

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 15th December, 1999

The House met at 9.00 a.m.

*[Mr. Speaker in the Chair]*

PRAYERS

### ORAL ANSWERS TO QUESTIONS

*Question No.136*

#### REVENUE COLLECTION BY KENYA REVENUE AUTHORITY

**Mr. N.M. Nyagah** asked the Minister for Finance:-

- (a) how much revenue the Kenya Revenue Authority collected in 1997; and,
- (b) whether he could give a breakdown of the revenue collected by the Motor Vehicle Registration Department for the years 1994, 1995 and 1996.

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

(a) The Kenya Revenue Authority collected a total of Kshs139.42 billion in the 1997 calendar year.

(b) A breakdown of the revenue collected by the Motor Vehicle Registration Department during the 1993/94-1996/97 Financial Years is as follows:- In 1993/94 - Kshs581.3 million; 1994/95 - Kshs377.5 million; 1995/96 - Kshs593.2 million and 1996/97 - Kshs877.3 million.

These annual aggregate Motor Vehicle Registration Department revenue collections can be further broken down as follows:-

On motor vehicle licences and PSV in 1993/94 the Department collected Kshs310.4 million; in 1994/95, it collected Kshs194.4 million; in 1995/96 it collected Kshs330.4 million and in 1996/97 it collected Kshs442.6 million. In the issuance of driving licenses, it collected Kshs96.4 million in 1993/94; in 1994/95 it collected Kshs44.9 million; in 1995/96 it collected Kshs91.1 million and in 1996/97 it collected Kshs167.8 million. For the TLB Licences in 1993/94 it collected Kshs5.1 million; in 1994/95 it collected Kshs3.1 million; in 1995/96 it collected Kshs8.7 million and in 1996/97 it collected Kshs14.1 million. Under the Registration and Transfer Fees programme, it collected Kshs131.1 million in 1993/94---

**Mr. Speaker:** How long are those figures, Mr. Marrirmoi?

**The Assistant Minister for Finance and Planning** (Mr. Marrirmoi): Mr. Speaker, Sir, the total for 1993/94 was Kshs581.3 million; for 1994/95 the figure was Kshs377.5 million; for 1995/96 it was Kshs593.2 million and for 1996/97 it was Kshs877.3 million.

**Mr. N.M. Nyagah:** Mr. Speaker, Sir, could the Assistant Minister explain why the docket for management of Motor Vehicle Registration Department was removed from the Kenya Revenue Authority when there was a rise of 200 per cent in revenue collection in 1997, in excess of Kshs1 billion from a mere Kshs347 million the previous year?

**Mr. Marrirmoi:** Mr. Speaker, Sir, I did not get the first part of the question. Could the hon. Member repeat his question please?

**Mr. N.M. Nyagah:** Why did the Government find it prudent to remove the management of the Motor Vehicle Registration Department from the Kenya Revenue Authority and take it back to the Registrar of Motor Vehicles whereas there was a registration of more than 200 per cent increase in terms of revenue collection?

**Mr. Marrirmoi:** Mr. Speaker, Sir, there was need to remove it because it has been doing well under the Registrar of Motor Vehicles.

**Mr. N.M. Nyagah:** Mr. Speaker, Sir, the answer given by the hon. Member is quite unsatisfactory. The issue of taking the Department of Motor Vehicle Registration to the Registrar of Motor Vehicle can be connected to a corrupt scam that the Government planned to introduce a couple of years ago; when they tried to use a legal office in Britain which was going to be involved in the management of motor vehicles in this country, but this was shot down in

this House. If through the Kenya Revenue Authority, we were able to collect in excess of Kshs1.3 billion, why would the Government move the collection of revenue and the motor vehicle registration to the Registrar of Motor Vehicles who is unable to collect that kind of money for Kenya?

**Mr. Marrimoi:** Mr. Speaker, Sir, let me assure the hon. Member that there is no more corruption now, as far as we are concerned.

*Question No.682*

CONTROLLING OF OIL INDUSTRY BY MULTINATIONALS

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

- (a) whether he is aware that the oil industry in this country is under the monopoly of a cartel of a few multinational companies;
- (b) whether he is further aware that these multinational companies have refused to sell part of their shares to Kenyan citizens; and,
- (c) when he will bring a Bill to the House, making it mandatory for the multinational companies trading in oil products to sell 50 per cent of their shares to Kenyan citizens.

**The Minister for Renewable Energy** (Mr. F.P.L. Lotodo): Mr. Speaker, Sir, I do not have an answer to this Question because there is still a tug of war between the Ministry of Energy and the Ministry of Finance and Planning as to which Ministry should give a reply.

**Mr. Ojode:** Mr. Speaker, Sir, the Minister for Energy knows very well that this Question is directed to his Ministry. He should have gone to the Ministry of Finance and Planning to sort out that mess without necessarily bringing it to the House. Is he in order to mislead this House that he does not know who is supposed to answer this Question?

**Mr. F.P.L. Lotodo:** Mr. Speaker, Sir, I am quite in order because I just saw it in the morning. Normally, I do not get the list of questions; I get the answers. So, I have ordered that they sort out the mess. If it is the Ministry of Finance to do it, let them do it. However, I cannot assure the House when the reply will be ready, whether it is next year or next week.

**Mr. Kajwang':** Mr. Speaker, Sir, is this really not a conspiracy of the oil industry to refuse to answer this Question? This is because our people and industries are suffering from abnormally high prices of fuel and our transportation system is becoming more expensive. Is this not a delaying tactic so that we go home for three months before this Question is answered?

**Mr. Speaker:** Mr. F.P.L. Lotodo, what is your reaction? Could that be the case?

**Mr. F.P.L. Lotodo:** No, that is not the case. It is just the right Ministry which should get the answer. We have tried to end the problem which the hon. Member is trying to address.

**Mr. Speaker:** Is it possible to get it tomorrow? Mr. Marrimoi is here from Treasury. Can you talk and see whether you can give the answer tomorrow?

**Mr. F.P.L. Lotodo:** Mr. Speaker, Sir, I can talk to the Assistant Minister, but I do not know whether the technicians will get the answer by tomorrow.

**Mr. Speaker:** Alright. I think what you will do is that if the technicians are refusing to give answers to Ministers, then you will tell me tomorrow. I may have to call them and we deal with them here.

*(Applause)*

**Mr. F.P.L. Lotodo:** Mr. Speaker, Sir, that is quite okay.

**Mr. Speaker:** Very well. I will defer it to tomorrow with instructions that the Question be prepared, failure to which those ones refusing to give answers to Parliament should appear before Parliament.

*(Question deferred)*

Next Question! Dr. Awiti.

*Question No.544*

REHABILITATION OF DAMS IN KARACHUONYO

**Dr. Awiti** asked the Minister for Water Development:-

(a) whether he is aware that the following dams were completely destroyed by the *El Nino* phenomenon:-

(i) Ombaga dam;

(ii) Dong'a dam;

(iii) Tinga dam; and

(iv) Pap Kamin Olwenyo dam; and,

(b) what measures the Ministry is taking to rehabilitate these dams.

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

(a) I am aware that Ombaga, Dong'a, Tinga and Pap Kimini Olwenyo dams were destroyed by the *El Nino* induced rains.

(b) The Ministry of Environment and Natural Resources, during this financial year, has allocated Kshs500,000 for rehabilitation of water supply schemes in Rachuonyo District. The Ministry realises, however, that the amount is not sufficient to carry out rehabilitation of all the above dams. The Ministry is actively looking for additional funds to rehabilitate the above dams.

**Dr. Awiti:** Mr. Speaker, Sir, it is common knowledge that these dams were built during the colonial days. They were built in 1959 and the *El Nino* phenomenon completely destroyed them. How much additional funds does the Ministry intend to utilise for the rehabilitation of these dams? The Kshs500,000 cannot even rehabilitate one of the dams.

**Mr. Ng'eny:** Mr. Speaker, Sir, it is true that those dams were built long time ago and they were fairly strong. That is why the Ministry is re-designing the dams and after designs have been completed, then the accurate estimates will be given.

**Dr. Oburu:** Mr. Speaker, Sir, very many dams in this country were built during colonial times. I would like the Minister to tell us whether since 1962 when we obtained our Independence, the Government has any plans to maintain these dams because they are breaking down as a result of non-maintenance? Can he tell us whether he is doing anything to maintain these dams?

**Mr. Ng'eny:** Mr. Speaker, Sir, the Ministry has got very elaborate plans to construct, maintain and run dams throughout the country. The only problem is the financial constraint.

**Mr. Otula:** Mr. Speaker, Sir, the Minister has told this House that he has earmarked Kshs500,000 to rehabilitate these particular dams. When will the work start?

**Mr. Ng'eny:** Mr. Speaker, Sir, as I said before, the dams were destroyed by the *El Nino* phenomenon hence the need to re-design those dams and give the estimates. We are in that process of giving the estimates now. It is only after we have redesigned the dams we will be able to give the estimates.

**Mr. Ojode:** Mr. Speaker, Sir, the question of the Ministry not having enough funds is not a new phrase in this House. The Ministry used to have a programme called the Drought Recovery Programme where they used to promise money for the rehabilitation of such dams. As a matter of fact, they promised even to finance construction of my dams in Ndhiwa Constituency to the tune of Kshs3 million which has not been availed to date. Could the Minister explain to this House what happened to the Drought Recovery Programme and how much money have they spent on it?

**Mr. Ng'eny:** Mr. Speaker, Sir, if we look into the financial estimates of this year, we shall find that every district is allocated Kshs500,000. Unless there is a special project in one particular district, then---

**Mr. Ojode:** On a point of order, Mr. Speaker, Sir. You will agree with me---

*(Hon. Ng'eny remained standing)*

**Mr. Speaker:** Order, the two of you! Order, Ojode! All of you must obey the Chair. You do not stand there quarrelling. Mr. Ojode, what was it?

**Mr. Ojode:** Mr. Speaker, Sir, the Minister is misleading the House because what I asked him was: How much money had already been spent on the Drought Recovery Programme? The Drought Recovery Programme has been financing the project of re-construction and rehabilitation of dams and what have you.

**Mr. Ng'eny:** Mr. Speaker, Sir, the Drought Recovery Programme belongs to another Ministry.

**Mr. Ojode:** No! On a point of order, Mr. Speaker, Sir. The Minister is misleading the House. Any question related to dams has been always answered by the Ministry of Water Development. Is he not in the Ministry of Water Development?

**Mr. Speaker:** Order, Mr. Ojode. I do not know whether you have read the recent circular detailing the

composition and portfolio of Ministries. I think the Minister is right. It does not fall under his Ministry. I think it falls under the Office of the President.

**Mr. Ojode:** Mr. Speaker, Sir, if that is what you are saying, why was he answering this Question which belongs to the Ministry of Natural Resources?

**Mr. Speaker:** Yes. Mr. Ng'eny, why were you answering it?

**Mr. Ng'eny:** Mr. Speaker, Sir, the normal dams which do not fall under the Drought Recovery Programme belong to the Ministry of Water Development.

**Dr. Awiti:** Mr. Speaker, Sir, I would like to know whether the Kshs500,000 which has been allocated is what is being used for the design, or whether the Ministry has a separate fund for the design, and when this design is going to be ready?

**Mr. Ng'eny:** Mr. Speaker, Sir, the design is in-house.

*Question No.650*

REHABILITATION OF OL KANGUI WATER SCHEME

**Eng. Muriuki** asked the Minister for Water Development the plans he has to rehabilitate Ol Kangui Water Supply Scheme and make the water treatment works operational.

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

The Ministry is looking for about Kshs3 million to rehabilitate and augment Ol Kangui Water Scheme. Rehabilitation will be carried out as soon as funds are made available. The treatment works are partially operational and the funds sought will make the scheme fully operational.

**Eng. Muriuki:** Mr. Speaker, Sir, this water supply scheme in Ol Kalou Constituency was completed 11 years ago. Could the Minister tell this House whether he has been looking for Kshs3 million for the last 11 years?

**Mr. Ng'eny:** Mr. Speaker, Sir, I entirely agree with the hon. Member that this project was constructed about 11 years ago. But the history of the project is that, it was a donor-sponsored project; by the Norwegian Government. The Chair may recall that, sometime in late the 1980s and early 1990s there was a problem with the Norwegian aid and that is why the project continues to be frustrated. However, now we are seriously looking for funds to complete the project. In fact, the project is listed among the first ones to be considered when funds are available.

**Dr. Ochuodho:** Mr. Speaker, Sir, one of the pressing problems that we have are projects that are started, but never completed. The Government started a water scheme in almost every district; three quarters of which stalled. After the Government spent Kshs20 million, in Homa Bay, the project stalled when, only another Kshs2 million was required to complete the project. Could the Minister tell us if he has done an assessment of these water schemes that were started, but were never completed all over the country and that, money was pumped in them was not utilised?

**Mr. Ng'eny:** Thank you, Mr. Speaker, Sir. I entirely agree with that and, in fact, the Ministry is virtually completing an exercise where some of the projects like Ol Kangui, is an example of projects which have been done and are between 65, 75 and even 90 per cent complete. But the projects had stalled due to one reason or another. The Ministry is now prioritizing those projects which have been completed half-way, but stalled due to reasons which we all know. We all know the reason why these projects stalled.

**Mr. Speaker:** Mr. Shidiye's Question!

*Question No.671*

WATER SUPPLY TO KORYALE LOCATION

**Mr. Speaker:** Mr. Shidiye not here! Next Question, Mr. Onesmus Mboko!

*Question No.722*

CONSTRUCTION OF MTITO-ANDEI HEALTH CENTRE

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

(a) why the construction of Mito-Andei Health Centre stalled; and,

(b) whether he could terminate this contract and appoint another contractor.

**The Minister for Medical Services (Dr. Anangwe):** Mr. Speaker, Sir, I beg to reply.

(a) The construction of Mtito-Andei Health Centre stalled as a result of the contractor, M/s Reef Building Systems, abandoned the site.

(b) The Ministry is in the process of determining the contract in view of the contractor's reluctance to resume the work.

**Mr. Mboko:** Mr. Speaker, Sir, this contractor abandoned the project several years ago. The then Minister for Health, hon. Joshua Angatia, visited the site and told the community that the contract would be determined and another contractor given the job; that was in 1995. Nothing has happened to date and the Health Centre is being vandalised! What immediate action is the Ministry going to take to complete this facility?

**Dr. Anangwe:** Mr. Speaker, Sir, it is true, as the hon. Member has said, that the contractor pulled out in 1993 and then in March, 1993, he was given a Default Notice by the Government and then a decision was made that the contract should be terminated. This morning, I instructed the Permanent Secretary to communicate the same to the DDC so that the process of awarding the contract could continue.

**Mr. Mboko:** Thank you, Mr. Speaker, Sir. If I take the Minister seriously on what he has said, is he aware that already the DDC in Makueni has sat and decided the same. This facility is 70 per cent complete, but now vandalism is taking place. We need the facility to go on. Could the Minister confirm to the House that, before the beginning of next year, a new contractor will be assigned the job?

**Dr. Anangwe:** Well, this is a decision we made this morning and we have looked at the books. Could the hon. Member give us time to exhaust the process and then I will be able to confirm when exactly the new contractor will be on site? As to the issue of vandalism, I am just a concerned as the Member is, but I think the Questioner being a Member of Parliament for the area, has a responsibility to tell his people that, in vandalising that particular facility, they are undermining a facility that would give them a service.

*Question No.631*

ALLOCATION OF PLOTS BY MAKUYU TOWN COUNCIL

**Mr. Kamande** asked the Minister Local Government:

(a) whether he could explain why Makuyu Town Council has not allocated plots at Kirimiri, despite the fact that applicants paid the required council levies; and,

(b) what the sizes of the plots are and when they will be allocated.

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

(a) The plots at Kirimiri Market, within Makuyu Town Council, were allocated by the Murang'a County Council between 1981 and 1986, under Temporary Occupation Licence, pending preparation of final Part Development Plan for the area.

The PDP has not been prepared by the Director of Physical Planning, Ministry of Lands and Settlement. Without the PDP, it is not possible to issue formal letters of allotment.

(b) It is not possible to tell the sizes of the plots because the area has not been planned. Once this is done, the allottees will be issued with letters of allocation.

**Mr. Kamande:** Mr. Speaker, Sir, the land title deed was given out by Kakuzi Limited. Initially it was five acres. Dues to squabbles within the local government offices within the our area, Kakuzi Limited reclaimed the land and reduced it to two acres. Thereafter, the people of Kirimiri - the allottees - paid Kshs5,000 each. But due to squabbles, the councillors within the area wanted that each plot be subdivided into two so that they can be beneficiaries. That is when the allocation was stopped. Could the Minister order Makuyu Town Council to facilitate this process for these people of Kirimiri to benefit? These people are feeling shameful having mud houses within our area.

**Mr. Affey:** Mr. Speaker, Sir, the hon. Member is right. The land under reference falls within land reference No.LR10731/2 Kirimiri-Makuyu; owned by Kakuzi Limited of Thika.

On or about October, 1981, Kakuzi Limited offered to surrender two hectares of land to Murang'a County Council to be excised from the above parcel of land for development of a market centre. The surrendered parcel was subsequently transferred to Murang'a County Council. Between 1981 and 1996, Murang'a County Council issued a total of 35 temporary TOLS to traders residing in the area. These temporary allottees put up temporary structures around the surrendered plots, pending formal planning of the area.

Mr. Speaker, Sir, it is true that, during the same period, the Murang'a County Council approached the Kakuzi Limited with a request for additional land adjacent to the surrendered one. This is because the hon. Member only seems to be aware of two hectares; but they requested for another three hectares increasing the total area to five hectares. Although Kakuzi Limited acceded to the request, no action was taken to implement it. Murang'a County Council,

therefore, went ahead and issued further land to some 35 applicants, despite the fact that the land had not been surrendered to them formally.

**Mr. Kamande:** Now that Makuyu Town Council collected levies from the public without authority, can the Assistant Minister order the council to refund that money to the allottees because it was illegal?

**Mr. Affey:** Mr. Speaker, Sir, that might not be possible, but the final allocation will depend on a very comprehensive planning of the plots. This will determine the size of the proposed plots taking into account the occupants already on the ground and others who have letters of temporary allocation.

**Mr. Speaker:** Next Question, Col. Kiluta?

*Question No.741*

CONSTRUCTION OF EKALAKALA/MANANJA BRIDGE

**Col. Kiluta** asked the Minister for Roads and Public Works:-

- (a) if he is aware that the bridge connecting Ekalakala Market and Mananja Market was submerged by water when Masinga Dam was constructed;
- (b) if he is further aware that the people going or coming from Ekalakala to Mananja have to travel long distances due to lack of this bridge; and,
- (c) if the answer to "a" and "b" above are in the affirmative, when he intends to construct another bridge.

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

(a) I am aware that the bridge connecting Ekalakala Market and Mananja Market was submerged by water when Masinga Dam was constructed.

(b) I am also aware that people going or coming from Ekalakala Market to Mananja Market have to travel long distances due to lack of this bridge.

(c) My Ministry will plan and budget for another bridge when we are advised of this as a top priority by the DDC.

**Col. Kiluta:** Mr. Speaker, Sir, it is very embarrassing to hear the Assistant Minister come here and answer a Question without doing any homework. This Question was before this House in 1994 and the same Ministry wrote to me and told me that they were budgeting for this bridge the following year. Now, he is telling me that he is going to budget for the bridge if it is prioritised by the DDC. What happened to the promise you made in 1994?

**Mr. Criticos:** Mr. Speaker, Sir, as my colleague realises, I have just been four months old in this Ministry and this is the information which I got from my officers. However, I will reprimand my officers if there is such a letter. I will further like to advise Col. Kiluta that we do not have enough funds for the construction of the new bridge whose cost should be Kshs150 million.

**Mr. Maundu:** Mr. Speaker, Sir, this is a very important bridge. It forces the area Member of Parliament to go round when inspecting development projects in his constituency more than 90 kilometres, whereas it would have taken him less than 15 kilometres. Can the Assistant Minister make sure that this bridge is given priority? How much money is required for this particular bridge?

**Mr. Criticos:** Mr. Speaker, Sir, there is no doubt that this bridge is very important. To correct hon. Maundu, the total distance is 111 kilometres and we take this very seriously. We had a commitment from the ODA that this bridge will be constructed. However, under the grant/aid programme, they did not include it. The construction of the concrete bridge will cost about Kshs150 million and this will put off the district and others off all other bridge projects. The current bridge project for 1999/2000 for the whole country has been allocated Kshs150 million.

**Col. Kiluta:** Mr. Speaker, Sir, as I said earlier, the Assistant Minister has not been properly briefed. There is a lot of correspondence on this bridge. The British engineers agreed to construct this bridge and they gave their quotation lower than what has been quoted by the Assistant Minister. The Ministry also came up with the drawings for the same bridge. I am pleading that the Assistant Minister to go back and be properly briefed and then report back to this House even it means next year. I do not think he knows what we are talking about here. Let him go and find out what happened to the promise made by the British engineers.

**Mr. Criticos:** Mr. Speaker, Sir, as I said earlier on, under the Third Bailee Bridging Programme, the ODA did not support the bridge. It is a long bridge about 190 feet or 60 metres. However, I can assure Col. Kiluta that I will go and investigate the matter and maybe, we can sit together and see how best we can go about it.

QUESTIONS BY PRIVATE NOTICE

EMPLOYMENT OF EXPATRIATES BY  
BARCLAYS BANK (K) LIMITED

**(Mr. Nyauchi)** to ask a Minister of State, Office of the President:-

- (a) How many expatriates are currently employed by Barclays Bank International (K) Limited, and in what job descriptions?  
(b) Is the Minister satisfied that the jobs being done by the expatriates cannot be done by Kenyans?

**Mr. Speaker:** Mr. Nyauchi's Question has been deferred to tomorrow afternoon.

*(Question deferred)*

**Mr. Speaker:** Next Question, Mr. Kamande?

INVASION OF MR. MBURU'S HOUSE  
BY ADMINISTRATION POLICE

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

Could the Minister inform the House under what circumstances Administration Police broke into the house of Vincent Njaramba Mburu of Ichagaki Sub-Location, Ichagaki Location of Maragwa District, on 30th October, 1999?

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

The allegation that Administration policemen broke into the house of Mr. Vincent Njaramba Mburu on 30th October, 1999, is not correct. The Administration policemen had been sent to conduct a search because it was believed that Mr. Mburu was a bhang peddler.

**Mr. Kamande:** Mr. Speaker, Sir, the answer given by the Minister is quite misleading. Mr. Mburu is a Catholic lay-leader and on that day, he was performing his duties at the church. When he came back at 1.00 p.m., he found that his house had been broken into. After inquiring, he was told that Administration Police broke his house under the command of the area chief and stole Kshs4,000. Immediately, Mr. Mburu reported the incident to Maragwa Police Station. Did the Administration Police have a search warrant from any court in Maragwa District or within Kenya when they conducted the search?

**Maj. Madoka:** Mr. Speaker, Sir, in the light of what the hon. Member has said that the Administration Police broke into the house, I will like to further investigate that because that is not information I have. However, I am prepared to check and then be able to report appropriately.

**Mr. Muchiri:** Thank you, Mr. Speaker, Sir. The Minister is aware that under the IPPG reforms, it was agreed that the Administration Police have no power to search people's houses or vehicles without a search warrant. They are now moving round all over the country performing those duties. Will you withdraw them from performing these duties, including manning the road blocks?

**Maj. Madoka:** Mr. Speaker, Sir, many times, the Administration Police are also used to help the police. They travel along with the police to try and maintain law and order.

**Mr. Muchiri:** On a point of order, Mr. Speaker, Sir. The Minister has not answered the question. We have officers who have no power to search within the Act, on what grounds are they assisting the police unless they are members of the public?

**Maj. Madoka:** Mr. Speaker, Sir, they do help the police many times even on the road blocks. Due to the shortage of the number of policemen we have, we use them to assist, but the powers of arrest lie with the police.

**Mr. Kamande:** Mr. Speaker, Sir, cases of Administration Policemen (APs) harassing *wananchi* and, in fact, asking for bribes, is very rampant, particularly in Maragwa District. Is the Minister taking any action to ensure that APs, District Officers (DOs) and District Commissioners (DCs) do not search houses belonging to *wananchi*, demanding bribes in the process?

**Maj. Madoka:** Mr. Speaker, Sir, APs, or the police generally, have no right to ask for bribes from members of the public. If there is sufficient evidence to the effect that police officers ask for bribes from members of the public, we would like to ask members of the public to report this, and we will deal with those individuals. We have had similar cases before, for which we had evidence, and people have been taken to court.

**Mr. Kamande:** Mr. Speaker, Sir, I brought this Question to this House because, one, early last year, the *Nation Newspaper* carried a very long story of how a chief arrested 45 people within Kamahuha Location. The same newspaper reported on how a sub-chief within Maragwa District raped a woman, and nothing was done by the

Government. Here is another chief who is now behaving like a robber. We now want to know whether the Government will take any action against these Provincial Administration officers who are trying to mess up with the reforms Kenyans are fighting for.

**Maj. Madoka:** Mr. Speaker, Sir, if the hon. Member gives us sufficient evidence to that effect, we will, certainly, take action against that chief.

MEASURES TO CURB ARMED ROBBERIES IN NYATIKE

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

(a) Is he aware that there is a spate of robberies with violence involving guns in Karungu Division, Nyatike Constituency?

(b) What action has he taken to curb this crime?

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

(a) It is not true that there is a spate of robberies with violence in Karungu Division. However, there have been a few such incidents, and the police are taking appropriate action to prevent such incidents from happening.

**Mr. Onyango:** Mr. Speaker, Sir, I wonder where the Minister got this answer from. I talked to the area DO, who told me that two robberies take place in that division every week. Also, the area Officer Commanding Police Division (OCPD) confirmed this. The two officers said that they are going to do something about the matter. Is the Minister aware that on the 2nd and the 6th of this month, there were robberies at Kogore and Aurachuonyo? What has he done about these two robbery incidents?

**Maj. Madoka:** Mr. Speaker, Sir, I am not aware of those two particular incidents. All I know is that, in the year, so far, there have only been three incidents involving the use of firearms.

**Mr. Ojode:** Mr. Speaker, Sir, this is a very worrying situation. Aurachuonyo falls within my constituency. It is, indeed, true that there have been robbery cases within Sori Market. The person behind these robberies is the area DO, Mr. Odongo.

**Mr. Speaker:** Order! Order! Do you have substantiated facts, Mr. Ojode?

**Mr. Ojode:** Mr. Speaker, Sir, I would like to substantiate. When thieves were arrested, it was the same DO who released them from custody. What would you say if it were you?

**Mr. Speaker:** Order! Order! Mr. Ojode, one thing I do not do is that I do not rumourmonger.

*(Laughter)*

**Mr. Ojode:** Mr. Speaker, Sir, this is serious issue.

**Mr. Speaker:** Then why do you not ask your question?

**Mr. Ojode:** Mr. Speaker, Sir, I am saying that one cannot travel within Karungu Market after 6.00 p.m., because of the DO's perpetration of theft. Now that the Minister has been informed that it is the area DO and the police officers under him who are carrying out robberies within Karungu, what is he going to do about it?

**Maj. Madoka:** Mr. Speaker, Sir, I wish the hon. Member had concrete evidence that the DO was involved in the perpetration of that crime; this would help us tremendously. However, claiming that because the DO went and released suspects from custody meant that he condones crime is not correct. So, I am prepared to follow up the matter further to establish the hon. Member's allegations.

**Mr. Onyango:** Mr. Speaker, Sir, I would like to know whether there is a cover up in this particular case, and whether the Government is involved. The area OCPD, OCS, and the DO have accepted that there are robberies in that area, and that they were going to do something about it. I suppose that these officers are supposed to have given the Minister the answer. Could he now tell the House what he is going to do about the matter now that he is aware?

**Maj. Madoka:** Mr. Speaker, Sir, we agree that there have been cases of robbery. However, when one says that there is a spate of robberies, it means that there are very many cases. I got this answer from the area OCPD and the DO.

**Mr. Ojode:** Mr. Speaker, Sir, the Minister is being misled because the answer he has read out before the House was given to him by the DO and the OCPD. Why can the Minister not transfer Mr. Odongo, or sack him altogether as he is the one who is behind these robberies? What is he going to do to ensure that DO is transferred from that area, or remove him from service altogether, and that all policemen, including APs, within Karungu, are transferred elsewhere?

**Maj. Madoka:** Mr. Speaker, Sir, I respect the hon. Member. However, as I have said, I would like him to



come up with concrete evidence on the allegations about the DO being involved in those incidents, so that I will be able to say what action we are prepared to take against him.

**Mr. Speaker:** The very last one, Mr. Sungu.

**Mr. Sungu:** Mr. Speaker, Sir, insurance farms have just investigated cases of robberies in that area. The situation is such that traders cannot travel with their merchandise to the various markets in the area because they are waylaid on the way on a weekly basis. The Minister is not telling us the truth regarding this matter. Could he assure us that the residents of that area, which is a border area, will be given security? Could he also assure us that the police are not going to hire out their guns to thugs, or allow their vehicles to be used in robberies?

**Mr. Madoka:** Mr. Speaker, Sir, as I said, the police are taking all the necessary action to try and ensure that we maintain law and order in that area.

**Mr. Speaker:** Let us go to Mr. Shidiye's Question by Private Notice.

**Mr. Ojode:** The very last one, Mr. Speaker, Sir.

**Mr. Speaker:** I am sorry, you are not allowed. Proceed, Mr. Shidiye.

#### REHABILITATION OF KULAN BOREHOLE

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

(a) Is he aware that the residents of Kulan, Liboi Division, Garissa District, have a serious shortage of water as a result of the collapse of the only borehole?

(b) What immediate action is he taking to repair or replace the pump?

**Mr. Speaker:** Where is the Minister for Water Development; Mr. Ngeny?

**Mr. Ojode:** He was here!

**Mr. Speaker:** I am sorry, Mr. Ngeny is not here and, therefore, I will defer your Question.

**Mr. Ojode:** On a point of order, Mr. Speaker, Sir. Hon. Ngeny was here and he knew very well that the other Question was coming before the House. What will the Chair do to compel him to answer this Question?

**Mr. Speaker:** I do not know where he has gone to. Mr. Shidiye, what do you want to say?

**Mr. Shidiye:** Mr. Speaker, Sir, this Question has been on the Order Paper for the last three weeks. When this Question was asked last time, the Deputy Speaker deferred it because we did not get an adequate answer. The people of this area are suffering because they lack water. That is why it is a Question by Private Notice. So, could the Chair summon the Assistant Minister or the Minister to come and answer this Question?

**Mr. Speaker:** Is there anybody from the Ministry of Water Development here?

**Mr. Ojode:** On a point of order, Mr. Speaker, Sir. We are seeking the indulgence of the Chair; Mr. Ngeny was sighted here answering Questions. What will the Chair do now that he has gone away before answering this Question? Where is he? What will the Chair do?

**Mr. Speaker:** Order! I agree with the hon. Member that Mr. Ngeny was here. Of course, Mr. Ngeny was here and he answered several Questions and somehow, went away. I am told by the Clerks at the Table that, indeed, Mr. Shidiye is right, that this Question has been on the Order Paper for the last three weeks. Everybody in this House knows that North Eastern Province is a semi-arid area and the question of water is a matter of life and death. So, I will direct that this Question be asked this afternoon notwithstanding the fact that it might not be on the Order Paper. This Question will be asked this afternoon, and I will ask the Clerk at the Table to send somebody to the Ministry of Water Development to ask Mr. Ngeny to present himself here in the afternoon to answer this Question. So, this Question is deferred until this afternoon.

*(Question deferred)*

#### MEASURES TO INSURE THIKA MUNICIPALITY VEHICLES

**(Mr. Ndicho)** to ask the Minister for Local Government:-

(a) Is the Minister aware that the following Thika Municipal Council vehicles are not insured and, yet they are operating on the road posing great danger to drivers, passengers and third party persons:-

Lorry KAH 082Y; Toyota Corolla KAB 173Q; Pickup KAB 174Q; Pickup KAB 175Q; Pickup KAB 176Q; Motor Cycle KAB 411Q; Motor Cycle KAB 412Q; Motor Cycle KAB 413Q and

Motor Cycle KAB 414Q?

(b) Why are these vehicles not insured?

(c) Could the Minister, as a matter of urgency, order that the said vehicles be insured?

**Mr. Speaker:** Is Mr. Ndicho not here? His Question is dropped!

*(Question dropped)*

Let us move on to the next Order.

## MOTION

### REVIVAL OF CONSTITUTIONAL REVIEW PROCESS

THAT, while noting that the Constitution of Kenya Review Commission (Amendment) Bill, 1998 received Presidential Assent on December 24th, 1998, with a commencement date of December 30th, 1998; cognisant of the fact that the implementation of the Act has been hampered by the disagreement over the nomination of Commissioners among some stakeholders and concerned that the review process is now behind schedule as a result of the impasse, this House urges the Attorney-General to reconvene the meeting of all the stakeholders not later than seven days on approval of this Motion; and further that each stakeholder listed in the Act be represented by two persons at the said meeting.

*(Mr. Raila on 8.12.99)*

*(Resumption of Debate interrupted on 8.12.99)*

**Mr. Speaker:** Nobody is interested in Raila's Motion? Can I call the Mover to reply?

**An hon. Member:** No!

**Mr. Speaker:** Order! We are on Order No.7. What happened last time is that Mr. Raila moved his Motion, it was seconded and there was another Motion which was moved by hon. Katuku to adjourn the Motion, which was being debated but it was rejected. But nevertheless, the time lapsed. So, we have one hour and 20 minutes for this Motion. As it is the case now, the Motion was moved and seconded. If there is no interest then I will call upon the Mover to reply.

**Dr. Oburu:** Mr. Speaker, Sir, this Motion is of utmost importance to this country. One could realise the importance of this Motion by the acrimony of last week which resulted into a number of hon. Members moving out of the House even before the Motion was moved.

I do not quite understand how hon. Members can move out of this House before a matter is even presented to the House for debate. The Motion was moved and seconded, but there are some people who were pre-empting debate by suggesting that there would be an amendment, which had not even been presented to the House.

When an amendment is presented, it is debated on its merit. It is then either accepted or rejected by the House, but we cannot pre-empt an amendment before it is presented to the House. This debate has been on and the process of constitutional review was started and recommended by Safari Park forum. The debate was brought here and an Act of Parliament was passed and signed by His Excellency the President. But despite the signing of that Act by the President, more than eight months have now elapsed and there is no progress. It is, therefore, unfair and unreasonable for us to be obstinate and claim that the Act was right, when the Act itself cannot make a movement. It is like a vehicle which was moving and stalled somewhere.

When our party, the NDP, brought a Motion here, it was meant to wake up those people who were sleeping. This is because we have been sleeping for the last eight months without taking any action. This Motion was meant to start off the process of constitutional review. The spirit of this Motion is to give the process a people-driven aspect. The establishment of a Commission does not mean that the Constitution will be a people-driven. People-driven Constitution means that the people must be consulted and give their input into this process. This Motion does not speak of any other thing.

When the leader of the NDP was supposed to present this Motion, he was out of the country and, therefore, he gave it to our colleagues from the Opposition side to present it, but they refused to present it as it is. Therefore, the leader of the NDP had to come back to move it himself in this House.

Now that this matter has been brought back to this House, it is my sincere hope that it will be debated with

rational patriotism and without any emotion so that whatever comes out of this process will be something which will set it moving. I do not want to talk a lot about this Motion because it is self-explanatory. But I would like to say that it has been misconstrued that there is a conspiracy by some parties to move this Motion without the knowledge of others. But this is a misconception because informal consultative meetings inviting all hon. Members were called at the Old Chambers more than five times. These are the same people who opted not to attend those meetings, saying that it was a waste of time and calling the people who called them "stupid" and using a language that is quite unparliamentary. If you do not want to consult with your colleagues, fail to attend the informal consultative meetings and later on you say that there is a conspiracy and you even call the meetings "night meeting" when there was none--- All the meetings which were called for informal consultative were indicated on the Notice Board and everybody was invited to attend them.

I would like to repeat that any amendment which will be proposed in this House will be debated without any emotion. I would also like to suggest that the people who will come up with amendments must come with amendments which will move this process forward. Those who have said that the amendments which are being brought here are, of course, to the letter and spirit of this Motion are also misleading this House.

**Dr. Kituyi:** On a point of order, Mr. Speaker, Sir. Is hon. Dr. Oburu in order to discuss an amendment to a Motion which has not been moved?

**Mr. Speaker:** Are you discussing an amendment that has not come to the House?

**Dr. Oburu:** Mr. Speaker, Sir, I am not discussing an amendment that has not come to the House. I am saying that there are people who walked out of this House because of pre-empting an amendment which had not been presented to this House. Whoever is bringing an amendment must know that the spirit and letter of this particular Motion is to jump-start the stalled Constitution review process whether it is through the Bishop Sulumeti Committee, the Safari Park Forum or a Select Parliamentary Committee.

With those few remarks, I beg to support.

**The Assistant Minister for Education, Science and Technology** (Mr. Karauri): On a point of order, Mr. Speaker, Sir. There is a stranger in the House. There is a bird up there with a very long beak.

**Mr. Speaker:** What are you talking about?

*(Laughter)*

**The Assistant Minister for Education, Science and Technology** (Mr. Karauri): Mr. Speaker, Sir, there are birds which can fly and easily injure somebody in the eye.

**Mr. Speaker:** Order! The House is where you sit. Above there is the Gallery. So, we have a spectator. That stranger is maybe, licensed to come and listen to the proceedings. Proceed!

**The Assistant Minister for Local Government** (Mr. Affey): Thank you, Mr. Speaker, Sir, for giving me this opportunity to support this very important Motion. First of all, I would like to congratulate the Mover of this Motion, hon. Raila, for thinking about this particular Motion at this time. It has taken this country probably eight months before we can sit again and discuss how best we can go about reviewing our Constitution. We cannot over-emphasise the fact that Parliament is the supreme body in this country and that it is the most important institution in this country today.

This House is expected to lead and show the way, lead this country and break the stalemate. We know that we have been struggling to break this stalemate, but I can see that quite a number of Members elected by the people in this country are not quite genuine in their attempts to break this stalemate. We cannot have Members walking out in protest when an hon. Member moves a Motion in this House because, probably that is not a favoured opinion. It is their own opinion. We are taught to listen to other people as democrats. I would like to encourage Members that, in future, you belittle the meaning of this House if you protest somebody's opinion in that despicable manner.

We have to respect the institution of Parliament and that it is supreme. If we have a stalemate, whom do we expect to break it? They say that once bitten twice shy. This House was bitten once. We treated an Act with a lot of reverence. We passed the Act and made it into law. We did not question the Act. We thought that all they did was the best for this country. We can be given another opportunity again to amend it because we have to change this Constitution before the next general election.

Therefore, I am saying that, as a House, we have the responsibility to break the current stalemate. I am for a people-driven Constitution reform. I am not saying that the people of Kenya should be excluded from the review process. The people of Kenya are part and parcel of the process. We have a problem. This House, if not anything has confused the nation even further. We have a problem; we gave the people of Kenya an Act that cannot work. We have a responsibility to amend, change or repeal this Act which has failed to function.

An amendment has not been brought before the House. Those Members who are suggesting that we have a

Parliamentary Select Committee to see how best those flaws can be addressed are absolutely right. The mistake we made was that we passed the Act wholesome without necessarily considering that it had vital problems. Now it is upon us to empower a Select Committee of this House to carry out further investigations and to consult further with all the stakeholders in this process so that we can get a comprehensive document that will not confuse this country further.

It is wrong for Members to walk out. Hon. Raila said that we should be able to distinguish between the current reform process and the aspect of succession. What is confusing this country most today is the politics of succession.

*(Loud Consultations)*

**Mr. Shidiye:** On a point of order, Mr. Speaker, Sir. There is so much noise that we can hardly hear.

**Mr. Speaker:** Order! There is too much consultation. Can we hear what is going on?

**The Assistant Minister for Local Government** (Mr. Affey): Thank you, Mr. Speaker, Sir, for protecting me. I was saying that this time when we are reviewing the Constitution, we should be able to distinguish between politics and serious issues that affect the welfare of the people of this country. On this aspect of succession that Mr. Raila spoke about, we should distinguish between politics of succession and politics of reviewing the Constitution. We are not interested in whoever becomes the President of this country. All we are interested in as a nation is that we get a responsible Constitution, responsible leaders and checks and balances that will control the future excesses executed by the Executive. I do not think that Members are very right to link the two because they have no connection. Most of us are interested in a genuine reform process conducted by the people of this country.

It is wrong to encourage intolerance and impatience. It is also wrong to preach war and instability in this country because we have had a Constitution that has served this country for 36 years. We are operating in a crisis now. We are going to a new millennium. Can we be able to adjust to the new millennium? Can we adjust our Constitution so that it reflects the wishes and aspirations of the many youths in this country? Therefore, I would like to urge the hon. Members to speak in one voice. If we do not do that, then I would suggest that birds of the same feather flock together. Do not be left out of this very important exercise because, whether you want it or not, it will continue. The people of Kenya are interested in it and we will go ahead with it.

Do not regret that after a few months you will become a mere stranger in the midst of people who are discussing serious business for this nation. No single person should be cheated that he alone can change the reform process in this country. This is a collective responsibility and we require to work on consensus.

With those few remarks, I beg to support.

**Mr. Ngunjiri:** Thank you, Mr. Speaker, Sir, for allowing me to support the Motion. It has taken this country a long time to reach where we are now. We must now tread very carefully about the Constitution review. We have attended meetings at County Hall and in this House, but it seems as if this process has failed to take off. As a party in this Parliament, we considered the next move and we said that the best thing is to compel the Attorney-General, through this Motion, to convene a meeting of the stakeholders to see whether the process can go on.

Mr. Speaker, Sir, this country and the people have been waiting for us to jump-start the Constitution review talks. Every time I go to my constituency, the first question I am asked is: "What are you going to do about the Constitution?" We are being asked that question by people and not this Parliament. They are not even asking us about the Constitutional Review Commission. They are asking: "You, as Parliamentarians, why can you not find a process that can make us move forward on the Constitutional review process?" As far as we are concerned, we are asking and urging the Attorney-General to convene a meeting of all the stakeholders, to see whether the country can move ahead with the Constitutional review process. We are aware that the Constitution should be people-driven and Kenyans are prepared to participate man to man, woman to woman, because they know the kind of Constitution they want. All they are waiting for is for us to provide them with leadership. The leadership we are providing now is to ask the Attorney-General to restart the stalled Constitution talks by convening a meeting of all stakeholders.

Mr. Speaker, Sir, since many months have elapsed with the stalled Constitution talks, it seems as if we have abdicated our responsibility as politicians and citizens of this country who were elected to represent our people in this House. I am of the opinion that, we as Parliament, must debate this Motion effectively without emotions. We must distinguish between our people when we talk about the Constitution being people-driven. Are we talking about the fellows who are going to collect and collate the information when we talk about a people-driven Constitution or are we talking about the people themselves who will give their views? Are we talking about the people themselves who are asking us to take steps to jump-start the Constitution talks? Are we talking about the people who are asking us what we are doing to have the new Constitution in place before the next election and have a level playing ground? This is because in this Parliament it is where a lot has been done to the present Constitution; a lot of patches have been made to it. Some amendments have been passed within two hours; amendments that were injurious to the general public and

Parliament has been watching.

Now, we are saying in Parliament that we must stand up and be counted that we are able, against all odds, to convene the meeting of the so-called stakeholders and have the Constitution review process in place. We are not going to restart the stalled Constitution talks if we question who convenes a consultative meeting and which one to attend or not. We are prepared to attend any meeting as long as it is positive to Kenyans. There are others who say that, if we attend this meeting, then we are not in keeping with the public. But I am speaking here on behalf of my constituents. They will be with me positively if the Constitutional Review process is going to be on track again. But they will never be with me, if I just sit and do nothing about the Constitutional review process. We must stand up and be counted as leaders because we were elected and sworn in this Parliament to talk on behalf of our people who elected us. We were never elected to this Parliament to walk out when we disagree with our colleagues. I would move a Motion which I know very well will be defeated in this House, but that does not stop me from showing the world, that this is the view I hold dear to me on this question. I would not stand to be counted on how many times I would move out of Parliament. I would stand to be counted how many times I opposed what I thought was not in keeping with my point of view and on how many times I supported what I thought was in keeping with my views.

Mr. Speaker, Sir, anybody can walk out and you do not need to be a Parliamentarian to walk out. You need to be a Parliamentarian to air your views and get your point known. Here I am getting my point known that this Motion should be supported and we must restart the Constitutional review process. Therefore, we are asking the Attorney-General to convene a meeting of all stakeholders. If this happens, then the meeting should not be invaded by strangers. If we say that it should be attended by five representatives, let it be so. It should not be invaded by other people because of the mere fact of numbers in a given political party. We want to see only the representatives who can sit down and deliberate. Whatever number it is, it does not matter. My party is on record saying we do not have anything to do with numbers. We can drop one or all, but no single Kenyan will be able to rewrite a Constitution that will not favour me but favour him alone. If that Constitution is brought into this House, we will not pass it. Therefore, we must sit together, deliberate over this matter and come to a consensus to overhaul the Constitution of Kenya. The Constitution that has been patched here and there, that you cannot even tell the colour of the original cloth---

Mr. Speaker, Sir, I believe that the Constitutional review process is a thorny issue and it needs to be people-driven. It should not be driven by a particular group of people, but all people must give their views.

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

**Mr. Speaker:** Mr. Anyona, you had an amendment. Would you like to move it now or can we proceed?

**Mr. Anyona:** Mr. Speaker, Sir, I beg to move that the Motion be amended as follows:-

- (a) By deleting all the words after the word "impasse" appearing on the sixth line thereof; and,
- (b) By inserting the following in the place thereof:- And in order to facilitate consensus building necessary to resolve the stalemate amongst the bodies specified in the First Schedule of the Act in the review of the Act, the formation of the Review Commission and co-ordination of the Constitutional Review Process, this House resolves to establish a Constitutional Review Committee consisting of the following Members:-

1. The hon. Prof. George Saitoti, MP.
2. The hon. Joseph Kamotho, MP.
3. The hon. Nicholas Biwott, MP.
4. The hon. Stephen K. Musyoka, MP.
5. The hon. Dr. Bonaya Godana, MP.
6. The hon. Wycliffe Musalia Mudavadi, MP.
7. The hon. Julius Sunkuli, MP.
8. The hon. Andrew Kiptoon, MP.
9. The hon. Prof. F.K. Ongeru, MP.
10. The hon. Jembe Mwakalu, MP.
11. The hon. Mrs. Z.J. Kittony, MP;
12. The hon. P.M. Maundu, MP;
13. The hon. Dr. A. Ali, MP;
14. The hon. M. Kibaki, MP;
15. The hon. M. Karua, MP;
16. The hon. K. Murungi, MP;
17. The hon. R. Odinga, MP;
18. The hon. O. Kajwang', MP;
19. The hon. M.K. Wamalwa, MP;

20. The hon. J. Munyasia, MP;
21. The hon. C.K. Ngilu, MP;
22. The hon. Prof. Anyang'-Nyo'ngo, MP;
23. The hon. N. Kariuki, MP;
24. The hon. M. Waithaka, MP;
25. The hon. A.N. Kathangu, MP;
26. The hon. R. Shakombo, MP;
27. The hon. G.M. Anyona, MP.

*(Loud consultations)*

**Mr. Speaker:** Order! Order, hon. Members! Could we have a little silence?

**Mr. Anyona:** Mr. Speaker, Sir, the purpose of this amendment is for Parliament to facilitate consultations and consensus, in assisting the reform process to move forward. The original Motion provides that we ask the Attorney-General to convene a meeting of the nominating bodies specified in the Act so that they can try to resolve the stalemate. If you look at the Act as it stands now, under Section 4, the Attorney-General does not need any extra mandate to call a meeting. After all, what happened is that in compliance with Section 4 Subsection 1 of the Act, the Attorney-General did, indeed, convene a consultative meeting. Now, that meeting was adjourned and, so, technically it is still in place. But if we now ask the Attorney-General to call for a meeting, which as I said is legally superfluous, because the Act already provides for it, and the Attorney-General goes ahead and the nominating bodies involved---

*(Loud consultations)*

**Mr. Speaker:** Order all of you! We cannot even follow what is happening in the House. Dr. Kituyi, what is your problem? You can raise your point of order very quickly, because even Mr. Anyona has also to be quick, because by 10.45 a.m. I must call upon the Government Responder to reply. **Dr. Kituyi:** On a point of order, Mr. Speaker, Sir. I rise on the provisions of Standing Order No.48 (1) and (2) regarding the proposed amendment to the Motion before the House. I think we run a grave risk of abusing the cardinal principles of the business of the House. The Standing Order No.48(1) states as follows:-

"Every amendment shall be relevant to the question which it seeks to amend and shall not raise any question which, in the opinion of Mr. Speaker, should be raised by a substantive Motion after notice given."

Mr. Speaker, Sir, before I go to the Standing Order No. 48(2), I just wish to draw your attention to the following. The principle Motion before the House is urging the Attorney-General to reconvene a meeting of all stakeholders as defined in the Act within seven days. An amendment is being proposed, not to add other people to the present number of stakeholders, or add another reason why a meeting of all stakeholders should be convened by the Attorney-General, but to take away what was the urging of the principal Motion. Whereas the principled Motion before us states that, "this House urges the Attorney-General to reconvene a meeting of all stakeholders," the proposed amendment states "this House resolves to establish a Constitution Review Committee." The establishment of a Constitution Review Committee is short-circuiting the principal goal of the original Motion.

*(Applause)*

**Mr. Speaker:** Order! Dr. Kituyi, I think you got it all wrong.

*(Dr. Kituyi and Mr. Muite stood up in their places)*

Order Dr. Kituyi and Mr. Muite! It is me who is to make the ruling, because the point of order was addressed to me. The principle in Mr. Raila's Motion, as I see it, is that he wanted the stalled constitutional review process to be jump-started; to be started from anywhere, and not to promote the Attorney-General.

*(Applause)*

Now, the amendment by Mr. Anyona--- Mr. Raila says that the review process should be started through the Attorney-General and Mr. Anyona says that it should be started through a Committee of this House. As far I am concerned, the aim is to start the stalled constitutional talks. Now, the mode of doing that can be by a spanner, or by a

motor, but the end result is to re-start the review process. By the way, the Standing Orders state that if it is in the opinion of Mr. Speaker--- Now, it is not in the opinion of Mr. Speaker that the principal aim of the Motion has been negated by this amendment. So, Mr. Anyona will proceed.

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

**Mr. Speaker:** Order, Dr. Kituyi! You did ask me to give a ruling and I have given you. So, what else do you want to say?

*(Dr. Kituyi insisted on his point of order)*

Order Dr. Kituyi! You have quoted the Standing Order No.48(1); I am not going to have an argument out of that. The Standing Order No.48(2) states as follows:-

"No amendment shall be permitted if in the opinion of Mr. Speaker represents a direct negative of the question proposed."

Now, the opinion of Mr. Speaker, who happens to be me, is that it does not.

*(Applause)*

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

**Mr. Speaker:** Dr. Kituyi, I will have the very last point of order from you.

**Dr. Kituyi:** Mr. Speaker, Sir, I want to go by precedent. I have raised a matter of a similar nature here before you and, in your ruling, you did not express an opinion of what the Mover of the Motion intends; you read the Motion as it is provided for. Why have you steered clear of reading what the Motion is asking for and interpreting what you think the Mover wanted?

*(Applause)*

**Mr. Speaker:** Order! That is not a point of order; you are now arguing with the Chair. You told me that the amendment proposed by Mr. Anyona negates the principle of Mr. Raila's Motion. Now, I have said that my understanding of the principle of the Motion is to kick-start the stalled constitutional talks; how you do it is another question. And that is what I have ruled. Mr. Anyona will continue with his contribution.

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

**Mr. Speaker:** Order! I am sorry, Mr. Muite.

**Mr. Muite:** Mr. Speaker, Sir, my point of order is on a very different issue.

**Mr. Speaker:** Even before Mr. Anyona has spoken? Yes, Mr. Muite.

**Mr. Muite:** Mr. Speaker, Sir, my point of order is on a different matter altogether. Is it in order for hon. Anyona, "mama yako---"

**Mr. Speaker:** Order, Mr. Muite! How dare you come here, after a long absence, to insult hon. Members? How do you call hon. Anyona "mama yako?" Will you withdraw that?

**Mr. Muite:** Mr. Speaker, Sir, I withdraw that. But I am asking: Is it in order for hon. Anyona to include a hon. Member from Safina party as a member of the Committee without any consultation and when Safina has said that it will not participate in the constitutional review process?

**Mr. Speaker:** Order! That is actually frivolous. If a hon. Member is proposed to a Committee, and he or she does not wish to participate, the hon. Member can any time withdraw his or her name on the Floor of the House, or by writing. Nobody will be forced to serve in a Committee that he or she does not intend to serve. Now, proceed Mr. Anyona.

*(Applause)*

**Mr. Anyona:** Mr. Speaker, Sir, that is precisely why I am bringing this amendment. If we pass hon. Raila's Motion as it is, we shall not really be advancing this course, because, under Section 4 Sub-section 2----

*(Several hon. Members moved to the Bar, sung the National Anthem and withdrew from the Chamber)*

**Mr. Speaker:** Order! Order! Order! That is an insult to the National Anthem. May I say that there is growing

a lot of childishness by some hon. Members to abuse the National Anthem of Kenya and to insult the sanctity of this Parliament. I think, those hon. Members must respect the National Anthem, the National Assembly and themselves. I do not understand why some hon. Members think that only their opinions must carry the day.

**Mr. Anyona:** Mr. Speaker, Sir, I will not be intimidated by anybody. I came to this Parliament before any of these people came. I fought for this freedom that they are now enjoying and are abusing. This Parliament will not be intimidated.

Mr. Speaker, Sir, what I was saying is that, the reason we are doing this is because, Section 4, Sub-section 2 of the Act, reads:-

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

Mr. Speaker, Sir, the Attorney-General did exactly that, and there was disagreement among the bodies. The meeting was adjourned and still stands adjourned. Now, if we ask the Attorney-General to call a meeting, and they come or they do not even come at all, we shall be creating a vexation, and the Attorney-General will not be able to move forward. Therefore, we are saying that this House has a responsibility of guiding this process, and the way we can do it, is to set up a Committee of the House, which on behalf of the House, will look at the Act establishing the Commission and guide the process, so that the reform process can continue.

With those few words, I beg to move.

**Mr. Speaker:** Do you have anybody to second the amendment?

**Mr. Anyona:** Hon. Kajwang' will second the amendment. Where is hon. Kajwang'?

**Hon. Members:** Hakuna! Hakuna! Where is the Seconder?

**Mr. Speaker:** Order! Do your job; I do mine!

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

**The Minister of State, Office of the President** (Mr. Sunkuli): Mr. Speaker, Sir, in the spirit that we are running short of time, and hon. Members would like to contribute to this Motion, I wish to propose a further amendment to hon. Anyona's amendment. This is taking into account that hon. Anyona's amendment wants a Select Committee, but has proposed names. It is my belief that parties have not had time to consult on the names. It would be good and in the spirit of this Motion, that we propose an amendment. I wish to propose:-

"THAT, the amendment further be amended by deleting all the words---"

**Mr. Speaker:** Mr. Sunkuli, I am a bit confused. Do we amend that amendment at this stage, or we dispose of it and then we can amend the Motion as amended? What is your opinion?

**The Minister of State, Office of the President** (Mr. Sunkuli): Mr. Speaker, Sir, I want your guidance, because I have proposed my amendment to you, and you have just given me direction that the only way I can bring my amendment is by amending hon. Anyona's. Otherwise, I was loaded with my own amendment.

**Mr. Speaker:** In my opinion, the rule is that, when more than one amendment is presented, then the Chair will take the amendments in the way they come and dispose one amendment at a time. So, if we dispose of Mr. Anyona's amendment, then anybody can then amend the Motion as amended. So, I think that is the better point.

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

**Mr. Speaker:** It therefore, means that you have refused to amend the Motion. So, the Motion stands exactly the way hon. Raila had proposed. But, I want to find out whether after you have refused to amend, you can bring a further amendment in similar terms. You may not be, by the way! Let me check. You may have just put yourselves into problems.

**The Minister of State, Office of the President** (Mr. Sunkuli): Mr. Speaker, Sir, that amendment having failed, I therefore wish to propose the following amendment to the original Motion, by deleting the following Words:-

"THAT, this House urges the Attorney-General to reconvene the meeting of all the stakeholders not



later than seven days on approval of this Motion, in order to resolve the stalemate and further that each stakeholder listed in the Act be represented by two persons at the said meeting---

And inserting the following words:-

**Mr. Speaker:** Mr. Sunkuli, just before we go to that, I would like hon. Members to address the issue, that we might have got into problems. The Chair would like to be addressed, as to whether the procedure we took is right or wrong.

**The Minister for Foreign Affairs and International Co-operation** (Dr. Godana): On a point of order, Mr. Speaker, Sir. In terms of rules and regulations of this House, it is perfectly in order for an hon. Member to move an amendment to an amendment. I, therefore, believe that you have made an error by advising hon. Sunkuli not to propose an amendment to an amendment, but to wait for one amendment to be disposed of. An amendment can come after an amendment has been disposed of, but an amendment is perfectly in order also, to an amendment which is before the House.

**Mr. Speaker:** I think you must be right and I must be wrong! So, that being the position, what do we do?

**The Minister for Education** (Mr. Musyoka): On a point of order, Mr. Speaker, Sir. That being the position, and since the hon. Julius Sunkuli was already on his feet moving an amendment to hon. Anyona's amendment, will I be in order to propose that hon. Sunkuli be allowed to move that amendment, now that you have accepted that slight omission on the part of the Chair?

**Mr. Speaker:** But one thing that I do not do is that I do not overrule myself. Let us do the right thing in the right way. I do not overrule myself but this House can rescind the decision that it has just made.

**An. hon. Member:** Let us rescind it.

**Mr. Speaker:** I cannot do it, but it has to be done by way of a Motion.

### MOTION

#### RESCISSION OF RESOLUTION ON HON. ANYONA'S AMENDMENT

**The Vice-President** (Prof. Saitoti): Mr. Speaker, Sir, I beg to move:-  
THAT, the House resolves to rescind the decision it carried out regarding hon. Anyona's amendment to the Motion.

**The Minister for Education** (Mr. Musyoka) seconded.

*(Question, that the House doth rescind its  
resolution, proposed)*

*(Question, that the House doth rescind its  
resolution, put and agreed to)*

*(Resumption of Debate on Motion as proposed  
for amendment by hon. Anyona)*

**Mr. Speaker:** Hon. Sunkuli, you can now move your amendment.

**The Minister of State, Office of the President** (Mr. Sunkuli): Mr. Speaker, Sir, I then move the following amendment to hon. Anyona's amendment:-

THAT, the amendment be amended by:-

(i) deleting all the words from "to establish a Constitution Review Commission---

*(Loud consultations)*

**Mr. Speaker:** Order! Can I follow the hon. Member on the Floor? We do not communicate because there is too much noise.

Mr. Sunkuli, are you proposing all the words after the words "constitutional review process"?

**The Minister of State, Office of the President** (Mr. Sunkuli): Mr. Speaker, Sir, I need to correct that.

I beg to move the following amendment to hon. Anyona's amendment:-

THAT, the amendment be amended by:-

- (i) deleting all the words from the words "the following Members" up to the end, including the names; and,
- (ii) inserting in place thereof the following:-
  - (a) 27 Members;
  - (b) to review the Constitution of Kenya Review Commission (Amendment) Act, 1998, taking into account the views of the people;
  - (c) to facilitate the formation of the Review Commission.

So, the new amended amendment now reads:-

"In order to facilitate consensus building necessary to resolve the stalemate amongst the bodies specified in the First Schedule to the Act in the review of the Act, the formation of the Review Commission and the co-ordination of the Constitution at

Review Process, this House resolves to establish a Constitutional Review Committee consisting of 27 Members;

- (a) to review the Constitution of Kenya Review Commission (Amendment) Act, 1998, in accordance with the wishes of the people;
- (b) to facilitate the formation of the Review Commission.

Mr. Speaker, Sir, that is the amendment I want to move, and I am sure that Dr. Godana wants to second it.

With those few remarks, I beg to move.

**The Minister for Foreign Affairs and International Co-operation** (Dr. Godana): Mr. Speaker, Sir, I stand to second the amendment proposed to the amendment of hon. Anyona.

The focus of hon. Sunkuli's proposed amendment to the amendment does not alter the main tenure of the main Motion. A goal for all of us to is to restart the stalled constitutional review process and to restart it in a manner which will be as inclusive as possible of all potential so-called stakeholders. We hope that through a Select Committee composed in accordance with tradition, with virtually equal numbers from both sides of the House, it will be possible to revisit the Act; go through the Act which is faulty and hear the views of all those who are interested, including the civil society, church groups, Members of Parliament and others. The Committee should come back to this House with proposals on how to tidy up the Act. This should also include proposals on how we can have a Commission which can be constituted without the wrangling that has been there.

With those few remarks, I beg to support.

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

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

*(Question of the second part of the amendment to the amendment, that the words to be inserted in place thereof be inserted, proposed)*

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

**Mr. Speaker:** Now, the amendment as amended---

**An hon. Member:** No, it is the Motion!

**Mr. Speaker:** Order! The amendment as amended--- We have not put the question of Mr. Anyona's amendment. I wish you people could give me a chance to do my job! The question of the amendment as now amended reads as follows:-

"...and in order to facilitate consensus building necessary to resolve the stalemate amongst bodies specified---

*(Loud consultations)*

Order! I really do not know whether you people are interested in this! The amendment as amended and

proposed by Mr. Anyona reads as follows:-

"...and in order to facilitate consensus building..." that is, after deleting all the other words proposed to be deleted, and which you have already actually deleted.

"...in order to facilitate consensus building necessary to resolve the stalemate amongst the bodies specified in the First Schedule to the Act, in the review of the Act, the formation of the Review Commission, and the Co-ordination of the Constitutional Review Process, this House resolves to establish a Constitutional Review Committee consisting of 27 Members, to review the Constitution of Kenya according to the wishes of Kenyans, and to facilitate the formation of the Review Commission".

*(Question of the amendment as amended proposed)*

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

I will straightaway put the question. We have dealt with deleting the words. Now, we are only left with the insertion of the words.

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

**Mr. Speaker:** Now, I will propose the question as amended.

*(Question of the Motion as amended proposed)*

**Mr. Speaker:** Now, it is time for the Government to respond!

**The Assistant Minister for Education** (Mr. Karauri): On a point of order, Mr. Speaker, Sir. I have been listening to you very carefully, because we do not have the written text. I thought that the amendment was to include: "That this House resolves to set up a Parliamentary Review Committee" and not "a Select Committee". It is not a Constitutional Review Committee. We want to be clear about that before we proceed. This is because it can create a lot of differences. It is "parliamentary review" and not "constitutional review"!

**Mr. Speaker:** Mr. Karauri, it does appear to me that you are right! The amendment as amended does intend to do what you are saying. I do not know whether that was the intention.

**The Vice-President** (Prof. Saitoti): On a point of information, Mr. Speaker, Sir. The Select Committee's intended purpose is to review, or to examine, the Constitutional Review Commission Act, and not the Constitution. There are two fundamental---

**Mr. Speaker:** Order, Prof. Saitoti! I think we are just dealing with the Motion as it is. That is what Mr. Karauri is raising. I think the best way to go about it is that if you do not like it the way it is worded, you can amend it. This is because if the Motion is accepted now, it will establish a Constitutional Review Committee. That is what the Motion reads!

**Mr. Anyona:** On a point of order, Mr. Speaker, Sir. If the quarrel is with the word "select", I think that under Standing Order No.153, any *ad hoc* Committee of the House is a Select Committee, whether you put the words there or not. That is the first argument.

Mr. Speaker, Sir, the second argument is that we are talking about a Constitutional Review Committee because it will deal with the issue of the review of the Constitution, where we will put in the terms of what it is supposed to do. The terms are to facilitate consultations on the review of the Act, to seek consensus on the establishment of the Commission, and to co-ordinate as far as possible, the process of the review. So, I really see nothing there that is in contradiction with what we are trying to do.

**Mr. Speaker:** Just before I come to the Minister, could Mr. Karauri tell us whether there is anything wrong with the Motion? Could he tell me what is wrong with the way it is?

**Mr. Maundu:** On a point of order, Mr. Speaker, Sir. The matter that was raised by hon. Karauri is of fundamental importance. This is because in our discussion, we evaluated all these possibilities. We thought that a Parliamentary Select Committee would be the most ideal, in conformity with our Standing Orders. Otherwise, if we establish a committee and a Constitution, it will become difficult for people to appreciate the full purpose and contents.

**Mr. Speaker:** Very well! It is again up to you. If you want to amend it, fine!

**The Minister for Foreign Affairs and International Co-operation** (Dr. Godana): I would think that your interpretation is correct. But for the avoidance of doubts, and to eliminate any petty excuses for creating wrangling, I wish to propose an amendment to the Motion as it now stands, by deleting the words "constitutional review" and inserting in place thereof, "Select Committee. It will obviously be parliamentary because the House will establish it! Therefore, that part would read:-

"...the House resolves to establish a Select Committee consisting of 27 Members."

**The Assistant Minister for Local Government** (Mr. Affey) seconded.

**Mr. Speaker:** I will propose the question straightaway.

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

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

*(Question of the second part of the amendment,  
that the words to be inserted in place thereof  
be inserted, proposed)*

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

**Mr. Speaker:** I will now propose the question as further amended. By the way, may I just make one general remark. Those Members proposing to make amendments to Motions are duty-bound to make written amendments and present them to the Chair. I will not accept any further oral amendments. Even if it is written, it must be given to the Chair for approval.

*(Question of the Motion as amended proposed)*

**Mr. Mwenje:** On a point of order, Mr. Speaker, Sir. Under Standing Order No.48(2), the amendment you have just read represents a direct negation of the original Question that was put. Are you satisfied?

**Mr. Speaker:** Order, Mr. Mwenje! I thought the whole thing was resolved way back before you came in?

**Mr. Mwenje:** Mr. Speaker, Sir, I am talking about the one which has just been moved now, during my presence.

**Mr. Speaker:** Yes, I am satisfied that it is all right.

**Mr. Mwenje:** Mr. Speaker, Sir, actually you are not satisfied--- If you are sincere to yourself, then this should not represent a direct negation of the original Motion.

**Mr. Speaker:** Order, Mr. Mwenje! You asked me whether I am satisfied. Here, there are two different persons; Mr. Mwenje and myself. You may not be satisfied, but I am. You have asked me whether I am satisfied, and I have answered you in the affirmative. That should end the story. I think it is now time for the Mover to reply.

**Mr. Mwenje:** Mr. Speaker, Sir, I sought the indulgence of the Chair---

**Mr. Speaker:** Order, Mr. Mwenje! I am the Speaker and the Chair as well. Yes, Mr. Vice-President?

**The Vice-President** (Prof. Saitoti): Mr. Speaker, Sir, because the time is over, I want to give the Government response very quickly. I want to make it very clear---

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

**Mr. Speaker:** Order, Mr. Mwenje! You cannot come here just ten minutes before the Motion is over, and take on the Chair. If you do not want it, then vote against it!

**The Vice-President** (Prof. Saitoti): Mr. Speaker, Sir, the amended Motion is an honest attempt to try to resolve the stalemate. It is well recognized by all Members of Parliament, including the parties that met yesterday, that we do have a flawed Act. The problem is that we are not able to break the stalemate without looking at the Act. Therefore, the Select Committee which has been recommended to this House has the following objectives: It will examine the Constitutional Review Act to ensure that it is free from flaws---

With those remarks, I beg to support.

**Mr. Speaker:** I am sorry, your time is up. It is now time for the Mover to reply.

**Mr. Raila:** Mr. Speaker, Sir, I am very grateful to all the hon. Members who have made their contributions to this Motion. I would have been a disappointed person if an amendment that kills the intention of the original Motion was to be brought here. As I said while moving this Motion, we in my party have been very concerned about the stalled Constitutional Review Process, and the intention was to jump-start this process. That is the reason why I have no objection to the amendment that has been moved because it is merely substituting the Attorney-General with a Select Committee of the House. This is more or less similar to the process that we went through when we started, because we had the IPPC which convened the Bomas and Safari Park meetings. The IPPC, was for all intents and purposes a Select Committee of the House because it consisted purely of Members of the House, the exception being that it was never formally moved here.

Mr. Speaker, Sir, I was a Member of the Sulumeti Committee that drafted the amendment to the original Constitution of Kenya Review Commission Act.

**Mr. Speaker:** Order, hon. Raila. As a matter of interest, since this is your Motion, and taking into account the way it is amended, when do you intend to give us the 27 names?

**Mr. Raila:** I will give those names by this afternoon. It is unfortunate that some of my colleagues walked out of this House before the amendment was finally moved. We should not blame anybody but, instead, get everybody on board, and we think that with time, we are going to convince those other colleagues who have walked out that this is the right way forward.

In the Sulumeti Committee, we did take stock of the experiences in other countries because, since the fall of the Berlin Wall in 1990, very many countries in Africa have gone through a constitutional review process. We looked at other countries and we did realise that there were certain similarities with our own situation. I have here with me a document that is entitled: *"The Making of the Constitution: The Story of South Africa's Constitutional Assembly of 1994"*. This document gives in detail the process that they went through in the Republic of South Africa in reviewing their Constitution. If you read this document, then you will understand the reason why some of our colleagues have walked out. It also did happen in South Africa.

Mr. Speaker, Sir, I want to quote from the former President of South Africa, President Nelson Mandela, in this document when he said:

"The brief seconds when the majority of hon. Members quietly ascended to the new basic law of the land have captured in a fleeting moment the centuries of history that the South African people have endured in search of a better future. As one of you, the representatives of the overwhelming majority of South Africans have given voice to the yearnings of millions, and so it has come to pass that today, South Africa undergoes her rebirth, cleansed of her horrible past; matured from a tentative beginning, and reaching out to the future with confidence".

So, in this document, you will find that a commission to review the South African Constitution consisted of 44 Members of Parliament. That commission was chaired by the Secretary-General of ANC. At some stage, some political parties walked out of the process but they finally came back. So, I would like to put it on record that we in my party have always stood for a people-driven process, and that position has not changed. Our understanding of a people-driven process is that a mechanism is created to facilitate the participation of the people in the review process. That mechanism is created, through which people can make representations and present memorandums to the commission that is going to review the Constitution. This is exactly what we wanted, and that is why we would like a Select Committee to be appointed today to speedily conclude its work. So, the commission can be put in place to go around the country and collect views of Kenyans so that we can, at the end of it, have a new Constitution.

Mr. Speaker, Sir, I want us to disabuse ourselves of the dangerous animal that is called ethnicity in our politics. I want to say again, for record purposes, that I am a nationalist and my entire upbringing has been that of a nationalist. I have no room in my heart for ethnicity. I would like to see a united Kenya, where all ethnic communities live in harmony and unity. That is why I have said that we must face this animal called ethnicity. I know that the ordinary man has no time for this ethnicity. It is some few selfish leaders who are encouraging this ethnicity. So, we want to create a harmonious Kenya. We would like to have a Kenya which is united and not sectoral. I said that the leadership of the review process is political, and that it is wrong to surrender or abdicate this responsibility to the religious sector. When it comes to spiritual matters, we will go to the religious leaders, but when it comes to temporal matters, the political leaders must give the lead.

Mr. Speaker, Sir, we have gone through the other processes in the past. I have here a draft Constitution that was prepared by the Law Society of Kenya (LSK), by the Kenya Human Rights Commission (KHRC) and the International Commission of Jurists of Kenya (ICJK). It is called: *"Kenya Tuitakayo - A proposal for a model Constitution"*. This Constitution was prepared and printed without the consultation of any Kenyan. So, I am saying that

constitutions can be written anywhere, but for them to become the law of this country, they must ultimately be brought before this House and approved.

*(Applause)*

That is the reason why we say that when it comes to legislation and lawmaking, Parliament is supreme. We cannot afford to have two parallel review processes. This is because, ultimately, one must be an exercise in futility. There is no way that a Constitution will be written elsewhere and then be made a law of this country unless it is brought here and receives support of two-thirds of the majority of this House.

*(Applause)*

Mr. Speaker, Sir, I am, therefore, saying that when we go out here, let us try to use persuasive language. Let us not try to ostracise other people who have not been with us today here. The language should be that of trying to persuade the other people to come back, for I know that at the end of the day, they are going to be convinced that, that other process is taking us nowhere; that the only way forward is for Members of Parliament to come in this House, debate and discuss the question of the extension.

With those remarks, I beg to move.

*(Applause)*

**Mr. Speaker:** Order, Members. Just before I put the Question, I wish to apologise to this House for the words I used when Members disregarded the House by singing the National Anthem. I described it as "childish". I think it is wrong for me to have done that. I apologise to this whole House and to those Members.

*(Applause)*

So, I hope that I have cleared myself. Occasionally, a human being makes a mistake. I have also made a mistake, and I truly apologise. So, I suppose I can now put the Question, having apologised.

*(Question of the Motion as amended  
put and agreed to)*

*Resolved accordingly:*

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

**Mr. Speaker:** Next Order!

*(Several hon. Members from both sides  
House withdrew from the Chamber)*

Order! Order! Order, Mr. Haji! The Business of the House is not over! Those who intend to withdraw, should do it quietly. You do not have to do it all together because you disrupt the business of the House.

So, we are on Mr. Munyao's Motion.

ESTABLISHMENT OF COMMISSION TO  
STUDY EFFECTS OF POLLUTION

**(Mr. Munyao)** THAT, in view of the fact that Nairobi and other major towns in this country are polluted due to lack of garbage collection and uncontrolled smoke from vehicles and industries; and considering the health hazard caused by such pollution, this House calls upon the Government to establish a commission to study and recommend action to be taken to curb such pollution.

**Mr. Speaker:** Mr. Munyao not here? Motion dropped!

*(Motion dropped)*

**The Minister for Education (Mr. Musyoka):** On a point of order, Mr. Speaker, Sir. I know we have moved to the next Order. I really wanted to take this opportunity to congratulate the Chair for your magnanimity in apologizing to the House, but during that turbulence, when you were amending the Motion and bringing about all that, I heard the Member for Kabete call an hon. Member "mama yako" or "mama yake". He did not apologize; he just insisted on withdrawing. But next time, when we see the Member for Kabete, will I be in order to demand that he will apologize to the House? I just thought the matter was so serious that he should have been made to apologize.

**Mr. Speaker:** Order! Order! How many hours ago was that, Mr. Musyoka? Were you scared of him when he was here?

Next Order!

#### ESTABLISHMENT OF MINING DEVELOPMENT LEVY

**(Mr. Kajwang)** THAT, in view of the Government concern to eradicate poverty; and considering the great potential of wealth and employment generated from effective development of the mining industry, this House urges the Government to establish a Mining Development Levy under the Mining Act, Cap. 306 of the Laws of Kenya, to foster, promote and develop mining industry in Kenya.

**Mr. Kajwang:** Mr. Speaker, Sir, I have no intention to proceed with this Motion this morning. I would urge that the Chair finds some other time later for it.

**Mr. Speaker:** Today?

**Mr. Kajwang:** Not today, Mr. Speaker, Sir. Some other time in the future.

**Mr. Speaker:** In the future?

**Mr. Kajwang:** In the future, Mr. Speaker, Sir.

**Mr. Speaker:** So, you want me to defer it, generally?

**Mr. Kajwang:** Yes, Mr. Speaker, Sir.

**Mr. Speaker:** The Motion is deferred generally!

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

*(Motion deferred)*

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

#### CONSOLIDATION OF URCHINS REHABILITATION PROGRAMMES

**(Mr. Kombe):** THAT, in view of the rapid increase of urchins in the streets and slum areas of the Capital and other urban areas in the country; aware that such influx is not only an menace and a waste of their human productivity, but also a major threat to the security of other residents, this House urges the Government to consolidate the existing Urchins Rehabilitation Programmes, so as to rid the urban places of the urchins and in order to tap their potential by training and to settle them so as to improve their conditions.

**Mr. Speaker:** Mr. David Kombe? Mr. Kombe! Mr. Kombe is absent, so, the Motion is dropped!

*(Motion dropped)*

**ADJOURNMENT**

**Mr. Speaker:** Order! Hon. Members, there is no business left for us to transact and for lack of business to transact, I now order that the House be adjourned to this afternoon, at 2.30 p.m.

The House rose at 11.25 a.m.