

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 26th November, 1998

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

PRAYERS

## ORAL ANSWERS TO QUESTIONS

*Question No. 718*

INSECURITY IN KATHIANI

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

(a) whether he is aware that state of insecurity is threatening activities of livestock farmers around Lukenya, Kinanie, Katani, Komarock and Muthwani areas; and,

(b) if the answer to "a" above is in the affirmative, what steps he is taking to avert the state of insecurity.

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

(a) I am aware.

(b) Two police posts have already been established in these areas; one at Katani and another one at Komarock which are manned by the Anti-Stock Theft Unit personnel. The establishment of the two police posts has drastically reduced cases of stock theft and livestock farmers are conducting their daily activities normally.

**Mr. Kaindi:** Mr. Speaker, Sir, the answer the hon. Assistant Minister has given is only true to a certain extent. The Anti-Stock Theft Unit station he is talking about is not at Katani; in fact, we have no Anti-Stock Theft Unit station at Katani. But we have one all the way at Komarock and the area we are talking about is expansive. It is an area that straddles from JKIA all the way to Kangundo and we do not have enough Anti-Stock Theft Unit personnel. Can the Minister consider establishing an Anti-Stock Theft Unit station at Lukenya?

**Mr. Sunkuli:** Mr. Speaker, Sir, the information I have given to the House shows that in Katani, there was a police post opened on the 6th of April, 1997. This was supposed to serve the areas of Katani, Lukenya and Kinanie. But I am prepared to undertake a review of the positioning of the Anti-Stock Theft Unit, so that it can be considered whether Lukenya can also have a unit of its own or we can relocate the one that is currently stationed there.

**Mr. Kaindi:** Mr. Speaker, Sir, I want to inform the Assistant Minister that the station he is talking about is an administration station. It has nothing to do with Anti-Stock Theft Unit. That is why we are requesting for an Anti-Stock Theft Unit, as the people of Lukenya, who have suffered enormously under the hands of cattle rustlers.

Most of the cattle finding their way to Dagoretti Market here are stolen from Lukenya. The Assistant Minister should, as a matter of concern and urgency, consider establishing a full Anti-Stock Theft Unit at Lukenya to cater for both Konza, Lukenya, Kinanie and Katani areas.

**Mr. Sunkuli:** Mr. Speaker, Sir, I will bring this to the notice of the Commissioner of Police, so that the matter can be addressed urgently.

*Question No. 370*

ABUSE OF RESPONSIBILITY BY  
DISTRICT OFFICER

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

(a) the number of people shot and wounded by the former District Officer of Nyamarambe, a Mr. Lunalo; and,

(b) whether he had taken disciplinary action against the said District Officer for abusing his responsibilities.

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

(a) No person has been shot or wounded by a District Officer in Nyamarambe Division.

(b) No disciplinary action is contemplated against the said officer, as no crime has been reported against him.

**Mr. Magara:** Mr. Speaker, Sir, I wonder whether this young Assistant Minister is really serious about what he is saying, as active as he seems to be. On 27th December, 1997, the DO I am talking about shot one Onyango Bichanga and to-date, the boy is still admitted in hospital; he cannot walk because he was shot in the knee. On the same day, the DO shot one Zacharia Omweri who is a clerk; a civil servant. He was shot in the shoulder and he has been in a plaster for the last three and half months.

**Mr. Speaker:** So, Hon. Magara, why ask all this if you know?

**Mr. Magara:** Mr. Speaker, Sir, he is saying he is not aware and I want to enlighten him, so that as active as he seems to be, he can assist this Government out of this mess. I am asking, why should the Assistant Minister rely on those people whom we are investigating? Can he go back and get us proper information because I have given him the names of those people who have been shot by this DO, who has since been transferred to another division in North Nyakach where he is still molesting people?

**Mr. Speaker:** Mr. Magara, you will take all the time; then, I will go to the next question.

**Mr. Magara:** Mr. Speaker, Sir, can the Assistant Minister go back and bring to this House proper information since I have now informed him?

**Mr. Sunkuli:** Yes, indeed, it appears the hon. Member might assist me with more information and I would like to beg the Chair to defer this Question to next week, so that I can come up with another answer.

**Mr. Speaker:** So be it.

*(Question deferred)*

*Question No. 710*

#### EVASION OF VAT BY DESBRO PLOYMERS LIMITED

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

(a) whether he is aware that Desbro Polymers Company Ltd., has been avoiding payment of VAT and Corporate Tax since 1992 on most of their wholesale materials and that, the amount involved is in excess of Kshs233,836,450;

(b) if the answer to "a" is in the affirmative, why the money has not been collected by the relevant departments; and,

(c) what immediate steps he is taking to stop this evasion of taxes by corporate bodies, majority of whom are keeping double entries in their books of account.

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

(a) I am not aware that Desbro Polymers Company Ltd. has been avoiding payment of VAT and Corporate Tax since 1992 on most of their wholesale materials and that the amount involved is in excess of Kshs233,836,450. However, I am aware that the company evaded paying VAT between April, 1993 and March, 1998 to a tune of Kshs224,172,834. This was established after VAT got a tip-off from an ex-employee of the trader on 3rd August, 1998 that the company maintained two sets of records.

(b) the VAT department has already sent a demand letter to the company to pay the VAT arrears. An earlier audit carried out on the company had not detected the anomaly as the auditors had no clue that the company maintained two sets of records.

(c) In order to eliminate tax evasion by traders, the VAT Department has instituted the following measures: The audit procedures have been streamlined with a view of maintaining high standards of audit. A system has been put in place to provide cash rewards to informers whose information leads to such recovery. Also, the VAT Department has installed a hotline telephone number which is 710268 and also a fax number which is 713263 to facilitate flow of information on tax evasion.

**Mr. Kikuyu:** Mr. Speaker, Sir, while appreciating the Assistant Minister's answer, although at first he was not aware but he has agreed the company has conned the Government Kshs224 million, why has the VAT Department not taken this Desbro Company to court because evasion of tax is a criminal offence, instead of giving

them advanced loot?

**Mr. Lomada:** Mr. Speaker, Sir, as I have said, we have learnt of this and the steps that I have mentioned here in fact, indicate that we are doing something to bring to court this Company because the tax goes to the Government and therefore, we would not like to allow any company to evade payment of tax.

**Mr. Mwiraria:** Mr. Speaker, Sir, evasion of tax is costing this country a lot of revenue. While we appreciate the improved collection on the part of the Kenya Revenue Authority, could the Assistant Minister tell us what steps they are taking other than the ones he has mentioned, to ensure that those individuals and companies who are keeping double books can be caught instead of waiting until they get information from an informer?

**Mr. Lomada:** Mr. Speaker, Sir, talking about the steps that I have mentioned here, our inspectors are also making surprise visits and therefore---

**Mr. Shill:** On a point of order, Mr. Speaker, Sir. Is it in order for the Assistant Minister to evade the question he was asked? The question was: Other than writing letters to those people, why can he not take them to court and imprison them because they evaded taxes?

**Mr. Lomada:** Mr. Speaker, Sir, I said earlier on that, we are not going to spare any---

**Mr. Shill:** You cannot shout at me!

**Mr. Lomada:** Mr. Speaker, Sir, we are not going to spare any company that is going to evade the payment of tax. I have mentioned the steps and here I promise that, any Member who knows any company that has evaded payment of tax, can tell us and we shall make sure that we follow suit.

**Mr. Kajwang:** Mr. Speaker, Sir, the question which the Assistant Minister is evading like this guy has evaded tax is this: Clearly, this guy that you paid has evaded tax from this period to this period and owes the Government Kshs224 million. Why have you not arrested him? That is the question.

**Mr. Lomada:** Mr. Speaker, Sir, as I have said, we are trying to bring the culprit and then he be taken to court. So, the audit is being done by the VAT Department.

**Mr. Mwiraria:** On a point of order, Mr. Speaker, Sir. I had asked a question which got lost due to the points of order as to whether or not, this man is being taken to court. Could the Assistant Minister now answer my question. Is it in order for him to sit down---

**Mr. Speaker:** Which one?

**Mr. Mwiraria:** Mr. Speaker, Sir, I asked him what steps they are taking to ensure that rather than wait for information from informers only, systems are designed to catch people who are keeping double books?

**Mr. Lomada:** Mr. Speaker, Sir, that is exactly the question that I was trying to answer; that, our inspectors are making surprise checks to make sure that those customers who are evading payment of tax and VAT are nabbed.

**Mr. Kikuyu:** Mr. Speaker, Sir, although the Assistant Minister's effort may not have been gripped to work, Desbro Polymers Company Limited is one of the many companies owned by Desbro Brothers and this happens to be owned by the father. The other nine happen to be owned by the sons. What is the Ministry doing to make sure that, all the other companies owned by Desbro Brothers pay taxes as demanded by the law?

**Mr. Lomada:** Mr. Speaker, Sir, I want to actually thank the Member for also giving us that information that, there are more companies that have evaded payment of tax. I want to assure him that, even the other nine companies will be followed until they are brought to book and be taken to court.

**Dr. Ochuodho:** On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order, to ask for examples of those various companies that have evaded tax? We can give him examples of such people, even of people inside this House. However, can the Assistant Minister tell us if there is anybody who has been specifically prosecuted for evading payment of VAT?

**Mr. Speaker:** That is not a point of order but that is a supplementary question. Next Question!

*Question No. 186*

KENYA'S CURRENT PER CAPITAL INCOME

**Mr. Obwocha** asked the Minister for Planning and National Development:-

- (a) what was the per capita income in 1963, 1970, 1980, and 1990;
- (b) what is Kenya's current per capita income; and,
- (c) how does this compare with other developing countries.

**The Assistant Minister for Planning and National Development** (Mr. Sumbeiywo): Mr. Speaker, Sir, I

beg to reply.

(a) Kenya's per capita income in 1963, 1970, 1980, and 1990 was as follows: 1963 - US\$300; 1970 - US\$365; 1980 - US\$425; 1990 - US\$361.

(b) Currently Kenya's per capita income stands at US\$271.

(c) This level of declining per capita income compares favourably with the per capita incomes of other developing countries, particularly those of the East African region and other countries within Sub-Saharan Africa whose per capita income is below US\$1,000.

**Mr. Obwocha:** Mr. Speaker, Sir, this tells quite clearly that this Government has run down the economy of this nation. We started climbing from US\$300 dollars to 1980, around the time the late President Kenyatta died at US\$425. Now, it has declined so sharply that, we are at US\$271. This Government is responsible for this mess. My question to the Assistant Minister is this: What factors have led to this decline?

**Mr. Sumbeiywo:** Mr. Speaker, Sir, the House may also wish to know that the high per capita income recorded between 1963 and 1980 was a result of the high economic growth rate, which averaged 6.6 per cent for the period 1964 to 1974, and 5.25 per cent in the period 1974 to 1980. On the other hand, the fall to the current level can be attributed to the slow-down of the economic growth rate brought about by increase in population growth rate, poor weather conditions which have led to prolonged droughts on one hand, and destructive heavy rains on the other, and the destruction of the infrastructure.

**An hon. Member:** And corruption!

**Mr. Sumbeiywo:** The fall in per capita income can also be attributed to the short-term effects of the current Structural Adjustment Programmes (SAPS) being implemented by the Government. There are other factors which have also contributed to reduced per capita income. The Government and hon. Members are aware of these. The Government has taken appropriate measures geared towards the promotion of higher rates of economic growth, so as to raise the per capita income of our people.

**Mr. Mwenje:** Mr. Speaker, Sir, could the Assistant Minister add corruption and lack of confidence in the leadership of this country to the list of the factors he has read out?

*(Applause)*

**Mr. Wamae:** Mr. Speaker, Sir, the figures given by the hon. Assistant Minister are very worrying. They show that Kenyans are getting poorer. We have already been told that whereas 23 per cent of Kenyans were poor in 1978, today, 47 per cent of this country's people are living below the poverty line. What plans does the Government have of alleviating these problems? What measures does the Government plan to put in place to reverse this downward trend of this country's per capita income?

**Mr. Sumbeiywo:** Mr. Speaker, Sir, in addition to the measures that have been put in place, the Government is also taking the following steps to raise the peoples' per capita income. We are working on sustenance of macro-economic stability by strengthening monetary and public sector financial management, and reinforcing financial discipline. You are aware of what we have seen in the banking sector recently. Other measures include implementation of efficiency of the public sector by accelerating and streamlining reforms in the Civil Service and public enterprises. Three, improving efficiency and effectiveness of public investment, including the delivery of infrastructure services through improved efficiency and better management. Four, enhancing external and internal competitiveness of the economy through further liberalisation of markets. Fifth, addressing the social aspects of development, particularly through targeted poverty interventions and access of the poor to social services.

**Mr. Shaaban:** Mr. Speaker, Sir, is the Assistant Minister aware that the majority of the people with the lowest per capita income in this country come from the North Eastern Province? And if that is the case, what specific plans does the Government have to increase the per capita income of these people and at least bring it at par with that of the rest of the people of this country?

**Mr. Sumbeiywo:** Mr. Speaker, Sir, when we talk of per capita income of our population, we cover the whole country. We do not cover areas as far as provinces and districts are concerned. However, I would like to assure the hon. Member that when all the measures that have been put in place are implemented, the North Eastern Province will not be left out.

**Mr. Speaker:** Mr. Mwangi Kiunjuri's Question!

**Mr. Obwocha:** The last question, Mr. Speaker, Sir.

**Mr. Speaker:** I am sorry, Mr. Obwocha. We have four Questions by Private Notice, and Question Time is only one hour. Mr. Mwangi Kiunjuri!

*Question No.550*

## EVICTION OF SQUATTERS FROM FORESTS

**Mr. Kiunjuri** asked the Minister for Lands and Settlement:-

(a) whether he is aware that squatters were evicted from Kahurura, Gathiuru and Mutiriri Forests in 1988;

(b) whether he is further aware that land was set aside for resettling genuine squatters and that as a result some were settled; and,

(c) if the answers to "a" and "b" are in the affirmative, when the remaining squatters will be settled.

**The Minister for Lands and Settlement** (Mr. Ngala): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that squatters were evicted from Kahurura, Gathiuru and Mutiriri areas of Mount Kenya Forest in 1998.

(b) I am further aware that land was set aside for resettling genuine squatters at Gathiuru. However, the demarcation and survey work is not complete. No squatters have so far been settled.

(c) The squatters will be settled as soon as the on-going survey work on the scheme is completed, which will be before the end of the year.

**Mr. Kiunjuri:** Mr. Speaker, Nanyuki Town is today carrying more than 20,000 squatters, who are scattered everywhere and have no shelter. Some of them go without even food. We are talking of squatters who were evicted 12 years ago. To date, the Government is still promising them that they will be settled. What criteria did the Government use to establish the genuine squatters?

**Mr. Ngala:** Mr. Speaker, Sir, the criteria to be used will be determined by the relevant committee, which normally meets, vets and selects the genuine squatters. So, I am sure that once the whole exercise is over, the committee will be able to determine the genuine squatters.

**Mr. Murungi:** Mr. Speaker, Sir, as the hon. Member has said, there are many squatters in Kahurura, Gathiuru and Mutiriri. Recently, over 1,000 acres of the Mount Kenya Forest were de-gazetted. Could the Minister assure this House that only squatters from these areas will be settled on the de-gazetted land, and not rich people from Nairobi and other parts of the country?

**Mr. Ngala:** Mr. Speaker, Sir, the best I can say is that those who will be considered for settlement will be the genuine squatters.

**Mr. Kiunjuri:** Could the Minister inform this House what is the composition of that committee? Did he include the elders who were evicted from those villages in that committee?

**Mr. Ngala:** Mr. Speaker, Sir, the composition of the District Settlement and Plots Allocation Committee is as follows: The DC, Chairman, the District KANU Chairman, member---

*(Laughter)*

Mr. Speaker, Sir, maybe the Members are appreciating it and the thing has got---

**Mr. P.K. Mwangi:** On a point of order, Mr. Speaker, Sir. The District KANU Chairman is a member of that committee, but why did they not consider other persons?

**Mr. Speaker:** Order! Order! Actually, you are frivolous. You are asking a question and, therefore, you should wait for an answer. Proceed, Mr. Minister.

**Mr. Ngala:** Mr. Speaker, Sir, the other members are the County Council Chairman or his representative, the District Agricultural Officer, the District Settlement Officer/Secretary. I think we will also consider the Member of Parliament to be a member of the committee.

**Mr. Wamae:** Mr. Speaker, Sir, would the Minister consider including the Chairman of the DP as a member of the committee because the area has more Members of DP? Further, when we asked a question

about the squatters from Mathira Constituency, we were told that they were going to be settled there. I do not see any representative from Nyeri in that committee.

**Mr. Ngala:** Mr. Speaker, Sir, the hon. Member is a member of the DP, so that will suffice.

**Mr. Speaker:** Very well. Next Question, Mr. Sungu.

**Mr. Sungu:** Mr. Speaker, Sir, although I have not received a written reply I beg to ask Question No.637.

*Question No.637*

REPAIR OF MAMBOLEO-GITA BRIDGE

**Mr. Sungu** asked the Minister for Public Works and Housing:-

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

**Mr. Speaker:** Is anyone here from the Ministry of Public Works and Housing? The question is stood over until the end. Next Question, Mr. Murungi.

*Question No.228*

DISBURSEMENT OF ROADS 2000 PROGRAMME FUNDS

**Mr. Murungi** asked the Minister for Public Works and Housing:-

- (a) how much money has been allocated to the following districts under the Roads 2000 Programme:-
  - (i) North Meru,
  - (ii) Central Meru;
  - (iii) South Meru and
  - (iv) Tharaka; and,
- (b) when the amounts will be released to the respective districts.

**Mr. Speaker:** Is any one here from the Ministry of Public Works and Housing? We will leave that Question until the end.

Next Question, Mr. Ndubai.

*Question No.644*

COLLAPSE OF MERU NORTH CO-OPERATIVE UNION

**Mr. Speaker:** We will come to that Question later. For the second time, Mr. Sungu.

*Question No.637*

REPAIR OF MAMBOLEO-GITA BRIDGE

**Mr. Sungu** asked the Minister for Public Works and Housing:-

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

**Mr. Speaker:** Is anyone here from the Ministry of Public Works and Housing? The question is deferred.

*(Question deferred)*

**Mr. Sungu:** Mr. Speaker, Sir, I would like to protest because this Question has been lying with the Ministry since June, this year and upto now, I have not received a written answer and nothing has been done.

**Mr. Speaker:** So, what do you want me to do?

**Mr. Sungu:** Can we know when we might get an answer, Mr. Speaker, Sir?

**Mr. Speaker:** Well, I have no any other business.

**An hon. Member:** Discipline the Minister.

**Mr. Speaker:** Mr. Murungi, for the second time.

*Question No.228*

DISBURSEMENT OF ROADS 2000 PROGRAMME FUNDS

**Mr. Murungi** asked the Minister for Public Works and Housing:-

(a) how much money has been allocated to the following districts under the Roads 2000 Programme:-

- (i) North Meru,
- (ii) Central Meru;
- (iii) South Meru and
- (iv) Tharaka; and,

(b) when the amounts will be released to the respective districts.

**Mr. Murungi:** As a matter of fact, I had informed the Minister that you had agreed to reschedule this Question after it was dropped when we were consulting with him and that it will be coming up today. Since we do not know where he is and no person should be condemned unheard, I will beg that the Question be deferred to Tuesday.

**Mr. Speaker:** The Question is deferred.

*(Question deferred)*

**Mr. Murungi:** Thank you.

*Question No.644*

COLLAPSE OF MERU NORTH CO-OPERATIVE UNION

**Mr. Speaker:** For the second time, Mr. Ndubai?

**Mr. Munyao:** On a point of order, Mr. Speaker, Sir. I heard you say that it is procedural to drop a Question when the Member is there, but as you are aware and the world knows, systems have been put in place to look for hon. Ndubai. Could we ask the Chair to defer this Question because after next week, nobody will be looking for him and he can come and ask the Question?

**Mr. Speaker:** The Question is dropped.

*(Question dropped)*

**QUESTIONS BY PRIVATE NOTICE**

HARASSMENT OF SUSPECTS BY POLICE

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

(a) Could the Minister immediately restrain the police and the Provincial Administration in Mombasa from continuing to harass M/S Khalif Khalifa, Munir Mazrui and others who are alleged to have demolished the fences surrounding the plots along the historical and recreational Mama Ngina Drive public grounds, said to have been allocated to private developers?

(b) Why are these alleged culprits being treated differently by the police from those highly publicised saviours of Karura Forest, some of whom, on their own confessions, caused obstruction to developers and destroyed private property worth millions of shillings and who have not been apprehended to date?

(c) How does the Minister intend to rectify this portrayal of double standards by the Kenya Police in handling matters before them, that are similar in nature?

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

(a) No police officer or Provincial Administrator is harassing M/S Khalif Khalifa, Munir Mazrui and others in Mombasa.

(b) Each of the two cases has got its own merit depending on evidence. The Mombasa case is already pending before the court and before the completion of the investigation, it is *sub judice* to discuss it outside the court. The Karura Forest case is still pending under investigation. Confessions made in the media are not by themselves sufficient to warrant court action before the investigations are done and the confessions are made in writing to a person in authority.

(c) There are no double standards by the police. The Karura Forest police case is still pending under investigation and it is only after investigation that action will be taken against any person who will be found to have committed any offence against any person or property.

**Mr. Badawy:** Mr. Speaker, Sir, I would like to respect the rule of *sub judice*, however, on the issue of the Karura Forest case, can the Assistant Minister tell us how far the investigations have gone especially where a crime has been committed and the whole world knows about it? Can he tell us whether he has, at least, served notices of intended prosecution to those who perpetrated the arson?

**Mr. Sunkuli:** Mr. Speaker, Sir, we have not served any notice to the arsonists so far, but I would like to inform the hon. Member that the investigations are, indeed, going on and I would not like at this stage to say how far they have gone.

**Mr. Haji:** Mr. Speaker, Sir, would the hon. Assistant Minister tell this House whether we have super citizens and sub-citizens in this country because when the Karura Forest crime was committed nobody was arrested, but when a similar thing happened in Mombasa, the people there were arrested and put in jail? Is it proper for us to assume that there are super citizens and sub-citizens in this country?

**Mr. Sunkuli:** Mr. Speaker, Sir, there are only citizens. There are no super citizens and sub-citizens and no other type of citizens. They are just one type of citizen. I just want to inform the hon. Member that those arsonists will be brought to book one day.

**Mr. Anyona:** On a point of order, Mr. Speaker, Sir. The Assistant Minister is talking about those Kenyans who have a case pending before them in court, but the Question is suggesting that they are being harassed while the case is in court. Is the Assistant Minister implying that the law allows the police to harass people who have cases pending before the courts? Is it correct?

**Mr. Sunkuli:** Mr. Speaker, Sir, the hon. Member for Kitutu Masaba did not listen properly because I said, that those matters are before the court and the hon. Badawy was in agreement with me that because the matter is before the court, we do not want to discuss it. But there is the other matter which is not yet before the court.

**Mr. Badawy:** On a point of order, Mr. Speaker, Sir. I do not agree with the Assistant Minister that I am satisfied that those people who were arrested in Mombasa are not being harassed. The matter is *sub judice*, but I would like to inform him that those gentlemen are still being harassed and one such harassment is the requirement to report to the police every four days. That is enough harassment.

**Mr. Sunkuli:** Mr. Speaker, Sir, that fact is new to me. I do not know whether it was as a result of a court order, but if it is not, then, I will make sure that, that matter is addressed.

**Mr. M. M. Galgalo:** Mr. Speaker, Sir, we both these teams on the TV. These people had committed similar crimes but the Assistant Minister here is answering it in a light manner. Again, the Assistant Minister is telling us that the law does not segregate between the citizens of this country. Is he in order to mislead this House when we know that some people are walking free while others have been arrested and charged in court for similar offenses?

(Applause)

**Mr. Sunkuli:** Mr. Speaker, Sir, it is that the investigations in this second case are not complete. As soon as certain statements have been recorded, then those who are suspected will be brought before court.

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

**Mr. Speaker:** Whose question was it? The very last one, Mr. Badawy!

**Mr. Badawy:** Mr. Speaker, Sir, could the Assistant Minister tell us what is delaying the investigations? For all we know, all those perpetrators are in Kenya and most of them are in this House. Why is he taking so long to complete the investigations?

(Applause)

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



**Mr. Speaker:** Yes, what is it?

**Hon. Members:** Sit down, Mr. Mwenje!

**Mr. Mwenje:** Mr. Speaker, Sir, is the hon. questioner in order to insinuate that there was a crime committed, when we all know that there was no crime committed?

**Mr. Speaker:** Order! Order, hon. Mwenje! I do not think you can take the fact from the question by the hon. Member. Let the Assistant Minister answer. I do not think---

**Mr. Mwenje:** I must talk!

**Mr. Speaker:** Order! Order! Order, hon. Mwenje! Precisely, that is what hon. M. M. Galgallo is complaining about. Do you understand what I am saying? That is what Mr. M. M. Galgallo is complaining about. There are no Kenyans who cannot be referred to as having committed crimes, if they have committed crimes. You cannot gag the whole House. Let the Assistant Minister put his case.

**Mr. Sunkuli:** Mr. Speaker, Sir, "the guilty runeth when no one pursueth". But, with respect to the hon. Member's question, we want to make sure that by the time we take these persons to court, there should be sufficient evidence. That is what we are trying to ensure that there is.

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

**Hon. Members:** Point of order, Mr. Speaker, Sir!

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

**Mr. Ndicho:** Mr. Speaker, Sir, you heard it very clearly hon. Badawy said that some of those suspected criminals are in this House.

**Hon. Members:** Yes, they are!

**Mr. Ndicho:** Mr. Speaker, Sir, if truly we have criminals here, can he name them? Unless he is a criminal, in the first place in this House?

*(Loud consultations)*

**Mr. Badawy:** He is one of them!

**Mr. Speaker:** Order! Mr. Ndicho, the only thing I can say for sure is that we do not have a House of saints. That is the best I can say.

*(Laughter)*

Next Question! Mr. Kombo!

MEASURES TO IMPROVE LIQUIDITY  
OF NATIONAL BANK OF KENYA

**Mr. Kombo:** Mr. Speaker, Sir, I beg to ask the Minister for Finance the following question by Private Notice.

(a) Under what terms and conditions was the Kshs.2 billion advanced to the National Bank of Kenya by the Government on Friday, the 20th November, 1998?

(b) Could the Minister table the list of parastatals and companies with non-performing loans to the National Bank of Kenya and the amounts outstanding on each?

(c) What measures is the Minister taking to have these loans repaid in order to improve the liquidity of the Bank?

**The Assistant Minister for Finance (Mr. Arap-Kirui):** Mr. Speaker, Sir, I beg to reply.

(a) It is not true that the Government advanced Kshs.2 billion to the National Bank of Kenya on 21st November, 1998. The correct position is that the Government paid Kshs.2 billion to the National Bank of Kenya in honour of its guarantee to the Bank on debts of Nzoia Sugar Company Limited and Muhoroni Sugar Company. The Government decided to honour its guarantee in order to help the Bank stabilise its liquidity position, which had been adversely affected by unwarranted panic withdrawals of deposits.

(b) Here below is a list of parastatals which had non-performing loans that were guaranteed by the Government as at 31st October, 1998. There are five of them, as follows:-

Name	Amount Kshs in	Millions
------	-------------------	----------

1. Nzoia Sugar Company Limited	1,410
2. Kenya Meat Commission (under Receivership)	804
3. Muhoroni Sugar Company Limited	1,183
4. Kenya Medical Research Institute	148
5. Lake Basin Development Authority	151

Mr. Speaker, Sir, as mentioned under (a), the debts owed to the Bank by the Nzoia and Muhoroni Sugar Companies were reduced by Kshs.2 billion as a result of the payment by the Government.

(ii) With regard to private companies, I wish to table a list of those companies that are with the National Bank Lawyers and those that have been sued by the bank for the purpose of debt recovery.

*(Mr. Arap-Kirui laid the document on the Table)*

Mr. Speaker, Sir, one of the measures which the Government has taken towards the repayment of non-performing loans by parastatals, is to honour its obligations with regard to guarantees. As you may be aware, a number of banks and non-bank financial institutions have been facing liquidity problems due to their failure largely to realise securities held against non-performing loans.

Mr. Speaker, Sir, to address this problem, the Government has requested the Attorney-General and the Chief Justice to strengthen the newly-created commercial courts. In particular, ways must be found of speeding up the realization of securities for money loaned by commercial banks and non-bank financial institutions. This should include sorting out of numerous injunctions put in court by borrowers which have led to delays in the realisation of security, in some cases for several years. Borrowers in general, must also realise that they are duty bound to service the loans which they have borrowed.

**Mr. Kombo:** Mr. Speaker, Sir, first, I want to complain against this question of laying the list on the Table and the hon. Members do not have an opportunity to look at it. This is not very good. When I asked the Assistant Minister, earlier on, for the list, he told me that he was instructed to just lay it on the Table and not to give to me in advance. Anyway, that notwithstanding, I would like to know where the Kshs2 billion came from. We know that this Government is broke.

*(Applause)*

They could not pay the teachers. Farmers in various zones like the maize growing areas are suffering and yet the government could find Kshs2 billion to give to the National Bank. Could the Assistant Minister tell us where the money came from, and what such a transaction does to a collapsed economy?

**Mr. Arap-Kirui:** Mr. Speaker, Sir, I think we have got to admit that where the Government had given a guarantee and a borrower has failed to honour his obligations, the guarantor had to come through. So, this was something that had to be done. The money that the Ministry paid to the bank was borrowed using Treasury Bills from the domestic market.

**Mr. Keriri:** Mr. Speaker, Sir, now, monies are paid from Government coffers through approved provisions in the Estimates. Could the Assistant Minister tell us which of the approved sub-heads in the Ministry's Vote was charged for this money? Was that provision approved by Parliament?

**Mr. Arap-Kirui:** Mr. Speaker, Sir, as far as I am aware, the guarantee to the bank was approved by Parliament and the Government has to meet its guarantee. This fact has to be admitted: That the National bank of Kenya is one of the largest banks in this country and so, when it suffered unwarranted panic withdrawals because of uncertainties in the market, the Government definitely had to do something. This had to be done.

**Mr. Murungi:** Mr. Speaker, Sir, it is true that the Government does guarantee loans of the kind and nature that the Assistant Minister is talking about. But Section 100 of the Constitution makes it quite clear that no amount of money can be withdrawn from the Consolidated Fund without the approval of this House. In honouring the guarantee, the money has to be withdrawn from the Consolidated Fund. Can the Assistant Minister tell this House when they came for approval from this House for the Kshs2 billion to be withdrawn from the Consolidated Fund?

**Mr. Arap-Kirui:** Mr. Speaker, Sir, I do not think we will go into the detailed accounting. As I said, the statement that the money came from the Consolidated Fund would suggest that this money was with the Central Bank of Kenya. This was money borrowed by the Ministry of Finance and used to meet these guarantees.

**Mr. Raila:** Mr. Speaker, Sir, this is new a type of accounting. It is not the type of accounting that this House is used to because it makes the whole process of budgeting meaningless. There is no point for the Minister to come to this House and present a Budget and ask for approval if thereafter, the Minister can go and withdraw money from the Consolidated Fund which was not approved by this House. But be that as it may, just a month ago, this same Government was refusing a proposal for financial restructuring of Nzoia and Muhoroni Sugar Companies. Instead, the Government went out to invite some other companies - a dubious company by the name of F.C. Shefar - to come and refinance Nzoia and Muhoroni Sugar Companies. Which is which? Has the Government now come to the agreement that there is a need for financial restructuring so that farmers in those areas can now buy shares from those companies or is that different? There are two questions here: Firstly, why is the Minister for Finance ignoring the Budget and secondly, have they now agreed to restructure those companies?

**Mr. Arap-Kirui:** Mr. Speaker, Sir, I might have to ask the Member to repeat part "a" of his question. He said the Government is ignoring something.

Mr. Speaker, Sir, I would like to put it this way. This was an emergency situation that had to be met and the Government within its budgetary proposals will be able to adjust to meet this payment within the financial year. If it becomes necessary, I am sure the Government will do what is necessary to correct that situation.

**Mr. Raila:** On a point of order, Mr. Speaker, Sir. We just finished with the Budget on the 31st of last month. Now, the Assistant Minister is telling us here that what happened in the National Bank of Kenya was an emergency. When did this emergency arise? Is he in order to mislead the House?

**Mr. Arap-Kirui:** Mr. Speaker, Sir, I thought every Member was aware that there was a panic withdrawal of funds from the National Bank of Kenya and it was an emergency. However, because the Government was able to meet its obligation, this situation has now stabilised. We know that the National Bank of Kenya is on a sound footing and will continue to serve its customers. As for the second question about the restructuring of certain companies, I think that is an entirely separate matter.

**Dr. Kituyi:** Mr. Speaker, Sir, early this year, the Finance Minister got into some political problems because he said that if the Government told him to allocate money for a new district headquarters, he was not going to print more Treasury Bills to finance any desire of the Government. He said there would be no more Treasury Bills, both in Mombasa and Mbagathi. His Assistant Minister did not hear that, but he heard what the President said when he went to Kitale to open the agricultural show. He said: "My undertaking that the Government will facilitate National Cereals and Produce Board to buy maize in order to save farmers who are now disposing of a Kshs90 Kilogramme bag at Kshs350 is going to be honoured." We understand that they have not done that because there is no money. Under what form of political auditing did the Government find more priority in saving bad debts at National Bank of Kenya than salvaging the agricultural economy of this country, particularly maize growers?

**Mr. Arap-Kirui:** Mr. Speaker, Sir, on the question of payment for agricultural produce; while that is important, it is a slightly different question. What I would like to say is that this was a situation that had to be dealt with. We are talking about a very major national institution. I think the alternative would have been worse if the Government did not take up its responsibility and respond immediately the way it did.

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

**Mr. Speaker:** I am sorry, Dr. Ochuodho. Mr. Orenge's Question! We have got to make progress!

#### HARASSMENT OF LICENSED HAWKERS IN KISUMU MUNICIPALITY

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

(a) Is the Minister aware that licensed hawkers in Kisumu Municipality are continually being harassed and ejected from designated areas by the officers of the Municipality with the assistance of the Provincial Administration and that in the process, many hawkers have been unjustifiably arrested and prosecuted and their goods and wares arbitrarily confiscated and destroyed?

(b) If the answer to "a" above is in the affirmative, why are the Municipality officials harassing licensed hawkers?

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

(a) It is not true that licensed hawkers in Kisumu Municipality are being harassed and ejected from their respective areas of operation by council employees. Only those operating from unauthorised areas have been stopped from doing so, and this has been done in line with the council by-laws. If there have been cases of arrests

and prosecutions, they have been done within the routine enforcement of the council by-laws.

(b) The Municipal Council of Kisumu is not harassing hawkers and business is going on in the normal way.

**Mr. Orengo:** Mr. Speaker, Sir, I am surprised by the answer given by the Assistant Minister. I was in Kisumu Town yesterday when the hawkers were to be evicted from these designated areas and they were supposed to be holding a demonstration. But for a good measure, the DC, told them that they can go on selling their wares at those particular areas. So, in fact, when I left Kisumu yesterday, I was a little bit happy with the situation on the ground. But the point is; these hawkers are paying rates and whatever fees the municipal council is asking for. The municipal council is a little bit sympathetic to the hawkers, but the Provincial Administration has continued to subject these hawkers to harassment for the last three weeks and there have been demonstrations in Kisumu, on several days for the last three weeks. Yesterday, when I was in Kisumu nine women were arrested. I went to the police station and all of them had trading licenses and they had been arrested. So, it is either that the Minister is not aware of the situation on the ground or he is deliberately not telling the House the truth. Can he rise up to the occasion and agree with the DC, Kisumu, in his decision of yesterday to allow the hawkers to continue working in those areas until the decision is formalised instead of telling us one story here while the DC has a different story?

**Mr. Sasura:** Mr. Speaker, Sir, I am very much aware of the situation on the ground. In the recent past, unlicensed hawkers, including the licensed ones have invaded the Central Business District in Kisumu Town. Following the invasion, Kisumu Municipal Council resolved to clear these [Mr. Sasura] hawkers through the normal procedure. While we appreciate the revenue we get from the licensed hawkers, we also consider that it is not fair on the part of the residents of Kisumu Town for the Central Business District to be invaded by hawkers. In our effort to improve this, the council has designated the following areas for hawking: Ang'awa Street, Paul Buya Street, Nyamulore Street and even Gor Mahiah Street

**Mr. Orengo:** Mr. Speaker, Sir, I am glad the Assistant Minister has named those streets. One of the streets where the hawkers were being chased in Kisumu, up to the end of the day yesterday, is Ang'awa Street. Could he make sure that he regularises the position on the ground and that in accordance with the resolutions of the Council, no acts of harassment are meted against the hawkers. I am glad he has read that list. That is where the problem was. Hon. Prof. Anyang'-Nyong'o was with me and he knows what the situation is on the ground.

**Mr. Sasura:** Mr. Speaker, Sir, I am very much aware that hon. Orengo and Prof. Anyang'-Nyong'o were there over the week end. The hawker who was chased from Ang'awa Street must have been unlicensed. If he was licensed, then there were no cause to chase him from a street which has been designated by the Municipal Council.

**Mr. Sungu:** Mr. Speaker, Sir, I represent part of Kisumu Town. The hawking problem has been a cause of concern for me and other political leaders in the area. In particular, I have discussed this issue with the Municipal Council as well as the local administration. It has been agreed that certain areas be left aside for those hawkers. You have failed to mention Ojino Okeyo Road. There are various ways and means of solving these issues. One of them is to close off some streets after 5.00 p.m. so that the hawkers can have access to these areas for trading, like it happens in Eldoret. It is also possible to have a Sunday market in some streets. Some streets can be closed on Sunday for some hawkers to trade so that they can have means of livelihood, instead of resorting to crime. This can be done with the co-operation that the Assistant Minister is showing. I am glad that he has noted that and I do hope that he can do this. Can the Assistant Minister assure us that he will take these measures in recognition?

**Mr. Sasura:** Mr. Speaker, Sir, it is true that Ojino Okeyo street is one of the streets that have been designated for this. I am glad that the hon. Member has got some advice for the Municipal Council and the hawkers association. Various meetings have been taking place, and there has been no dispute between the hawkers association and the Municipal Council of Kisumu. I am sure that in the course of time, they will come to an amicable solution to the problem.

#### ILLEGAL ALLOCATION OF UTILITY PLOTS

**Mr. Muchiri:** Mr. Speaker, Sir, I beg to ask the Minister for Lands and Settlement the following Question by Private Notice.

(a) Is the Minister aware that over 100 public utility plots surrendered to Nairobi City Council by land buying companies for nursery, primary and secondary schools, dispensaries, open spaces and hospitals within Kasarani Constituency have been unlawfully allocated to individuals and companies by the office of the Commissioner of Lands without approval or resolution of Nairobi City Council?

(b) Is he further aware that LR/71/7/8 allocated to M/S Kibe, Duncan Muriuki, James Nganyira and

Harrison Mwangi, is a plot on which a nursery school built by the public stands, and that the new allottees are now harassing the nursery school children?

(c) If the answers to "a" and "b" above are in the affirmative, could the Minister revoke the said allocation as a matter of urgency?

**Mr. Speaker:** Hon. Muchiri, I am sorry, but I will defer your Question to Tuesday. The time is up.

**Mr. Muchiri:** On a point of order, Mr. Speaker, Sir. This Question has been deferred two times. I have got three other Questions that have always been deferred. These Questions are always put last on the Order Paper. Can they now be put in the first place?

**Mr. Speaker:** Yes, you have a point there. I will consider having the Question first on the list of Questions by Private Notice.

*(Question deferred)*

## MINISTERIAL STATEMENT

### EXCISION OF FOREST LAND

**The Minister for Natural Resources** (Mr. F. P.L. Lotodo): Mr. Speaker, Sir, I wish to make a Ministerial Statement.

Before 1977, about 816 families were living in the Lower Nturiri area of Mt. Kenya Forest as squatters. Between 1975 and 1977, the Government excised the area occupied by the squatters for the then Minister for Lands and Settlement, thereby dislocating them. The said squatters moved and squatted in a very cold area, known as Gushishi near Onturiri Forest Station. As the area is not suitable for settlement, and the squatters had been engaging in wanton destruction of the forest and other illegal activities, the Government has found it necessary to move them to a more hospitable area. This is the area which is the subject of my Gazette Notice No.5847 of 23rd October, 1998, under which I am proposing to excise 796 hectares of land for the permanent settlement of the 816 families.

The squatters are currently inside the forest and on the upper part of the mountain, where it is difficult to control their illegal activities in the forest destruction. Furthermore, the area is a primary water catchment for numerous streams flowing into North Ewaso Nyiro River. Hence, their continued stay in this area would have a negative impact on the environment. Let me hasten to add that the area is not suitable for agriculture. The proposed area for settlement is in the periphery of the forest and the settlers will have access to public amenities. Besides, the area is of high agricultural potential with good terrain. Most of the land has been under forest plantation, which has been harvested. Although the area is neighbouring Sirimon River, the river banks will be left intact as they are covered with indigenous vegetation.

Since the area has been under plantation for over 60 years, I should emphasise that this excision will not have further negative effect on the flora and fauna.

Thank you, Mr. Speaker, Sir.

**Mr. Mwiraria:** Mr. Speaker, Sir, I am assuming that this Ministerial Statement is being made following a request by hon. Maore last week. I just wanted to seek clarification from the Minister.

Mr. Speaker, Sir, I have, on several occasions, raised in this House, the question on the fate of those squatters. There are three groups, all of them calling themselves, Nyayo Squatters in Gushishi, Karuri and another area. The point that I would like to clarify with the Minister is whether, once that piece of forest has been excised, the squatters will be the ones who will be settled on all the land.

**The Minister for Natural Resources** (Mr. F. P.L. Lotodo): Mr. Speaker, Sir, the purpose of de-gazetting the 796 hectares is to have the 816 families down there to be settled. We shall invite the hon. Member on the day of the exercise to be there.

## BILL

### *Second Reading*

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

*(The Attorney-General on 19.11.98)*

*(Resumption of Debate interrupted on 25.11.98)*

**Mr. Speaker:** Prof. Anyang'-Nyong'o was on the Floor.

**Prof. Anyang'-Nyong'o:** Mr. Speaker, Sir, when the House rose yesterday, I was making my contribution to this Bill. I was saying that it is important to underscore the fact that a Constitution is a fundamental law of the land. It is a social contract between the people and their governors and, therefore, it provides a very important dotation for the process of discussing the Constitution to be open, frank and people-based, and not just driven. So, the modality for consultation during this review process, must, indeed, be such that it provides the widest latitude for those who are going to be involved in the review process, to do so effectively. That the final deliberating assembly, which is Parliament, must, in its capacity as a Constituent Assembly, have that open and frank contribution in mind. It is in that regard that the Social Democratic Party, on the 4th of May, 1998, through its Secretary-General, wrote to the Attorney-General, stipulating the conditions under which the Social Democratic Party will participate in the Constitutional Review Process. Some of the major landmarks in the Act that had been passed in Parliament, needed to be amended, if, indeed, the process could be effective, open and frank. First, in the letter, we told the Attorney-General that we need a full and open consultation process whereby the deliberating bodies will elect their delegates and the delegates will elect their own chairperson in formulating the Bill. Secondly, we also stated that the Eighth Parliament should, in that process, be constituted in the Constituent Assembly to review the commission, and that the review commission itself should be an agent of that Constituent Assembly.

Mr. Speaker, Sir, we noted that in the process of reviewing the Constitution, Parliament should not lose its role of continuing its normal activities as a legislative body. That, constituting itself into Constituent Assembly would in no way contradict the normal role of Parliament as a legislative body.

Thirdly, it was pointed out that the commissioners nominated through the review commission would be delegates of the bodies that had nominated them and they would represent those bodies in the review commission. Contrary to what has been said in the Bill, the Act stipulates that the President would appoint such commissioners.

Fourthly, we also noted that the commission would appoint its own secretariat and guarantee that the funding of that secretariat is autonomous from and, indeed, liberated from the control of the executive.

Fifthly, Mr. Speaker, Sir, we observed that the views collected by the commission would finally be submitted to Parliament or a Constituent Assembly which would deliberate on them and reduce them into a Constitution.

Sixthly, we noted that the tenure of the commission should be extended by one year beyond the adoption of the new revised Constitution. Finally, we said that Parliament would approve the appropriate levels of the remuneration of both the secretariat of the commission and the commissioners themselves.

Mr. Speaker, Sir, in this process, we noted that political parties and interest groups, as the fundamental bodies that would send delegates to this commission, must indeed be fully funded at appropriate levels. Their participation should not in any way be impaired by the lack of the resources they need to participate fully in the constitutional review process.

Mr. Speaker, Sir, having looked at the Constitution of Kenya Review Commission (Amendment) Bill, the Social Democratic Party feels that, in large measure, some of the conditions that we noted to the Attorney-General have been satisfied in the drafting of the Bill. But we have also noted that there are two certain key areas that would need amendment to make this Bill reflect what we would term as a process that would be representative, effective and responsive to the long term interests of Kenyan people and to the needs of a Constitution that would stand the test of time. First of all, I need not emphasise again that an area of an amendment that we shall be moving is regarding the districts. Messrs. Ntimama and Kones spoke effectively about this. We would like to propose that the districts to participate and be represented in the review process should be those districts that were as of 30th June, 1998, properly gazetted as districts.

Secondly, Mr. Speaker, Sir, we would like also to propose that the commissioners who are representatives of the bodies that have send them to the review commission should functions as delegates, subject to recall by those bodies that have send them there. It is important that they do indeed represent those bodies that have nominated them to the review commission. This would in no way contradict the code of conduct that is stated in the Bill; neither would it contradict the sense of independence that each commissioner should exercise in his capacity as the representative of the people and of Kenya in the constitutional review process.

Thirdly, since the district has been recognised as the primary locus of representation at the grassroots

level in the process of reviewing the Constitution, it is important that the functions of the district front be extended beyond mere civic education and that the district forums be enabled to represent the people there effectively in voicing their ideas about the Constitution. At this point in time, it is not very clear in the Bill how participants in the district forums will be funded. It is assumed that they will render these services voluntarily. But we do know that in our districts people need to travel, sometimes they travel long distances. They will have in certain cases to spend nights in the headquarters where the forum is being held. There will be a substantial sum of money needed by these people and this should not be left to voluntarism. The funding for the district forums and bodies sending the participants there should be sufficient and effective so that the participants do not become mere tokens in the deliberations at the district forums.

It should also be noted that the representation to the national forums should be weighed by the population. It is not geography that we need to represent. It is population or demography that we need to represent. As many people as possible should have their voices heard in both the district and national forums. Since at best each Kenyan should be in this forum, however, we know that cannot happen because it will be too expensive and too cumbersome. Hence, at worst, everybody will be represented by a representative and we should pay particular attention to weighing representation on the basis of population. Fourthly, there is the issue of participants in the national forum on an ex-official capacity. The other factor about the national forum is the manner in which decisions have to be arrived at. I think it is rather risky if the decisions of the national forum are made by sheer simple majority. At the moment, it is assumed that the simple majority of members present will make it possible for decisions to be made. I think the Attorney-General should review this. Since the national forum will be making extremely important decisions, I think it should be stated that a two-thirds majority of members present would be necessary on major decisions.

Fifthly, Mr. Speaker, Sir, there is the issue of the commission's expenses. Expenses of participants should be charged to the Consolidated Fund. At the moment, if we are not very careful we might find ourselves going back to the old situation in the Kenyan elections where political parties with a lot of money can participate effectively in elections and the political parties which are devoid of funds are disadvantaged. In this regard, if you are going to make the commissioners and commission's expenses in general effective, I think all aspects of it should be charged to the Consolidated Fund.

Mr. Speaker, Sir, it is important that once the views are collated, the draft is made and presented to Parliament and Parliament finally puts the stamp of approval on a new Constitution, that the organs which have been responsible for the review process; the district forums, the national forum and the commissioners themselves be let to exist at least a year beyond the approval of the new Constitution.

Mr. Speaker, Sir, this is important because they will be in a position to oversee and overlook the extent to which the new Constitution is being put into practice. This will avoid us the pitfalls that we had with the Inter Parliamentary Party Group (IPPG), where the body was disbanded and new institutions came into place. There was no time to superintend the effectiveness and the extent to which some of the resolutions that had been passed were being translated into reality. I will move an amendment at the Committee stage, which will make these organs exist beyond the time of approving the Constitution by at least one year.

Finally, it is important that while the review process is still going on, and when the new constitution comes into being, Parliament will not be prorogued prematurely. At present, Section 59(1) and (2) of the Kenyan Constitution gives the President power to prorogue Parliament at any time. I realise that when we say that Parliament should not be prorogued at any time, the new constitution should be in existence for at least a year before the next general elections; we are saying that Parliament should not extend its seating beyond the five years which are stipulated in the Constitution. Secondly, the new constitution should come into effect at least a year before another general election is held. This means that the Attorney-General (AG) may have to propose to this House either before the Bill is passed, or soon after it has been passed--- We should look at Section 59(1) and (2) of the Kenyan Constitution. We should propose an appropriate amendment to the Constitution which will ensure that Parliament is not prorogued prematurely while the review process is still going on, or before the Constitution has been in existence for at least a year to ensure that Kenyans have faith in the new constitution and some of the proposals that are actually put into practice.

Mr. Speaker, Sir, while debating the Constitution of Kenya Review Commission (Amendment) Bill, my hon. friend, Mr. Murungi did mention in this House that in one of my contributions to the debates not in this House, I had said that if we are not careful we may be overtaken by a social upheaval, or a social revolution which we have not planned for. Hon. Murungi thought that I was trying to advocate for an extra-Parliamentary process of social change.

I would like to say that constitutions are mere documents. Unless they are backed by the people, and there are social forces in society which have faith in them, then the constitutions mean very little. We know that Nigeria

has had several military coups and at the end of each military coup it has a new constitution. Those constitutions have not meant anything to the political development in that country. This is because constitutions cannot wipe out the social injustices in a society. A constitution by itself cannot eradicate poverty and injustice. It is the process of socio-economic change and democratising social relations in a society that can indeed wipe out these things.

In Kenya, today, we read in the newspapers that a bank was robbed of money in Mombasa Town with members of the Police Force carrying guns. We have also read in the newspapers about a police officer killing his fellow policeman. Some policemen are defending the law while some are breaking it! This happens because, if we have a situation where people are retired from their jobs without being given good pension, somebody who had been using the salary to feed his family, and no longer receives it-- You are inviting this person to theft and robbery.

Mr. Speaker, Sir, the National Social Security Fund (NSSF) will soon go down the drain, because earlier in this decade, it had Kshs2.5 billion deposit in the National Bank of Kenya (NBK), which was turned into equity by the bank, since it was going under, without the approval of the Board of Directors of the NSSF. If Kenyans believed that this bank was going to turn around soon or later then it was a non-truth. The problems the NBK is facing today, having misused the monies of pensioners in this country, are the problems which were sown earlier in this decade. We are simply looking at the symptoms and not the causes of the problems, which are the bad laws and the unfair socio-economic relations in this country that make the State to misuse pension funds.

One of the reasons why we want a new constitution is to establish a fundamental law in this country that will guide social practice towards democratisation of society and a socially just system of socio-economic relations in this society. Unless those are our goals, then indeed, we are inviting social upheaval and social revolutions which I was talking about. The choice is not with us, but it exists in the socio-economic conditions in this country, which we must understand as the basis of making a new constitution.

Mr. Speaker, Sir, on many occasions, this House has said that one of the areas in which we can check injustice and economic exploitation in this country is for Parliament to have the powers to supervise and review the appointments of persons to important positions in this country, including parastatals. Secondly, we have always said in this House that when an institution is mismanaged the first thing, and this is done in business practices, is to fire the executive officers. Any business that is doing poorly, when indeed you want to turn it round, you have to change the chief executive officer. Parliament has said all those things, but it does not seem to have the power to implement them.

As I stand here today, I do not understand why in the saga of the NBK, the Chief Executive, Mr. Simba has not been fired. I do not also know why the Chairman, Mr. Ahmed has not been fired. These people have to go in order to give the organisation the freedom to restructure itself and start on a new course.

Mr. Speaker, Sir, the Minister for Finance has spoken very strongly about the need for change in the financial affairs of this country. He is a typical example that we are facing and we are seeing no effective decision being made. I do understand that Mr. Ahmed used to be a machine operator at the Central Bank of Kenya (CBK). I do not know what qualification he had, which enabled him to occupy such an important position in the NBK. Unless something happens with regard to those two people, the NBK will go down the drain more and more.

In the new constitution, one of the things that will happen is that we will have a true balance among the three organs of Government. These are the Executive, Legislature and Judiciary. Indeed, the essence of a democratic system of government is that the three branches of Government must be autonomous from each other and strong enough to fulfil their functions in the process of democratic governance. Parliament must be strong enough to make laws and autonomous from the other systems of Government. The Judiciary must also be strong enough to interpret the law and remain autonomous from the other systems of Government. The Executive must also be strong enough to execute the law autonomously from the other two branches of the Government. Nonetheless, autonomy means interdependence that reflects the boundaries of good governance.

We do hope that in the review process, education to the people of Kenya will be taken seriously. This is because a review process without an effective system of civic education, that will educate the people on what we want to put in place will not be effective. I do hope that in this Bill, the priority that will be given to civic education will be backed by resources necessary for it.

Secondly, I hope that in this Bill, the role of civic educators will not be considered as an anathema to the process. Civic education is not just carried out by Non-Governmental Organisations (NGOs), which brand themselves "civic educators." It is given by all those members of civil society, including political parties. These parties should inform their members and those they are trying to influence with effectiveness and good ideas. I do hope that with this process we shall have the most important institution of communication in this country - the radio - open to everybody. That is why I think it is putting the cart before the horse to start a process of reviewing the Constitution when people have no access to the mass media that will tell them what they are reviewing and



give them the latitude to discuss the review process. It is urgent, and I hope the Attorney-General takes note, that the liberalisation of the airwaves, particularly the radio, takes place urgently and speedily so that we can have, not just Kenya Broadcasting Corporation as the avenue for radio communication, but all those private sector radio stations that are important in ensuring that civil society recognises the importance of this Bill. If this happens, the idea of strengthening the civil society will become a reality and not just something to which the Government pays homage whenever they want us to pass a Bill in this House.

*[Mr. Speaker left the Chair]*

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

It does not make sense whatsoever to speak about strengthening the civil society when it does not have a means of communicating with itself. In the same regard, the freedom of thought, association and communication that we thought had been achieved by a certain IPPG amendment is fast being eroded by some of the practices of the Provincial Administration. Hon. Kones made a fantastic contribution in the House yesterday when he said emphatically that if indeed, we are going to have these civil liberties in the process of reviewing the Constitution then the first instrument of oppression in this country that must go is the Provincial Administration. The Provincial Administration is an anachronism in a democratic society. In colonial Kenya the Governor needed the PCs as the representatives of the Crown in the provinces. We no longer have a Governor nor a Crown. We have what we call a democratic Constitution. We no longer need to have ambassadors with the crown on their heads camping around the provinces and terrorising the natives. Therefore, if the Provincial Administration cannot be abolished through amendment of the constitution, before we begin this process of reviewing the Constitution, then in practice, the Government should make sure as hon. Kones said yesterday, that they do not interfere unnecessarily with the process of communication and the rights of assembly and association of the people of Kenya. In this country, the method of changing the fundamental law of the land is through a review of the Constitution.

At this point, it is so important that I think it is even necessary for the Cabinet to convene an emergency Cabinet meeting to ensure that they deliberate on this issue expeditiously and come up with a decision that will make people of Kenya have confidence in the process of reviewing this Constitution without somebody with a crown on his head terrorising the countryside in the name of the Provincial Administration. In that regard, we want to say that maintaining good security in the countryside is extremely important during this process of discussion. We do not want a situation where a district forum is meeting in Kericho, Bomet, Garissa and people are scampered all of a sudden because a bank nearby is being attacked by thieves. Obviously, the next day nobody is going to be able to withdraw money from the bank to pay the same people who are deliberating in the district forum, discussing an important situation like this. It has been said that there is a third column operating within the police force, independent of the official line of police action. This third force hires guns, uniforms and everything else to the people who go and rob banks in the name of robbers when they are indeed under the aegis of this third force.

Once liberalisation blocked avenues of embezzling funds in parastatals and licensing and so on, we seem to have opened a new fund, that of armed robbery. The very people who have terrorised this nation, assassinated the people of Kenya and have stopped the process of democratisation going on are now robbing banks to stash up money with which they are going to subvert the democratic process and the constitutional review process and even subvert the next general elections. The Cabinet should take this issue very seriously and ensure that proper security is maintained in the country.

**Mr. Kapten:** Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to contribute to this very important Bill. I do support this Bill. It is an important Bill in our national history and I do believe that everybody is going to support it. I wish to associate myself with the sentiments expressed by the previous speakers. I will start by talking about security in this country. We are going to have a Commission which I suppose, is going to go round the country to get views of wananchi about the kind of Constitution Kenya should have. In going round the country one important thing is about security. If we do not have security in this country and I said that in some parts of this country even now you can hardly hold a meeting without interference from bandits. How is the district forum going to meet? How are we going to get delegates at this meeting if the security of these people is not ensured? We have a police force in this country which instead of protecting wananchi, it is in fact, the one which is going round killing people, stealing and damaging people's property. What kind of security do we have in this country? You can hardly be sure that you will travel from point A to point B without

being harmed on the way.

In my Kwanza constituency, and I have talked about this for a long period of time, people are living in a state of fear. On 1st of this month, 285 cattle were stolen from a GSU camp because people can hardly keep their cattle in their compounds. So, every evening they take their cattle to a GSU camp for protection overnight. On 1st we heard reports that people were going to attack the GSU camp. The security forces were informed that there was an impending attack on the camp. At night the GSU camp was attacked and 205 cattle taken from the camp. What surprises us is that despite the fact that, that camp had over 100 security officers nobody was injured and they were not able to injure even one bandit. The big question is; are our security forces the ones who were involved in this banditry? I do believe that, that is what is happening because if they were given information and they were not able even to injure even one bandit, what would wananchi conclude?

Mr. Temporary Deputy Speaker, Sir, on Monday, cows were again stolen from my Constituency. This time, the bandits killed, at least, two people. None of them was injured. Do we have a Government in this country and if we have, what is this Government doing? Getting involved in corruption? The duty of the Government is to protect the lives and property of the wananchi. This Government is hardly doing that! I hope when this Committee or Commission goes around, they will be protected and the people who will come out to air their views to the Commission will also be protected.

Mr. Temporary Deputy Speaker, Sir, we have banditry all over, even in towns. Every week we hear a bank has been robbed. The surprising thing, the information we have is that policemen are the ones who are doing these kind of things.

This morning I went to a bank; you find two, three or four police officers with G3 guns protecting a bank. When such a bank is attacked by bandits, thieves or robbers nothing happens. They will just gun them down. The thieves will go into the bank, steal and go. Can we not have another way of protecting the bank? How can one have a G3, a long gun in the City of Nairobi protecting a bank? Do we not have some pistols? Do we not have security officers who can be in civilian clothes to protect the banks? I think the Government should answer this question to wananchi. They are themselves involved in robbing the banks.

Mr. Temporary Deputy Speaker, Sir, when it comes to corruption, we have talked about corruption for a long, long time. It is right in the Executive, it is right in the Judiciary. Nobody in the Executive is trying to stump out this corruption. Even when it comes to retirement, senior officers bribe their masters so that when retirement age comes, they continue working.

We have one gentleman at the lands office; the Commissioner of Lands. This man is past the retirement age. What is he still doing at the lands office? We have all along said that there is massive corruption at the Lands office. Karura Forest is the best example now which we can give. The Commissioner of Lands is involved. He is past 55 years and yet, the Executive still wants to keep him. What kind of Government do we have in this country?

I quite accept and agree with the sentiments expressed by hon. Ntimama and the hon. Kones when they talked about the problems with the Executive. We want "more" Ntimamas and "more" Kones' to come to this House. Although they are Members of the Executive, they are able now to say that there is a problem within the Executive.

We do not have to hide anything, we want a Constitution which is going to help this country. When we talk about the presidency, let us stop thinking in terms of President Moi. President Moi is "going". In three years' time, he will not be the President of this country. We are talking about a Constitution which will be there after Moi. So, when we talk about the President, people should not get jittery and say, "oh, they are attacking the President". No, we are talking about "the presidency" not the "President". And we should differentiate those things.

We have given too much powers to the Executive. In this country, the President is too powerful. He can do anything and yet nothing can happen to him. I hope when the Commission goes round, we are going to limit the powers of the President because now the President is everything in this country.

When it comes to education, he is the Chancellor of all the public universities. I do not know, but I think time has come when we should have chancellors who are academicians themselves and who know something about the running of a university. We should not just have somebody because he is the President of this country, and therefore, he should be the Chancellor of all the universities. Time has come when we must change everything.

Mr. Temporary Deputy Speaker, Sir, when it comes to agriculture, the President is the patron of all the agricultural societies. The President is the father of the so-called "Nyayo children". He is the Chairman of the Board of Governors of some schools. Surely, going back down to the Chairman of the Board of Governors of schools, what kind of a head does the President have? We have over-loaded the President in this country and that

is why everything is going wrong. Time has come for us to change.

When we come to the Ministers, the gentlemen sitting on the Front Bench, we call them Ministers, but when it comes to decision-making, they hardly make any decisions. That is the truth of the matter. Ministers cannot even sack a sweeper in their officers or a messenger because that messenger has direct access to State House. The Ministers are unable to do anything if they want to discipline a member of staff in their Ministries. There is a lot of indiscipline in the Civil Service because senior members in the Ministries are unable to control the junior members. I hope when time comes to look at these in this Constitution, we will change some of these anomalies which are in our Statute Law.

Mr. Temporary Deputy Speaker, Sir, I want to talk about separation of powers. We have three organs of Government; the Executive, the Judiciary and the Legislature. As I said, in this country the Executive is everything. The Judiciary has been rendered "impotent" because of the behaviour, the actions and the directives of the Executive. Judges are at times unable to give judicial rulings because of interference from the Executive. Magistrates are unable to give fair rulings because of interference from the Executive.

Time has come when magistrates and judges in this country should stand on their feet and tell the Executive that they have work to do in this country, to do justice for everybody irrespective of his position in life. This question of the DCs, PCs ringing magistrates to decide cases in a certain way, will be a thing of the past. We should not allow these kind of things to happen in this country. I wish, at this juncture, to pay tribute to the Chief Justice. Despite the accusations that have been levelled against the present Chief Justice, I believe he is doing a good job to revamp the Judiciary in this country. People may not agree with me on that, but I believe what he is doing right now, is something which we should accept.

Today, I read that a decision has been given about the Anti-Corruption Authority case involving the Chairman. That is a decision which has been given by the judges. I do not want to comment about it, but when it comes to the appointments of the new board and even the new Chairman, I hope this time the appointing authority is going to do proper research and appoint somebody who is going to deal with corruption fairly in this country. It is corruption which has ruined this country and we, as Kenyans, must stand up to help this Authority to fight corruption that is rampant in this country.

Mr. Temporary Deputy Speaker, Sir, we may talk about Charles Njonjo, and whatever he did; but when he was the Attorney-General, I believe he did some splendid work. In fact, if I were given power, I would say that let him be the chairman.

As regards the Bill itself, I hope the Commissioners will be left to do their work independently. We are appointing a Commission and we have said in the Bill that it will be working independently. That is on paper. But when it comes to practice, you will hardly find that these people are independent. When it comes to the question of funding, Prof. Anyang'-Nyong'o has rightly said that this Commission should be funded from the Consolidated Fund instead of being left at the mercy of the Ministry of Finance. We should vote money specifically to enable the Commission run its work until the end.

Mr. Temporary Deputy Speaker, Sir, I wish to touch on Clause 6, paragraph 13 (iii) which says that the membership of the Commission, under subsection 2 shall include, at least, two representatives from each province in Kenya. This is a noble idea, but the question is; how is this going to be done? This is because we have not given a method on how representatives from each province are going to be appointed under this Act. The Attorney-General should give a formula on how the appointing bodies are going to select, at least, two people from each province.

Clause 13 (f), talks about filling vacancies in cases where a member of the Commission has failed to attend sittings for eight consecutive days. I personally think that allowing eight days is too long a period. If somebody can absent himself from attending a function of the Commission, even for two or three days, it means that, that particular Commissioner is not interested in his work. My view is that, once a person has absented himself for two or three days, without reasonable cause, his place should be taken over by somebody else. I am saying this because if we allow absenteeism of eight days, some Commissioners will be attending sittings on the seventh day, just to ensure that they have satisfied the legal requirement of the eight days. So, my view is that, instead of allowing a member to be disqualified after he has absented himself for eight consecutive days, this period of eight days should be reduced to two, or three days.

With regard to Clause 13 (h), it deals with the decision by the Commission to disqualify a person who has absented himself. The Clause says that the Commission should resolve by a two thirds majority if a person absents himself. Supposing that the Commission does not resolve by a two thirds majority, are we going to allow this person who fails to attend the sittings of the Commission to continue being in the Commission? My view is that, once it has been proved that somebody has absented himself from the Commission's sittings for a prescribed period, he should automatically lose his seat and the machinery should be put in place to replace him, instead of

waiting for the Commission to resolve by a two thirds majority. This is because it may not be possible to have a two thirds majority voting to remove a member of the Commission. So, my view is that, this should be an automatic thing. You fail to attend the Commission's meetings for a number of days that are prescribed, you automatically go.

Mr. Temporary Deputy Speaker, Sir, the machinery of filling the vacancy that occurs in the Commission is a bit cumbersome. This is because if you look at it, right from Clauses 4 to 7, it looks cumbersome. Why do we report to the President? We are giving the President too much work. Let us not call the President when a vacancy occurs. The Attorney-General who is an ex-officio member of the Commission should just put the machinery in place to fill any vacancy that occurs in the Commission. As I said, if you do the computation, it takes 66 good days to fill a vacancy. So, if the Commission is sitting on a day-to-day basis and one Commissioner does not attend the sittings for 66 days, will he be able to get what other Commissioners are doing? We should reduce the number of days that are required to fill any vacancy that occurs within the Commission. Section 14,(9)(a) is a good one, it gives protection to this Commission. It is a constitutional office and as I said, we hope it is not just on paper but in practice, that, these officers will be protected under the Constitution, and they will do their work until they finalise what they will be doing.

Mr. Temporary Deputy Speaker, Sir, Prof. Anyang'-Nyong'o also talked about proroguing Parliament in the course of the work of the Commission. We should put a clause in this Bill, that while the Commission is doing its work, the President should not have powers to prorogue Parliament. I think that is very important, because if Parliament is prorogued or dissolved, for that matter, while the Commission is doing its work, there will be a mess.

With those few remarks, I beg to support the Bill.

**The Assistant Minister for Lands and Settlement** (Mr. arap Leting'): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me the chance to add my voice to this Bill. I think this is a golden opportunity for Kenyans and Members of Parliament to review the Constitution which was made up more than 35 years ago, by a few people. It is now a chance for us to look at the Constitution and learn from the mistakes which have been made as a result of the existing Constitution. I understand that one of the aims of looking at the Constitution is to recover the lost powers of this Parliament. The way I have seen it, Parliament is supposed to be supreme and yet it is not supreme in action. If Parliament was supreme, the recommendations of PIC and PAC should have been implemented immediately, but it is not happening.

Mr. Temporary Deputy Speaker, Sir, there has been public outcry asking the Government to do certain things through Parliament. For example, when it comes to agriculture, farmers have been pleading with the Government that there should be no importation of grain, sugar, wheat and other commodities. But all this is not heeded to by the Executive. It is ignored. As a result, farmers suffer. The question of forests as a natural resource has been in the news for several years. Wananchi are crying about the forests, but nothing is done. Parliament implores the Government to take action, but nothing is done. The public through Parliament has recommended what should be done to have fair allocation of public land, but this is not taken into consideration. When the 8-4-4 was introduced, professionals like the headmasters, KNUT and parents kept on crying that it be reviewed, but nothing was done until recently. I am speaking as the Member for Emgwen and not as an Assistant Minister. So, I am giving those examples so that when we come to amend this Constitution, we will make sure that in future, when Kenyans cry out that something should be done, it should be done and not postponed.

Mr. Temporary Deputy Speaker, Sir, another area I have found to be wanting, and this has been mentioned by other hon. Members, is the role of the Provincial Administration *vis-a-vis* other administration in the districts. With the little experience I have had since I began this job, the people in the district are burdened with so many bosses. We have the DCs, councillors, DOs, chiefs and party bosses, resulting into a lot of confusion in the districts. The way I see it is that, the Provincial Administration and its role must be reviewed by the Commission because at the moment, to me, it is redundant. It has no job to do. If Parliament is supreme and at the district level Members of Parliament are under DCs, what are we? Councillors are elected by the people, but the DC who is an ex-officio member in the council seems to have in-built veto powers. So, the whole system has to be reorganized. We should even form district councils and abolish provinces. We should deal with the districts directly so that we cut down expenses. What are the provincial officers doing? I do not know what they are doing except to be there. I do not see their role in this era of functionality and accountability.

The way I see it is that, the Commission must review the role of the Provincial Administration. District Commissioners have been overburdened with so many functions. They are chairmen of DEB, DDC, Security Committee, Land Control Board and the rest. How can the DC perform all these jobs? Furthermore, when it comes to being the chairman of these committees, we should not forget that transfers for these people are effected almost after every six months or annually. Now, what can the DC do as the chairman of the DDC if he is transferred after

a few months before he settles down? The reason why there is need to review the district administration is to stabilise the administration; to make it more permanent and more useful to the public.

Mr. Temporary Deputy Speaker, Sir, while we are looking forward to the Commission reviewing the Provincial Administration, I find other administrative problems within the districts. Maybe I should give my own district, Nandi, as an example. For the last four years, all telephone lines for the heads of departments in the district have been disconnected. They cannot receive calls or call out. Authority to Incur Expenditure (AIE) is given to the district heads, but when they go to the District Treasury to get money, they are empty. The result is that, the officer does no job the whole year round. During the review process, the manner of transferring funds from ministries should be looked into, because that transfer is theoretical. No money is actually released. Then as a Member of Parliament you keep getting complaints that there is no money. If you try to harass the departmental heads, you will discover that they are helpless or disabled by the fact that they have no fuel or money. So, really, we are running districts which are not functioning. Officers in the districts have no work to do. Also, there are county councils and district commissioners in the districts. Now, these two administrations should be harmonised. If the district commissioners have to remain, we have to review their roles.

Mr. Temporary Deputy Speaker, Sir, the local authorities, as mentioned by other hon. Members, are not effective because of so many hurdles which must be looked into. So, the local authorities and the, Provincial Administration should be harmonised to produce one unit instead of having several units within the district.

Mr. Temporary Deputy Speaker, Sir, I am glad that we are reviewing the Constitution at a time when we have issues of public interest. I hope we will now build in the new Constitution, the measures that will prevent any tampering with issues of public interest like land, minerals, forests and all other things which touch on the whole nation. So, I hope we will make sure that the mistakes which have been made will not be repeated. Where we think that a matter is of public interest, it would be better to bring it to Parliament for ratification. For example, the allocation of land. However, we might overreact as Parliamentarians and give ourselves too much power and make the Executive immobile, so that if they have to come here all the time and ask for permission, administration will be very cumbersome and things may not run smoothly. It might also instil fear in those who are executing Government policies. So, let us also be careful. When we review the Constitution, let us not over-heap ourselves with powers that everything all the time must be brought to Parliament. We must lie somewhere in the middle. So, whatever we do, let us make sure that the Executive will be able to function normally. We should only interfere where we think it is in the interest of the nation, because we represent the nation as Members of Parliament.

Lastly, I would propose that among the functions of the Commission should be the review of public collections. We know that harambee is there with us and we have had problems with accounting for harambee money. Can this Commission also look at everything to do with public collections? If money is to be collected, what is the mode of collecting, accounting or spending? This will cover all types of collections, including money for disasters and ordinary harambees.

With those few remarks, I beg to support.

**Mr. Raila:** Thank you, Mr. Temporary Deputy Speaker, Sir, for the opportunity.

Mr. Temporary Deputy Speaker, Sir, I consider this to be one of the most important Bills to have come before this House during this Session. I say so, because I do not know any other matter that can be important to a nation more than its Constitution.

Mr. Temporary Deputy Speaker, Sir, today marks another very important milestone in our long constitutional journey; journey that began at Lancaster House and which has taken us through the hills and valleys upto where we are. The constitutional clock has gone a full circle. We are back to where we started in 1963, because we are now reviewing our constitution 35 years later. Now, we have hindsight. But in 1963, we did not have any foresight. We were experimenting; we were groping in the dark. The Constitution of 1963 was negotiated by the out-going Colonial master and the Kenyan people did not have sufficient voice in its making. However, one year later, in the process of experimentation, we committed what I think is one of the major mistakes which we have lived with until today. When we changed from the Independence Constitution to the Republican Constitution, we tried to marry the Westminster system with the Presidential system of the United States of America. We created an Executive President who enjoys the powers of the President of the United States, but also enjoys the privileges of the Queen of England and therein, lies our problem. That, the President is above the law and he cannot be impeached. Consequently, we do not know when the President is acting as a Head of State, Head of Government, a Member of Parliament representing a Constituency or a head of a political party. We need to go and look at all these things afresh.

Mr. Temporary Deputy Speaker, Sir, this country has a unique opportunity. It is not everyday that a country has an opportunity to look at its Constitution in a comprehensive manner. So, those of us who are privileged to be able to re-write our Constitution should also look at the future generations and know that we have

an obligation to those generations. We want to bequeath to Kenyans a Constitution that will serve the next generation and other generations to come. We are like the Americans re-writing their Constitution afresh. When the Americans said: "No taxation without representation," they said "No to Colonialism." We are now saying "NO" to a Constitution that was not properly negotiated or discussed by the people of this country. We now want the people to have a say, and that is why we are saying this process must be people-driven; it must be people-oriented. The Kenyan people must have a say in how they are going to be governed in the future.

Mr. Temporary Deputy Speaker, Sir, briefly, if you look at our historical flash-points, there has been the struggle between two diametrically opposed forces. There have been the forces of the retention of the status quo; those who wanted to inherit the powers of the going colonial masters and use those powers to suppress the people; to rule the people of this country. Then, there have been those who wanted to democratise those institutions; to create democratic structures that would answer to the needs of the people of this country. The struggle that we have experience throughout our Independence history has been the struggle between these two diametrically opposed political forces. This struggle has taken different angles, as I have said, but there are certain flash-points that you can mention. You can mention the assassination of Pio Gama Pinto as one of such flash-points. You can mention the Limuru Conference, shooting down of people in Kisumu in 1969, assassinations of Tom Mboya and J.M. Kariuki, the arrest and detention of Jean-Marie Seroney and Martin Shikuku in the precincts of this Parliament, detention of hon. George Anyona, Jaramogi Oginga Odinga, Raila Odinga, introduction of Section 2(A) into our Constitution, the Mwakenya, debacle, assassination of Robert Ouko, Saba Saba and so on. These are the flash-points of that struggle. When we began to amend the Constitution in the 1960s to deal with the situations of the time, we began to move on a very dangerous path. This is because the Constitution was being amended so often, to just deal with the problem of the moment. We, therefore, did away with the checks and balances and introduced, unconsciously, the lowering of our socio-economic ethics and morals. So, you find that people who were planning assassinations thought they were doing so in the interest of the country. They thought they were saving the country from some imminent danger.

Mr. Temporary Deputy Speaker, Sir, the people who arrested the late Seroney and Shikuku from the precincts of this Parliament thought that they were saving the country from some danger. The people who installed this Section 2(A) and had it passed within half an hour thought that they were saving this country. They thought that they were saving this country from some kind of danger. The people who designed the dungeons in Nyayo House; those torture chambers, they were convinced that, they were acting in the interests of this country. I had occasion to be interrogated in Nyayo House and the people who were interrogating me were convinced that, they were saving this country by doing what they were doing to me.

Mr. Temporary Deputy Speaker, Sir, we therefore, need to recover our moral values. This, we will do through this constitutional reform process. However, we do not need to re-invent the wheel. We are not the only country in the world that is going through this process of constitutional reforms. We are behaving as if we do not have any other relevant parallel examples to learn from and I think this is wrong. We have an abundance of examples to learn from. I see that several fears are being expressed here. I think some of them are misplaced and misconceived; fears that are not founded on facts.

Mr. Temporary Deputy Speaker, Sir, the South Africans have gone through a similar process. They wrote a new constitution to end the Apartheid era. Now, the South Africans also set up a Constitutional Commission. That commission consisted only of Members of Parliament. There was no civil society represented in that commission. It was headed by Cyrille Ramaphosa who is the secretary general of the ANC and his deputy was a member of the Nationalist Party. Why am I saying that? I am saying that what is important is what ultimately comes out of the process. It is a case where the end justifies the means. What the people of Kenya want is a democratic constitution in which they have a say in its making. That is why I was saying that, we do not need sectoral representation and representatives from the districts that, each district should be represented or that each and every section of civil society or each and every political party should be represented. I say that we need a professional Commission consisting of Kenyans of integrity, with knowledge on constitutional matters to go round the country and collect the views and present those views to a bigger representative body for debate.

Mr. Temporary Deputy Speaker, Sir, I think here as I have said earlier on, we can learn from the experiences of other countries. We should not, however, try to introduce certain abstract theories taken from certain historical contexts which are irrelevant to our situation today. This is because no particular historical phenomenon is replicable. We cannot say this is how they did it in Bosnia and therefore we should do it this way. This is how they did it in Argentina, Fiji and the Philippines because socio-economic and political realities in Kenya are different and are specific to Kenya. That is why we need to deal with our own situation as it is. However, we have relevant examples.

Mr. Temporary Deputy Speaker, Sir, I have just arrived this morning from Switzerland. Switzerland is a

tiny country in the middle of Europe. It is like an island because it is the only country now that is not a member of the European Union, but it is also a multi-national country. It is a country with four official languages: that is, French, German, Italian and even an ancient language called Romance. They respect the languages and cultures of all these people. In Switzerland, there is a typical example of unity in diversity. The Swiss love their country and I am saying that, we can actually do the same in this country. That, we can come up with a constitutional order that will respect the interests of the minority and also let the majority have their way. Mr. Temporary Deputy Speaker, Sir, the reason why everybody's eye is on the institution of the Presidency, is because of the way that institution has dwarfed all other democratic institutions. The way so much power has been concentrated on the institution of the Presidency; that the Presidency is above the law. The President appoints the Cabinet, all the judges including the Chief Justice although the Judiciary is supposed to be independent of the Executive, all the ambassadors, all the permanent secretaries, all the heads of parastatals---

**Hon. Members:** Even the Attorney-General.

**Mr. Raila:** Of course, in his capacity as the chief legal adviser. There are too much powers vested in the institution of the Presidency so that, we cannot have competition for important executive positions. We do not advertise some of these jobs that require very specialised skills. Like if somebody is going to head Kenya Revenue Authority, why do we not advertise that position? Why do we not get eminent Kenyans who are qualified to apply and subject them to interviews? Why should we not even subject permanent secretaries to interviews? Why do we not let them come before a Parliamentary select committee, so that we can look at them and vet them? What about judges, like it does happen in the United States where all the ambassadors have to appear before the Congress before they are appointed? If we do this, then we will create some checks and balances in the system.

Mr. Temporary Deputy Speaker, Sir, I have been saying that, this is a very important process for our country. I am saying this because I have been to another country and I got a letter yesterday because I wrote an article which did not please a very eminent lady from that country. I gave the example of Zambia. Zambians went through a process where they changed a head of state and the Government but they did not change the system. When there was that euphoria that "Kaunda must go and the hour has come", number of pro-Kaunda men jumped ship and went and joined the MMD. The MMD was a cocktail of all opposition political parties. When they moved in, they removed UNIP and Kaunda but they did not change anything. They retained all those laws that they were complaining about. They used them against UNIP and Kaunda, so that last year when they realised that UNIP was going to win the elections, they de-nationalised Kaunda and said: "You are not a Zambian citizen. Wewe ni mwana haramu. You are from Malawi". Now, here is a man who led the independence struggle against the British and who was detained and imprisoned several times by the colonial regime. A man who was a president for that country for 27 years and who was defeated in an election and democratically handed over power to the Opposition. This man is now being de-nationalised because he stands a chance of winning an election. So, I am saying that, what is important for this country is not a change of guard in State House but a change of system. That is why it is important for us to have a comprehensive review of our Constitution.

Mr. Temporary Deputy Speaker, Sir, talking about the specific clauses here, I was myself a member of the committee that participated in drafting this Bill. I have heard some members express certain reservations about certain clauses. We said that, we wanted to give Kenyans the opportunity to participate effectively and that is why we created a three-tier process; that, we will have district fora where people will be represented, three people per location. That is a youth, a woman and a man.

I have heard fears being expressed at the mention of local authority in facilitation of the elections. In this Bill, we have also said the Commission will produce regulations on how those elections will be conducted. So, it is not the county councils that will preside over those elections.

Mr. Temporary Deputy Speaker, Sir, some hon. Members have expressed a wish to have an amendment to make the Commissioners representatives of the nominating bodies. If effected, this amendment will make a complete mockery of the independence of the Commission. The reason why we made provisions for political parties, religious organisations and civic organisations to nominate the representatives was just to spread out the process of nomination.

We have said that these people are not going to be representatives of the nominating organisations. If we do otherwise, we will remove the independence of the Commission. This is going to be a national Constitutional commission. So, we shall be making a mockery of it if we say that these people should enjoy security of tenure, and at the same time say that the nominating authorities should have a right to recall the Commissioners once they are dissatisfied with their work. Then, what kind of commission shall we be creating if we give people independence with one hand and then take it away with the other?

The organisations being given opportunity to nominate the commissioners should do a thorough job. They should search, vet and evaluate the individuals they are going to nominate, because we want Kenyans of

integrity to be in the commission. We do not want anybody to come here and tell us: "We nominated this person but now we have disagreed with him. So, we want to remove him." We want these people to be permanent Commissioners until the process is over. So, let the nominating authorities do a good job. Let there be no favouritism, nepotism, or tribalism in nominating the representatives to the Commission.

Mr. Temporary Deputy Speaker, Sir, we have given the Commission a lot of responsibilities. We have included other things, which were not included in the original draft. For example, we have said that the Commission should look at our electoral laws and make recommendations with a view to amending them. It is time that we revisited our system of elections. One issue to be analysed is the single constituency system. Has this system served us well? Do we want to retain it? Do we want to experiment with other systems? Or, do we want to blend it with other systems such as proportional representation? How are we going to register our people for elections? Should registration of voters be an on-going process as was agreed in the Inter-Parties Parliamentary Group (IPPG) meetings? What should be the voting age? These are key issues that this Commission should address itself to. They also include the composition of the Electoral Commission of Kenya (ECK). How are the commissioners to the ECK going to be appointed? We also widened other terms of reference to also include the management of public finances, because we do not think that we have adequate provisions for this.

Mr. Temporary Deputy Speaker, Sir, we have also asked the Commission to look at the Provincial Administration and its relevance in Independent Kenya. I, of course, share the view of hon. Anyang'-Nyong'o, that the Provincial Administration is a relic of colonialism that has no place in a democratic society. Switzerland and Britain, where the system came from, do not have District Commissioners (DCs), District Officers (DOs) or chiefs, but their systems run very well.

Mr. Temporary Deputy Speaker, Sir, this morning, I was at a meeting where people wanted to appoint sub-chiefs in Nairobi. Now, do we need such an archaic system of governance in the 21st Century? Do we need this system in our urban centres? Do we not need a much more modern system where we will have elected councillors, who are enlightened and who can talk about issues of development in their respective wards without interference from the Provincial Administration? The Provincial Administration is also the cause of so much corruption. Land grabbing in all our urban centres is being done through DOs, chiefs and DCs. So, if we go through this process properly, we can deal with these cases of corruption properly.

We know the causes of corruption, but we are doing nothing about it because we do not have proper institutions to deal with it. Sometime back, the Attorney-General said that he was going to do something about it. But we know that he is not capable of doing anything about it. For example, we know that Mr. Pattni's file is very hot in the courts. Every judge wants to see it, not because they want to deal with the case effectively, otherwise the file would not have been doing rounds in our courts for "centuries". The suspects should have been taken to court. But if they are taken to the Kibera Court, the suspects run to a judge and the following day there will be an injunction restraining the magistrate at Kibera from proceeding with the case. So, our courts are a big shame to the nation.

*(Applause)*

Mr. Temporary Deputy Speaker, Sir, we are going to bring a Motion here to discuss the conduct, not just of the Chief Justice, but also of some of the High Court judges and magistrates. So, we want to put the courts themselves on trial on the Floor of this House.

There is a debate about the vacancy of the Vice President. I think this is in bad taste. We want this Government to deal with the issue of the appointment of the Vice President. Let those of us who are in the Opposition not be asked to suggest who should be the Vice President, because that is none of our business. It will be our business when we become the Government.

Mr. Temporary Deputy Speaker, Sir, we want a proper division of power among the Executive, Legislature and the Judiciary. We want to create other institutions. We also want the freedom of the Press to be real. We have fought very hard for the freedom of the Press in this country, and now we have a fairly vibrant print media. Although some of the publications are practising "yellow" journalism, I will be the last person to suggest that the Press should be restricted. Let them have the freedom to write and hope that they will learn in the process that it pays to write the truth.

**An hon. Member:** We should also liberalise the air waves!

**Mr. Raila:** Yes, we should also liberalise the air waves fully. We should not do it selectively, so that some people are licensed through the back door to operate radio and television stations, while others are denied such licences. We want the air waves liberalised properly with only one provision - that the majority of the shareholders in media organisations must be Kenyans. In the United States of America and Great Britain, one



cannot operate a radio or television station if the majority of the shares of the stations are not owned by the natives of those countries.

Mr. Temporary Deputy Speaker, Sir, with those few words, I support.

**Mr. Koske:** Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me the opportunity to air my views on this very important Bill that is before the Floor of the House. Those of us who are in this Eighth Parliament feel privileged to be amongst the few lucky Kenyans who are going to discuss and make a wholesome overhaul of the Constitution of this country. So, in this regard, I have views that I feel I should share with this House so that as we go ahead with the constitutional review process, if my ideas will be incorporated into this Constitution, the people of Kuresoi who sent me here will feel that I came to represent them amply in this House.

There has been a lot of talk about the Provincial Administration. For those of us who represent rural constituencies, we know the value of the Provincial Administration. Some of us come from constituencies that do not have a police station and the only person who is next to the mwananchi on the ground is the chief. So, when we talk of the Provincial Administration, we should look at the positive and negative aspects of the Provincial Administration. We should correct any anomalies instead of condemning them wholesome because at the end of the day, for those of us who represent constituencies that do not have police stations, once in a while those chiefs have actually come in handy and have been able to sort out the problems afflicting the people back at home. So, when we are saying that we should look into the role of the Provincial Administration, we are suggesting that we should retain the positive roles that the Provincial Administration has been playing and at the same time, do away with the negative aspects. It is sad to sit here and say that those people from the new districts that are being created should not be included in the constitutional review process. I think in this case, what is happening on the Floor of this House is that people are trying to create a big issue out of the issues that are prevailing in their districts. Personally, I do not see anything wrong in the creation of new districts because we are trying to change the current Constitution by incorporating the biggest segment of the Kenyan population into this review process. When we stand here and say that, any new district that has been created should not be allowed to participate in the review process; I think we are not being honest enough. In this case, those who advocated for and got their districts should not shut out those who also want new district.

There are big districts which need to be split, for instance, Nakuru District. We would not like to see anybody standing our way to block us from splitting this large district which is multi-ethnic or saying that if it is divided, those of us who will be in the two new districts should not be allowed to participate in the review process. I believe this is a constitutional right and if we are given a district today, we have every right to select our committee and participate fully in this review process. So, for those who have a feeling that those who will be given new districts should not participate in the review process, I think they are misguided.

Mr. Temporary Deputy Speaker, Sir, for those of us who have been making contributions in this House, one of my colleague talked of short memories and it is unfortunate that some people tend to have short memories and they live in glass houses and they are the first ones to throw stones. Right now, back home in Nakuru County Council, we have a very serious issue which concerns a plot that was owned by the county council and somebody somewhere sat in his office and used his powers and gave a few councillors the authority to sell off all the properties that belonged to the Nakuru County Council. Sometimes back, the council was very rich, but now it is very poor. The reason why it is poor is because the properties that it owned were sold off irregularly. When we are looking at the review of the Constitution, let also look at the powers that have been entrusted to certain Ministers in certain Ministries so that they do not overstep their powers. As it has been happening now and again, we realised that in some instances, anybody holding the docket of the Ministry of Local Authorities or Ministry of Natural Resources can decide on his own whims to dish out the properties that are preserved for posterity, to his friends. So, at the end of the day, those properties that are supposed to be held in trust by those same Ministries are not held in trust for the future generation of this country. When we suggest that we should trim the powers of the Executive, I would also want to propose that when we are looking into these different Ministries that have been empowered, we come up with solutions to make sure that any Minister who has been given arbitrarily powers in the past, those powers should not be given, but instead a system of checks and balances be instituted. We should not be debating about irregular allocation of plots, but we should be looking for ways of strengthening those councils. So, in essence, when we talk of having a Constitution that is wholesome, we should come up with a Constitution which should not be abused as it has been happening in the past. It should encompass what is happening in the country. The purpose of any Constitution at the end of the day is to create checks and balances between the different institutions of the Government. So, it will not be of any use if we are changing the current Constitution and yet, we fail to look at the past shortcomings caused by those who were there before and made amendments to the Constitution to suit their whims. If we are bequeathing to the future generation a Constitution, we should sit back at one time and be proud that we gave this country a wholesome Constitution.

Mr. Temporary Deputy Speaker, Sir, there is one area that has been a serious problem with regard to the electoral process; the usage of identity cards as a basis of registration for voters in this country. You will agree with me that this system of registering voters with identity cards has been used to manipulate the voter registration, and in essence, the person who ends up being elected in a given constituency. I want this House, and those who are involved in this process of reviewing this Constitution to come up with a system whereby this abuse of the electoral process is not allowed to happen again in future. As we are saying, we are moving into the next millennium of the 21st century. It will actually be wrong if we are going to use this system of voter registration to actually rig the elections. I do not think it will be of any purpose to actually prepare ourselves for this kind of electoral process. So, we should come up with an electoral system that is very open and which will be seen to be democratic.

Mr. Temporary Deputy Speaker, Sir, I would not like to agree with my colleague, hon. Raila, when he says that we should look at the system of proportional representation because in this case here, we may end up having a Government that is not working. In the end, we might end up with a coalition Government. As we know from past experiences and from considering examples of different nations, those countries which have adopted this system of electioneering have had governments which keep falling apart. For a poor country like ours, I do not think we can afford this kind of exercise, time and again. We know that the electioneering process is an expensive exercise and if we are to engage in it time and again, I really do not think our system and economy will actually allow us to do so. I would suggest that for the time being, and before we are able to finance elections time and again, we should retain the system that is in place now so that it will enable us actually to strengthen our economy which is currently not growing. As some people have said time and again, the main reason why the economy is on its "death bed" is because of the many cases of corruption in this country. However, I will beg to disagree with that. Reports of the Public Accounts Committee (PAC) and Public Investments Committee (PIC) which are annually tabled in this House have continually shown that there is a lot of mismanagement in our public institutions. Incompetent managers are allowed to run state corporations and other public institutions. The end result is that such individual mismanage these institutions. As a result, you will find that today the Minister for Finance was telling us that the Government had to bail out the Nzoia Sugar Company and various sugar companies in Western Kenya. The reason being that there was a lot of mismanagement of these institutions. Because of this, you will find that the Treasury ends up bailing out these institutions. What we are simply saying is that a system should be put in place where, before any appointments to these positions are made, the candidates should actually be vetted. The criteria in this case should be based on one's experience and qualifications. At the end of the day, if you gave a good manager an institution to run, he will give you good results as opposed to somebody who, instead of running this institution, he or she is at the office of the person who "ensures" that he or she is in that seat. This person, at the end of the day, will not get any good result. A competent manager who knows that he holds his position because of his experience and qualifications will do a good job for that given institution.

Mr. Temporary Deputy Speaker, Sir, we should be given a chance as a Parliament so that we have a Parliamentary Select Committee which will look into these institutions and actually vet the qualifications and appropriateness of these people when they are being appointed to these various positions. So, if all this was done, I tend to believe that, at the end of the day, our institutions will be better run and they should be able to give us some good results as opposed to this practice of appointing people for the sake of trying to maintain some kind of patronage in the appointments to these positions. All in all, what I am trying to say is that as we embark on this road here of reviewing the Constitution, we should also look at the integrity, commitment, experience and qualifications of these Commissioners we will be appointing. As we have been saying, time and again, this country is favoured in the sense that we have people who have vast experience and knowledge in this field of Constitution writing. So, when we go out there, we should actually pick the best or get people whom we feel will give this country the best that she deserves. In this case, I suggest that we should come up with a list of the experience and qualifications that should be met by those whom we feel should be given this chance of being appointed Commissioners. At the end of the day, there will be no reason why a Commission should be set up to vet the efficiency and qualifications of these people as part of their nomination process to this Kenya Constitution Review Commission.

Mr. Temporary Deputy Speaker, Sir, with those few remarks, I beg to support the Bill.

**Mr. Kibaki:** Mr. Temporary Deputy Speaker, Sir, I rise to support the Bill. This Bill has taken a long time to come to this House essentially because, the issues handled have been difficult and some of them have been divisive. Now that we have found a common ground for going forward, I am sure it is every Kenyan's hope, that, from this moment onwards, we shall go forward and not allow ourselves to stagnate or be diverted by irrelevant kind of attitudes or mind.

Mr. Temporary Deputy Speaker, Sir, what I mean is that, before this time, there have been very many statements on the kinds of Constitution that we need. Therefore, when the Commission goes to work, it will face a lot suggestions from different people. But, as hon. Members, I believe that we have a special responsibility to educate those whom we represent about the minimum of being one nation. This is because some of the proposals which are already being made and held strongly, are not tenable where you have one nation. What I have in mind is that some of those who believe that they are promoting what they call "*Majimbo*", or federalism have not read anything about the Federal Constitutions around the world. This is so because, even in the loosest of the federations around the world, no individual state within federations is ever given powers to restrict, for instance, the movement of the citizens of that particular republic. So, if you go to any federation, whether you are in Switzerland, America, or any other, the freedom of the individual citizen to travel, set up business, and to live where he or she chooses within the federal state has never been restricted. In fact, you cannot have one nation which restricts freedom of movement, association and activities of the citizens. I am saying that if we educate the public on this particular fundamentals, they will cease to harbour illusions, that, once they have a federation, they will be able to control Mombasa Port, Nairobi Airport, and the movement of people. We want to travel freely in Rift Valley, and *et cetera*. These illusions are the ones which can divert this Commission and hold it to work for far too long. Since we know that these are not tenable within one nation, and therefore, cannot be accommodated by a Constitution of any nation, then it is better for us to begin now to educate the public about what is possible in writing a Constitution. That is a very fundamental point, because I am sure that whatever Constitution we work out, the right of the citizens will figure in a special Chapter. I know that Chapter 5 now does spell out the human rights of the citizens. Of course, now, this will be spelt out even in greater detail, because ever since we wrote that particular Constitution, new ideas as to what are the rights of a citizen have come up. For instance, we have to spell out more clearly the rights of the children and the rights of women which were not even clearly spelt out in the previous Constitution. That Constitution took what was in the United Nations Charter of Human Rights and it was incorporated almost word for word into that Charter 5. That Charter has been amended and revised and it is a new concept, all of which should be included in this matter. So, I am sure that during the recess, we can take time to begin to educate the public on these issues before the Commission even begins to work.

Mr. Temporary Deputy Speaker, Sir, the other point which I have in mind is that we have now created hope. Kenyans are very peculiar. We have a big problem of corruption. Now we have a whole new attitude that, that Commission, in writing our Constitution, will tackle corruption. We are being encouraged to think of another future when corruption is still with us and we are being told that, that Commission will deal with the problems of corruption. That is cheating. It should not be allowed to give hope for nothing! If we are to tackle corruption, we as Members of Parliament are insisting that this Government - because it will go on being the Kenya Government when this Commission will be working for the next two years - if it is to take any action, it should take it now. It is very important that we keep repeating what was said by the Member for Narok North the day before yesterday and which has been said by so many other people namely; that corruption will never ever be tackled unless we start from the top. If we are going to start from anywhere else, it may never be done. Starting from the top means that we stop right now degazetting forests! You degazette a forest which exists and a Minister who is in charge of natural resources goes to an international meeting and he is not shy to say that the Kenya Government protects natural resources. How is that possible? Who is he telling that? Who will believe him? Nobody! We are disgracing ourselves and yet we have the headquarters of United Nations Environmental Programme(UNEP) here? It is a total disgrace! Therefore, the least that the Government can do is to withdraw the notices they have given about Karura, Mt. Kenya, Mt. Elgon, Mau Narok, Ngong and Kakamega Forests. If we go on destroying forests this way, nobody will ever believe that we are serious about tackling corruption. There is nothing that the Government cannot do tomorrow. But I am sure that a Minister will find it in himself to stand up here and pretend that some action is going to be taken sometime in future. Why not now? We need this action at this moment.

Mr. Temporary Deputy Speaker, Sir, equally, we are getting into crisis in the money sector of this nation. It does not help for the Minister for Finance to tell us that he is going to salvage one bank. That bank has been privatised or has it not? It has been privatised! On what basis have we decided that a privatised institution has a right of access to tax payers, money from the taxpayers from the Consolidated Fund? There is no basis whatsoever! We are not following the law. We privatised this bank so that it could run its affairs privately. If it has to borrow money, it has got to do so from other private institutions. On what basis do we make a decision that such a bank should be given money from the Consolidated Fund without the authority of Parliament and without even an approval from the Cabinet? There was no basis for this action at all! It is just a way of extending corruption in the system. This is more terrible. If we have to salvage it, we do not have to give it a few shillings and say that will solve their problem. It cannot. The National Bank of Kenya has already "swallowed" resources

from the National Social Security Fund(NSSF); resources which the NSSF put in that bank as a customer, but after the money was looted, the NSSF was told to buy shares in the bank using the looted money. Is that not swindling in open daylight? As a customer, when you put your resources in a bank, you are not buying shares; you are putting your money there so that you may use it. The NSSF belongs to the public of Kenya. It belongs to the employees of this Republic who will retire and be given some resources. But the NSSF now is not capable of paying anybody who has retired. So, our constituents come to us to explain their predicament and when we go there, the NSSF is incapable of paying anybody anything. But about Kshs6 or Kshs7 billion has gone through that bank and has been lent onwards to some very favoured people who have become billionaires while the NSSF has no money. It has only been given some papers and they are told: "Now, you should celebrate because you own 37 and a half per cent of the bank." But the bank has no money! The bank has no money and so, what is it that NSSF can own with that piece of paper? If there is no money in that institution called a bank, what other thing does it own so that you own something? Nothing! We are being swindled in open daylight by this Government. Nobody in the world, not even those whom we are trying to borrow from can forget it. It is a reality! So, what I am saying is: If the Government is serious, then it must abandon that kind of policy. But there is a feeling now amongst the ordinary Kenyans that this Government wants in its final stretch, before it goes out to actually destroy the whole economy of this nation. There was once upon a time a military Government which adopted what is called the Scorched Earth Policy. This meant that they wanted to "eat" all the resources; all the tarmac roads, all the medicine and everything that could possibly be eaten and eventually go! What is happening now is exactly that. There is no other way you can explain how hospital land, where hospitals could expand is being appropriated by this Government and given to individuals who are favoured to sell and make some money and then the institution is destroyed. Land belonging to schools is being taken away. The houses which were built a long time ago to house civil servants have now been allocated and sold so that some individuals who are favoured may share it out in this final phase of this dictatorship.

Mr. Temporary Deputy Speaker, Sir, do we not have children or do we not think of the children? Has this Government ceased to think of children? The credibility of this Government is no longer possible because those actions speak louder than words all the time and everyday. It is very sad to note that there is a lot of looting of forests which is being done in Mt. Kenya Forest, where after they have looted the trees they allow their own friends to plant bhang and then they arrest an ordinary street boy in Nairobi selling bhang and say that they have arrested him because of drug trafficking. Those who plant 100 acres of bhang inside Mt. Kenya are known and they are there and they have employed people who are armed and, therefore, forest officers cannot approach those places. The Government on one hand is talking nonsense. Then, it is taking no action. So, they went and found one person there in Nithi Division with half an acre of bhang. He was arrested and kept in the police cells without being prosecuted. What about the people who are planting hundreds of acres and who are known? These are the people who can carry the bang from those places, right through the roads, pass through five to eight police roadblocks, and they are never asked a question. They are known. The vehicles that they travel in are known. So, they are just waved on. This is a Government system. What we are saying is that the system knows and approves what is going on. The policy is the same; that is of the scorched earth policy. Destroy everything that you can destroy and when you go, nothing remains. That does not help anybody. Do they really think it is an inspiration to leave behind a country like Somalia, which has been destroyed?

In this country, we hear everyday that there are armed people attacking, robbing and looting everywhere. When is the Government going to issue a statement and take action to show that they are aware that inside the police system, people who assist in such armed robberies are there, and they are known to be there. They have been identified by people who are ordinary citizens of this country. These are very worrying aspects. We are saying that these problems do not have to wait until we have a Commission. In any case, this Commission will have citizens who will be talking about the new Constitution. This corruption must be dealt with by the existing Government at this moment.

Mr. Temporary Deputy Speaker, Sir, we have an economy which must be allowed to grow. Right now, ordinary farmers in Kenya - and the bulk of us here represent the farmers - would like to have a bank which can be sympathetic to them, and lend them money. As it is today, you know as much as I know, that the commercial banks in Kenya get their deposits from the farming community of Kenya. Very little is from the urban commercial class. The bulk of the savings which are in the banks are from the rural farmers. Yet, when the farmer wants to borrow, he is told to produce some cashflow activities and analysis showing monthly returns. The farmer has no way of showing monthly returns. He gets his money according to seasons. We want an institution which will be sympathetic. All of us who know about the world are aware that other countries in the world set up found banking institutions which specialise in helping farmers. We want to do the same here. We do not want the Government, either through the Central Bank or the Treasury, to try to block this very noble development.

This is because we know what it means. The bigger banks in Kenya have gotten together and made representation that the farmers should not be authorised. But every trader in this town has been allowed to open a bank, some of which have got into trouble now. Why? How can you discriminate against the majority of Kenyans, and you are supporting a small commercial class in Nairobi to start their own banks? When they have started their own little banks, you are advising them to merge, since they will collapse if they do not merge. Now, the farmer can survive without merging with anybody else. They have all the savings and, yet, they are unable to get lending. It is a disgrace that we generate 90 per cent of the savings of the nation as farmers and, yet, when it comes to lending, we are only lent 15 per cent! That position is not tenable. Therefore, I am saying that the Government, through the Ministry of Finance, should take action to make sure that the farmers are not denied their right. Otherwise, we are being goaded to take other actions, which are not helpful at all.

Mr. Temporary Deputy Speaker, Sir, another speaker who spoke yesterday, and even another one today, spoke about the creation of the new districts. You know that districts have a procedure for being created. You know that districts were listed on a schedule to a law which was passed in this Parliament, that is the Districts and Provinces Act. You know that there is a procedure there, when you want to amend that Act, so as to add new districts. You know that in the last six to seven years, when districts have been created, no Bill has been brought into this Parliament, to amend that law. So, no law has been followed. So, it has been all one mammoth illegal action by the Executive, to create the districts, for their own convenience, or for the convenience of their friends, who demand those districts. It is not done because of anybody else. Now, when illegal things have been done, and then, they are made to be the basis of election to a Commission, which is going to write a Constitution, that means that you start with an illegality, and you base your representation on an illegal thing and, yet, you are trying to create a Constitution, which is the foundation of all legality. It is a contradiction! So, I hope, at least, for the moment, in order to control the damage, the Attorney-General will bring a small amendment which says that the districts should be as they are now, and there should be no more. This is because it is very obvious that there is a hidden agenda in the creation of additional districts, somewhere in the politics of the existing party. There must be some hidden agenda. It cannot just be enjoyment or dreams of anybody. There must be certain specific hidden agenda. This is because no meaningful criteria is being followed in the creation of these districts like population.

Mr. Temporary Deputy Speaker, Sir, this Bill spells out the time schedule over which we should get all things done, so that we can have a new Constitution well before the next elections. This will be in time for us to go to the country-side, to explain the new Constitution, and to educate the people about their new rights, and to do everything else. Let us commit ourselves to this one programme. We do not have to delay this Commission by bringing extraneous matters in their way, so that they can, in this period given, complete their work and bring a Bill on a new Constitution in good time, for us to have it enacted before the next general elections. That can be the only way we can have a stable system in that period.

As I have just said, in this Parliament, we have a special duty to make sure that we have a Constitution which is workable. You can have a Constitution which is not workable. I know that in 1963, when an effort was being made to operate the Constitution that we had inherited then, one major problem did arise. That the way those federal structures had been drawn, they were not feasible financially. This is because they could not raise enough revenue in each one of those federal states, to be able to sustain themselves. This is a very important thing. I know everybody was saying that we had a first-class Constitution, only to have been destroyed. But, at least, over that one regard, it had been brought to the notice of those who were writing that Constitution in London, but they said: "We cannot keep discussing it forever. You go and try as best as you can to apply it". When it was attempted, there was no money in most of the majimbo states to be able to finance those structures.

In the present Kenya now, nothing very fundamental has changed geographically, so that the creation of new federal states, which seems to be a favourite of some people, must face the economic circumstances that is before us, so that they can be institutions which can be implemented. There is no point in writing a Constitution which cannot be financed. One thing which is very important to note in a federal state is that it is possible to see one state that is viable being ordered to support another. It will not be possible. The only one thing we can do in our circumstances here, and for the sake of better development, is to make sure that we have a viable Central Government. But I know we shall make those representations to the commission. All I am pleading is: We should not create a background - which some of us are trying to create - where we will find it impossible to begin "eating" our own words. Some of us might find ourselves in a position where we have to say: "Look we had wanted this, but we will not go back." Let us start from the reality that there are certain things which cannot be financed at all.

Mr. Temporary Deputy Speaker, Sir, I want to end here by saying that if this Government does not want to be condemned forever, it must start taking action now on the system of corruption in this country and, particularly on what we have just said about looting the land of our institutions. Let us not destroy the institutions

we have like hospitals, schools, churches and others. In doing so, we are really showing that we have no interest in what will happen in future. So, anyone who is supporting this Bill should also support action to stop the looting of the land of our institutions.

I want to support very strongly a proposal that was made here that the Provincial Administration must be left out of this exercise and the Government must make sure that they are out of it. We cannot have a proper constitutional review exercise, if we are going to have the DOs and the DCs controlling it. Recently, we amended some sections of our law in this House, but there are some parts of Kenya where the Government is taking advantage of the fact that the citizens are not as enlightened as in other areas - the Government is still pretending that chiefs and DOs still have those powers. We know that they do not have those powers and yet the Government is still using the Provincial Administration to subvert the constitutional development in this country. Will the Government, therefore, starting from today, stop interfering with the activities of the civil societies which are holding seminars on civic education? They are still being interfered with in very many places. Churches and civil groups who are organising seminars to educate the public are not being allowed to do so. They are being stopped from holding them under the pretext that there is a security risk. The security risk is not coming from that end. It is coming from organised and armed thieves who are known to the Government. The Government knows where those arms come from. So, it is not church groups and other groups of people who are creating insecurity in this country. Civic education is our right and the Government must allow all those institutions to do it freely without interference and we shall have a much better environment in which to operate.

Finally, the money that has now been gotten for the repair of the road network which was destroyed by *El Nino* and the money this Government has allocated for this purpose must be utilised properly. We should be careful on how this Government will use that money because the way the game is going on now, that money will be "hijacked" by specialised contractors. There are five or six contractors/builders who are favoured by the Ministers and who are the ones who will be given those jobs; starting with the ones who were given a contract to carpet Nairobi roads and already they have shown what they can do. They have already spent over Kshs100 million, but the roads which were carpeted have already been eroded. The money has been "eaten" because they do not do it as per the specifications and nobody follows those specifications. That kind of corruption cannot happen without the sanction of the Government. Why do I say that? Because the officers who write the certificate so that a contractor may be paid are the professional civil servants in the Ministry of Public Works and Housing and other Ministries. They write the certificates knowing very well that this job has not been properly done. The fellow is paid and part of the money is shared between themselves. The public knows this, but the Government goes on pretending. As we move on in this very important exercise of reviewing our Constitution, we plead with the Government to stop pretending and act as a proper institution. If you must destroy this nation, you better declare so. Then we shall declare you not to be a political party, but an occupation army which we cannot accept.

*(Applause)*

**Mr. Kathangu:** Bw. Naibu Spika wa Muda, nakushukuru kwa kunipa fursa hii kusimama mbele ya waheshimiwa Wabunge na Mawaziri ili niseme machache kuhusu Mswada huu juu ya Katiba yetu.

Wakati wa kubadilisha Katiba ni lazima tukumbuke mambo machache yanayoendelea katika nchi hii. Kwanza, tuwafikirie wananchi wetu wanaotusikiza tunapozungumza juu ya kubadilisha Katiba yetu. Jambo la pili, ni nini Serikali yetu inafikiria kuhusu kubadilisha Katiba, na Bunge hili litafanya nini kuhusu ubadilishaji wa Katiba nchini.

Kwanza kabisa nchi hii ingetaka kuona kuna utaratibu mwafaka katika urithi wa uongozi katika nchi hii. Ili kurithishana uongozi katika nchi hii, ni lazima tuwe na mwongozo fulani; mwongozo mzuri kwa sababu tumeshuhudia mambo mengi katika ulimwengu huu. Kwa mfano, kuna wakati Raisi wa nchi anaambatana na Mawaziri wake katika ziara fulani na wakati mwingine wanaweza kukumbwa na mkosi fulani na wote kufa angani kwa sababu ndege imeanguka, meli imezama ama wanawafanyia madhara makubwa kama kule Msiri wakati Rais wa nchi hiyo na Mawaziri wake walipouwa na majangili. Kwa hivyo, ni lazima tuwe na utaratibu fulani wa urithi wa uongozi wa nchi. Ni lazima Katiba yetu mpya iwe na mwongozo wa kubadilishana uongozi wa nchi kutoka kwa mtu fulani na mwingine kwa njia inayofaa.

Jambo lingine, Bw. Naibu Spika wa Muda, ni kuhusu umilikaji wa mashamba nchini. Hakuna vile Katiba yetu inaweza kusimamia nchi hii kwa njia inayofaa ikiwa haitasema kikamilifu juu ya umilikaji wa mashamba. Nchi yetu ina masikini wengi sana. Kuna masikini ambao hata leo hajui watakula nini. Wananchi ambao wamehudhuria kikao cha leo kusikiliza maoni yetu kuhusu Katiba hawajui jinsi watakavyoenda nyumbani, hawajui watakula nini na wengine wao hawajui kama watapata malazi. Kwa hivyo ni lazima Katiba yetu iwe na miongozo ya kuonyesha jinsi mashamba yatakavyomilikiwa.

Bw. Naibu Spika wa Muda, tunajua katika nchi hii, matajiri ambao wana ekari zaidi ya mia moja ndio wanaonyakua misitu na kutafuta njia maalum ya kuweza kukausha ziwa Victoria ili wapata mashamba, na pia, ndio wanaofikiria jinsi Bahari ya Hindi inaweza kusukumwa hadi Bara Hindi ili waweze kupata ufuo huo wa bahari. Nikitazama mambo hayo yote kwa makini, ni kama kuna "wazimu" fulani ambao umeingia nchini. Matajiri fulani wanatafuta mashamba kila mahali. Makaburi yote yamenyakuliwa. Hata makaburi ambapo babu na nyanya wetu walipofukiwa kuna matajiri fulani wanaotaka kuyanyakua ili wapate mashamba. Je, wanafanya nini na vyeti vya mashamba haya? Wanapeleka vyeti hivyo katika benki ambazo zimeanguka ili wapate pesa. Wanataka pesa hizi ili waweze kununua mashamba mengine.

Kwa hivyo, Bw. Naibu Spika wa Muda, ninaona kuna maana sana wakati tutakapoanza kuzungumza juu ya kubadilisha Katiba tuwe na msimamo maalum juu ya umilikaji wa mashamba nchini.

Bw. Naibu Spika wa Muda, kuna watu wengine katika nchi hii ambao hawaungi mkono misimamo ya vyama vya kisiasa kwa sababu vyama vingi havina tofauti katika miongozo na misimamo yao. Baadhi ya vyama hivi kama KANU, Democratic party of Kenya (DP), FORD (A), FORD (K) na FORD (P) vinasema kwamba ni lazima nchi iwe na utajiri, elimu na watu wawe na afya bora. Kuna watu wengi katika nchi hii ambao hawaungi mkono misimamo hii. Pia inafaa watu hao wapewe fursa ya kugombea kila kiti katika nchi hii, ikiwa ni pamoja na urais, ubunge au udiwani. Inafaa jambo hili lishughulikiwe katika Katiba yetu, ili watu wakubaliwe kugombea wakiwa independent candidates.

Jambo lingine ambalo ninataka kuzungumzia linahusu upigaji wa kura ya maoni. Tunaweza kupitisha mambo mengi katika Bunge hili, au katika wilaya, tutakapokuwa tukizungumzia Katiba, lakini huenda watu wasitunge mkono. Kwa hivyo inafaa tupitishie maoni ambayo tumeyatoa hapa ili wananchi waone kwamba tumefanya vile walivyotuaambia.

Jambo lingine ambalo ningependa kuzungumzia linahusu Wizara. Unaweza kuona kwamba kuundwa kwa Wizara katika nchi hii kumekuwa kama mchezo. Hii ni kwa sababu kuna watu ambao wanateuliwa kuwa Mawaziri kwa sababu wanakubaliana na mambo fulani ambayo Rais wa nchi hii, au marafiki zake wanayataka. Kwa sababu hii Wizara inabuniwa. Ninakumbuka kwamba wakati mmoja tulikuwa na Wizara ya Political Propaganda. Wizara hii ilikuwa na Waziri lakini ilivunja baada ya miezi sita, kwa sababu haikuwa na kazi maalum. Kwa hivyo ni lazima Katiba yetu ionyeshe mambo ambayo yanaweza kushughulikiwa na Wizara na idadi ya Wizara tunazohitaji.

Bw. Naibu Spika wa Muda, kuna maoni ambayo yametolewa hapa na Wabunge wenzangu kuhusu kubadilisha Katiba yetu. Kuna watu wengine ambao wanataka ibadilishwe sasa, na wale ambao hawataki njia ambayo tunafuata sasa ya kubadilisha Katiba yetu. Hii ndio sababu ambayo iliwafanya watu wengine watoke katika makundi ambayo yalikuwa yakishughulikia ubadilishaji wa Katiba ya nchi hii. Tunawajua watu hao wote na pia tunayaelewa maoni yao. Ni lazima tukubali kwamba watu hao pia wana haki ya kutoa maoni yao tunaporekebisha Katiba yetu.

Kuhusu watu ambao wanataka Katiba ibadilishwe wakati huu na kwa njia ambayo inandelea sasa, ni lazima tukubali kwamba nchi hii itaelekea katika vita. Ni lazima tujiepushe na mambo ambayo yanaweza kuleta vita katika nchi hii. Pia, ni lazima tujiepushe na mambo ambayo yanaweza kuleta vita katika nchi hii na tuyapondeponde kwa njia ya kimawazo. Inafaa kujadiliana, na ikiwa kuna mtu aliye na maoni yake kuhusu vile nchi hii inavyoweza kusimamiwa vyema, ni lazima tumpatie nafasi ili atoe hayo maoni. Kama hatutafanya hivyo tutakuwa tunawapumbasa watu hao na mwishowe tutakuwa na shida katika nchi hii.

Bw. Naibu Spika wa Muda, ikiwa tunataka amani katika nchi hii kesho na keshokutwa ni lazima tukubali mazungumzo juu ya Katiba yanayoendelea sasa. Pia, ni lazima tutilie maanani maoni ya watu wengine. Wale watu ambao hawataki mazungumzo haya yaendeleo wanasema kwamba yule atakayekuwa usukani ili kuona kwamba Katiba inabadilishwa, labda ni yeye ambaye ameharibu mambo yote katika nchi hii; kwa mfano, Rais na Serikali yake, ambayo imepora karibu mali yetu yote, na kuharibu au kuvunja karibu sheria zote. Kutoka mwaka wa 1964 mpaka sasa, Katiba yetu imebadilishwa mara nyingi sana. Kila wakati Katiba hii imebadilishwa ili impe Rias na Serikali yake nguvu zaidi. Jambo hili ndilo linalowaogopesha watu wengine. Wanafikiri kwamba unaweza kufika wakati fulani Rais wa nchi hii akalivunja Bunge wakati tunapoendelea na mazungumzo juu ya Katiba. Akilivunja Bunge, basi mazungumzo hayo yote yatakomea hapo. Kwa hivyo watu wa nchi hii wako na uoga ambao unatokana na historia. Historia yetu inaonyesha kukandamizwa kwa watu! Tungependelea kuwe na national forum katika nchi hii yetu ambayo itamhusisha kila Mkenya. Itakuwa inawausisha Wabunge na watu ambao watakuwa katika tume ya kurekebisha Katiba. Pia itawahusisha watu watatu kutoka kila wilaya.

Ningependa kumwuliza Mkuu wa Sheria kwamba, ikiwa tutafikia wakati ambapo Rais atalivunja Bunge, Wabunge ambao watakuwa wanachama wa national forum watatoka wapi? Jambo hili linaonyesha kwamba Rais mwenyewe anaweza kuyakatisha haya mazungumzo wakati wowote atakapotaka. Kwa hivyo sisi na wale wananchi ambao tumezungumza nao tunaonelea kuwe na rekebisho fulani katika Katiba ya nchi hii kabla ya

mazungumzo kuanza. Inafaa Katiba ibadilishwe ili iwe wazi kwamba Bunge hili halitavunjwa mpaka tuwe na Katiba mpya. Tunataka Rais asiwe na uwezo wa kuvunja Bunge kabla hatujapata Katiba mpya. Bila jambo hili kufanyika tutazidi kuwa na uoga kwamba Rais anaweza kulivunja Bunge na kukomesha mazungumzo juu ya katiba mpya. Tunataka uoga huu uondolewe kwa Mkuu wa Sheria kuwasilisha rekebisho la Katiba katika Bunge hili ili tulipitishwe kabla ya mazungumzo haya kuanza.

Bw. Naibu Spika wa Muda, ninawaunga mkono wale ambao wameongea hapa mbeleni. Baadhi yao alikuwa arap Leting, ambaye ni Waziri Msaidizi. Mimi ninafikiri kwamba arap Leting anaelewa vizuri kuhusu Provincial Administration. Hii ni kwa sababu yeye aliisimamia idara hii, na anaelewa kazi yake. Anajua kama kuna kazi ama hakuna kazi ya Provincial Administration. Alipokuwa akizungumza hapa leo, alisema kwa Kiingereza kwamba: "Provincial Administration is both outdated and redundant." Ninakubaliana naye kwa sababu hakuna kazi ambayo maafisa wa idara hii wanafanya. Hakuna kazi ya Mkuu wa Wilaya na Mkuu wa Mkoa. Mkuu wa Tarafa ndiye aliyeanza kukosa kazi zamani. Siku hizi kazi ya chifu ni kula mbuzi. Kwa hivyo, hakuna kazi ambayo watu hao wanafanya. Sisemi kwamba maafisa hao wafutwe kazi, lakini ninaonelea wanaweza kupelekwa kwa idara nyingine, kama zile za maji na misitu. Sasa kazi ya mwenyekiti wa county council imekuwa ni bure kwa sababu kuna Mkuu wa Wilaya ambaye anasimamia maji, hospitali na ueenezaji wa stima, ingawa yeye hazifahamu kazi hizi.

Kwa hivyo, mimi ninakubaliana na Bw. Leting kwamba hawa watu hawatakiwi kuwa katika nchi hii wakiongoza. Wanafaa, kikatiba, kuondolewa kabisa na badala yao tuwe na councils ama civic authorities ambazo zina uwezo wa kutosha. Rais wa nchi hii na PCs wake waliingizwa kama vile Malkia alivyotaka. Malkia alikuwa anasimamia nchi hii. Alipojiiondoa, kwa sababu kiongozi wetu alikuwa Prime Minister na kulikuwa na Governor, ikawa Rais wa nchi hii ni lazima awe na "Governor" wake ambaye ni PC. Kazi yake ni kupiga simu kwa Rais Saa Tatu ambayo inajulikana kama "morning breakfast". Naye ni lazima angojee Saa Mbili na nusu apigwiwe simu na DC ili aambiwe kama kuna shida katika wilaya. Shida ile ambayo wanazungumzia si nyingine ila ni kama kuna mtu ambaye anataka kuipindua Serikali. Wale ambao wanataka kupindua Serikali ni kama Kathangu ambao wakikaa kwenye bar wakinywa pombe, inasemekana wanataka kupindua Serikali. Hiyo ni kazi kubwa sana kwa PC kila mahali. Kazi yake ni kumpigia Rais simu na kusema: "Mzee isipokuwa ni Kathangu leo, hawa wengine ni sawa sawa. Kwa hivyo tutamweka ndani." Naye Waziri anakuja katika Bunge kutoa orodha ya Mawaziri ambayo ni ya bandia kusema kwamba Kathangu na Anyona walipokuwa wanasimama mahali fulani walikuwa wanataka hawa wawe Mawaziri. Kwa hivyo yafaa wawekwe kizuizini". Kulingana na yale ambayo yamesemwa hapa leo utaona kwamba wengi walikuwa na kazi wakati ule na tungetaka hiyo kazi iendelee. Nyakati za kuweka watu kizuizini nafikiri zimekwisha katika nchi hii. Kile kilichobakia ni kuitengeneza nchi ambayo itakuwa na manufaa katika Afrika ili tuweza kujidai kwamba katika Afrika, kuna nchi ambayo inaitwa Kenya.

Inaonekana kwamba nchi ambazo zipo Afrika, hasa Afrika mashariki na kati, wakati huu ndizo zinazungumzia juu ya ubadilisho wa Katiba zao. Na tunaona namna gani? Kenya iko nyuma. Kenya ambayo tulikuwa tunasema ni nambari moja, ambayo ilikuwa ionaongoza kwa mambo mbalimbali, ambayo ilikuwa inajidai kuwa ina utajiri sasa ndio ya mwisho katika demokrasia. Kenya iko mwisho katika sheria kwa sababu sheria zetu zote ni za kikoloni. Hata wakati huu tutakapoadilisha Katiba tungesema tutafanya nini ndio sheria zetu zote ambazo ni zaidi ya mia tano zitakapoadilishwa ziwe zinaweza kukubaliana na Katiba. Hayo ni mambo ambayo hatujazungumzia. Utakuta kwamba bado kuna sheria ambazo zina fuatwa katika nchi hii za kikoloni kweli. Wakati tunapozungumza hapa utakuta chifu ambaye tunazungumzia ndiye mwenye kujua kama mpaka wa shamba uko wapi na hali sisi tuko na survey katika county council kila mahali hata zinaweza kwenda kuchukua mapu ya shamba na tuichore. DC hawezi kuipitisha shamba ambayo imekuwa na kesi bila yule chifu ama DO kukubali. Huo ni ukoloni na tungetaka haya mambo yamalizwe. Jambo lingine ni mambo ya majimbo. Sisi ambao tumekua katika shida kwa sababu ya Serikali hizi mbili, ya Kenyatta na ya Moi tunajua kuna shida moja hapa; kwamba majimbo ambayo yalikuwa yanazungumziwa mwaka wa 1991 mpaka sasa ndio yanafuatwa.

Ukiangalia katika rekodi za Bunge tangu mwaka huo utakuta kwamba kulikuwa bado na pande mbili. Pande ambayo ilikuwa ikiunga majimbo na nyingine ambayo ilikuwa inapinga. Historia inaonyesha kuwa wale watu wote ambao walikanusha majimbo wamekuwa na shida nyingi sana katika nchi hii. Wengine wameuawa, wamewekwa jela na wengine mpaka sasa hawajapatiwa nafasi ya kua katika maongozi ya nchi. Wale ambao wamezungumza juu ya ubadilisho wa Katiba katika nchi hii wamesema mambo mengi sana. Walikuwa wakiongozwa na akina Tom Mboya, Marie Seroney, Gichoya, mtu anayelitwa Waira Kamau ambaye siku hizi ni muhubili anasimamia dini kule Ruiru, Anyeni na Jomo Kenyatta. Niliona katika Rekodi za Bunge za mwaka huo Bw. Tom Mboya akisema kwamba kuna watu wengine wanaofikiria katika nchi hii kwamba yeye anatakiwa afikirie Kicuba. Kwamba siku zile watu wengine walikuwa wanasema wengine ni wasoshalisti, wakoministi, makapitolisti na kadhalika. Alisema hivi: "Wale ambao wanataka nitoke katika fikira za Marekani ndio nifikirie kiCuba wanajidanganya. Mimi ninasema kwamba ikiwa hawajatosheka ni afadhali mimi nisiwe hai kuliko



kubadilisha mawazo na kuchukua mengine ambayo hayatakua na maana."

Sisi katika nchi hii, na hasa mimi ninaye simama hapa, ninafikiria kwamba wale ambao wanataka nchi hii ikatwekatwe kimajimbo ni wale ambao pia wanataka mawazo fulani yaingizwe kwa watu ndio nchi hii isiwe na taratibu ya amani na mwisho kabisa itakumbwa na vita. Hii ndio maana tuje tuone wale ambao walienda mbele yetu walikua na nguvu za siasa kuliko wale wanaofuata. Hii ni kusema nini? Tumejua kwamba kuna viongozi katika ulimwengu ambao kazi yao ni kuziharibu nchi zao ndio wale ambao watakuja baadaye isemekane kwamba hawawezi na kuwa afadhali fulani kwa sababu nchi yake haikubomoka wakati alipokua anaongoza. Inabomoka sasa wakati fulani anaongoza. Nafikiri nchi hii inatakiwa iangalie kwamba Serikali ambayo iko sasa haiharibu nchi ili kuwaharibia wale wengine wataokuja kuchukua usukani wa maongozi ya nchi hii. Tukifanya hivyo tutakua tumeivunjavunja nchi yetu na itakua mbaya zaidi. Mambo ya Benki yametajwa hapa. Leo nimepata barua kutoka kwa Co-operative Bank of Kenya ikinalika kwenda katika chakula cha mchana huko hoteli ya Grand Regency, siku ya Disemba Mosi, saa tano tuzungumzie mambo ya kahawa, fedha ambazo zinatokana na kahawa na vile tunatakiwa kusimamia sector ya ukulima.

Jambo ambalo ninalijua ni hili; benki hii ilianzishwa kwa minajili ya kutunza fedha na mambo ya utume ya mkulima na wa ushirika. Leo wamejiona na sasa wanaitua sisi ambao tunatoka katika sehemu za ukulima wa kahawa ili tuende tukubaliane na hawa kwamba hakutakiwi benki nyingine katika nchi hii, hasa ile inayoitwa benki ya ukulima. Wale ambao wataenda kukaa chini na wakurugenzi na halmashauri ya benki hii watakua wamekubali kwamba benki ya ukulima haitakiwi kuwekwa nchini. Hiyo ni kusema benki ambazo zipo sasa ndizo zinatakiwa kuendeleza kazi zao. Hii ni kusema pia fedha ambazo zimepotea katika nchi hii zikifuatiliwa ama zikitumiwa na mabenki, sisi tunatakiwa tunyamaze.

Bw. Naibu Spika wa Muda, katika nchi hii ni watu wangapi wako na mashamba? Ni watu wangapi ambao wako na manyumba mijini? Utakuta kwamba ukienda kuchukua mkopo kutoka kwa benki yoyote, jambo la kwanza ambalo wanataka kujua ni kama wewe uko na mali katika mji wowote ndio uwapatie, ama kama hauna mali kama nyumba au ploti mjini, uko na shamba lo lote ambalo linaweza kudhamini pesa kiasi hiki? Ninaona hii ni kusema kwamba ni watu wengi sana katika nchi hii ambao hawataweza kupata mikopo kwa sababu ya msimamo kama huo. Katiba yetu inaweza kuisaidia nchi hii kwa sababu tukirekebisha mambo ya mashamba na turekebisha usimamizi wa benki na upeanaji wa mikopo, tutakuwa tumepanua uchumi na usimamizi wa uchumi huu.

Bw. Naibu Spika wa Muda, katika mjadala ambao umekuwa ukiendelea nimeyasikia machache kutoka kwa watu wengine wakisema kwamba akina mama katika Kamati ambayo itaundwa, ni wengi sana. Kwa hivyo, wanatakiwa wapunguzwe kidogo. Wakati tulikuwa katika mazungumzo kule Bomas of Kenya na Safari Park, tulikubaliana kwamba akina mama waliuliza wapewe nafasi ya akina mama asilimia thelathini. Asilimia 30 ni ndogo sana kwa sababu akina mama kila wakati wamekuwa wakisema wao ni asilimia 52 katika nchi. Na wakati akina mama walisimama - na Mkuu wa Sheria anajua haya maneno - badala ya kuitisha asilimia 52 uwakilishaji, waliuliza asilimia 30. Nikaona wakiwa wakarimu sana kwa sababu wao ni asilimia 52 katika nchi, lakini waliuliza asilimia 30.

Itakuwa vibaya sana kwa mtu yeyote kusimama katika Bunge hili na kusema kwamba asilimia 30 ambayo akina mama waliuliza ni kubwa. Ama kusema eti sio "women political caucus" inatakiwa kuwakilisha akina mama bali ni chama cha Maendeleo ya Wamawake. Sisi tunajua kulikuwa na njama kufanya Maendeleo ya Wamawake kuwa KANU II katika nchi hii. Kuna watu ambao bado wanafikiria chama cha Maendeleo ya Wanawake ndicho kinatakiwa kuongoza akina mama.

Bw. Naibu Spika wa Muda, ningetaka kusema, "ufundishapo mwanamama, unafundisha familia na mama ni utajiri wa nchi".

Asante sana.

**Mr. Muite:** Thank you, Mr. Temporary Deputy Speaker, Sir. In supporting this Bill, the first point I would like to make is to appeal to the institutions which, when the Bill is passed, are going to have the responsibility of nominating these 25 Commissioners: The women political caucus, the political parties, the civil society and the religious sector. I would like to make an appeal that each of these institutions lays down the criteria of ability, merit and integrity. Those are the conditions and the criteria that the appointing institutions should go for.

In appointing these 25 Commissioners, each of these appointing institutions should appreciate and be conscious of the fact that this is a very heavy responsibility - this is very important work to us - for the first time, writing our Constitution. Therefore, these 25 Commissioners will have a very heavy responsibility in history. It is a historical occasion and I would like to appeal to each one of them, not to appoint people because they support this party or that party. Let us go in for merit, ability and integrity so that we can have men and women who are going to live up to the expectations of Kenyans.

Secondly, we need to create an environment in which the constitutional review process can take place successfully. If we do not create that environment, this process is going to stall. And the heavier responsibility of creating this environment rests squarely on the shoulders of the KANU Government. When I say that we need to create the environment, the KANU Government must demonstrate by action and conduct about their political commitment to ensure that this process is going to be a success.

For example, why does KBC which is funded by taxpayers money continue to be exclusively a mouthpiece for the ruling party KANU? If they are serious about the success of this process, we want the Government to allow KBC to operate independently and to cover events because they are newsworthy. It must not be used as a propaganda mouthpiece for the ruling party KANU.

*(Applause)*

Sir, if we see some changes there, then we will have confidence that the necessary environment is going to be created. But it is terribly insulting to switch on KBC, whether it is radio or television; everyday, it is either what the President did or said. Fortunately or unfortunately, there is no Vice-President because when we had one it was what the Vice-President did, what the Ministers did, what the DCs did and what the PCs did. It is so very irritating and we are asking this Government to de-link itself from the KBC. That is a small action that will go some way in demonstrating that the constitutional process is going to be successful.

Take the police force. We want this Government to demonstrate that they are creating the environment where this process is going to be successful by allowing the police the autonomy which they should have and also the Provincial Administration. These are not institutions that should be used by the ruling party KANU to prop up the party in power. Most of their work is in finding out what this and that Opposition person is doing. It is to collect political intelligence about what the Opposition is doing.

We need this Government to demonstrate their commitment to the creation of that conducive environment by allowing these institutions to serve Kenyans and the law rather than the ruling party KANU.

We have seen continued disruption - and this has been mentioned by other Members - of meetings and seminars. This is not the conduct of a Government that is committed to sincere constitutional reform process. So, we are asking that this Government actually begins to demonstrate that they are prepared and they are moving towards the creation of this environment.

Corruption has been mentioned here and the land grabbing mania. If this Government is truly committed to a successful constitutional reform process, they must start demonstrating now. All the de-gazettement of forest land that has been illegally, and unconstitutionally done, in breach of trust, should be nullified. This Government does not appear to know that it does not own the land in its---

#### **HON. MEMBERS' HALF-HOUR STATEMENTS**

**The Temporary Deputy Speaker** (Mr. Imanyara): Hon. Members, there is one request from the Member for South Imenti, Mr. Kiraitu Murungi. Hon. Kiraitu, Murungi!

**An Hon. Member:** He is not there!

#### **ADJOURNMENT**

**The Temporary Deputy Speaker** (Mr. Imanyara): In that case, we must adjourn at this stage. The House is, therefore, adjourned until Tuesday, 1st December, 1998, at 2.30 p.m.

The House rose at 6.30 p.m