An hon. Member:** And they are Kikuyus?

**Mr. Deputy Speaker:** Do not put words in my mouth and those two members are members of the Kenya Civil Service. And that is all that we are going to deal with and not members of any tribe.

**Mr. Obwocha:** Mr. Deputy Speaker, Sir, while the Minister has not answered hon. Kombo's question, the list he has submitted here is of 22 officers. Now, could he tell this House when these people are going to retire if they have passed their mandatory retirement age?

**Mr. Ndambuki:** Mr. Deputy Speaker, Sir, first, I am surprised that the hon. Member who asked the supplementary question could only glance at the names of the 22 officers and come up with such a question. I do not know whether he expected me to bring those two names but what I got is what I gave him. The other answer to the second question is that, I do not know when they are going to retire but if that is of any importance, I can find out and report to the House.

**Mr. Anyona:** On a point of order, Mr. Deputy Speaker, Sir. In all fairness to the House, if the list is too long, yes but you must give the House a gist of what this is all about. You cannot just come here with the list of names, put them there and the House has no idea that they are five, 20 or 50 and what categories these officers belong to. Could the Minister not have summarised the answer in terms of numbers and categories and give some kind of reasonable answer?

**Mr. Ndambuki:** Mr. Deputy Speaker, Sir, in that answer that I gave, all the names are put there and their jobs and grades. There are 22 civil servants.

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

**Mr. Deputy Speaker:** Order! I am not going to recognise any more points of order because Members are using it as a pretext to ask questions. So, if you want to ask questions, stand up and catch the Speaker's eye.

**Mrs. Mugo:** Mr. Deputy Speaker, Sir, could the Minister tell this House this Kikuyu called Mr. Gachanja, the Commissioner of Lands, what extra experience he has other than just dishing out public land and engaging in corrupt activities like dishing out Karura Forest and the sooner he resigns, the better?

**Mr. Deputy Speaker:** Order! Is Mr. Gachanja's name on that list?

**Mr. Ndambuki:** No, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** It is not. He was not mentioned on that list. He was mentioned by hon. Kombo, asking why his name is not on the list. First of all, his name has to be on that list in order for him to be relevant to this question.

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

**Mr. Deputy Speaker:** Order! Hon. Members, I will not allow civil servants whose names are not on that list to be discussed.

**Mr. Maore:** On a point of order, Mr. Deputy Speaker, Sir. Now, the list of the 22 civil servants could be acceptable as genuine if the Minister would state their professional qualifications; for example, an expert in nuclear physics whereby you do not have another one who has come up. However, if it is a question of experience, a civil servant who has been sitting on a position---

**Mr. Deputy Speaker:** Ask your question?

**Mr. Maore:** No, I am asking the Minister why should experience be an excuse 35 years after Independence, when we should have prepared other Kenyans to take those jobs?

**Mr. Ndambuki:** Mr. Deputy Speaker, Sir, the experience really matters but in the question, he did not ask for the qualifications. I would have supplied the qualifications.

**Mr. Deputy Speaker:** Next Question.

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

**Mr. Deputy Speaker:** Order! Look at the clock.

*Question No.623*

REVIVAL OF PRIMARY TEXTBOOK PROGRAMME

**Mr. Otula** asked the Minister for Education and Human Resource Development, in view of the high costs of primary school text books, whether he could revive the Primary Textbook Programme to enhance learning and also ease the parents from the burden of purchasing the costly books.

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

Since the beginning of 1991/92 Financial Year, the Government launched a Primary School Textbook Distribution Programme under the Social Dimension of Development Projects. My Ministry has so far distributed a total of 7.5 million textbooks to primary schools throughout the country, covering all the primary school

curriculum subjects. In conjunction with donors, the Government is in the process of further strengthening the programme of provision of textbooks to primary schools in the country.

**Mr. Otula:** Mr. Deputy Speaker, Sir, is the Assistant aware that the books in question did not reach all schools as given by him in the answer and if they did, how many schools managed to get these books and which schools are these?

**Mr. Awori:** Mr. Deputy Speaker, Sir, the information that I have been given by my officers indicate that all schools did receive a percentage of books. I cannot stand here and swear that indeed, each and every school obtained the textbooks; I can only go by the information that I have been given.

**Mr. Anyona:** Mr. Deputy Speaker, Sir, this is a very important question because our schools cannot function without books and the Government has to assure this Parliament and the people that these books are available. Can the Assistant Minister confirm or deny or tell us the progress with respect to the fact that exactly on 30th June 1993, this Parliament adopted a resolution which stated as follows:

"That the school programme be continued and improved while the Government continues to strengthen the supply of books, stationery and other teaching materials to schools and colleges".

Originally, the Motion required that the School Milk Programme be scrapped. The Government came here and pleaded for an amendment to say: Let us provide both milk and the books. Can the Assistant Minister now tell us how far that resolution and that commitment of the Government has been implemented, so much so that today there should not be another question on this subject?

**Mr. Awori:** Mr. Deputy Speaker, Sir, the Ministry intends to implement the School Milk and the Textbooks Programmes in accordance with the finances it has. I do not believe that it took into consideration the Motion that the hon. Member has quoted.

**Mr. Otieno-Kajwang:** Mr. Deputy Speaker, Sir, the Assistant Minister has said that they, together with donors, are continuing with the Textbooks Programme. Whenever they talk these days, they talk of donors such as the World Bank, the International Monetary Fund (IMF), *et cetera*. For how long will the Government tell us about donors? Even when Government officials talk about textbooks for primary schools, they talk of donors.

**Mr. Awori:** Mr. Deputy Speaker, Sir, donors are partners in development. For example, in this particular case, if the Dutch Government offers us textbooks for our schools, should we say "no"? We are not going to say "no". We will accept the books and distribute them to our schools. The original Questioner has in mind the problem of the heavy load on the parents. If someone can help us to reduce this load on the parents by buying the books for us, we will accept it.

**Mr. Otula:** Mr. Deputy Speaker, Sir, the project the Assistant Minister is talking about managed to give some very few schools not more than 100 books. This is not enough to cater for the schools which have Standard One to Standard Eight classes. Could the Assistant Minister assure this House that they will abolish the School Milk Programme and use the money used for buying the milk to buy textbooks?

**Mr. Awori:** Mr. Deputy Speaker, Sir, there is no reason why we should abolish the School Milk Programme since there are enough textbooks for our schools. The district where the hon. Questioner comes from received 55,239 books in the 1993/94 Financial Year. This does not show that each school received 100 books. In 1994/95, the district received 82,650 books and in 1996/97, it got 38,099 books. So, the district has received more books than the hon. Member claims. The books were provided by the Government of Kenya in conjunction with the British Government. The programme we are implementing currently---

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

**Mr. Deputy Speaker:** I will not accept any more points of order because hon. Members use the opportunity to ask questions.

**Mr. Awori:** Mr. Deputy Speaker, Sir, the Dutch Programme has enabled us to have more books than we had before. We have already issued a policy paper on the distribution of these books.

**Mr. Otula:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Assistant Minister to tell lies to hon. Members of this House?

**Mr. Deputy Speaker:** Order! Order! Hon. Oloo Otula, hon. Members do not tell lies. Hon. Members, including yourself, neither tell lies, nor use that word. Next Question!

*Question No.527*

DE-GAZETTEMET OF FOREST LAND

**Mr. Kihoro**, on behalf of **Mr. Kihara**, asked the Minister for Natural Resources how many

hectares of forest land have been de-gazetted and alienated between the years 1975 and 1995 in the Mount Kenya, Kikuyu Escarpment, Molo and Marmanet Forests?

**The Assistant Minister for Natural Resources** (Mr. Lengees): Mr. Deputy Speaker, Sir, I beg to reply.

A total of 5,918.483 hectares have been de-gazetted and alienated between 1975 and 1995 in Mount Kenya, Kikuyu Escarpment, Molo and Marmanet Forests.

**Mr. Kihoro:** Mr. Deputy Speaker, Sir, certainly, the answer the Assistant Minister has given cannot be correct. For the last 20 years, we have been destroying our forests countrywide. The Assistant Minister has admitted that approximately 6,000 hectares of forest have been de-gazetted, if that figure is correct. According to his written answer, 6,000,000 hectares were de-gazetted over that period of time. So, I think the Assistant Minister needs to clarify this. We need to know how much forest land has been de-gazetted. If he has de-gazetted 6,000,000 hectares of forest land, certainly, that is the entire area of Government forests.

**Mr. Lengees:** Mr. Deputy Speaker, Sir, I think 6,000,000 hectares of forest land is beyond what any Government can de-gazette. The correct figure is 5,918.483 hectares.

**Mr. Maore:** Mr. Deputy Speaker, Sir, at one time in the early 1980s, His Excellency the President received an award of being a great environmentalist, although this was the dark period of his Presidency. Does this Government want to declare an environmental war on certain areas in this country? Is the Government really serious about settling anybody in forests?

**Mr. Lengees:** Mr. Deputy Speaker, Sir, the hon. Member has said that His Excellency the President was given a medal for environmental conservation.

**An hon. Member:** It should be withdrawn!

**Mr. Lengees:** For sure, His Excellency the President has been the number one person in protecting the environment and water conservation undertakings in this country. The Ministry has effected the de-gazettement according to laid down Government procedures. It has strictly followed environmental considerations

**Mr. Ndwiiga:** Mr. Deputy Speaker, Sir, forests are very important catchment areas in this country. The areas which have been de-gazetted are bound to be seriously affected environmentally. Last week, I made a trip with members of the Press around Mount Kenya. Apart from these de-gazetted areas, we found more than 600 acres of land under bhang growing. Within those plantations, the trees have been cleared. Now, what programme does this Government have to replace trees, which have been criminally cut down?

**Mr. Lengees:** Mr. Deputy Speaker, Sir, the Ministry plans to plant more than five million seedlings yearly.

**Mr. Wamae:** Mr. Deputy Speaker, Sir, the question of the environment is very crucial particularly along the Mt. Kenya area. Could the hon. Assistant Minister tell us what was the purpose for degazetting these forests in each of these cases?

**Mr. Lengees:** Mr. Deputy Speaker, Sir, the purpose was to settle the needy Kenyans around those forests.

**Mr. Muite:** Mr. Deputy Speaker, Sir, may I ask this Assistant Minister through you, whether the Government is aware that Kenyans are now swearing that next time, it is not the tractors that they are going to burn, but they are going to put tyres around those grabbers or any contractor who goes to the forest?

**Hon. Members:** Is he aware?

**Mr. Deputy Speaker:** Order! Order! He is aware because Mr. Muite seems to be speaking with some authority. But, please, do not use threatening language in the House.

**Mr. Lengees:** Thank you, Mr. Deputy Speaker, Sir, for requesting the Member not to use threatening language. These forests are being given to Kenyans. Why are the Members so bitter about this one and the Government is ready to protect the forests?

*(Several Members stood up)*

**Mr. Deputy Speaker:** Order! Hon. Members, I have already told you that if you want to ask a question, you do so. Members are rising on points of order to ask questions contrary to the provisions of Standing Order No.68.

**Mr. Kihoro:** Mr. Deputy Speaker, Sir, it is unfortunate that this Government which is the custodian of the whole world programme as propagated by United Nations Environmental Programme (UNEP), is the one that has been so instrumental in destroying our forests. It is also unfortunate that this Government has not gazetted a single acre of land in this country as forest. This Government ought to revise its policy and it is important that, that is done quickly before we destroy the inheritance of our children. Can this Assistant Minister assure this House that the inheritance of our children is going to be reserved by this Government before it is out of office?

**Mr. Lengees:** Mr. Deputy Speaker, Sir, I do not see anything wrong with the Government degazetting the forests. I think the Government is giving needy Kenyans part of the forests.

**Mr. Ndwiga:** Mr. Deputy Speaker, Sir, could the Assistant Minister tell this House what wisdom is there in degazetting forests and allocating them to Kenyans who cannot live in those areas once the environment is polluted to the extent that there would be no water and other facilities?

**Mr. Lengees:** Mr. Deputy Speaker, Sir, any Kenyan is needy and if he says there is land for any other development, that is a purpose for the land to be degazetted.

**Mr. Deputy Speaker:** Next Question, Mr. Oloo-Aringo.

*Question No. 700*

IMPLEMENTATION OF YALA SWAMP  
IRRIGATION PROJECT

**Mr. Oloo-Aringo** asked the Minister for Rural Development:-

(a) what steps the Lake Basin Development Authority (LBDA) has taken to irrigate 1,000 hectares of Yala Swamp Farm using Yala River waters to produce seed rice for West Kenya Rainfed Rice Development Project; and,

(b) if he could assure the House that a loan of Kshs150 million borrowed by the Kenya Government from the African Development Bank (ADB) to implement this project at Yala Swamp Farm will be used in producing seed rice at Yala Swamp Farm and that this money will not be diverted to any other use.

**The Minister for Rural Development** (Mr. Mohammed): Mr. Deputy Speaker, Sir, I beg to reply.

(a) The Lake Basin Development Authority (LBDA) has undertaken the following steps to irrigate 1,000 hectares of Yala Swamp Farm using Yala River to produce seed rice for Western Kenya Rainfed Rice Development Project. Development of infrastructure since 1991 consisting of rehabilitation of the intake, feeder canal to Lake Kanyaboli, construction of water sluices and gates, the construction and levelling of the rice growing paddies to access water to the Rainfed Rice Development Project. The Authority has borrowed Kshs150 million from the African Development Bank (ADB) for the construction of a weir across the Yala diversion canal to avail water to irrigate 2,000 hectares of the Yala Swamp including West Kenya Rainfed Rice Development Project. The contract has been awarded and work is in progress. When completed, it is expected to improve the current seed rice production from 2.5 tons to 5 tons per hectare.

(b) The loan of Kshs150 million borrowed from the ADB is for the construction of Yala River Weir, which will facilitate the irrigation of 2,000 hectares of Yala Swamp Farm for the production of rice. I can assure the House that the money will be used for the intended purpose; the construction of the weir.

**Mr. Oloo-Aringo:** Mr. Deputy Speaker, Sir, I must say I am full of praise for the Minister as an extremely competent Minister because no sooner had we passed the Motion than he personally travelled to Yala Swamp to see for himself the project. What he is saying is something he has assured the people of the area. However, I raised this Question because this country is known for its corruption and much as I know the Minister is a great person, I wanted this assurance that the money will not be diverted for another use. I am personally very happy and satisfied with the reply of the Minister. I want to assure him of my support, but I will still request you to allow my colleagues from the neighbouring constituencies like Dr. Oburu to ask supplementary questions.

**An hon. Member:** He is a V-P now!

*(Laughter)*

**Mr. Deputy Speaker:** Order! Hon. Ojode is not your neighbour.

**Dr. Oburu:** Mr. Deputy Speaker, Sir, I am not hon. Ojode, I am hon. Dr. Oburu Oginga. I am also very grateful to the Minister for the answer he has given. But we would like him to assure us that the seed rice will be grown by the people of Bondo and Alego-Usonga Constituencies and sold to the LBDA and that casual labourers at that place will not be imported from elsewhere, but will be hired from the locals because as I am speaking now, that place is sealed and the locals are not allowed to go there?

**Mr. Speaker:** Order, Dr. Oburu!

**Mr. Mohammed:** Mr. Deputy Speaker, Sir, the seed rice will be grown by the LBDA and, of course, the people of Alego-Usonga and Bondo Constituencies will also be involved. I gave that assurance when I was there



that no labourers will be imported from other parts of this country; they will be employed from Bondo and Alego-Usonga.

**Mr. Ojode:** Thank you, Mr. Deputy Speaker, Sir. Could the Minister confirm to this House that the funds which have been allocated for the LBDA will never be diverted to Kerio Development Authority? The reason why I am asking for the confirmation---

**Mr. Deputy Speaker:** Order! You have asked the question.

**Mr. Mohammed:** Mr. Deputy Speaker, Sir, this particular money is to be utilised by the Lake Basin Development Authority and it is for this specific project. We have already given the contract and this money will not be handled by the Ministry or the Lake Basin Development Authority---

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

**Mr. Deputy Speaker:** Proceed, Mr. Mohammed.

**Mr. Mohammed:** Mr. Deputy Speaker, Sir, the African Development Bank will pay money directly to the contractors and already the work is in progress. I do not know why the hon. Member is worried.

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

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

**Mr. Oloo-Aringo:** Mr. Deputy Speaker, Sir, is there any way I can assure the Minister that he deserves to be the Vice-President because of that response? You should declare your candidacy and run for it!

*(Laughter)*

**Mr. Deputy Speaker:** Order! Order! Order, hon. Members! The Vice-Presidency is a fairly senior position and you really--- At the rate hon. Members are going, it means that everybody in this House is going to be a candidate.

*Question No.668*

#### CONSTANT POWER INTERRUPTIONS IN NITHI

**Mr. Mutani** asked the Minister for Energy:-

(a) if he is aware that there is constant power failure in Nithi which occurs almost on a weekly basis;

(b) if he is further aware that traders and schools continue to incur extra expenses as a result of such interruptions; and,

(c) if the answers to "a" and "b" are in the affirmative, what is causing these interruptions and whether he could remedy the situation.

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

(a) While I am aware that sometimes there are breakdowns in the lines which supply Nithi with electricity, I am not aware that this happens constantly every week.

(b) There is a maintenance plan which happens every three months and it occurs every Monday simply because this is the day farmers do not process their green leaves. I know that this inconveniences some people, but they have to bear with us because a normal maintenance has got to be carried out.

(c) Customers in Nithi constituency are currently being supplied with electricity from 33/11 KVA step-down station at Kieni, Runyenjes. Recently, the Kenya Power and Lighting company discovered that this one is not sufficient, and therefore it has established another substation line of 33/11 KVA step-down substation at Kanyachieni in Meru Central constituency. This will offer an alternative supply to the customers in Nithi constituency which will help to solve this problem.

**Mr. Mutani:** Mr. Deputy Speaker, Sir, is the Assistant Minister aware that banks, petrol stations and the big hotels have gone as far as buying standby power generators when power fails and boarding secondary and primary schools have taxed parents by asking them to pay more money to buy pressure lamps in order to continue with evening classes and avoid the inconvenience of this wayward power generation plant?

**Mr. Manga:** Mr. Deputy Speaker, I am not aware. But, sometimes it is inevitable because if you know that in case of a breakdown of the main power supplier and you need power continuation, then may be you will need a standby generator.

**Mr. Ngure:** Thank you, Mr. Deputy Speaker, Sir. Power failure is a constant thing even in the cities. I am not surprised that it is happening in Nithi constituency. Is the Assistant Minister aware that the citizens of this

country are so fed up with power failures that the Kenya Power and Lighting Company has been turned into "Kenya Paraffins and Lamp Company" and people are buying shares?

*(Laughter)*

**Mr. Manga:** Mr. Deputy Speaker, Sir, I did not get that question very well. Could he repeat?

**Mr. Ngure:** Mr. Deputy Speaker, Sir, is he aware that the Kenya Power and Lighting Company you have quoted has been turned into "Kenya Paraffin and Lamp Company?"

*(Laughter)*

**Mr. Manga:** Mr. Deputy Speaker, Sir, I am not aware.

*Question No.561*

ILLEGAL BAN ON SAND HARVESTING

**Mr. Deputy Speaker:** Hon. Katuku! He is not there. Next Question!

*Question No.570*

FOREIGN CURRENCY EARNINGS  
FROM MILLED COFFEE

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

(a) if he could inform the House on the gross earnings in foreign currency of milled coffee delivered by Girango Farmers Co-operative Society Limited during the months of May and June as of 10th June, 1998;

(b) if he could inform the House on the net payments to Girango Farmers Co-operative Society Limited and to individuals farmers during the two months; and,

(c) if he could inform the House on the respective net deductions by the Coffee Board of Kenya, the Kenya Planters Co-operative Union, the Co-operative Bank of Kenya, the Kisii Farmers Co-operative Union and Girango Farmers Co-operative Society Limited.

**The Minister for Co-operative Development** (Dr. Anangwe): Mr. Deputy Speaker, Sir, I beg, with the indulgence of the hon. Member, that the answer to this question be deferred until next week because we are not ready with the answer right now.

**Mr. Anyona:** Mr. Deputy Speaker, Sir, I appreciate that this Minister is doing his best to restructure the co-operative sector by reviving the coffee sector and the rest. Obviously, he deserves every goodwill and the support that we can give him in this House. But, be that as it may, he will not be able to succeed if he does not get the support of his officers. It is his officers who prepare the answers to these Questions. They not only prepare them in time but they make sure that we get the correct answers. So, in view of the provisions of Standing Order No. 35, paragraph 5, which mandatorily requires that once a Question has been forwarded to the Ministry, it is required to be placed on the Order Paper, not later than ten days---- This Question was submitted in June; is that not an indication that the Minister is not likely to succeed because his officers are asleep and they have not prepared the answers? Hence, they [**Mr. Anyona**]

are violating the rules of Parliament. Therefore, how can we help the Minister to run this Ministry?

**Mr. Deputy Speaker:** Order! The hon. Minister has said that he will answer this Question satisfactorily next week. So, if that does not happen, we will deal with it at that time. So, hon. Minister, we will depend on you to provide the answer next week, the same day.

For the second time, Mr. Katuku's Question!

*Question No.516*

ILLEGAL BAN ON SAND HARVESTING

*(Question dropped)*

### QUESTIONS BY PRIVATE NOTICE

#### DISAPPEARANCE OF KAA FUNDS

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

(a) Is the Minister aware that Ksh130 million payable and due to Kenya Airports Authority (KAA) was banked in a personal account with the Prudential Bank Ltd?

(b) Is he further aware that the funds were meant to pay the employees proceeding on voluntary retirement scheme and that the disappearance of the funds is partly the reason why KAA is unable to pay the staff?

(c) If the answers to "a" and "b" are in the affirmative and given the urgency to help the retiring employees, would the Minister ensure that the funds are transferred from the personal account to that of KAA?

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

(a) I am not aware.

(b) I am not aware.

(c) In view of my reply in "a" and "b", part "c" therefore does not arise.

**Mr. N. Nyagah:** Mr. Deputy Speaker, Sir, this Assistant Minister was advised by hon. Nyachae that this is true. I do not want to touch on what is before the Public Investments Committee (PIC) where they have asked Mr. Lagat to produce the Ksh90 million that he has banked with the Prudential Bank---

**Mr. Deputy Speaker:** Order! Order, Mr. N. Nyagah! If the matter is before the PIC, you should not anticipate it by bringing it here. Ask your question!

**Mr. N. Nyagah:** Mr. Deputy Speaker, Sir, precisely so, and yet the Assistant Minister says that he is not aware. How will he be aware no matter what question I ask? Will he not protect Mr. Lagat, and that he will not give me an answer?

**Mr. Deputy Speaker:** Order! Order! If the matter which you have referred to is in fact before the PIC as of now, then you are prejudicing the outcome from that Committee by bringing the matter to the House now. So, the Assistant Minister's hands are, in fact, tied and so are yours. It is a matter currently before a Select Committee of the House.

**Mr. Anyona:** On a point of order, Mr. Deputy Speaker, Sir. It is true that we must protect the rules of our House. One thing that is beginning to worry me is that when a Minister comes to the House, he says that he is not aware and stops there. Are we really being fair to the House? I will expect the Minister, and I am not talking about this particular question because this is a habitual answer we get--- Surely, I would have thought that if I said that the money is in a personal account, I would expect the Minister to come and say that "we have investigated that the money is not in the personal account or there is no such account at all." But, this question of Ministers answering; "I am not aware" is not fair. I am not raising this matter just because of him.

**Mr. Sunkuli:** Mr. Deputy Speaker, Sir, the hon. Members must appreciate our position here on the Front Bench. We answer questions as succinctly as they have been asked. I was going to give further particulars because the hon. Member asked this question and I requested to take this question away to go and investigate. Being aware of the rules of this House that the Hon. Members who asked the question would get the first shot at a supplementary question, I was in no doubt that the hon. Member was going to ask a supplementary question in which I was going to supply more facts. If you can allow me to therefore, anticipate the question he would have asked--- The question is actually specifically asking if I knew there was money in a private account. The account in which this money was banked is account number 3002923008 which is a deposit account and was opened on 1st November, 1995 to last up to 30th September, 1997. That account is in the name of the Kenya Airports Authority. So, I would assure hon. N. Nyagah that I have no reason to protect Mr. Lagat at all.

**Mr. N. Nyagah:** Mr. Deputy Speaker, Sir, is the Assistant Minister aware that Kshs150 million was initially deposited under the Kenya Airports Authority and eventually Kshs90 million was withdrawn in form of CDs under the name of Mr. Lagat?

**Mr. Sunkuli:** Mr. Deputy Speaker, Sir, I am aware of the first aspect of the question that, indeed, Kshs130 million was deposited in the account, but I am also aware that Kshs50 million was later withdrawn.

**Mr. Murathe:** Mr. Deputy Speaker, Sir, the Assistant Minister is aware that this bank has since

collapsed and that by the time it was collapsing it had an initial capital of Kshs125 million. By the time it was put under statutory management, it had a balance of Kshs18 million. This bank owes in debts Kshs1 billion and it owes depositors Kshs700 million. How is the Kenya Airports Authority going to recover that money?

**Mr. Sunkuli:** Mr. Deputy Speaker, Sir, that is a matter to be dealt with by the Minister for Finance, but the Government has given directions to all the parastatals to put their deposits in sound banks.

**Mr. Mwenje:** Mr. Deputy Speaker, Sir, when these employees were paid their money, some of the money - that is exemption from taxes - which was exempted under Legal Notice No.62 was not paid and they were told that the money would be drawn from this account. They were supposed to be paid before December. Can the Assistant Minister tell us where this money will come from if this account has been tampered with?

**Mr. Sunkuli:** Mr. Deputy Speaker, Sir, all the money owing to the officers of the Kenya Airports Authority has been paid. The Minister of State, Office of the President has, indeed, issued instructions and that has been done.

**Mr. Mwenje:** On a point of order, Mr. Deputy Speaker. I am on a point of order, Mr. Deputy Speaker, Sir!

**Mr. Deputy Speaker:** You are not!

**Mr. Mwenje:** Please, Mr. Deputy Speaker, Sir, may I inform the Assistant Minister because he is misleading this country.

**Mr. Deputy Speaker:** Are you on a point of order, or you want to give information?

**Mr. Mwenje:** The Assistant Minister is totally out of order by saying that the money was paid. That is misleading this country and this House. We know that it was not paid. Can he correctly tell us when the balance will be paid?

**Mr. Deputy Speaker:** Order, hon. Mwenje! You have been in this House long enough to know that you are just arguing with the Assistant Minister and not raising a point of order! Of course, you have just made an allegation which you have not been able to prove. You are developing habits which you brought from some other place---

*(Laughter)*

**Mr. Sunkuli:** Mr. Deputy Speaker, Sir, in order to retain the dignity of this House, I think we need to put some things into correct perspective. I think it is important that you order hon. Mwenje to bring a list of people whom he believes have not been paid. I have stated here that everybody who was working for the Kenya Airport Authority has been paid.

**Mr. N. Nyagah:** When this Question about the payment of employees was brought here a few weeks ago, the Minister told us that 232 people have not been paid their money despite the fact that there was no Board approval to get rid of them.

**Mr. Sunkuli:** I did not get the question. Could hon. Nyagah kindly repeat his question?

**Mr. N. Nyagah:** Despite the fact that there was no Board approval to get rid of these employees, is the Assistant Minister aware that the Minister of State, Office of the President, a few weeks ago, claimed that out of 728 people who have been sent on compulsory leave, 238 have not been paid?

**Mr. Sunkuli:** Mr. Deputy Speaker, Sir, the Minister of State, Office of the President, consequently issued instructions that all the officers be paid.

#### COMPLETION OF IJARA DAM PROJECT

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

(a) Is the Minister aware that the construction of the dam to supply water to Ijara Trading Centre in Ijara Sub-District has stalled?

(b) How much money was earmarked for the construction of this dam and how much has been utilised so far?

(c) Since the residents of this centre are relying on the untreated water, which has resulted in the increases of bilharzia cases, what urgent measures is the Minister taking to complete this dam and rehabilitate the other small sources of water in Ijara Sub-District?

**The Assistant Minister for Water Resources (Mr. Chanzu):** Mr. Deputy Speaker, I beg to reply.

(a) I am aware that construction of the dam to supply water to Ijara Trading Centre and Ijara Sub-District

has not resumed since it was stopped due to flooding by the *El Nino* induced rains of October, 1997.

(b) Kshs8.8 million was earmarked for the construction of the dam and a total of Kshs4 million has been utilised so far.

(c) It is not possible to complete the 13 per cent of the remaining work on the dam at the moment because it is full of water. However, my Ministry has made plans to rehabilitate ten pans in the Sub-District under the *El Nino* Emergency Project. The Sub-District is also expected to benefit from 14 shallow wells which will be equipped with hand pumps.

**Mr. Haji:** Mr. Deputy Speaker, Sir, would the Assistant Minister agree with me if I say that this project stalled even before the onset of the *El Nino* rains? Secondly, over Kshs10 million was given for this project and we are being told that only Kshs4 million was utilised. What happened to the remaining Kshs6 million?

**Mr. Chanzu:** Mr. Deputy Speaker, Sir, I am aware that even before the *El Nino* rains, there was a problem with the project when the Ministry was handling it directly. But there after, a contractor was engaged and that is the stage when it was caught up in the *El Nino* rains. The balance of the money has been affected by austerity measures which the Government has put in place. There are supposed to be budgetary cuts in order to resuscitate the economy.

**Mr. Shaaban:** Mr. Deputy Speaker, Sir, is the Assistant Minister aware that according to a hydro-geological survey carried out in Ijara Sub-District from the colonial times upto date, the data shows that no water is available in Ijara Sub-District? Is he, therefore, not misleading this House that 14 shallow wells will be constructed in this area when the Minister for Water Resources knows that there is no ground water which is available in Ijara Sub-District? Where is he going to get that water from?

**Mr. Chanzu:** Mr. Deputy Speaker, Sir, the Ministry will carry out more investigations to see the best way this issue will be handled.

**Mr. Shabaan:** On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister in his reply, has told us that already, 14 shallow wells have been earmarked for construction in the sub-district. Where will this money which has already been earmarked go to? This is because no water is readily available and they have already been established by the Ministry.

**Mr. Deputy Speaker:** Order! You are asking another question. Proceed, hon. Haji!

**Mr. Haji:** Mr. Deputy Speaker, Sir, would the Assistant Minister assure us that he will come back to the House to clarify the position of the shallow wells which are practically impossible?

**Mr. Deputy Speaker:** Ask one question at a time. Hon. Chanzu, will you assure the House that after the investigations, you will come and confirm or deny that allegation?

**Mr. Chanzu:** Mr. Deputy Speaker, Sir, I would like to assure the House that on the aspect of the shallow wells, we will come back and clarify that matter.

#### DISAPPEARANCE OF RUIRU MUNICIPAL COUNCIL FUNDS

**Mr. Ndicho:** Mr. Deputy Speaker, Sir, I beg to ask the Minister for Local Authorities the following Question by Private Notice:-

(a) Is the Minister aware that Kshs5 million that was banked at the Ruiru KCB Branch by Ruiru Municipal Council in the service charge account has gone missing?

(b) Is he further aware that last month, Kshs3 million belonging to the same council was withdrawn to purchase private land at Ruiru?

(c) If the answers to "a" and "b" above are in the affirmative, what steps will the Minister take to recover the money and have the culprits punished?

**Mr. Gatabaki:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for hon. Ndicho, known very well to be a Member of the Social Democratic Party to ask Questions from the side of the Government which we want to remove because it has failed to govern this country?

**Mr. Deputy Speaker:** Order! Order! Our Standing Orders only specify who should sit on the Front Benches on either side of the Chair. But out of practice and custom, those who oppose sits to the left and those who support or propose, sit to the right. So, hon. Ndicho has acted out of character, but we will allow him since we know he will waste time walking across. So, answer the Question hon. Sasura.

**The Assistant Minister for Local Authorities (Mr. Sasura):** Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am not aware. However, if there is any such allegation, the necessary investigations will be instituted by the Ministry.

(b) I am aware that the Council has approved withdrawal of Kshs3 million being ten per cent initial payment for eight acres of land within the Municipality, which has been offered to the Council by the KPCU at a cost of Kshs30 million.

(c) I cannot take any measures since the Council has not acted contrary to the regulations. However, as I have stated herein above, if there is any alleged misappropriation, the necessary action will be instituted.

**Mr. Ndicho:** Mr. Deputy Speaker, Ruiru Municipal Council is about to spend Kshs30 million. My question is: Has the Minister for Local Authorities approved that expenditure?

**Mr. Sasura:** Mr. Deputy Speaker, Sir, the withdrawal of the Kshs3 million was approved by the Full Council Meeting, which adopted a Town Planning Works and Housing Committee meeting that met on 23rd of October, 1998. However, answering hon. Ndicho's question, the Minister for Local Authorities has to approve any expenditure pertaining to service charge. This is not service charge.

**Mr. Ndicho:** Mr. Deputy Speaker, Sir, that is a very misleading answer. That the Minister is only allowed to approve service charge money. In fact, service charge money has been abolished. Is the Assistant Minister telling us that from now henceforth, the Minister for Local Authorities will not be approving any expenditures? It is wrong because this money has been spent without even the Ministry's knowledge. So, I am asking the Assistant Minister whether he is aware that even the Minister himself is not aware of this expenditure, which is Kshs30 million. If the Council spends this kind of money, it will collapse.

**Mr. Sasura:** Mr. Deputy Speaker, Sir, it is not true that the Minister is not aware. The Minutes of the Full Council Meeting must be submitted to the Minister. However, it is very difficult to say that the Kshs3 million was misappropriated because this is a decision taken by councillors of the area the hon. Member represents. This is a decision wholly taken in a Full Council Meeting.

**Mr. Gatabaki:** Mr. Deputy Speaker, Sir, is the Assistant Minister aware that this kind of reckless expenditure of the cess and service charge money started in all localities in Central Province, when Mr. S.K. Macharia took councillors to State House? This is being done with the knowledge of His Excellency the President.

**Mr. Sasura:** Mr. Deputy Speaker, Sir, would you advise me to answer that question?

**Mr. Deputy Speaker:** It is not relevant to the Question.

**Mr. Ndicho:** Mr. Deputy Speaker, Sir, the Assistant Minister is talking of Kshs3 million, and I am talking of Kshs30 million. The Council is spending Kshs30 million to buy land from a Ruiru politician called Waira Kamau. They have already paid Kshs3 million as ten per cent. The whole saga is that the Ministry, including the Assistant Minister, is not aware of this expenditure. My question is: Can the Ministry cancel this deal because it is supposed to enrich the Town Clerk, the Mayor and a few councillors? Ruiru Municipal Council is a brand new council and if it spends Kshs30 million which it does not have at the moment, it will collapse. So, can the Assistant Minister cancel that deal now?

**Mr. Sasura:** Mr. Deputy Speaker, Sir, it is very unfair on the part of the hon. Member to say that this is just to enrich a few individuals, including the Town Clerk. It is the policy of the Ministry to avoid any matter which is trivial to be brought into this House. It is common knowledge in the Ministry that the hon. Member has a personal difference with the Clerk, and we are not ready to address personal differences here.

**Mr. Deputy Speaker:** Order, hon. Sasura! Just answer the question and forget about the rumour mongering.

**Mr. Sasura:** Mr. Deputy Speaker, Sir, while I am not acting on rumour mongering, we are not considering to cancel what the hon. Member is requesting. It is difficult for us to cancel the deal because this is something which has been taken by the Full Council Meeting.

**Mr. Ndicho:** On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister has said that I am bringing a trivial matter here. Can he withdraw that because no hon. Member brings trivial matters in the House?

**Mr. Deputy Speaker:** Order! I did not hear what the Assistant Minister said. I would like the Assistant Minister to repeat what he said. What did you say in respect of hon. Ndicho?

**Mr. Sasura:** Mr. Deputy Speaker, Sir, what I said is that the Ministry is very much aware of the differences that exist between the hon. Member and the chief officers of the Council. I said that we are not depending on rumours. That is what I said against the hon. Member.

**Mr. Deputy Speaker:** We will look at what the HANSARD has recorded and we will refer to the matter tomorrow.

## MINISTERIAL STATEMENT

### CLASH BETWEEN SPLA FACTIONS IN NAIROBI

**The Minister of State, Office of the President** (Maj. (Rtd) Madoka): Mr. Deputy Speaker, Sir, I wish to make a Ministerial Statement on an incident which occurred at the residence of Col. John Garang, SPLA Leader in Nairobi. The facts of this incidence are as follows:

*(Prolonged applause as hon. Ntimama enters the Chamber)*

**Mr. Deputy Speaker:** Order! You must all lie down like envelopes!

*(Applause)*

**The Minister of State, Office of the President** (Maj. (Rtd) Madoka): Mr. Deputy Speaker, Sir, on 16th November, 1998 at about 3.00 a.m. a group of 11 Sudanese men loyal to Maj. Gen. Dr. Kerubino of Sudanese Peoples Liberation Movement (SPLM), a refugee residing in Kenya attacked the residence of the Col. John Garang in Nairobi along the Kabasaran Avenue. The men guarding Col. Garang's residence overpowered the attackers and repulsed them. One of the attackers by the name of James Dalibai was arrested, beaten by Garang's men and died on his way to Kenyatta National Hospital. His body was taken to the City Mortuary. The rest of the attackers escaped. Police from Muthangari Police Station were informed, rushed to the scene and commenced investigations immediately on the incident. As a result of the incident, two supporters of Maj. Gen. Kerubino and four of Col. Garang were arrested and are assisting the police with investigations in this matter.

Prior to this incident, Mr. Deputy Speaker, Sir, police had gone to the residence of Maj. Gen. Kerubino on the night of 10th November, 1998 at Mountain View Estate in Nairobi following some information that he was hiding some arms and some communication equipment whose communication range was capable of reaching very distant countries. No firearms were recovered, but a trans-receiver with its parts was found and held by police for further investigations.

Following that, on 14th November, 1998 acting on further information, police stopped and detained the following Sudanese at Jomo Kenyatta International Airport terminal while preparing to leave for Sudan. They were Maj. Gen. Kerubino, Dr. Among(?) Wantok(?), Raja Abdalla of SPLA, Mr. Joseph Nduku who had gone to see them off. The three had chartered a small plane to take them to Lokichogio. They were escorted to Muthangari Police Station to assist police in the investigations, but they were later released. However, Maj. Gen. Kerubino took refuge at the Zambian Embassy suspecting his rival, Col. Garang, to have been behind the arrest. However, he later left the embassy to his residence.

It has been indicated that in 1997, Maj. Gen. Kerubino Bol who was one of the founder members of the SPLA, defected to the Government side and he was fighting the SPLM. His movement was known as SPLA Brigade Group. He later re-defected to the SPLM and brought with him his group also known as Southern Sudan Release and Rehabilitation Commission.

Mr. Deputy Speaker, Sir, there have been allegations in the Press that the SPLA factions have brought in firearms into the country, some of which were said to have been used during the fighting at Col. Garang's residence.

I would like to assure the House that no firearms were used and no SPLA faction has been allowed to bring into this country any firearm. Moreover, the Government is investigating the allegations that some of the supporters of the SPLA factional leaders could be in possession of illegal firearms. Those found to have contravened the law will be dealt with in accordance with our laws.

I would also like to inform this august House that Kenya is the chairman of the IGAD sub-committee on the conflict in southern Sudan. In this regard, Kenya is required from time to time to consult the warring parties concerned as part of the shuttle diplomacy agreed in the negotiations. As the SPLA cannot guarantee the security of negotiations in the area they control, Kenya can only exercise this mandate by making it possible for them to be here for the consultation.

**Mrs. Mugo:** Mr. Deputy Speaker, Sir, I appreciate the Ministerial Statement given by the Minister. I also appreciate the role the Kenyan people have played in helping our neighbours, especially the refugees when there is a conflict in their country. Indeed, that has been done very well. But first and foremost, the interest and security of Kenyans must be taken into consideration when we play host to our neighbours. The Ministerial Statement given does show clearly that fighting took place here in Nairobi. But when the Minister denies that there were no guns brought into Kenya, that cannot be true, unless the Kenyan security forces or Kenyan Government supplied the arms to the refugees who have sought asylum in this country. We should be clear on

that.

Mr. Deputy Speaker, Sir, I would like to say that the security of Kenyans has been compromised. We know there are very many guns in this country brought in by the so-called refugees. And if those refugees can even fight on the Kenyan soil, it shows that either the Government is not in full control of the security of this country or the Government has compromised our security. I would like to reiterate here that the Government has a responsibility to guarantee security to its citizens. Just recently hon. Members were denied guns for their own security. Are we more of a security risk than those foreigners who come here looking for asylum and they are allowed to use guns? Just yesterday, hon. Nyanja was harassed by Kenyan security forces when they were looking for guns in his house.

**Hon. Members:** Shame!

**Mrs. Mugo:** Are those guns more dangerous to Kenyans than those guns used by Garang and company? I think the Government should come out clean and stop protecting some people. We do not want to give asylum to people who cannot follow our laws here. I am not quite satisfied with this Ministerial Statement - I do not know whether other hon. Members are. Our security is compromised and Kenyans are being killed every day by trigger-happy gangsters.

**Mr. Kajwang:** Mr. Deputy Speaker, Sir, the Minister said that they are investigating whether there are any illegal guns brought by those foreigners and yet he says that there was a gun fight involving two factions and one person died while being taken to hospital. So, what are they investigating when it is clear there was a fight with guns, which were either given by the Government - he should tell us - or were imported illegally? Is it not true that the Government is supporting Garang against his enemies?

**The Minister of State, Office of the President (Maj.(Rtd) Madoka):** Mr. Deputy Speaker, Sir, I want to clear one thing. My statement was very clear: No arms were used in the incident which took place outside Garang's house. Neither was there any fighting at the police station.

**Hon. Members:** What killed Dalibai? Was he killed by a stone?

#### POINT OF ORDER

##### MINISTERIAL STATEMENT SOUGHT: SECURITY IN MARAGWA CONSTITUENCY

**Mr. Kamande:** Mr. Deputy Speaker, Sir, I stand here to seek a Ministerial Statement concerning security in Maragwa Constituency. For the last two years, Maragwa constituents have been quite insecure. On 26th August, 1998, I was one of the victims of this insecurity in Maragwa. The people of Maragwa demand that the Minister concerned should issue a Ministerial statement to show how many cases of this insecurity have been reported to the police, or how many people have been killed in the course of these attacks and how many have been injured. We also would like to know the number of arrests and convicts in each location of the Constituency.

**Mr. Deputy Speaker:** Mr. Minister, would you like to respond on that one now or you want to do it later?

**The Minister of State, Office of the President (Maj.(Rtd) Madoka):** Mr. Deputy Speaker, Sir, I will make that Ministerial statement later. But I have yet another Ministerial statement to make.

**Mr. Deputy Speaker:** You will make that one later.

**Prof. Anyang'-Nyong'o:** Mr. Deputy Speaker, Sir, over the last two weeks we have asked for Ministerial Statements on the Nyayo Bus Service (NBS) and the National Bank of Kenya (NBK). The Government side said it will issue these Ministerial Statements and they have not yet been issued. Could the Government side tell us when it will issue Ministerial Statements on the NBS saga and the NBK?

**The Minister of State, Office of the President (Mr. Ndambuki):** Mr. Deputy Speaker, Sir, on the issue of the NBS, in fact, the hon. Member has just given me the information I had requested and I will make a Ministerial Statement on Tuesday next week.

#### MINISTERIAL STATEMENT

##### BREWING AND DRINKING OF KARUBU

**The Minister of State, Office of the President (Maj. Madoka):** Mr. Deputy Speaker, Sir, I wish to make a Ministerial Statement on the brewing and drinking of a local brew called *Karubu*, which was requested for by



hon. Munyao. The Government views the brewing and drinking of local brews with a lot of concern. Drinking of illicit brews retards development by weakening the people. In view of this, therefore, the Government is determined to eliminate not just *Karubu*, but all types of illicit brews. Since the beginning of this year a total of 2,107 of traditional liquor cases were detected in Central Province and taken to court. North Eastern Province had a total of 2,067 cases, while Rift Valley Province had a total of 1,747 cases. Fines ranging from Kshs500 to Kshs1,000 were imposed, and in default two or three months of extra mural penal employment was imposed. In addition to these arrests, the Provincial Administration continuously educates wananchi through public *barazas* on the dangers of indulging in drinking illicit brews.

The rate at which all types of illicit brews, namely *chang'aa*, *busaa*, *karubu et cetera*, is being drunk by our people is very alarming. This was especially so towards the end of 1997 and in the course of this year. This has been particularly occasioned by the constitutional and administrative reforms our country has undergone in the run up to the last general election. Hon. Members are aware that Section 30 of the Traditional Liquor Act was amended by deleting "administrative officers" and leaving the police as the only persons who may enter and search premises. Furthermore, such police officers should at all times have a search warrant. During the Inter-Party Parliamentary Group (IPPG) consultative meetings and subsequent amendments to the Chief's Authority Act, wananchi were made to understand that chiefs had been stripped off all their powers. As a result, any effort by a chief or an administrative officer to arrest those drinking local brews has been resisted. In some cases District Officers (DOs) have been served with court injunctions restraining them from entering private premises, which are suspected to be dens for illicit brews.

This has greatly hampered efforts to stamp out or eradicate drinking of illicit brews. Resulting from the above circumstances plus deliberate statements from hon. Members of Parliament (MPs) to the effect that wananchi are free to drink traditional liquor, any effort to stamp out the practice has been paralysed. It may be recalled that only recently when this House passed a Motion which legalised the tapping and drinking of palm wine (*mmazi*). It is also on record that some hon. Members have occasionally raised questions on the gazetting and licensing of Traditional Liquor Board. These actions have clearly sent out messages to wananchi that there is nothing bad in drinking illicit brews.

I wish to reiterate that the reach Government is committed to stamping out illicit brews from our society. To enable us this objective, however, we require the cooperation of leaders and wananchi in general. Therefore, I take this opportunity to implore upon hon. Members to refrain from issuing statements which might be misinterpreted by wananchi. The Government, on its part, will spare no effort in educating wananchi on the dangers of consuming illicit brews and bringing to book those who are found doing so contrary to the laws of this country.

**Mr. Munyasia:** On a point of order, Mr. Deputy Speaker, Sir. Could the Minister distinguish between local, traditional and illicit brews? He is using them interchangeably as if they mean one and the same thing. *Busaa* is not an illicit drink, but it is a traditional drink that we all have. We also have palm wine, which is found at the Coast. It is *chang'aa* that is an illicit brew. So, could he make that distinction? He should not criminalise the usual brew that people drink at home.

**Mr. Wamae:** Mr. Deputy Speaker, Sir, we would also like the Minister to clarify--- When we raised these issues in this House and passed a Motion to bar taking of illicit drinks, most of them, like *sorghum sake*, were banned. But there is one illicit drink which has come back to the market from Naivasha Town. This drink is called *medusa*. This brew is as bad as *sorghum sake*. Why is it being allowed to be distributed in Central Province and other places? What is the Attorney-General doing if there is a court order? He should be there to defend us and wananchi.

**Mr. Deputy Speaker:** Mr. Minister, would you like to respond to the issues raised by the hon. Members? Hon. Sunkuli, do you want to respond?

**The Assistant Minister Office of the President** (Mr. Sunkuli): No, Mr. Deputy Speaker, Sir.

## BILL

### *Second Reading*

#### THE CONSTITUTION OF KENYA REVIEW COMMISSION (AMENDMENT) BILL

*(The Attorney-General on 19.11.98)*

*(Resumption of debate interrupted on 24.11.98)*

**Mr. Deputy Speaker:** Hon. Kituyi was on the Floor. Is he not in the House so that he can continue? Hon. Sunkuli!

**The Assistant Minister, Office of the President** (Mr. Sunkuli): Thank you, Mr. Deputy Speaker, Sir. Today, this House is debating a Bill which has been as a result of a lot of negotiations and consultations by persons from different sectors of this country. I would like to take this opportunity to pay tribute to the members of the Drafting Committee, which I belonged to, and which drafted this Bill the way it is now. I would like to say that the proposals which were made at the Bomas of Kenya and the Safari Park are the ones which eventually resulted in this amendment Bill. Because I took part in the Drafting Committee, which was mandated at the Safari Park meeting to draft the Bill, I do not intend to dwell at length on this particular Bill. But I would like to point out the salient issues as I saw them.

Mr. Deputy Speaker, Sir, I would like to begin by paying tribute to, especially, those who spent a lot of hours deliberating on the issues contained in it. I would like to recognise the role played by the Chairman of the Drafting Committee, Rt. Rev. Philip Sulumeti. I would also like to recognise the conciliatory methods used by my friend from the opposite side, hon. Anyona, to ensure that those who were negotiating did not find themselves far apart. Notwithstanding the very trying moments that we had at the Safari Park, I still do not wish to leave unrecognised the efforts of my learned friend, hon. Karua. In spite of sometimes being too harsh, I think she is one of those Kenyans whom I would say are really interested to see Kenya move towards the right direction.

The Drafting Committee did its part and handed this document to those who attended the Safari Park meeting. As a result of that, today Kenyans have generally agreed that this is the way forward. The Bill is just an illustration of a means to a certain end. At the end, a Commission will be set up to go round the country and gather the views of Kenyans, which will form the basis of governing Kenya in the next century and beyond.

It is very important that various groups who have been mandated to nominate Commissioners should take the fact that Kenyans of really high integrity should become Commissioners so that they can produce a Constitution of the future and not just a document that is going again to require other amendments. The Bill before us today faces a situation where civic education becomes the first thing before even anything else happens. We all take cognisance of the fact that not everybody in this country knows how the Constitution looks like now. The Constitution as it is now must be put before Kenyans in a language they understand. I want to add that civic education should not just be put as a duty to facilitate the Commission. In fact, the Commission should be commanded by this Act to actually carry out civic education not just to facilitate it so that we can ensure that civic education goes to every part of this country. It is very important that the Commission does utilise the district forum that this Bill creates in order to ensure that everybody in this country receives civic education. I am aware that a number of donors are putting funds together and giving them to some NGOs in order to carry out civic education.

For once in this conciliatory state of the present day Kenya it is important that the NGOs do not carry civic education on the Constitution the way they did civic education on electioneering. It is important that they distinguish between civic education and advocates so that people do not travel from, say, the Coast to go to Western Province to preach Majimbo or the other people to go and preach against majimbo. Let us stick to civic education alone so that each and every Kenyan must become educated about the Constitution as it is now.

This Bill proposes the functions of the Commission under Section 5. Without prejudice to paragraph one, the Commission will examine and make recommendations on the Judiciary generally and in particular on the establishment of jurisdiction, of course, aiming at taking measures necessary to ensure there is competence, accountability, efficiency, discipline and independence of the Judiciary. When this Commission comes into force it is important that it considers all aspects related to the Judiciary. I know that many people accuse the Judiciary in Kenya of being subject to the whims of the Executive. Having been a member of the Judiciary in Kenya, I beg to differ. The Judiciary in Kenya is subject to its own whims. The weaknesses in the Judiciary in Kenya are weaknesses which the Constitution must address because there are certain elements within the Judiciary that do not enable it to operate fairly. I think the word to underline here is "fairness".

When it comes into being, I would expect that the new Constitution should take into account the feelings of all Kenyans, especially the feeling that justice must not be far away from the people. It should be mandatory in fact, in considering the jurisdictions of every magistrate within a district so that people can easily reach a magistrate. There are many districts that do not have magistrates. I think that the Constitution must guarantee to the people that they will receive justice very close to them. If there is no magistrate near you it means that you will resort to other unlawful means of settling disputes. I think that this present Constitution should look into that particular fact. Under the same Section one of the roles of the Commission is to examine and review the place of the local authorities in the Constitutional organisation of the Republic of Kenya and the degree of the development

of power to local authorities. I personally believe that the future of this country is in the local Government. I think that the Commission which will be set up will take this particular thing into account so that we all sit down and start looking at the ways through which the local Government will operate in future so that it operates as a Government not just as an organ.

If we want to give autonomy to the people, then we must give autonomy to the local governments so that they shall not become subject to the whims of a Minister or the Central Government. This becomes very important because those of us who came to politics recently have seen the way successive Minister utilise power over the local authorities. It is very crucial that this be de-linked and that the new Constitution does in fact, take into account the fact that the local governments should be a local Government indeed. The other function that has been given to the Commission that I wish to comment on is to examine and review the place of property and land rights including private, Government and trust land and in the constitutional framework and the law of Kenya and recommend improvements that will secure the fullest usage of land and other property rights. Those of us who come from areas where land which is basically unadjudicated take this particular role of the Commission to be set up as most paramount because the way in which the present land law operates is so chaotic.

We wish that the new Constitution does address the issue of land because the issue of land is the root of many of the ills that we have today in Kenya including tribal clashes. If the present Constitution was not silent about this issue, we would not have been having this kind of chaotic situation. We must be able to say from hence to who the trust land belongs to. In particular, we want the future Constitution to secure land in areas like Maasai Mara so that land becomes constitutionally defined as belonging to the people so that it cannot be disposed of or tampered with. Right now Masai Mara is open land that can be described as trust land or whatever you want to describe it as, but does not have a definite regime of law that is governing it. It is important that Maasai Mara and other areas like Naiminengiyo Forest should be secured in the Constitution so that personalities should not consider themselves capable of tampering with the ownership or the use of those particular pieces of land. We hope that the new Constitution will address itself to this issue.

Going back to the first aspect of this Bill under Section 5(2A)(b), to review the Constitution in order to ensure that we have a free and democratic system of Government that enshrines good governance, constitutionalism, the rule of law, human rights and gender equity, the Kenya we are talking of today is a Kenya that is certainly in terms of governance is quite improved. We are now a multi-party country and we want to ensure that multi-partyism is protected because it provides an avenue for the alternative view. This topic of good governance has become a topic. I keep hearing people discussing certain things. I am wondering whether I am waking up from sleep or if I am actually deep in a reverie. One wonders when one talks about the future of this country. I think those people who have the habit of looking backwards must not also suffer from failing memory.

Mr. Deputy Speaker, Sir, we have today people discussing dictatorship in this country. I am tempted to laugh, but it is a serious matter. I am not a protestant, but I know that the day protestants get saved they tell you, "we are today saved"; that they have now forgotten everything they used to do.

I have said in the past that the reason why I do not support the Opposition mainly, is because those of them who talk about grabbing actually grab. I have said that before that those people today who are talking of good governance have done nothing in the past as a show of their good governance. Even some of our colleagues--

**Prof. Anyang'-Nyong'o:** On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Assistant Minister in order to cast aspersions that hon. Members of this House who have talked about good governance, including myself, as having grabbed? Can he tell me what I have grabbed in the Republic of Kenya?

**The Assistant Minister, office of the President** (Mr. Sunkuli): Prof. Anyang'-Nyong'o has grabbed nothing!

*(Applause)*

**Mr. Mwhia:** On a point of order, Mr. Deputy Speaker, Sir. Hon. Anyang'-Nyong'o has been exonerated. Can the Assistant Minister exonerate all Members of this side, including me and all Members because we have not grabbed any property in this country? Secondly, is he in order to state that if one repents and gets saved in Christ, one must remain in the darkness, like the Assistant Minister has said?

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

**Mr. Mwhia:** Mr. Deputy Speaker, Sir, is he in order to only exonerate Prof. Anyang'-Nyong'o, when he knows that hon. Mwhia has never grabbed an inch of this country and many of these Members, including some Back Benchers in the KANU side?

**The Assistant Minister, Office of the President** (Mr. Sunkuli): Mr. Deputy Speaker, Sir, if the hon. Member can accept, I can give a general absolution to the Members, but I am actually describing a certain pertinent situation where some people are talking as though "holier than thou--"

**Dr. Ochuodho:** On a point of order, Mr. Deputy Speaker, Sir. The hon. Assistant Minister has made a very serious allegation. If we have some "sacred cows" on this side, we would want to know. He either enumerates one by one clearing people or he pinpoints those who he is referring to?

**Mr. Deputy Speaker:** Order! Order, the Assistant Minister is also entitled to his opinion. You may disagree with him, but as I said, it is only the guilty who are afraid!

**The Assistant Minister, Office of the President** (Mr. Sunkuli): Mr. Deputy Speaker, Sir, I was expecting hon. Ochuodho, being one of the younger Members of Parliament, to know that I am not talking about him.

I know that if there was a time that people were represented, it was the time when we were developing something called "tribal spokesmen". When people wanted to be in charge of the tribes and then muzzle everybody who was there elected. If we are saying 50 Members of Parliament from Luo land, for instance, who has the right to speak for all of us yet we were elected each one of us on his ticket?

**Mr. Kajwang':** On a point of order. Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to bring "Masaai wars" into this House?

*(Laughter)*

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

**The Assistant Minister, Office of the President** (Mr. Sunkuli): Mr. Deputy Speaker, Sir, those of us who belong to the younger generation look at these things with a lot of shock because we believe that Kenya is improving. We had IPPG which brought certain changes to this country. IPPC of late, that has also brought in a lot of changes.

We are now debating about a better Constitution that will ensure that we concentrate on nation building and not the building of a state. It becomes, therefore, pertinent that we all discuss about the Kenya we want in this particular Constitution. We must say that what we actually want is good governance and nothing else.

It is, therefore, important that this new Constitution, does delineate exactly what the powers of each of the offices of state are so that we can point out and say that "where we have failed to perform is here".

I know of some people today who are criticising the Government and they have not been known to - whether they are managing directors or whatever - perform at all. Some people have been bosses of certain places and they have nothing to tell about how they were running institutions.

Mr. Deputy Speaker, Sir, it is, therefore, important that we all focus on this new Constitution and forget about other matters that would look like hindrances. We want to secure the rights of our people to the next century. We want a Constitution that will show us where we are going and not where we are coming from. Because sometimes there are some people in this country who are just young enough to say "this is where we are coming from".

The future is more important to us than the past. I think sometimes we can concentrate about the past so much that we forget about the future. What is the use of telling people that "let us preserve this and that" and not tell them where they are supposed to go? The Constitution of the future must not concentrate on history, but it must concentrate on the future.

Mr. Deputy Speaker, Sir, we come from a very cultural community and we want to transform this culture into an asset not a liability. We want it to be known that because the present Bill gives the information, the authority to look into the culture, let us make sure that the Constitution of the future will "look at culture as an asset" and "not as a liability". Many people would like to build an aura around their community saying that, "we are this and that" and that keeps the community where it used to be when certain individuals are going ahead.

I think the Constitution must be de-linked from certain individuals so that society can operate quite freely. I say this because when we were debating about the Constitution, I remember that this particular aspect of culture was one of the most controversial aspects of all. Many people did not want it to be included, but it is so important it remained in the Constitution.

Mr. Deputy Speaker, Sir, in conclusion, I would also want to urge my colleagues that if there are any minor changes to be made, let it be recognised that this Constitution has been a compromise of many stakeholders of this country. Other people began as the activists towards Constitutional change and later on, we all came to the negotiating table.

It has been a very rare show indeed in this country, that the Opposition, the Government and other people

outside this House met together to formulate this Bill. It is, therefore, important that even the Constitution itself, when it comes eventually to this House, does not divide Kenyans, but rather unite them.

Then, Kenyans should be allowed to ventilate whatever their views are. Let all those who believe that Kenya should be a federal country be allowed to air their views as to why they want Kenya to be a federal state.

Mr. Deputy Speaker, Sir, those who believe that the Government of Kenya should be governed by a federal government or that we should continue with the present central government should be able to articulate their views. But let us not have intimidation. Let us have the freedom to believe in a federal Kenya or a unitary Kenya. Let us believe in Kenya because the future of each of our children is in Kenya. I emphasize the future. I want to urge every politician who does not consider himself to have been out of fashion to consider a Constitution that is going to better this nation. I want to say once again that, I wish to pay special tribute to those who contributed to the formulation of this Bill. I wish to recognise the special effort made by His Excellency the President for coming before the Safari Park meeting and ensuring that we all found a middle way.

I just want to say that His Excellency the President has been one politician who has been able to update his thinking, at least, to be able to accommodate the thinking of the future. I want to urge those who are of the older generation to follow his example and update their thinking; not to run out of fashion too fast, or to subject themselves to lamentations but to participate in the building of a future Kenya.

Thank you, Mr. Deputy Speaker, Sir.

**Ms. Karua:** Thank you, Mr. Deputy Speaker, Sir. I rise in support of the Bill. I would like us to take note of the fact that; firstly, the Constitution of Kenya Review Commission (Amendment) Bill widens the mandate of the Commission which was not the case with the previous Bill. It also introduces greater participation by the people of Kenya in the Constitutional Review process. The three-tier structure ensures the participation of all Kenyans. The District Forum which will have elected representatives from all the locations takes the Constitutional Review process closer to the people, at the locational level, everybody will be able to get answers, ask questions about the Constitution and the District Forum, through the locational representation, will be able to mobilise all Kenyans to participate in the Constitution Review process.

Mr. Deputy Speaker, Sir, a look at this Bill clearly shows that the work of the District Forum is to facilitate civic education, mobilise the population before the Commission comes and, at a later stage, after the Commission makes its recommendations, to publicize the recommendations of the Commission, generate public debate to enable Kenyans to input before the National Consultative Forum makes final recommendations on the amendments to the Constitution.

*[Mr. Deputy Speaker left the Chair]*

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

Mr. Temporary Deputy Speaker, Sir, a lot of people have been wondering what will be the content of the civic education that the District Constitutional Forum will facilitate. The civic education envisaged in this Act is information to the population on the current power structure in our Constitution today and comparative power structures in constitutions in other democracies. It will be helpful to examine the power structures in the constitutions of our neighbours like Uganda and South Africa, who have both recently undergone a constitutional review process. We will consider the Constitution of Namibia and other African countries, and also examine the power structure of other democracies in the West; like Britain, upon which our democracy is modelled but which operates without a written constitution, and other models like the American model. It is then that our people can be able to meaningfully participate in the Constitutional review process.

There are people who harbour fears that civic education will mean campaign against one or another view. This is not the case. Civic education just means enhancing the awareness of the population and leaving them to make up their mind. I do not agree, with respect to my learned junior, hon. Sunkuli, who has just spoken that, during the run-up to last year's General Election, NGOs gave partisan civic education. What my colleague may be mistaken about is that, the civic education given before the elections talked of the qualities of a leader and enlightened the population on how to measure a good party and how to examine the principles which a party stands for. So, sometimes when vices are discouraged, if one is in a party that is prone to vice, then they may mistake that for a campaign against a particular political party. That is not to say that there could be one or two instances where bias civic education could be given. I do agree that during the Constitutional Review Process we should all ensure that the civic education carried out by both the Constitutional Review officers in the District Forums and by the NGOs and other interested parties should be non-partisan and neutral.

Mr. Temporary Deputy Speaker, Sir, for instance, let us consider the issue of the much talked about majimbo. What do the people of Kenya understand by majimbo? There are those who think that majimbo means people who are not indigenous to that area will be expelled and they will inherit their land free of charge. This is not the real meaning of majimbo. The federal system of government does not entail any loss of property by people living in any given area. It just means that certain areas or designated areas can govern their day-to-day affairs without reference to the Central Government. This is the kind of civic education that is envisaged so that people do not make choices without sufficient information. We want meaningful participation by the people of Kenya in the Constitutional Review Process and we want people to be able to make informed choices. It is true that the Constitutional Review Commission (Amendment) Bill does not provide for how the content of the civic education will be developed; but the law cannot provide for every situation. It is up to those who are interested; all the stakeholders to come together during this period while waiting for the Constitutional Review team to be assembled, to develop an acceptable content of what the civic education as envisaged should entail.

I am glad to say that I know several NGOs are already working on their drafts. Perhaps, the Attorney-General's office should also work on a draft and the Commissioners, when they are appointed, should sit together with other stakeholders and agree on a minimum content of what the civic education should be before the review process.

Mr. Temporary Deputy Speaker, Sir, this amendment Bill recognises the principle of affirmative action and guarantees participation by women right from the grassroots. One of the three elected representatives from the location who will become members of the District Constitutional Forum, will be a woman and, therefore, right from the grassroots, there will be one third content of the women. One of the two district co-ordinators shall be a woman, according to this Act. That is a positive step because it ensures, at least, some meaningful participation by over 50 per cent of the Kenyan population. We cannot purport to have an all inclusive review process if we marginalise more than 50 per cent of the population. Therefore, this Act ought to be supported as it recognizes all gender.

Mr. Temporary Deputy Speaker, Sir, certain contributors have raised doubt about the ability of the Kenya Women Political Caucus to co-ordinate the appointment of the five Commissioners allocated to women. It is to be recalled that when this process began, the voice of women was not heard. It is women themselves who lobbied to get space for themselves. Now that women have a voice and space, we see the emergence of self proclaimed advocates of women who are now telling us that the Kenya Women Political Caucus does not represent women. Where were they when women had no place in this process? We, as women, do not want divide and rule tactics which some of our male colleagues want to use. I must acknowledge that majority of our male colleagues have been very supportive to the women's participation in the process, but I am calling upon those who think they can use divide and rule tactics to stop us because it will not succeed. The Women Political Caucus is the largest umbrella organization that brings in all women organizations in this country. By all women's organizations, I mean that the caucus brings together such organizations as Maendeleo ya Wanawake, National Council of Women of Kenya, International Federation of Women Lawyers, the League of Kenya Women Voters, Muslim Sisters Network and many women in church organizations. I have named just a few of the organizations that comprise the Women Political Caucus.

Mr. Temporary Deputy Speaker, Sir, I would like to say that as to this date, being a member of the caucus, I can mention that the caucus has sent out letters to all women organizations and it is willing to receive applications from women organizations all over the country including those at the grassroots level, on suggestions on the manner in which the five women Commissioners should be appointed. No woman will be excluded from the process of nominating the five women. We are aware that it is going to take a lot of time and bargaining, it is going to be very strenuous, but the women are ready to undertake that task to ensure that the representation is broad based and is truly representative of Kenyan women. So, let those who are sceptical of the Women Political Caucus give us a chance to see what the women, left on their own can do, without having to be directed and divided by detractors.

Mr. Temporary Deputy Speaker, Sir, the Caucus is defined in Section 2 which is the definition section of this Act as follows:-

"The Kenya Women Political Caucus means the Kenya Women Political Caucus existing at the commencement of this Act, being a network of women's organizations, including, but not limited to those specified in part (c) of the First Schedule".

If you go to part (c) the women's organizations listed there are: Kenya Women Political Caucus, Maendeleo ya Wanawake, League of Kenya Women Voters, Collaborative Centre for Gender and Development, Kenya Widows and Orphans Association, Federation of Women Lawyers, Kenya Chapter, National Council of Women of Kenya and Muslim Consultative Council Sisters Network. But the Act is very clear that this definition is not exhaustive.

The caucus includes these organizations, but it is not limited to them. So, let no woman fear and let no person instil fear in women, that they are going to be left out. They will be included in the nomination of the five women Commissioners. We do expect that the political parties will give us at least two additional women. It would be a pleasant surprise if the political parties decided to give us one-third of their total number of 13, in which case, we will have an additional five women from the political parties. We are saying, it would be a good idea for the political parties to show that they are committed to the principle of affirmative action embraced in this Bill.

Mr. Temporary Deputy Speaker, Sir, this Bill also introduces the role of the media, mainly, the Government-owned electronic media, that is the Kenya Broadcasting Corporation television and radio. This Act mandates or makes it obligatory for the radio station of this Corporation to give one hour in the national service stations, that is, English and Kiswahili to the Constitution of Kenya Review Commission daily, and to also give a brief time on other vernacular services. This will ensure that Kenyans have a day to day account of where the constitutional review process has reached. It also ensures that the civic education we talked about earlier will be disseminated, not only by the people on the ground, but also through the media. Kenyans will be kept abreast of what is happening and also of the contributions of other Kenyans in all the parts of the country.

Mr. Temporary Deputy Speaker, Sir, the Bill also provides for documentation centres in all the districts. This will be provided by the county councils and the Kenya National Library Services throughout the country. This ensures that those who wish to know details about the review process through reading documents laid by the constitutional review team, will be able to access them through the documentation centres. This again enhances meaningful participation by Kenyans; participation from a point of information. That will ensure that the whole process is people driven.

Mr. Temporary Deputy Speaker, Sir, one of the hon. Members contributing, took issue with the fact that the Bill decrees that the Chairman or the Chairperson of the Commission should be a lawyer; a Judge or a practising lawyer who is qualified to be a Judge of the High Court. Unless we do not want to appreciate professionalism, I do not see why one should take issue with a lawyer chairing a constitutional review process. This is about laws, and the technical experts in review of laws are lawyers unless we want to say that we want the medical services headed by a lay person who is not a doctor or we want to see mechanics heading the teaching profession. If we are confused about the role of professionals, then I do not see why anyone would question the fact that the Bill has sense to provide that a lawyer who is a technical expert in this field, should actually, chair the Commission. It is not just a political exercise. We agreed that there needs to be input of other people, not necessarily lawyers. But finally, putting the document together, reducing it into a draft Bill and making the recommendations will need technical know-how which lawyers can provide. It is, therefore, befitting that the Commission be headed by a lawyer.

Mr. Temporary Deputy Speaker, Sir, I would also like to take issue with the creation of the new districts. It is an act of bad faith to have new districts created when we had provided that the composition of the National Consultative Forum will be made up of three representatives, each from the districts. This appears like an attempt to manipulate the process. I would, therefore, call upon the Government to desist from creating any new districts if they intend to create the public confidence in the manner they shall conduct the constitutional review process. We cannot go on without knowing how many districts we are talking about in the review process. We cannot go on without knowing how many districts will be created and with the feeling that at any one time, a district will be split even when the exercise itself is going on. We may end up having so many districts that it will be impossible to bring together the National Consultative Forum, because its representatives are going to increase by an uncertain number. I will once again repeat that to retain the good faith and confidence of Kenyans in the review process, the Government must desist from creating new districts and introducing confusion in the constitutional review process.

Mr. Temporary Deputy Speaker, Sir, I would like to finally point out, and I do hope that the Attorney-General is paying attention, that although the time frame is largely provided for in this Bill, there is a slight omission. There is no time frame provided for when the Commission will begin its work. The Commission has been given time to get ready, set up the secretariat and conduct civic education before the review exercise begins. These are issues that need to be taken care of at the committee stage and that is why I do hope that the responsible person who is the Attorney-General, is paying attention to that particular issue.

**Mrs. Seii:** He is not paying attention.

**Ms. Karua:** It is hoped that he is paying attention.

Mr. Temporary Deputy Speaker, Sir, with those few remarks, I beg to support and donate my remaining time to hon. Seii, with the permission of the Chair.

**The Temporary Deputy Speaker (Mr. Musila):** Order! Ms. Karua, you are out of order. Mr. Sambu?

**Mr. Sambu:** Bw. Naibu Spika wa Muda, ninashukuru kwa kunipa nafasi hii niseme machache kuhusu

Mswada huu, ambao umeletwa ili tuchunguze Katiba ya nchi hii; kisha baadaye, tufanye marekebisho yatakayofaa na ambayo yataleta Katiba ambayo itafaa nchi yetu kwa siku nyingi zijazo. Sio Katiba ya kufaa wachache, watu fulani, dini fulani, lakini watu wote wa Kenya.

Bw. Naibu Spika wa Muda, wakati watu wetu walipopigania Uhuru, walifanya hivyo ili tujitawale. Lakini sikitiko ni kwamba sasa hatujitawali; tunatawaliwa. Ndiiposa tunaimba: "Tawala Kenya tawala---"

*(Laughter)*

Tulipigania Uhuru tujitawale, si kutawaliwa. Katiba ilivyo sasa, ni Katiba ambayo hatuifahamu kama ni ya Kifalme, Kirais, Kijamhuri, Jamhuri ya Waziri Mkuu au Jamhuri ya Rais; haijulikani. Kwa hivyo, ninatumaini tutafanya juhudi ile Commission itakayotembea ikuchukua maoni ya wananchi itapewa fursa nzuri. Lakini, jambo muhimu kwanza ni kuelimisha wananchi, ili wafahamu Katiba ni nini. Miaka miwili au mwaka mmoja na nusu uliopita, station moja ya televisheni iliuliza watu mtaani Nairobi: "Je, Katiba ni nini?" Wengi hawakufahamu Katiba ni nini. Hata wengine walifikiria Katiba ni Matiba. Hatuwezi kuwalaumu. Hawajui Katiba au Matiba; hawafahamu. Tunatumaini Katiba hii itapitishwa hapa, kwa sababu tunajua marekebisho hayaruhusiwi hapa kwa sababu ni ya Katiba. Ikipitishwa, ni muhimu wananchi waelimishwe. Ninakumbuka, ingawa nilikuwa mtoto mdogo, mwaka 1961/62, Serikali ya Kikoloni ilifanya jambo la muhimu kuliko hata tunavyofanya. Kulipokuwa na mkutano wa kikatiba kule Lancaster House, kila wiki walikuwa wanatoa nakili. Ilikuwa kama gazeti; ninakumbuka ilikuwa ya rangi ya manjano. Tulikuwa tunapata kwa mashule, tukisoma vile kila chama, KANU au KADU inataka Katiba ya aina gani. Wakati huu, watu wetu hawajui Katiba ni nini. Jambo la kwanza ambalo ni lazima litimizwe ni Serikali itumie rasilmali yake, kama ni kutoka kwa Mkuu wa Sheria ama kwa Commission, watoe nakili ya Katiba ya sasa kwa lugha ya taifa. Na zitolewe nakili za kutosha zifike kila mahali, na ielezwe kinaganaga, kutoka sura ya kwanza mpaka sura ya mwisho ya Katiba ya sasa. Hii ni kwa sababu tutaeleza watu wabadilishe Katiba, ilhali hawaielewi ile Katiba iliyoko sasa inasema nini. Ninasema tunatawaliwa kwa sababu ile Katiba iliyoko sasa, mamlaka yote yamepewa afisi moja. Kutoka kuajiri kwa watu watakaotumikia Serikali, Mawaziri gani watateuliwa, hata Bunge yenyewe, hatuna mamlaka. Mamlaka yote yamekabidhiwa afisi ya Rais.

*(Applause)*

Ni Lazima tufunze watu wetu tusije tukafanya kosa kama lile tulifanya wakati Mhe. Saitoti alizunguka, akachukua maoni ya watu nchi nzima, lakini mwisho kilichotokea ni kutoa Section 2(a). Sasa, ilikuwa ni ya manufaa gani kutumia mali ya nchi kuzunguka na mwisho ni sehemu moja tu ndio kilichobadilishwa? Baadaye, ndugu zangu katika upande ule walianza kupiga mayowe waliposhindwa mwaka wa 1992. Hata mwaka 1997, walipiga mayowe. Tukitaka tusirudie mayowe, tutazame Katiba hii vizuri. Tufunze watu wetu sura kwa sura, kipengele kwa kipengele; yaani Paragragh hii inasema nini, maana yake ni nini. Watu hawafahamu. Watu wanafikiria ukishachagua Mhe. mbunge aende Bunge, mambo yote yametimika. La, sivyo. Mara ngapi hoja zimeletwa hapa na Wabunge, tunapitisha lakini hazitekelezwi. Kwa mfano, tunapitisha kwamba barabara fulani, kutoka nyando hadi kule, iwekwe lami. Ama barabara kutoka Eldoret mpaka Chepterwek kule kwa akina Sambu, itawekwa lami. Wapi? Mamlaka gani tunayo hapa? Ni ile afisi moja ndio itaamua tu! Siku moja, mkubwa akaja kwangu na akasema barabara itakayotengenezwa ni ile. Na hiyo si ile raia wanataka. Hii ni kwa sababu Bunge haina mamlaka. Watu wanatuchagua ndio; lakini, wanafanya kazi bure. Kwa hivyo, tuelimishe watu wetu kwa njia ya kuwatolea nakili za Katiba iliyoko.

Bw. Naibu Spika wa Muda, ni lazima tuwape watu sampuli za Katiba zingine. Tulipochukua ile ya 1963, tuliona kwamba Waziri Mkuu hafai, hana nguvu. Tilitaka kumuonyesha Muingereza kwamba sisi ndio wenyewe. Tukabadilisha ile Katiba na madaraka yote tukakabidhi ile afisi ya Rais. Lakini sasa ni lazima tutoe sampuli za Katiba na tuzitume kwa watu kule vijijini.

Bw. Naibu Spika wa Muda, Jamhuri na mamlaka ya Rais ni gani na gani? Sasa hatujui kama Serikali yetu hii ni kama ya Marekani, au Jamhuri ya Misri ama gani? Ni vizuri tufahamu. Mamlaka yote yanabandikwa pahali moja. Lazima tupatie wananchi sampuli za katiba; tuwapatie sampuli kama Serikali ya kifalme ya Swaziland kule Afrika ya Kusini ambayo ina Katiba nzuri. Tupewe nakili na tunakilishe, ili tuizambaze popwote nchini. Tukija Uingereza wanasema hawana Katiba iliyoandikwa, lakini inajulikana jinsi wanavyofanya kazi. Tuwape sampuli ya katiba ya Kiingereza. Na tukienda India, tuchukue sampuli ya katiba ya India na tuwaonyeshe watu wetu. Saa hii, watu hawajui kwamba Katiba ya kutawala inafanya nini. Hawafahamu. Kwa hivyo, tukiendelea kuwambia tuabadilishe katiba bila kuwapa sampuli za katiba zingine, tutapoteza wakati na mwisho tutakwenda kule na wale wachache ambao wamezoea kutugandamiza--- Kwa sababu tumezoea kugandamizwa; sio? Ikiwa kule katika eneo ya uwakilishi wako huwezi kunena kama mkubwa anakutembelea, utafunza watu



wako vipi? Hata hivyo, Tume ikienda kule, wale watakaonena na kuzungumza na kutoa mawazo yao ni wale ambao wanakanyaga laini sawasawa. Tayari tunaona hiyo itakuja tu. Kwanza, hata wale watakaoteuliwa kama wateji katika Tume ile watateuliwa vipi? Mambo ni yale yale tu. Watakwenda kusema huyu yuko hivi na yule yuko hivi.

Bw. Naibu Spika wa Muda, kwa hivyo, watu wetu wafunzwe kwa kupatiwa nakili ya Katiba ya sasa na kuwapatia sampuli za katiba. Hii ni kwa sababu mwisho tunataka Jamhuri ya Kenya ambayo itadumu kama nchi moja. Tunataka watu wajue jinsi pesa zao zinavyogawa na jinsi zinazotumiwa sasa, na kitu watakachotaka baadaye. Serikali za mitaa kwa saa hazina mamlaka. Yule mwenyekiti wa County Council ama meya wa manispaa akiketi pale kwenye kiti chake kubwa na mkufu wake ameweka shingoni; lakini utapata Mkuu wa Wilaya ameketi pale na macho ya simba, akingoja ateleze mara moja na anapiga simu moja na yule meya anaitwa huku Nairobi. Tunataka Serikali ya mitaa ipewe rusugu zake ama fedha zake, na fedha hizo zibaki pale na zitawaliwe pale.

Bw. Naibu Spika wa Muda, kwa sasa hata kununua dawa chache tu katika hospitali ya wilaya ya Kapsabet, ni mpaka ifike kwa Katibu wa Kudumu hapa Nairobi. Tunajitawala sasa lakini heri siku za kikoloni. Mkuu wa Wilaya wa sasa, na naomba radhi yako Bw. Naibu Spika wa Muda kwa sababu wewe ulikuwa mmoja wao, lakini mkuu wa Wilaya wa sasa pamoja na chifu wana mamlaka zaidi kuliko yule wa kikoloni. Nani asiyejua? Juzi, mimi nilitoka mkutano wa DDC na zingeweza kunena kwa sababu yule Mkuu wa Mkoa mkubwa yuko kwa kiti na mimi ndiye nilichaguliwa na watu 32,000 na Bw. Leting naye alichaguliwa na karibu watu 50,000. Bw. Choge na Bw. Kosgey walichaguliwa vile vile, lakini ni nani mkubwa katika mkoa? Anaitwa Mkuu wa Wilaya. Jina lenyewe linamtambulisha. Lazima tutoe mabaki ya ukoloni. Tuwape watu wetu Uhuru, ili wajitawale bali sio kutawalwa halafu tunaimba: "Tawala Kenya, Tawala Kenya". Lazima watu wajitawale na Bunge hili ndilo litafanya watu wajitawale. Hakuna Bunge lingine.

*(Applause)*

Bw. Naibu Spika wa Muda, kwa sasa kuna mikono mitatu ama sehemu tatu za Serikali. Napenda kuiita Executive Government Serikali tekelezi, kwa sababu mimi sio Mswahili na kwa hivyo, lugha ingine sanifu zaidi ya hiyo, siwezi kuongea. Nasema Serikali tekelezi, yaani Executive Government ambayo inatekeleza na sio mahakama wala Bunge. Katiba iliyo sasa, haitambui zile zingine mbili. Kwa kunena, inasema. Kwa maneno, inaandikwa pale lakini kwa kutekeleza na kutenda, Serikali tekelezi inafanya mambo yote. Mamlaka yote ni ya Serikali hii, na hata mahakama. Kama mahakama ni huru, mbona Jaji Mkuu asiwe ndiye anamilki kila kitu katika korti? Mbona Rais wa Jamhuri ndiye anayeteuwa Jaji Mkuu na majaji wengine wa mahakama? Tutasema je; eti tuko huru katika mahakama yetu?

Bw. Naibu Spika wa Muda, ni lazima tuwaelimishe watu wetu ili waelewe pahali tulipo sasa na pahali tunapoenda. Wajue kwamba ili nchi iendelee vizuri na amani idumu na uchumi wa watu wetu ustawi na pia watu wafurahie kuwa katika nchi huru, hizi sehemu tatu za Serikali ni lazima zitengwe na kila moja ipewe nguvu yake kamili. Lakini nguvu zote za mwisho zitatokana na Jumba hili ambalo liko na Wajumbe waliochaguliwa na watu. Hata wale wakuteuliwa, hatuoni maana yao baadaye. Mtu aliteuliwa kwa nini? Kama wewe ulitaka siasa wewe sio--- Pengine wale wasiojiweza ni bora basi. Lakini mtu mzima, unateuliwa kwa nini? Ukitaka siasa, basi kwenda uwanjani.

**Mrs. Sinyo:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Could the hon. Member be informed that, even in this House we have Nominated Members of Parliament who have been elected and by misleading the House that those who are disabled, which is a wrong term, are the ones who are not nominated? Could he withdraw that statement?

**Mr. Sambu:** Bw. Naibu Spika wa Muda, naomba radhi Mhe. yule ikiwa hatukuelewana. Lakini lengo langu halikuwa kuweka jambo lolote, kwa yoyote asiyejiweza. Nilivyoeleza ni hivi; yule anayejiweza kamili asiteuliwe. Sioni tofauti yangu na Mjumbe mpya, ambaye namkaribisha katika Jumba hili.

**The Assistant Minister for Education and Human Resource Development (Mr. Awori):** Jambo la nidhamu Bw. Naibu Spika wa Muda. Mhe. mwenzangu nafikiri Mbunge hakufahamu. Hakuna watu ambao hawajiwezi. Labda atumie neno, "mlemavu" lakini asiseme hawajiwezi. Yule Mhe. ambaye ameteuliwa hivi majuzi, alikuwa wakili shupafu na anajiweza. Kwa hivyo, tafadhali aondoe jambo lile, hajiwezi?

**Mr. Sambu:** Sawa, imetosh. Mimi nilisema---

**The Temporary Deputy Speaker (Mr. Musila):** Order, mhe. Sambu. Nafikiri umeelezwa vizuri kinaganaga na Mhe. Awori na pia Mhe. Sinyo alisema kwamba, neno "wasiojiweza" halifai. Kwa hivyo, uliondoe.

**Mr. Sambu:** Bw. Naibu Spika wa Muda, nilisema naliondoa na naomba radhi.

**The Temporary Deputy Speaker (Mr. Musila):** Basi, endelea.

**Mr. Sambu:** Bw. Naibu Spika wa Muda, lakini lengo langu---

**An hon. Member:** On a point of information, Mr. Temporary Deputy Speaker, Sir.

**Mr. Sambu:** Bw. Naibu Spika wa Muda, sipendelei kupewa jambo la habari, kwa sababu fikira zangu zitapotoshwa. Sitaki nielemishwe bali nimeelimishwa tayari katika hayo mambo ya habari.

Bw. Naibu Spika wa Muda, ninasema ya kwamba watu wote, haswa walemavu, wapewe nafasi ya kushiriki katika shughuli hii ya urekebishaji wa Katiba ya nchi hii. Inafaa wale watu ambao ni timamu wapigania viti vya kisiasa. Ijapokuwa Kifungu 2(a) kilitolewa katika Katiba ya nchi hii, mpaka sasa demokrasia halisi haijapatikana. Hata mamlaka ya Tume ya Uchaguzi Nchini si kamili. Kuna malalamiko mengi katika mahakama ya malalamishi ya uchaguzi dhidi ya uchaguzi wa Wabunge wanaohusika. Mahakama hii imejitahidi ipasavyo katika juhudi za kutekeleza wajibu wake. Kufikia sasa, kesi nyingi zimetupiliwa mbali. Ijapokuwa sisi hatufahamu kikamilifu shughuli za mahakama hiyo, tunasema ya kwamba tunaitaka mahakama hiyo itende haki. Hii ndiyo sababu nimesema ya kwamba tunataka Bunge liwe huru, na liwe na mamlaka kamili. Bunge hili liko na Wabunge wengi waliochaguliwa na Wakenya, na wale walioteuliwa.

Kuna mambo mengi ambayo watu ni lazima waelimishwe juu yake kabla ya Tume ya Marekebisha ya Kikatiba nchini kuwasilisha ripoti yake katika Bunge hili ili ijadiliwe na kupitishwa kuwa sheria. Kuna maswala mengi yanayohusu haki za umilikaji ardhi. Mpaka leo, watu hawajui haki zao juu ya umilikaji wa ardhi. Ardhi nyingi ya wananchi ilikuwa ikiitwa trust land. Mabaraza ya wilaya yalikuwa yakishikilia ardhi hiyo kwa niaba ya watu wa sehemu za mabaraza hayo. Lakini sasa Serikali imenyakuwa mamlaka yote. Sasa wenye ardhi hawafahamu kama ardhi hiyo ni yao au la. Wilaya zinagawanywa na nyingine mpya kuanzishwa kiholela. Hivi karibuni, mikoa mipya huenda ikaanzishwa.

Bw. Naibu Spika wa Mda, tabia ya kutowaelimisha watu juu ya haki zao, ama kutowatendea haki kutokana na ardhi zao--- Kwanza, tunataka tuelezwe ni ardhi ya nani iliyonyakuliwa na mzungu yupi. Walowezi, au settlers, walinyakua ardhi kubwa katika sehemu nyingi za nchi hii. Watu wengi walipoteza ardhi yao. Katiba ya mwaka wa 1963 ilielezea jambo hili kinaganaga. Lakini baadaye, mambo yalienda kombo. Mipaka ya wilaya inabadilishwa mara kwa mara. Ni lazima jambo hili lirekebishwe. Kutokana na haja ya kuteuliwa kwa wale ambao wataiongoza mijadala ya wananchi katika wilaya, ni muhimu kwamba watu wote wapewe fursa sawa ya kuteua. Ingawa baadaye tutasema ya kwamba tumepata maoni kutoka kwa watu, huenda ikawa si wale watakaosemekana wametoa maoni ambao haswa watakuwa wamechanga maoni fulani.

Bw. Naibu Spika wa Mda, ninaomba jambo hili liangaliwe vyema tusije tukajikuta katika shida tuliyonayo. Kwa hayo machache, nimeshukuru.

**Ms Sinyo:** Thank you, Mr. Temporary Deputy Speaker, Sir. I would like to take this opportunity to appreciate the constitutional review process meetings that took place at Safari Park, which have given us the Bill we are discussing this afternoon. In a special way, I want to recognise the efforts of my colleagues in the Office of the Attorney-General. At the same time, I would like to remind this House that my presence in it is a hope to many parents who have children with disabilities. In itself, it is a voice of people with disabilities, who consider this opportunity as self-representation.

*(Applause)*

Mr. Temporary Deputy Speaker, Sir, this notwithstanding, I would like to remind hon. Members that each one of us has people with disabilities in his or her constituency, and that mine is just to play the role of sensitizing them further on the needs of people with disabilities. So, I should not be the only one to raise issues relating to people with disabilities in this House.

Referring to the Constitution of Kenya Review Commission Bill, I would like to regrettably say that despite the representation of organisations of people with disabilities at the Safari Park fora, we were unfortunately left out of the drafting committee. As a result, pertinent concerns of people with disabilities are not correctly reflected in the Bill. So, despite the empathic gesture that the hon. Attorney-General made in this House while taking us through the Bill, I would like to appeal to hon. Members to consider the issues I am going to raise.

In Section 12, which pertains to district representation, there is a clear reference to religious groups and percentages of the total members of the committee. However, there is no clear or express reference of the presence of people with disabilities in this forum, yet religious organisations have a place. It is my proposal that we amend this section by inserting a new clause to give provision for representation of people with disabilities in the district fora. At least five per cent of the members in those fora should be people with disabilities. There is an affirmative measure in this Bill on gender issues. Again, I wish to make a proposal on the basis of the fact that it is the wearer of the shoe who knows where it pinches. In the Commission, we will have five women commissioners from the women's political caucus. However, I am of the opinion that an affirmative measure should also be put in this Bill

to say that disability should also be a tool of analysis: One of the five women commissioners should be a person with a disability.

Mr. Temporary Deputy Speaker, Sir, I am empathic on this line of argument because people with disability could amount to about 10 per cent or 15 per cent of the country's population. This is about a sixth of the population, or three million people. This number represents a large group of this country's citizens. If we do not go out deliberately and employ affirmative measures to enable people with disabilities to play an active role in the constitutional review process, both in gender issues and other roles, the Bill will not implement the hon. Attorney-General's expression, namely, that the process will be people-driven. The marginalised groups will definitely fail to play that leading role of contributing to the constitutional review process. In this way, they will fail to be involved in the process at all.

We have provided that the KBC will play an active role in highlighting the progress and the feedback in the Commission. I would want to appeal to the House that we add that while the KBC is doing this, there should be a provision for sign language in the television and electronic process because of the people with hearing impairment. In as much you put radio and television without catering for this category, the deaf will not be seen to be playing a role in the constitutional review process.

Mr. Temporary Deputy Speaker, Sir, I am forced to appeal to this House on a positive note on the provision of the civil society where it is explicitly said that regard should be given to disability and gender. Having seen what happened at the Safari Park meeting, that even with representation there we were not incorporated in the Drafting Committee to give guidance as to the concerns of people with disabilities, leaving this section to the civil society just with a consideration of regard to one person being a person with disability, we are apprehensive as people with disabilities that we might not have any room at all even from the civil society's point of view. It is our prayer that it is explicitly put just as it has been put for gender that one person should be a woman, so should it also read that one person should be a person with disability.

Mr. Temporary Deputy Speaker, Sir, finally, I would also want to recommend that we are not represented in the Consultative Forum. It should also come out quite explicitly in this Bill that people with **[Ms. Sinyo]** disabilities should be represented in the Consultative Forum. Thank you.

**The Assistant Minister for Research and Technology** (Mr. Kiangoi): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to also air my views about this important Bill. Let me start by saying that Members of this Parliament are lucky because an important legislation is coming up during our time. So, we must take this challenge very seriously and do what is right despite our political and cultural differences. This is the time to stand up the challenge and contribute to the constitutional change in this country. Secondly, let me thank all those who have taken part in drafting this Bill; the Drafting Committee, the people who went to Safari Park so many times and gave their own contributions. At least, we have this Bill now before us because of the many hours which they put in, especially the Chairman, Bishop Sulumeti and other members.

Mr. Temporary Deputy Speaker, Sir, coming to the Bill, let me say that the Bill states that there will be 25 members excluding the chairman. If you look at the whole composition, there are about eight women representatives. Within those eight women representatives, it is said that five will be nominated through the Kenya Women's Political Caucus. My learned friend, Ms. Karua, endeavoured to explain what the Kenya Women's Political Caucus is. However, if you look at the definition given of the Kenya Women's Political Caucus, it does not help you at all. It says,

"The Kenya Women's Political Caucus means Kenya Women's Political Caucus existing at the commencement of this Act, being a network of women organisations including, but not limited to those specified in part "c" of this Schedule".

If you look at part "c", it does not expound on what they mean by Kenya Women's Political Caucus. If the definition to the words, "Kenya Women Political Caucus" is again "Kenya Women's Political Caucus", where does that leave us? We should have been told who specifically they are. I understand that they also include some women groups from Dagoretti, with due respect to hon. Mugo, but excludes women from Nyamira District.

**Mrs. Mugo:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I think the hon. Assistant Minister is misinforming this House. I do not think there is anywhere where it says that those women groups are from Dagoretti. I think he should withdraw that remark.

**The Assistant Minister for Research and Technology** (Mr. Kiangoi): I just said, Mr. Temporary Deputy Speaker, Sir, that I understand they also include some women groups from Dagoretti---

**The Temporary Deputy Speaker** (Mr. Musila): Order! Order, Mr. Kiangoi! I did not get the point of order raised by hon. Mugo. Could you, please, repeat?

**Mrs. Mugo:** The Assistant Minister is trying to allude that those women groups come from Dagoretti.

First, he starts by saying that he does not know who the representatives of the Kenya Women's Political Caucus are and then he concludes by saying that he understands that they are from Dagoretti, implying that some of them come from Dagoretti. It is wrong, he should withdraw.

**The Temporary Deputy Speaker** (Mr. Musila): Order, hon. Mugo! I am sorry, that is now a debate, it is not a point of order. Proceed, Mr. Kiangoi.

**The Assistant Minister for Research and Technology** (Mr. Kiangoi): Thank you, Mr. Temporary Deputy Speaker, Sir. I think the hon. Member misunderstood me. I just said that this definition given in this Bill does not help us at all to know who they are because part "c" which purports to be giving definition of Kenya Women's Political Caucus, again lists them as "Kenya Women's Political Caucus." So, I went ahead and said that I understand that it includes some groups from Dagoretti, but it specifically excludes women from Nyamira. Therefore, I was saying that this is not an organisation, with due respect to hon. Karua, which should take the responsibility of having women representatives nominated through them. Perhaps, we should have Maendeleo ya Wanawake Organisation which is found in every village in Kenya. It is an organisation which we know and I do hope because of this lack of definition, that the Attorney-General and this House will make the necessary amendments.

Mr. Temporary Deputy Speaker, Sir, Section 3 of the amendment Bill, states: The membership of the Commission under Subsection 2 shall include at least two representatives from each province in Kenya. Subsection (3) (4b) states that in nominating the members of the Commission, the bodies referred to in Subsection 2 shall have regard to Kenya's ethnic, geographical, cultural, political, social and economic diversity. I was wondering who will be coordinating and ensuring that the people who are nominated have really complied with Section (3) (b) and 3 (iii) and 3 (4b). In the case of women representatives, for example, we should have had all of them being nominated by one body so that we can have one woman representative from each of the provinces of Kenya. That will ensure fairness and compliance with this Subsection of the law that is intended to be in place.

Mr. Temporary Deputy Speaker, Sir, thirdly, I wish to agree with hon. Sinyo that Section 4 (i) which empowers the civil society to nominate at least four members without regard being given to the people with disability should be amended. I think we are being unfair to the people with disability. I support hon. Sinyo that we should specifically provide that at least one of those people to be nominated by the civil society should be a person with disability. In the same vein, we should also provide that at least one of those people should be a member of the Law Society of Kenya (LSK). I say so because the LSK is a body which has been specifically formed to help the Government of Kenya in formulating laws by assisting in interpretation and incorporation of the laws. It would not be in good faith if we omitted the LSK and left it to an amorphous group called the civil society.

Mr. Temporary Deputy Speaker, Sir, we should also provide that one of the people to be nominated by the civil society should be a youth. That will give them a chance to pick one among themselves. I say so because if you look at the definition of the civil society in the Bill, it has left out very important things. The groups listed in the Bill do not cover groups like the National Federation of *Jua Kali* Associations. This is a body which supports over 4 million people in this country, and yet some of the groups listed in the Bill are formed by about five people. Five brothers and cousins come together and form a group, and such groups have been considered and included to be part of the civil society. I do hope that this body will be included in the Bill because it supports about 4 million people in this country and that is a big fraction of the Kenyan population.

Mr. Temporary Deputy Speaker, Sir, on the functions of the Commission, I do say that this is an important Bill because it will enable Kenyans to decide the way they will be ruled. I would like to touch on the issue of civic education. I would agree with my learned friend, hon. Sunkuli, that in effecting civic education for Kenyans, we should not try to use groups whose effect will not be felt in particular places. I say so because you will find that there will be groups which will be formed because these people always look where there is money and they will identify this civic education as an area where they are not going to get at least something to put in their pockets. They will rise up and say that they emanate from the civil society and that they are people who will now be responsible for Kenyan civic education. Every district has got the District Forum. I propose that the District Forum should be used for purposes of civic education. The councillors who are there and the members who are chosen from every location will participate in educating the people right at the grassroots what their rights are, what they need to do about this Constitutional change, what amendments have to be brought up so that what comes up in the final documents emanates from the people. That is the only time we can say that this is a Constitution which is being "people-driven" and that emanates from the people, the very people who are supposed to be governed using this document, rather than using groups whose origin is doubtful. I wish to say that the objects of this Act as set out explain what is to be done. I also congratulate the Attorney-General and his office for drafting this Bill. Thank you.

**Mr. Kajwang:** Mr. Temporary Deputy Speaker, Sir, I will be brief and take less than the time allocated to me so that I can give some time to my other friends. This Constitutional review process which we are now talking about has arisen out of a movement in this country. People have lost their lives, slept in dungeons, shed blood, suffered serious pain in order to bring about what we are talking today. We call it a second liberation. It does not matter whether we had one liberation before, we are now talking about the second liberation. I hope that there will be no third liberation because we want to make a Constitution which will set foundations, as hon. Ntimama said: For 1000 years.

Mr. Temporary Deputy Speaker, Sir, I have looked at the old Constitution again and again; it is not that it is bad. I have read my Constitution severally because I am a lawyer myself. Actually, sometimes when you look at it there is nothing seriously wrong with it. What is wrong with this Constitution is the manner in which it has been used to "sit" on Kenyans. I will tell the House, through the Chair, that the problem with the old Constitution has been the office called the "Presidency".

*(Applause)*

It is the Presidency, the Presidency and the Presidency which is the problem of this country. That is why when you talk about the Vice-Presidency, everybody nominates a person from his village because everybody wants to be a Vice-President so that in case of something he or she may end up being the President. If I may ask: Why is this Office so much sought after? This is because it has been misused and abused. Why is this office so much sought after? It is because people want to benefit from the immense powers exercised by the Office of the President. It is the misuse of powers exercised by that office which makes everybody look forward to having that office, so that if somebody, a clan or a tribe, feels its desire to occupy that office is threatened, there is a threat of war. This is because the President always says it. He always says that if he is not there, this country might be another Somalia or Rwanda. Why should one office threaten the security of this country? This is because it has been misused and that is why we are talking about a new Constitution. There is nothing wrong with the old Constitution. It is the office! I want to tell the House why this office has been misused. Once there was a division of powers; that was the Executive headed by the President; the Judiciary headed by the Chief Justice and the Legislature, supposedly headed by the Speaker. We just talked about it the other day, that Parliament is a department of the Office of the President.

Mr. Temporary Deputy Speaker, Sir, you have just read the Kwach Commission Report. They are crying that they are "suffocated" by the Office of the President. That is the problem! I have just looked at the old Constitution which we want to do away with and it speaks very well in Section 107. It says: "The power to appoint, to hold or to act in offices in the Public Service and in the service of local authorities shall vest with the Public Service Commission". When they appointed Permanent Secretaries, did they consult the Public Service Commission? When they appointed the DCs, DOs and chiefs, did they consult the Public Service Commission? The Public Service Commission has become a toothless bulldog and it has become irrelevant. It is only the Office of the President which is relevant in this country, wherever you go, whether you go to the Public Service, the parastatals or the Judiciary. When they chose the Chief Justice, did they consult the Judicial Service Commission? They did not! We are supposedly represented in the Judicial Service Commission through the Law Society of Kenya. We have never had a chance to debate on who will be the Chief Justice. Sometimes we make noise that this time the Chief Justice must be an African, but we have no powers in determining who becomes the Chief Justice. The Office of the President has been the problem and the headache of this country. We have to look at it again. If the Office of the President would exercise the powers within the Constitution, as it is supposed to be exercised, people would be happy in this country.

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

*[Mr. Deputy Speaker resumed the Chair]*

Mr. Deputy Speaker, Sir, there is nothing in this Constitution to prevent the President from acting in a manner which ends up interfering with every department because he has powers to appoint everybody in every constitutional office. He appoints the Attorney-General, the Controller and Auditor-General, the Chief Justice, the Chairman of the Electoral Commission, the Judges, PCs, DCs, DOs, chiefs and assistant chiefs. The whole life of this country is the presidency from the top to the village, so that when you go to your sub-location, you find the Office of the President through the assistant chief. When you go to the location, you find the Office of the

President. There is too much presidency in the lives of Kenyans and that is why this Office is so much sought after, because it can cause maximum good, maximum benefits and maximum harm.

**Mr. Deputy Speaker:** Order, hon. Kajwang! This Bill is about setting up a Commission to review the Constitution and we are not talking about the Constitution yet.

**Mr. Kajwang:** Thank you, Mr. Deputy Speaker, Sir. I am talking about those who will be reviewing this Constitution so that they can look at the Office of the President.

Secondly, I want to say that this Parliament is supposedly supreme. We make laws, tax the citizens of this country and appropriate the money which we tax, but I would like to ask Members of Parliament whether they ever know how this money is appropriated. Of course, we debate the Financial Bill and talk for a few days, but do we ever determine which department needs how much money and which project needs how much money? I would like to suggest that when we look at this Constitution once again--- If Parliament is going to be in charge of taxation and the appropriation of that money, then Parliament must be in charge of the Budget, so that the office of the person in charge of the Budget will be under Parliamentary House Committee. By so doing, we shall determine where that money will go.

Mr. Deputy Speaker, Sir, if you look at Section 2(a) of this Bill, it has been amended---

*(Applause as Mr. ole Ntimama took his seat)*

That is foot-thumbing for my friend the Minister for Transport and Communications who turned out to be a very popular Minister from yesterday!

Mr. Deputy Speaker, Sir, Section 2(a) talks of recognizing and demarcating divisions of responsibility amongst State organs. That is why I was taking a lot of time. One of the objects of this Bill is recognizing and demarcating the divisions of responsibility among State organs; the Executive, the Legislature and the Judiciary, so as to create checks and balances between them and to secure accountability of the Government and its officers to the people of Kenya. So, when I am dwelling on the Office of the President, I am looking at the provisions of Section of 2A (c). Another thing which has caused damage to this country and which I hope while looking at Section 2A(c) of those objects will be looked at is that there will be a Supreme Court in this country which will determine whether the Executive has acted beyond its powers and has interfered with the Legislature. A Supreme Court which will look at whether the Legislature has gone beyond its boundaries and has interfered with the Judiciary so that there will be an arbitrator who will determine whether there is constitutionalism or not. Presently, the format in Kenya is that after Parliament passes a law, the High Court has no other power other than to interpret it as Parliament enacts that law. The Judiciary as we now have it has no power to declare any law which has been passed by this Parliament unconstitutional.

One of these days, you might find one party having more than two-thirds of the Members of this House and they may do certain things which are unconstitutional and we would need the Supreme Court to interpret that Constitution. Other than that, I want to say one more thing---

*(Mr. ole Ntimama consulted loudly with Mr. Leshore)*

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

**Mr. Kajwang:** Mr. Deputy Speaker, Sir, that is Maasai war!

Mr. Deputy Speaker, Sir, I want to say one more thing about the empowerment of the Local Authorities. Whoever will be writing this Constitution must demarcate very clearly the powers of the Local Authorities.

We want the Local Authorities to have the powers to legislate, impose taxes and appropriate those taxes for the benefit of the people that reside in their areas of jurisdiction. The powers that were given to the Local Authorities were graduated personal tax, and they were removed from them. The Local Authorities have become useless organisations because we have removed all the powers from them. We need to empower the Local Authorities once again. I want to be in a Local Authority which can impose tax, appropriate the tax and develop our rural areas. I do not want to come to this Parliament and hope that a Minister or the President might pass through my constituency and declare that the rural road be built from today. That there can be no "development" unless the President visits your constituency and he is happy with you. We must change things to make sure that this country is built on taxes and not on Harambees. I said that Harambees are the heart and cause of all corruption in this country. Harambee must be outlawed in this country. I notice now that the President is not so enthusiastic about Harambees. I hope he stops that practice so that everybody else can stop the practice.

Thank you very much, Mr. Deputy Speaker, Sir.

**Mrs. Mugo:** Thank you, Mr. Deputy Speaker, Sir. I rise to support this Bill, but I would like to make

some observations first. I would also like to agree with those who have spoken before me and to commend those who drafted this Bill. I think they did a commendable job. I would like to commend my women colleagues who beforehand, were nowhere to be seen, or were not thought of, but at the end of this product, there is room for women to participate in the Constitutional Review Process.

Mr. Deputy Speaker, Sir, I think what we need amongst Kenyans is really a change of heart, a "re-birth" of our morals and actions from the top administrators, those who hold power in this country. I am saying that because the implementation of the Constitution that will come to be is the most important part of this whole exercise. This is because we could end up with a document that will not help Kenyans, if what we see happening today is anything to go by. I say this because all the power has been taken away from the people, and concentrated on a very few individuals. The review of the Kenyan Constitution to my mind, the biggest achievement, or what we should be looking for, is returning the power to the people, so that if they want, they can change the Government through the vote. A Government is a Government of the people. What we have seen is that the people of Kenya, no matter what they did with the past few elections, they could not be able to change a Government. Why? Because there is so much power concentrated on the Executive. The Executive could appoint the Chairman of the Electoral Commission and all the other people who matter in the whole exercise. They could not help rigging the elections. I think most of the time, the elections ended up being rigged. So, the people did not chose the Government that they wanted. I hope that will not be repeated. We can only ensure that it will not be repeated if the Commissioners in the whole process will endeavour to give power back to the people.

The people of Kenya have watched helplessly as the economy has been run down in this country. The people of Kenya know exactly what was going wrong. But they have no power to remove the KANU Government from power and put a Government of their choice. Somebody would think they would have repaired what was going wrong. They had no power to say: "We do not want that officer being placed there because he is squandering all the public coffers". We want to see a situation where people can say: "This is a Government for the people by the people", which is not owned by the Government but the people.

Looking through the structures, my only worry is if the same manipulation that we have seen in the past, of putting the people who are not even capable to run public affairs in places of authority, and leaving them there to run down the country, which has ended up in extreme poverty. The poverty in Kenya is man-made so that the people can be able to be governed without much pressure from any quarter. If the same exercise is repeated; if the people we get as Commissioners can be manipulated; if the Executive is allowed in any way to interfere with the process, we will end up with a useless document which will not be able to help the Kenyans.

So, this House, as the watchdog, will rise up to the occasion of making sure that the process is not misused at any stage, where it will fail to serve the people it is supposed to serve.

I hope the hon. Member who spoke about the women caucus and women organisations is still here. This is because I need to give him a bit of information, together with other Members in this House. The women are tired of being told which organisations will carry their activities. I would like to inform the hon. Member that Maendeleo ya Wanawake is no longer a representative of women in this country. From the time Maendeleo ya Wanawake was taken over by KANU, and in fact, it came up very clearly that it was an arm of KANU, even when pressure came from donor countries that they will not get the money again and KANU tried very hard to withdraw, we know that it is still a mouthpiece of KANU. To prove it, we even have the Chairperson of Maendeleo ya Wanawake nominated by KANU. That removes all credibility of that organisation being a representative of women of this country. In fact, we have seen the Chairperson of Maendeleo some years back, and not the current one, going to the mothers of the political prisoners or giving very strange statements when those women were beaten by the police at the Cathedral Grounds, supporting that action of brutality against innocent old women who were out there crying for thier children. Just because it was Koigi wa Wamwere mother and others, and just because Maendeleo ya Wanawake is a mouthpiece of KANU, this is what they were told. In the elections of KANU women said that the people who were put on the top were put there by male KANU barons.

Women say that the leaders of Maendeleo ya Wanawake organisation in Kenya were elected by KANU male barons. So, women of Kenya do not recognise Maendeleo ya Wanawake as a representative of all women in this country. For the information of the hon. Member because he was asking the Attorney-General to change this Bill-- I would like to inform him that these organisations which are listed in this Bill are national organisations. The hon. Member said that she understands that some of these organisations are from Dagorreti. Actually, I am not a member of the Women Political Caucus, but I intend to join them very soon. So, it is not what he is saying. We are not all of us members of this caucus just because you refer to us as "elite women". We are not elite women, but we have a lot of grassroots support. But the caucus is the umbrella for the national women organisations which have grassroots. These organisations that form this caucus are Maendeleo ya Wanawake, the League of Women Voters, the Kenya Widows and Orphans Association and so on. In fact, the leader of the

Kenya Widows and Orphans Association is a national leader and has nothing to do with the so-called elite women. The National Council of Women of Kenya is the umbrella organisation for women groups. So, maendeleo ya Wanawake, as opposed to this caucus is not an umbrella of these organisations. The caucus is not an organisation as such, but it has grouped together all these organisations under its umbrella in order to lead women in this constitutional review process. So, I want to assure hon. Members not to be afraid that this caucus is controlled by a few women in leadership. Dagorreti Constituency is not at all represented in this caucus. If any groups in Dagorreti Constituency are represented in this caucus, they are not through Beth Mugo, but they are through these national organisations which are listed here. I would ask this House not to make the mistake of thinking that Maendeleo ya Wanawake is a representative of all women in this country. Indeed, in all areas which are opposition strongholds - and they are the majority - there is no Maendeleo ya Wanawake Organisation. Maybe, it is only ten women who hold office, but there is no real membership to talk about. So, please forget about Maendeleo ya Wanawake and let us talk of women of Kenya.

I would have supported a strong representation on the province basis where women would come together and select their own representative. However, I am not doing that because I want to support the caucus. I think the caucus which is a collection of many national organisations will suffice to articulate women's issues in this constitutional review.

Mr. Deputy Speaker, Sir, I will conclude by saying that what has ailed our country is the breakdown of the institutions. The new Constitution that we will come up with should have foresight of strengthening our institutions. No matter who is the incumbent of the Presidency, nobody should have the right to break down our education and health institutions and ruin our economy. I think concentrating too much power in one individual is not good for this country because he can bring all of us down if he wanted to. This is wrong. It is by returning power to the people that this nation will be stronger and united. If we make any confusion in this process of the constitutional review, the future generations will judge us harshly if the new Constitution will not unite Kenyans, but divide them. We should never at all live at the whim of one individual or two individuals. I am very happy to note that the Front Bench on that side is beginning to be very sensitive as to why they were really elected by their people. I want to congratulate hon. Ntimama for seeing the light finally. One time I was very worried when he said that we should "lie low" like envelopes. I hope his colleagues will see the light and be heroes in this country because they will save this country. But if you continue to give us answers---

**Mr. Ndicho:** On a point of information, Mr. Deputy Speaker, Sir. I want to give hon. Mugo the following information. Last week, when hon. Ntimama was with the President at Narok, he was kept very far from the Presidential dais. Messrs. Sunkuli and ole Ntutu were seated next to the President. That arrangement - and that is why hon. Sunkuli is very happy - is that hon. Ntimama will be dropped from the Cabinet and hon. Sunkuli will be elevated. Do not waste your congratulations on "Bill" Ntimama!

**Mr. Deputy Speaker:** Order! I do not know whether hon. Mugo would like to use that information. As to its first part, I suppose you could have seen it on television. It is factual. In fact, that is how they sat. But I do not know whether hon. Ntimama has a place vis-a-vis where the President sits. Must he always sit next to the President? For the second part, that is rumour mongering. Proceed, Mrs. Mugo.

**Mrs. Mugo:** Thank you, Mr. Ndicho, for that information. I hope that arrangement has really transformed the hon. Member.

Mr. Deputy Speaker, Sir, I am only worried about Nairobi. I feel we in Nairobi have not been done justice in this Bill. Nairobi is a province like any other province with a high population, but we have been given very few commissioners in this Bill. I think in this Bill, Nairobi is only given four districts in comparison to some small political districts which have been created recently. In those districts there are very few people and many goats. Considering the population of other districts, Nairobi should have two more political districts. Nairobi should not be considered like these districts. Everything we do should be based on the population, but not on size because we serve people. Mr. Attorney-General, you should not be unfair to Nairobi; Nairobi deserves more representation than what you have given in this Bill.

Mr. Deputy Speaker, Sir, I would like to add here that this Government should stop with immediate effect the creation of more districts. When the representation of this review process is done, it should be based on the districts which were already there when this Bill was prepared and when the Safari Park meetings were taking place. If it will be based on anything else, then that would be cheating. I hope there will be an amendment on Clause 12(a) where it should be amended to read "districts in place when this Bill was gazetted". More than that, I will leave it to the good judgement of political parties who have been charged with the nomination of Commissioners. I hope they will nominate Commissioners of integrity and who cannot be bought, who have a conscience and love Kenya as their country. Their role should be that of facilitators. They should facilitate the wishes and the aspirations of the Kenyan people, so that the new Constitution can be owned by the people. I



support the sentiments by hon. Ntimama that this Constitution must reflect the wishes and aspirations of the Kenyan people and it should start with the words, "We, the people of Kenya---."

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

**The Minister for Public Works and Housing** (Mr. Kones): Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to contribute to this very important Bill. First and foremost, I would like to thank the Members of the Inter-Parties Parliamentary Committee (IPPC) who deliberated on this matter for a very long time. We have come along way and we have drafted a Bill, which will enable us to start amending our Constitution.

As many hon. Members have said earlier, there is nothing seriously wrong with the current Constitution except when it is applied wrongly. We can draw up another Constitution, but if it is poorly applied it will still be a wrong constitution. We hope that when we draw up the new constitution it will be properly applied and there will be nothing wrong with it.

I would like to touch on a few matters that I think, if we are not very careful about, will put us into trouble. I would like to focus more on the district forums which, to me, will actually be the grassroots and the most important organ of the constitution review process.

Mr. Deputy Speaker, Sir, Section 12(A) of the relevant law clearly talks of districts with gazetted county councils.

*(Applause)*

I think we should actually identify and put in this Bill the date when the districts were actually gazetted, so that nobody will start gazetting certain districts overnight. In this case, I think we should stick to 5.10.98, so that any other county council that could have been created after that will not qualify to have a district forum.

Mr. Deputy Speaker, Sir, I am saying that because this should be a procedural process. This is because if any good process is not managed properly it could be derailed any time. To be quite sure that nothing happens to the process that will be likely to derail the efforts of the IPPC, the Drafting Committee, hon. Members of Parliament and other members of the public who came out there and spent sleepless nights thinking about how to formulate this process--- We would like to make sure that this is spelt out correctly. In fact, we would like to have an amendment to incorporate into the Bill names of the districts which will be entitled to establish forums.

I think that in the case of Nairobi Province, we should not just say that it will have only four districts. Hon. Mugo is talking about six districts. If that has been accepted, it is fair enough. But we would like to see the districts actually named. If it is Nairobi West or South, it should be known by its name, so that there will be no loophole for anybody to manipulate anything. Mombasa will have two districts, but where will they be? What are their names? Will they be fairly created? Will two districts be created in one constituency? These are very important things, because we are going through a process, and we would like to see total and transparent democracy prevail.

We are supposed to move away from what we see as a "single-person-driven system" to what we call a "people-driven system".

There are people who will be appointed to represent certain communities in the district foras. I can see that there will be three representatives from each location but we are not being told who is going to nominate these three fellows. This is another loophole which must be filled. We want this "animal" called Provincial Administration to be totally removed from this process. If you do not do that, then we are risking a lot. You will find that all these representatives will have been selected by chiefs with the instructions from somebody somewhere. I would want to imagine that this is the last time we are seeing the Provincial Administration. We want the Local Authorities to take over that role because they have the ability. I do not think a chief is any better than any councillor. I do not think there could be anybody more intelligent than a councillor. There is no reason why a chief would want to "sit" on a councillor or a Member of Parliament just because he is a chief or a DO. A District Commissioner should not "sit" on a Member of Parliament just because he has security around him. We do not want to see the Provincial Administration interfering with this process.

I am appealing to the Attorney-General to make sure that he spells out exactly who is going to be nominated. This is a warning. Everything that the provincial administration tries to do always gets derailed. We have seen Provincial Administration rig elections and they have done it successfully. Some of us have been victims of this situation. We are talking from experience. If we know what we want and if we are really saying that we want to have a new Constitution, we must never include this animal. It is a dangerous one. There are certain things that have prompted us all, as IPPG, to sit down and say we must seriously review our position. We must be serious about it. It is going to be very shameful if we are going to spend time and money and fail to achieve anything sensible. We must make sure that the Provincial Administration is totally out. All the problems and the

evils that you see around are done by the Provincial Administration. Today you hear that the Provincial Administration is rigging elections; the next day you will hear that they are stealing maize, or grabbing pieces of land.

I really do not want to say much about this, but I think I have made my point. All I am trying to say is that let this process be people-driven and let nobody try to manipulate anybody. We are saying that there must be a lot of education at the village level to enlighten the members of the public on what they want or looking for. The process must also be transparent. That way we will achieve the best Constitution.

Mr. Deputy Speaker, Sir, you can see that people actually have got one heart. They mean good for this nation. They mean well and, if allowed, they will achieve the best. There is no reason why they should not be allowed. Everybody wants to see a better country and wants to see the economy of this country pick up again. Everybody, including the President himself, has said it.

What we want is to actually allow that process and give it a chance and we will achieve it. We do not need a lot of years to turn around our economy, but we must be serious about it. When we talk of stopping corruption, we must actually do it and we must be seen to be serious about that. If we do that, we will definitely eliminate it. So, we want to see this process go through, we are serious about it and once this Bill is passed, we would like to see a completely new approach to things.

Mr. Deputy Speaker, Sir, like I was saying, the Provincial Administration must stop interfering. We said here last year - those of us who were not here already know this country was almost "going" - we are actually going into a big problem. The biggest problem at that stage was actually the misuse of powers by the Provincial Administration. Then we managed to trim their powers, and not everybody got happy. Like somebody was saying, they seem to be trying to come back, to sneak in their powers through a back door. We must refuse and refuse strongly.

*(Applause)*

There is nothing that makes an administrator any more intelligent than a Member of Parliament. There is nothing that makes a Provincial Commissioner any more intelligent than a doctor, for example, in a provincial hospital. There is nothing that makes a District Commissioner to be more important than an accountant in that district. They just assume powers. There is nothing that makes them any cleaner than any other thief in the streets. Nothing! The problem is that they assume powers that they do not have. It is this Parliament---

**Mr. Ndicho:** On a point of order, Mr. Deputy Speaker, Sir. With due respect to hon. Kones, who is really a totally changed person to our appreciation of what he is saying---

**Mr. Deputy Speaker:** What is your point of order?

**Mr. Ndicho:** My point of order is that is the Minister in order to tell us more about the powers assumed by the Provincial Administration; the DOs, DCs and the PCs who have really brutalised us and beaten us all over when we know very well that the problem is not necessarily the Provincial Administration, but the problem is where they derive that power? It is from the President! It is the presidency! It is not---

**Mr. Deputy Speaker:** Order! Order! Order! Hon. Ndicho, you know that is not a point of order! You really are behaving as if you should be having an "L-plate" on you---

*(Hon. Ndicho stood in his place)*

Sit down! Hon. Ndicho, you must desist from interrupting Members on the Floor on what quite frankly it is a frivolous point of order! Next time, I will pin an "L-plate" both to your front and to your back until you know how to raise a genuine point of order! Proceed!

**The Minister for Public Works and Housing (Mr. Kones):** Mr. Deputy Speaker, Sir, I think the problem with the Provincial Administration is not what the hon. Member is trying to say, it is the misinterpretation of the law. In most cases, they would like to misuse what they know that they do not have. I do not want to dwell so much on this because it has been said. But I would like to emphasize the fact that these district forums should be properly identified so that in the middle of the process we do not hear that, another county council has been formed.

With those few remarks, I beg to support.

**Prof. Anyang'-Nyong'o:** Mr. Deputy Speaker, Sir, I rise to contribute to the debate on this Bill and I would like to congratulate hon. Kones for a speech well-delivered, thought out, articulated and well sent home. I would also like to congratulate my dear friend, hon. William Ntimama. I was not in the House yesterday when he made his contribution, but I had the privilege of reading the HANSARD today, and indeed, I want to say that it

was a speech well conceived, delivered and well sent home. I hope those who have ears to listen will hear. When they say in the Bible that, "we deceive ourselves and there is no health in us". Those who deceive themselves that, what hon. Ntimama said yesterday and what hon. Kones said today are not true, definitely have no health in them and are not in a position whatsoever to guide this nation into the next millennium through a proper change in our laws and a proper establishment of the fundamental law of the land, which is the Constitution.

Having said that, I would like to begin by making my contribution this way: No constitution in this earth, or in any nation can make sense unless the people for which that constitution is made believe in it. In getting to believe in such a constitution, the process of making it must not be accompanied by any dogmatism whatsoever. The first dogmatism that we should dispel from our minds in this House is that, even this Review Bill is sacrosanct. The Constitution of Kenya Review Commission (Amendment) Bill, 1998, cannot be sacrosanct. It must be subjected to the scrutiny of this House. We must look at it agnostically and we must arrive at a conclusion that, when we pass it in this House, it must be passed with those amendments. This House still believes that it is important to make it a Bill that will lead to the process of making a Constitution in which the key people of Kenya will have faith. That is why I am saying that this House must be given the fullest latitude possible to discuss this amendment Bill. Nothing should be rushed through this House when we are discussing the Bill that lays the framework for discussing the Constitution. Every hon. Member must be given the opportunity to contribute to this Bill and every suggestion related to any amendment whatsoever that is to be made, must be listened to and must be given the time it deserves.

So, for one, I would like to support hon. Kones by saying that, the definition of the district, as stated in the Bill, must be so precise that, first, it will not be cumbersome to the financial system of this nation; and secondly, it will not create possibilities of having districts that cannot house the district forums. For example, Nyando District was created the other day. They are still struggling to get a house for the DC. They are still struggling to find a way where the office of the DC will be. Now, if you give these people a further responsibility of running a district forum, you are giving them too much work to do at a time when they are still thinking of laying down the basic infrastructure for running that district. We can speak of many more districts in that position. For example, Mt. Elgon District was created several years ago, they still do not even have proper district headquarters. They still do not know how to run a county council. These are practical matters that we must not overlook when we are talking about the primary point of representation in discussing this Constitutional Review Process, at the district level.

#### ADJOURNMENT

**Mr. Deputy Speaker:** Order! Hon. Members, it is now time for the interruption of business. This House, therefore, stands adjourned until tomorrow, Thursday, 26th November, 1998 at 2.30 p.m.

The House rose at 6.30 p.m.