

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 1st April, 2010

The House met at 9.00 a.m.

[Mr. Speaker in the Chair]

PRAYERS

COMMUNICATION FROM THE CHAIR

CONSIDERATION OF SUPPLEMENTARY PRESIDENTIAL MEMORANDUM ON OFFICES OF MINISTER BILL

Mr. Speaker: Hon. Members, I have two communications to make this morning. First, you will recall that last week on 24th March, 2010 the Chair issued a communication regarding the consideration of a Supplementary Memorandum from His Excellency the Presidency on the Offices of Minister Bill in exercise of powers conferred upon His Excellency the President by Section 46, Subsection 3 and 4 of the Constitution of Kenya. Members will no doubt also recollect that the Chair directed the Clerk to circulate the Supplementary Memorandum to all hon. Members and further that it be placed on the Order Paper for Wednesday, 31st March, 2010. I believe each hon. Member was supplied with a copy of the Memorandum and that all have acquainted themselves with its contents.

As hon. Members will note, the Memorandum was not on the Order Paper for Wednesday, 31st March, 2010 due to the agenda before the House namely; Consideration of the Draft Constitution. With the indulgence of the House and the hon. Member for Turkana Central, I direct that the Memorandum be placed on the Order Paper for Thursday 8th April, 2010 and the House will proceed and consider the Supplementary Memorandum in accordance with Section 46, Subsection 5 of the Constitution.

EXCLUSION OF QUESTIONS FROM ORDER PAPER

Hon. Members, the second communication is as follows: The sitting this morning has been convened pursuant to Standing Order No.20 Paragraph 3 as a special sitting to consider the Draft Constitution. The debate will resume where it was interrupted yesterday, 31st March, 2010 at 6.30 p.m. Being a special sitting, Questions will not be taken as the Schedule of Questions for the week commencing Tuesday 30th March, 2010 was prepared last week and the respective Ministries notified accordingly. Therefore, we shall proceed forthwith to Order No.8.

Hon. Members, may I take this opportunity to reiterate the procedure which I set out in my earlier communications, that we will allow every amendment a maximum of five minutes. If we spill over, then it will just be two more minutes. The Mover should try and restrict themselves within three minutes and interventions should last two minutes and at the very most, another two minutes if the matter draws too much interest. Please be guided accordingly because we have many amendments to go through.

Mr. Ruteere: Mr. Speaker, Sir, I wanted to stand and contribute from where we left yesterday, according to your ruling.

Mr. Speaker: That is Order No.8 and I would like to be briefed on where we are now.

MOTION

APPROVAL OF DRAFT CONSTITUTION OF KENYA

THAT, Pursuant to the provisions of Section 33(4) of the Constitution of Kenya Review Act, 2008, this House approves the Draft Constitution submitted by the Committee of Experts and laid on the Table of the House on Tuesday 2nd March 2010.

(Mr. Abdikadir on 23.3.2010)

(Resumption of Debate interrupted on 31.3.2010)

Hon. Members, I am now updated. If you go to the Order Paper, we are now on page two and we are dealing with Article 27. The Question has already been proposed, so Mr. Ruteere you may contribute!

Mr. Ruteere: Mr. Speaker, Sir, I stand to oppose the amendment. The few gains that have been made by women in this country are being negated by the deletion of this clause. The consideration that gender parity in this country is given priority is being taken away by the simple deletion of these clauses. Being fathers of daughters and husbands of wives, it is right that we continue encouraging our women to take positions that are able to be given through other means which they cannot compete. For that reason, I stand to oppose.

Mr. Affey: Mr. Speaker, Sir, this is clearly a very retrogressive piece of amendment. This amendment is uncalled for, unnecessary and in bad faith. The women of this country have been given a raw deal for a long time. I speak as the Chairman of the House Committee on Equal Opportunities. This amendment should have been the reversed role. In fact, we are doing very badly in this region. When you go to countries like Rwanda, Uganda and South Africa, they have done very well in the empowerment of women. Kenya which is beacon of hope, it is strange that we are going round the region learning how to improve the welfare of women. In fact, the other countries in the region should have visited us to learn how we do it here. This is retrogressive and I oppose it.

The Assistant Minister for Agriculture (Mr. Ndambuki): Thank you, Mr. Speaker, Sir. I stand to oppose. It is true that we are really seen in very bad light by other countries. We cannot allow our women or ladies to take various positions in this country.

So, Mr. Speaker, Sir, I am pleading with this House to show that we are concerned about our women – we should allow them to take one-third of positions in every establishment. We should not deny them this opportunity. In fact, if you also look at the entire document, it is calling for positions for women; by deleting this, we are creating a very bad precedent in the chapters to come. So, Mr. Speaker, Sir, I really oppose the amendment.

The Minister for Housing (Mr. Shitanda): Thank you, Mr. Speaker, Sir. I do not really understand where my colleagues are getting this notion that this clause targets women. The clause is talking about gender; it says that not more two-thirds of elective or appointive positions shall be for the same gender.

Mr. Speaker, Sir, in as much as I want to oppose this clause, I do believe that it is one of those clauses that will not actually be implemented when this Constitution is passed. How do you ensure that two-thirds of elective positions do not go to the same gender? We have 210 elected hon. Members here, and we do not have more than 30 hon. Members being our sisters in this House! So, how are we going to ensure that out of the 210 elective positions, two-thirds of them are not held by men? So, as much as I want to---

Mr. Speaker: Order! Order! Your time is up!

The Minister for Housing (Mr. Shitanda): Thank you, Mr. Speaker, Sir. I beg to oppose.

Mr. Speaker: Order! Order! Hon. Members, we will now proceed to Division on the proposed amendment.

Ring the Division Bell!

(The Division Bell was rung)

Order, hon. Members! Will you, please, close the doors and draw up the Bar?

(The doors were closed and the Bar drawn up)

We will now ascertain the numbers present so as to go to the Division.

*(The Clerks-at-the-table took count
of the hon. Members present)*

Mr. Speaker: Order, hon. Members! There are 28 hon. Members present for the Division, which is below the threshold set by the Constitution. In the circumstances, therefore, the amendments proposed to Article 27 are negatived; they fail!

(Proposed amendments to Article 27 negatived)

Open the Bar and the doors!

(The doors were opened and the Bar undrawn)

Proceed, hon. Mwathi!

Article 31

Mr. Mwathi: Mr. Speaker, Sir, I beg to move:-

THAT pursuant to the provisions of section 33(4) of the Constitution of Kenya Review Act, 2008, this House approves the Draft Constitution submitted by the Committee of Experts and laid on the table of the House on Tuesday, 2nd March, 2010 subject to the amendment of Article 31 by deleting paragraphs (a) and (b).

Mr. Speaker, Sir, in the proposed Draft Constitution, Article 36 (a) refers to the right of a person not to have--- It reads as follows:- “Every person has the right to privacy, which includes the right not to have (a) their person or home or property searched”; and, “b” “their possessions seized”.

Mr. Speaker, Sir, I am informed by the fact that we want to enact this Constitution and, in particular, Clause 31 (b) to say that the “possessions shall not be seized---” I am going by the definition of the word “possession”, which includes wealth and property. We have so many people who have used their property as collateral in banks and in other institutions to get loans. If, therefore, we enact this as it is, I am persuaded that, then, people will get a blank cheque to have their loans written off.

In the first instance, clause “a” refers to the search we go through every time. Every time we go through the airport, we are required by the international standards to be searched. That is done two or three times in case you are suspected to have a problem. This will not go well with any international law.

With those two reasons, I beg to move and request hon. Kioni to second.

Mr. Kioni: Thank you, Mr. Speaker, Sir. I want to second this amendment for two reasons. One, there is a likelihood that this will affect the security measures in our country in this era of terrorism. Secondly, it may complicate commercial transactions and, perhaps, affect economic growth. I know there is a way of dealing with these limitations by introducing an amendment or a legislative agenda in Parliament. The threshold to attain it is fairly high. There may be need to qualify this right for purposes of doing business and making sure that we are still within secure borders.

(Question of the amendment proposed)

Mr. Chepkittyony: Thank you, Mr. Speaker, Sir. I stand to oppose this amendment because I think it will violate the rights of persons. The best we should have done is to say the right can be violated through a court order. I do not support the amendment.

Mr. Speaker: Hon. Members, we will proceed to division. Please, ring the Division Bell.

(The Division Bell was rung)

Order! Hon. Members, let us ascertain the numbers present. The number ascertained is 30 which is way below the threshold set by the Constitution. Therefore, the amendment moved by the Member for Limuru is negated.

(Proposed amendment to Article 31 negated)

Article 32

Mr. Musyimi: Thank you Mr. Speaker, Sir. I beg to move:-

THAT, pursuant to the provisions of section 33(4) of the Constitution of Kenya Review Act, 2008, this House approves the Draft Constitution submitted by the Committee of Experts and laid on the table of the House on Tuesday, 2nd March, 2010 subject to the insertion of the following new clauses in clause 32-

“(5) Everyone has a right to propagate their religion or convert from one religion to another.

“(6) Clause (3) shall not apply to institutions and facilities that are established solely or partly for religious purposes.”

This right is contained in the current Constitution. Section 78(1) of our current Constitution reads as follows:

“Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this section that freedom includes freedom of thought, religion, freedom to change his religion or belief and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.”

Within the boundaries of respect of right of others, space ought to be opened and guaranteed by this Constitution to take faith to the marketplace of ideas and people should be free to embrace the faith of their choice. We are trying to argue for the need to accept that there has to be public conversation, public discourse for our people to come to terms with the fact that this is a democracy and that anything that comes to the Constitution is open to public debate and interrogation. To deny people the right to change their faith and not guarantee that right in the Constitution is the most undemocratic thing imaginable. Those who have faith have their right, and those who have no faith too have their right.

I beg to move and request Mr. Kioni to second this Motion.

Mr. Kioni: Mr. Speaker, Sir, I rise to second the Motion with the following reasons. One, this right exists in the current Constitution. Two, churches and Christian organizations and religious groupings should be allowed to compete in the market place so that they can push for their faith. Three, if institutions have been set up solely for purposes of religious faith, it is only fair that they also be allowed to recruit those who share in that faith. I would not want to imagine a situation where you find a Christian in the mosque and vice versa or somebody trying to give sacrament in a temple. It will not add up. I think that will be giving us difficulties in the country. It is important that this be respected. It is for those reasons that I second the Motion.

I beg to second.

(Question of the amendment proposed)

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang): Mr. Speaker, Sir, I oppose the amendment for the obvious reason that Article 32 has already provided for what we are trying to include. Article 32 (1) already gives us the right to freedom of conscious, freedom of religion, thought, belief and opinion. It also includes the right to go and convert anybody, if you want. If you have been given a right to religious freedom and conscious, you can pursue it wherever you want. So that amendment that now says you can propagate your religion and that you are free to convert somebody is repetitive. It is not necessary.

Mr. Speaker: Order, Mr. Minister! Time up!

Mrs. Odhiambo-Mabona: Thank you, Mr. Speaker, Sir. I want to oppose this amendment because the fact that everyone has a right to propagate their religion or convert from one religion to another is already covered under religious freedom. However, the second amendment makes sense but it can be covered under legislation. I think one of the things that we are losing sight of, which also came in hon. Mwathi's proposed amendment, is that the Draft Constitution actually allows for legislation that will limit some of the rights to the extent that it is necessary in an open and democratic society and that does not negate or go to the core of the rights. Therefore, even the proposed amendment and Article 6 can go into legislation.

I, therefore, oppose.

Mr. C. Kilonzo: Mr. Speaker, Sir, I beg to oppose the Motion. I am, indeed, surprised that this amendment has been brought by somebody from the clergy itself. Most of the matters of religion are best treated and handled when they are left out in any written law. Which religion wants her members to be converted to another? None! Even my own religion, Christianity, will not make a law which will allow her members to be converted to another religion, not even Muslims. It is a surprise that it has come from our good friend here.

We have also said that everyone has a right to propagate their religion. We are saying even cults, which were banned, have a right. This can only be a bad law.

I oppose the amendment.

Mr. Speaker: Hon. Members, we will now proceed to division. Ring the Division Bell.

Order, hon. Members! Close the door and draw the Bar. We will ascertain how many Members are present.

(The Clerks-at-the Table counted the Members present)

Order, hon. Members! It has been ascertained that 38 Members are present, which is way below the threshold set by the Constitution. In the circumstances, therefore, the amendment moved to Article 32 is negatived. It fails.

(Proposed amendment to Article 32 negatived)

Mr. Mwathi: Mr. Speaker, Sir, in reference to Article 32 and the following Article 34, and going by the mood of the House and the number of Members present, I want to withdraw this amendment and leave it to the conscience of the House but we can revisit it at a future date when the time allows.

I withdraw.

Mr. Speaker: Order, Member for Limuru! If you are withdrawing the amendment, you withdraw and nothing more.

Mr. Mwathi: Mr. Speaker, Sir, I withdraw---

Mr. Speaker: Order, the Member for Limuru! We have called you in respect of Article 32.

Hon. Members, as the Member for Limuru wishes to withdraw his proposed amendment to Article 32 it, therefore, stands withdrawn. It is spent and, therefore, negated.

(Proposed amendment to Article 32 withdrawn)

Article 34

Mr. Mwathi: Mr. Speaker, Sir, being the statesman that I am, and going by what I said previously, I wish to withdraw my proposed amendment to Article 34.

(Applause)

Mr. Speaker: Order, hon. Members! With that indication from the Member for Limuru, the proposed amendment to Article 34 stands withdrawn. It is negated and, therefore, spent.

(Proposed amendment to Article 34 withdrawn)

Eng. Rege: Mr. Speaker, Sir, I have noted that with regard to derogation under the Bill of Rights, my concerns can be legislated later on. I, therefore, wish to withdraw the proposed amendment. I also note that all hon. Members have noted my concerns. I am a statesman.

(Applause)

Mr. Speaker: Order, Members! With that indication from the Member for Karachuonyo, the proposed amendment to Article 34 stands withdrawn and is, therefore, negated.

(Proposed amendment to Article 34 withdrawn)

Article 35

Mr. Speaker: The Member for Mwingi South! Is he not here?

Hon. Members, given that the Mover of that amendment is absent, that amendment cannot stand. It is, therefore, dropped and negatived.

(Proposed amendment to Article 35 dropped)

Mr. Speaker: The Member for Limuru!

Mr. Mwathi: Mr. Speaker, Sir, as I stated previously and being the same statesman, I wish to withdraw my proposed amendment to Article 35.

Mr. Speaker: Hon. Members, with that indication from the Member for Limuru, the proposed amendment to Article 35 stands withdrawn and is, therefore, negatived.

(Proposed amendment to Article 35 withdrawn)

The Member for Chepalungu!

Hon. Members: Be a statesman! Statesman!

Article 40

Mr. Ruto: Mr. Speaker, Sir, because I am a statesman, I will move my amendment. I beg to move:-

THAT, pursuant to the provisions of section 33 (4) of the Constitution of Kenya Review Act, 2008, this House approves the Draft Constitution submitted by the Committee of Experts and laid on the table of the House on Tuesday 2nd March, 2010 subject to amendments to Article 40 by—

(a) deleting the word “or” appearing at the end of clause (2)(a) and substituting therefor the word “and”;

(b) inserting the words “by the court, after due process of law” immediately after the word “acquired” in clause (6).

Mr. Speaker, Sir, in the Bill of Rights, Clause 40(3) states:-

“The State may not deprive a person of property of any description, or of any interest in, or right over, property unless (“unless” means that it has now exempted) that deprivation-

(a) results from an acquisition of land or an interest in land or a conversion of an interest in land or title to land in accordance with Chapter 5”.

Mr. Speaker, Sir, Chapter 5 deals with land entirely. Therefore, my argument is that this particular sub-section exempts land from any protection whatsoever as envisaged by the Bill of Rights. I propose that we delete the word “or” and replace it with the word “and”. This will then allow the provisions in (b) which require payment in full or just compensation to any person or allow a person to go to court.

It is not appropriate to give the Government a free hand to decide what to do with other people’s property. By allowing this to stay, we would have effectively devalued land. This is because it is no longer recognized as a property worth any respect. This, in itself, is a dangerous clause because it will enable a rogue Government to ride roughshod over people’s property. I beg to request that we delete that particular word.

I also wish to add on the last one---

Mr. Speaker: Your time is up! Who is seconding you?

Mr. Ruto: Mr. Samoei!

The Minister for Agriculture (Mr. Samoei): Mr. Speaker, Sir, just to further the argument Mr. Ruto has made, we have given unto ourselves in this document a very elaborate Bill of Rights. In fact, the strength of this document is on its Bill of Rights provision. In fact, it has been hailed as the best ever crafted Bill of Rights in any Constitution.

Unfortunately, with provisions of Article 40, we have negated the constitutional protection of the rights to land. In fact, we have given an exception that all rights are protected, that is rights of individuals to life, any other issue or all other property, except land. In effect, we are saying that land should not have any value. If land does not have any constitutional provision and if a title deed means nothing or if we turned the titled deed into a piece of paper, it means that we cannot invest in land because it does not have the requisite constitutional provision.

Mr. Speaker, Sir, what Mr. Ruto has proposed is that in the event that you want to deprive anybody of their rights to own land, you must go through due process. There cannot be any better provision. Due process is the minimum---

Mr. Speaker: Order, Mr. Samoei. Your time is up. I will allow you one minute to wind up.

The Minister for Agriculture (Mr. Samoei): Thank you, Mr. Speaker, Sir. The provision that due process becomes the avenue for depriving anybody of their rights to property in land is the basic minimum. If you say that you can deprive anybody their rights in land without due process, then you are basically saying that there is no meaning in owning any land because it can be deprived without any reference to any legislation.

I beg to support.

(Question of the amendment proposed)

Mr. Mbadi: Mr. Speaker, Sir, I rise to oppose this amendment. First of all, this country has had serious cases of land grabbing. There are people who have got Government land. There are people who have taken the National Social Security Fund (NSSF) land and converted it to personal use. If there is any legislation that will stop these individuals from their greed, we should welcome it with open hands. Saying that the Government will go through due process to repossess this land--- We know that these land grabbers use their influence, money and ill-gotten wealth to block justice from taking its course.

I oppose.

The Assistant Minister for Environment and Mineral Resources (Mr. Kajembe): Mr. Speaker, Sir, I rise to support the amendment. I do so because if we do not amend this Article the way it has been proposed by the Mover, we will be giving a free hand to the National Land Commission. If you go back to the Draft Constitution, you will see that the National Land Commission is very powerful wherever land exists. For instance, owners of land in the locations and districts will have no right to say anything on land belonging to the Government. We want people at the grassroot-level to have a say in land allocation, especially when a project is identified.

This amendment will strengthen the value of title deeds. If we do not amend this Article, title deeds will be mere documents.

Mr. Speaker: Order! Order, Member of Parliament for Changamwe! Time is up!
The Assistant Minister for Environment and Mineral Resources (Mr. Kajembe): Mr. Speaker, Sir, I support the amendment.

Mr. Kivuti: Mr. Speaker, Sir, I stand to oppose the amendment. I do not think substituting the word “or” with the word “and” adds value. When you have the word “or” you actually have a wider opening for more legislative power. I would have been happy if the Mover had looked at Article 255 and suggested that we remove sub-clause (1) (j). It would enable us to even change other things in future. Right now, we are going to have a tie around our neck that cannot be untied because we are, definitely, passing this Draft Constitution.

With those remarks, I beg to oppose.

Mr. Speaker: Hon. Members, we will make one exception here just to allow the Minister for Roads, who may have a major stake in this amendment, to make a contribution.

The Minister for Roads (Mr. Bett): Mr. Speaker, Sir, I support the amendment. I want to bring to the attention of hon. Members the fact that this Article does not talk about land alone. The word is “property”. It extends to your car and everything else that you have in this world. So, if you think that it only relates to land, and you think that there are only a few people who can own land, you are mistaken. It talks about property, and “property” has a wider description.

Mr. Speaker: Hon. Members, we will proceed to division. Ring the Division Bell.

(The Division Bell was rung)

Order, hon. Members! Close the doors and draw the bar.

(The doors were closed and Bar drawn)

Let us ascertain how many Members are present.

(The Clerks-at-the Table counted the hon. Members in the Chamber)

Mr. Speaker: Hon. Members, our evaluation confirms that there are 55 hon. Members present, who are below the requisite threshold. Therefore, the proposed amendment to Article 40 is negatived and fails.

(Proposed amendment to Article 40 negatived)

Yes, Member of Parliament for Limuru!

Article 41

Mr. Mwathi: Mr. Speaker, Sir, for the reasons I gave earlier, I wish to withdraw the amendments I had proposed on Article 41.

Mr. Speaker: Hon. Members, given the indication by the Member of Parliament for Limuru, the proposed amendment to Article 41 is negated and falls.

(Proposed amendment to Article 41 withdrawn)

Hon. Members, there is a proposed amendment by the Member of Parliament for Tinderet.

Article 43

The Minister for Industrialization (Mr. Kosgey): Mr. Speaker, Sir, we look like we are engaged in an exercise in futility. So, in order to---

Mr. Speaker: Order, Member of Parliament for Tinderet! You have caught the Speaker's eye to move the amendment.

Proceed!

The Minister for Industrialization (Mr. Kosgey): Mr. Speaker, Sir, I was just starting the---

Mr. Speaker: Order, Member of Parliament for Tinderet! We do not have that much time.

The Minister for Industrialization (Mr. Kosgey): Mr. Speaker, Sir, I was just saying that it looks like we are engaged in an exercise in futility and, in order to save time---

Mr. Speaker: Mr. Kosgey, you are a senior Member of this House. Proceed and move your amendment.

The Minister for Industrialization (Mr. Kosgey): Mr. Speaker, Sir, I withdraw the amendment, because this is an exercise in futility.

Mr. Speaker: Hon. Members, given the indication from the Member of Parliament for Tinderet that he wishes to withdraw the proposed amendment, it stands withdrawn. It is, therefore, negated and falls.

(Proposed amendment to Article 43 withdrawn)

Yes, Member of Parliament for Turkana South!

Article 45

The Assistant Minister for Forestry and Wildlife (Mr. Nanok): Mr. Speaker, Sir, I beg to move:-

THAT, pursuant to the provisions of section 33 (4) of the Constitution of Kenya Review Act, 2008, this House approves the Draft Constitution submitted by the Committee of Experts and laid on the table of the House on Tuesday 2nd March, 2010 subject to amendment of clause (2) of Article 45 by deleting the words "a person" appearing immediately after the word "marry" and substituting therefor the words "an adult".

In moving this amendment, I realize that, as is indicated in the Draft Constitution, this will legalize child marriage. It will be a futile effort for all those advocates of early

marriages. Knowing that every hon. Member of this House has a child and their neighbours have children, we have to protect these children.

Also I realize that to amend this draft, particularly the Bill of Rights, you will need to go through a referendum. So, does that mean then that we will have to take very long to protect our children from child marriages?

I would like to call upon my colleagues in this House, that although we may not get the numbers, they should stand to be counted as people who attempted to protect their children and children of this country from being married off by adults.

I will ask Mrs. Odhiambo-Mabona to second me.

Mrs. Odhiambo-Mabona: Mr. Speaker, Sir, I wish to second this amendment. As the PSC, we did not intend to legislate for this and it must have escaped our attention. We have absolutely no intention of legislating on child marriages.

Even though people are saying that we are engaging in an exercise in futility, I do not think so because this will form part of legislative history. In future, should we want to amend this, it will be on record that we opposed child marriages.

Mr. Speaker, Sir, I would also like to encourage the Attorney-General that if we do not raise the numbers, it is actually contradictory of Article 57(d). Therefore, when this document goes to him, he can harmonise it by providing for the word "adult". Otherwise, this is one of the best drafts in relation to children, because of the issues of human rights and human rights-based approach.

(Question of the amendment proposed)

Mr. Bahari: Mr. Speaker, Sir, I support this amendment, because this is a reality in this country. We have seen it happen and it must be outlawed. This is the right place to do it.

The Minister for Gender, Children And Social Development (Ms. Mathenge): Mr. Speaker, Sir, I support this amendment because we have issues of old men wanting to marry girls, who are aged below 18 years. We must include this amendment in this Draft Constitution.

Mr. Pesa: Mr. Speaker, Sir, incidentally, I want to support this amendment and say that it is not only old men that marry young girls; what we know in Kenya is that child marriages exist. It is something that, as Kenyans, we would not want to continue. So, if we have it in the Constitution, I think this will protect our young children who are married off at an age when they really need to be going to school.

Mr. Speaker, Sir, I support.

Mrs. Noor: Mr. Speaker, Sir, I stand here to support the amendment, so that we can protect our children. It is a reality that---

Mr. Mbadi: On a point of order, Mr. Speaker, Sir. I find it not in order because hon. Members have not understood this particular schedule. If you talk of "every adult" we should look at it from both sides. The Mover, the Seconder and supporters of this amendment are looking at this from only one side. So, if you talk of every adult, the person marrying and the person being married have to be both adults.

Mr. Speaker: Order, Mr. Mbadi! You will have to have some decorum. Your point of order, as I see it, does not amount to any breach of our rules. It is a matter that you could have raised in your contribution if you caught the Speaker's eye.

Proceed, Mrs. Noor.

Mrs. Noor: Mr. Speaker, Sir, I support this amendment because it is a reality. It is something that we have seen before. We have seen young girls being married off to old men. We have seen young boys getting married to old women. We are here to protect all our children, both boys and girls. We need only adults to marry adults.

Ms. Leshomo: Asante sana Bw. Spika. Hata mini ninaunga mkono hilo pendekezo. Msichana akiolewa akiwa na miaka 11 au 12, au mvulana pia akioa mama mzee--- Ingekuwa muhimu kuwa na sheria ili tusaidie jamii zingine kama jamii ya wafugaji, ambao hawana hii habari. Kwa hivyo, kunatakikana kuwe na sheria ya kukataza jambo hili.

Ms. Karua: Mr. Speaker, Sir, I stand to oppose the amendment. If you look at Clause 45(2), which is being amended, every adult has a right to marry a person of the opposite sex. The word "person" must be interpreted in relation to the word "adult". This is a battle of interpretation. Like many other amendments, it is totally unnecessary. I oppose it.

The Assistant Minister for Co-operative Development and Marketing (Mrs. Kilimo): Mr. Speaker, Sir, I stand to support this Motion, because for one it will reduce the instances of cattle rustling in some communities in this country. You will find that the youth, who do not have money to pay dowry have to raid communities so that they can acquire cattle and marry. This is because the elders in those communities, who have got all the property, keep on marrying young girls because they have cows.

This amendment will also help the girl-child in these communities to focus on education, instead of being married off early. I support.

The Assistant Minister for Tourism (Ms. Mbarire): Mr. Speaker, Sir, I also feel that this particular Article is being misinterpreted by the hon. Members. Nobody approves of child marriage, but I think we are reading this Article in the wrong way. When we say that every adult has a right to marry a person--- It does not say this person should be a child. I imagine it means an adult.

More than that, if you go to Article 53 on children, we will still have to enact legislation which will define who a child is. I think we want to put too many details into this Constitution; we are forgetting that a constitution has just the basic principles. The Children Act will have to say who a child is.

Mr. Speaker: Thank you, for that contribution, Member for Runyenjes. Perhaps, the Member for Gwasssi would have ably done that. So, you represented him as well.

Order, hon. Members. We will now proceed to Division. Ring the Division Bell.

(The Division Bell was rung)

Mr. Speaker: Order, hon. Members! Close the doors and draw the bar! Let us ascertain how many Members are present.

Hon. Members, 66 Members are present which is below the threshold. The amendment to Article 45 is, therefore, negatived.

(Proposed amendment to Article 45 negatived)

(Several hon. Members withdrew from the Chamber)

The Minister for Industrialization (Mr. Kosgey): On a point of order, Mr. Speaker, Sir. Is it in order for hon. Members to come in, listen to debates and then walk out during the voting time? Is it in order for them to do so? Is this really a good parliamentary practice?

Mr. Speaker: Order, hon. Members. The point of order raised by the Member for Tinderet has a substance in it. It is certainly merited; that, as much as possible, Members ought to stay in the House and go through the Division.

But that notwithstanding, hon. Members have the freedom to be in the House when they choose to and withdraw when they so desire. We cannot set any hard rules on this. But it is up to every Member to deal with their conscience. If their conscience tells them the right thing to do at a given time is to withdraw, so be it.

Member for Chepalungu!

Article 60

Mr. Ruto: Mr. Speaker, Sir, I beg to move:-

THAT pursuant to the provisions of section 33 (4) of the Constitution of Kenya Review Act, 2008, this House approves the draft constitution submitted by the Committee of Experts and laid on the table of the House on Tuesday 2nd March, 2010 subject to amendments to clause (1) of Article 60 by—

(a) inserting the words “for all land holders, users and occupiers in good faith” immediately after the word “rights” appearing in paragraph (b);

(b) deleting the words “consistent with this Constitution” appearing in paragraph (g).

Mr. Speaker, Sir, the point I wish to put across is that the security of these land rights should be qualified for those who are using it in good faith. It should not be rights for marauders. I also want to stop after word “initiatives” on (g) because this is repetitive and adds no much value. We are trying to say that we have to encourage communities to settle land disputes through recognised local community initiatives. When they are doing this in the villages, they have got no access to the Constitution and lawyers. I think we have to encourage them to continue settling this. There is no much time, so I want to stop. I am sure Members of Parliament have understood this.

With those few remarks, I beg to move.

The Minister for Agriculture (Mr. Samoei): Mr. Speaker, Sir, I beg to second this Motion.

The basis of this Motion is that while we were in Naivasha with the Parliamentary Select Committee (PSC), these were the rafts of amendments that we had agreed on this Chapter. Unfortunately, they were reversed by the Committee of Experts. The basis of the amendment that has been proposed here is that we must identify community land in a specific manner and give it sufficient protection, so that marauders and land grabbers do not access community land and abuse it. I think there is merit in us giving constitutional basis for land dispute settlement, in the rural areas. Many community based organizations and structures facilitate land settlement disputes in the rural areas. For the *Njuri Ncheke*,

it performs a very important role and they should be recognised in the settlement of land disputes.

This is the basis of this amendment and I beg to second.

(Question of the amendment proposed)

Mr. Mbadi: Mr. Speaker, Sir, my reasons for opposing this Motion are two. First, it is difficult for me to understand how we are going to give people security of using land in good faith. How will you determine good faith? Someone can just come and occupy your land and claim that he has been using it in good faith. Secondly---

The Minister for Agriculture (Mr. Samoei): On a point of order, Mr. Speaker, Sir.

The hon. Member should take time to understand the import of the amendment before he makes a contribution that is completely irrelevant and has no direct basis on the proposed amendment in question.

Mr. Speaker: Order! The hon. Member for Eldoret North; much as you have expressed a concern there, you stood on a point of order. What you have endeavoured to do is arrogate yourself the duty and, indeed, responsibility of determining which Member is relevant and who is not. I am afraid that does not belong to your province.

Proceed, the Member for Gwassi!

Mr. Mbadi: Mr. Speaker, Sir, my command of English is fair, average and very good.

Mr. Speaker: Order! I have already given directions.

Mr. Mbadi: Mr. Speaker, Sir, my last contribution is with regard to deleting the words, "consistent with this Constitution". Much as we would like to encourage even communal settlement of disputes, it must be done within the Constitution which is the supreme law of the land. Therefore, that particular part is very relevant to me and need not be deleted.

I beg to oppose.

Mr. Speaker: Hon. Members, we will proceed to the Division! Ring the Division Bell.

(The Division Bell was rung)

Order, hon. Members! The numbers present are ascertained to be 65 which is below the threshold. Therefore, the amendment to Article 60 is negatived.

Open the doors!

(Proposed amendment to Article 60 negatived)

Article 60

The Member for Kajiado Central! Hon. Members, given that the Member for Kajiado Central is not in the House, the amendment as proposed to Article 60 is dropped and, therefore, negatived.

(Proposed amendment to Article 60 dropped and negatived)

Proceed the Member for Oloitokitok!

Article 62

The Assistant Minister for Regional Development Authorities (Mr. ole Metito): Mr. Speaker, Sir, I beg to move:-

THAT pursuant to the provision of section 33(4) of the Constitution of Kenya Review Act, 2008, this House approves the draft Constitution submitted by the Committee of Experts and laid on the table of the House on Tuesday, 2nd March, 2010 subject to the deletion in Article 62 of the words “government game reserves, national parks, government animal sanctuaries, and specially protected areas” appearing in paragraph (g) of clause (62).

Mr. Speaker, Sir, my proposed amendment is to delete that clause under the public land and place them under community land just the way it is. This is because if you read Article 62(g) alongside Article 175(b) on page 117 of the Draft Constitution, you will find it says:-

“county governments shall have reliable sources of revenue to enable them to govern and deliver services effectively and;”

Mr. Speaker, Sir, again, read the Fourth Schedule part (b) clause 7 on page 191. It says that the functions of the devolved Government, in this case, the functions and powers of the counties--- Article 7 says, trade licences (excluding regulation of professions). All these game parks and national reserves are placed under public lands which are managed by the Central Government through the National Land Commission. If we do not place them under the community land which is managed by the counties, then most of these proposed counties will not be viable. They will not generate the required revenue to be sustainable. I have a list of 33 parks, but because of time, I kindly request Mr. Bahari to second.

Mr. Bahari: Mr. Speaker, Sir, I beg to second because you will realize that most of these game reserves and other sanctuaries are within the pastoral areas and the pastoralists lost their grazing lands. Because they lost that, one way to promote or compensate for that loss is to ensure that the counties are the ones who manage this on behalf of the communities and it is a very costly thing to this society. In addition, we must promote conservation that involves the communities around there. Once they own and benefit from it, I think it is one of the best things that can be done and, therefore, the proposal is to have it move from public land to community land.

(Question of the amendment proposed)

The Minister for Housing (Mr. Shitanda): Mr. Speaker, Sir, I want to oppose this amendment. Most of the game reserves and game sanctuaries that are being managed by councils today are institutions which have seriously been misused by those councils

and in any event, the revenues that are generated by those sanctuaries and game reserves are normally remitted to the councils by the Central Government.

With those few remarks, I beg to oppose.

The Minister for Agriculture (Mr. Samoei): Mr. Speaker, Sir, I rise to support this amendment. If we truly want to give meaning to devolved governments, we must not at the same time deprive them of the means to create sufficient resources to make meaning of the devolved governments. Contrary to what has been said here, the game reserves as they are today are being managed by the Central Government and that is why we have the mess that we are witnessing. I think if we sincerely want to give meaning to devolved governments as per the wishes of the people when we collected their views, we must categorize game reserves as has been listed in this amendment under devolved governments so that we can make them viable, create more accountability and ensure that these devolved units survive.

With those few remarks, I beg to support.

(Mrs. Kilimo moved to the Dispatch Box reserved for the Opposition)

The Assistant Minister for Co-operatives Development and Marketing (Mrs. Kilimo): Mr. Speaker, Sir, I rise to support this Motion considering, for example, some protected areas in communities like the Kaya Bombo areas, we have sanctuaries in forests where people used to go and do some ceremonies and it gives the people ownership. When you take from them like the way it is now, people do not protect the forest because they have no ownership; they simply say: "Well, it belongs to the Government!"

Mr. Speaker: Order, Mrs. Kilimo! I have given directions previously and I thought you would correct that on your own instance. I am afraid you will re-arrange yourself and go and talk from the right position.

The Assistant Minister for Co-operatives Development and Marketing (Mrs. Kilimo): Mr. Speaker, Sir, I am not aware of any Opposition in this Government.

Mr. Speaker: Order, Mrs. Kilimo!

Mr. Speaker: Mr. Speaker has given directions on this matter previously, even as recently as yesterday. Just adjust!

Hon. Members: Cross!

(Mrs. Kilimo crossed the Floor)

The Assistant Minister for Co-operatives Development and Marketing (Mrs. Kilimo): Mr. Speaker, Sir, I support and I am sorry for that.

I support this Motion because as we are currently, you get county councils coming to Nairobi looking for lieu of rates because of the forests that they have conserved. We are talking about devolution and the forests that the Central Government thinks are their own forests are owned by people. Clans in this country have some attachment to the forests within their regions because of maybe, some beehives which are there. Some people use them for ceremonies like the Kaya Bombo people; to give sacrifices and so taking the very thing that communities value and bring them to the Central Government--

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With those few remarks, I beg to support.

Mr. Speaker: Order hon. Members! We will move to Division. Ring the Division Bell!

(The Division Bell was rung)

(Proposed amendment to Article 62 negatived)

Article 62

Mr. Ruto: Mr. Speaker, Sir, I beg to move the following amendment:-

THAT, pursuant to the provisions of section 33 (4) of the Constitution of Kenya Review Act, 2008, this House approves the draft constitution submitted by the Committee of Experts and laid on the table of the House on Tuesday 2nd March, 2010 subject to amendments to Article 62 by—

(a) deleting Clause (2) and substituting therefor the following new clause—

“(2) Public land shall vest, be held and administered on their behalf by the county government if it is classified under—

(b) Clause (1)(a), (c), (d) or (e); and

(c) Clause (1)(b), other than land held, used or occupied by a national State organ.”;

(d) deleting clause (3) and substituting therefor the following new clause—

“(3) Public land classified under Clause (1)(f) and (m) shall vest in and be held by the national and county governments in trust for the people of Kenya and shall be administered on their behalf by the county governments and the National Land Commission.”

Mr. Speaker, Sir, the import of this proposed amendment is to ensure that the counties have a role in the management of their land. It is meaningless, and it has been argued previously in amendments moved by my colleagues, to have devolution and at the same time, all the land is managed from Nairobi by the national Government and a new juggernaut called the National Land Commission (NLC). We are decentralising, but it is strange that at the same time, we want to take away land and give it to a new group.

I beg to move and ask hon. Duale to second.

The Assistant Minister for Livestock Development (Mr. Duale): Mr. Speaker, Sir, I stand to second this amendment. Land is a very important resource to various communities in this country. In my opinion, land can only be managed by the counties where the devolved governments will be. The history of this country in terms of land being managed by the national Government through the Commissioner of Lands and the Ministry of lands, we know where it has taken us. All the prime land in the Coast Province, Rift Valley and North Eastern provinces was ditched out in 1980s and the 1990s by the national Government. This Constitution is supposed to redress those mistakes.

We cannot allow the same mistakes to be repeated in this document that land is again taken back to the NLC. It is my humble opinion that if we are devolving power and resources, then land is a very important resource for the communities that live in there. I beg to second.

(Question of the amendment proposed)

Dr. Khalwale: Mr. Speaker, Sir, I would like to oppose this particular amendment. Land is very emotive and some people want to think that land in certain geographical areas in this country belongs to certain communities. That thinking will be expressed by way of making the people who own land where they were not born, becoming insecure.

It is true and I want to agree with hon. Duale that large tracts of land had been unfairly grabbed by people of influence, some of them politicians like us. The route to go about it is not to put it in the Constitution. Let us be brave and take the Ndung'u Report, which is there in black and white and implement it.

I oppose.

The Minister for Youth and Sports (Prof. Sambili): Mr. Speaker, Sir, I rise to support this amendment. In the spirit of devolution, I believe that it is important for communities to be empowered to decide on land that is within their jurisdiction. The NLC should just play an oversight role and not control the land within community areas.

Mr. Chachu: Mr. Speaker, Sir, I rise to support these amendments. The whole process of devolution is about resources and power. Land is a major resource for several communities. They should be empowered and given the right at the county government level to manage their land.

The Minister for Agriculture (Mr. Samoei): Mr. Speaker, Sir, I rise to support this amendment. Again, we must be careful and listen to what the people wanted. Devolution is a major concept of this Constitution review process. If we want to give meaning to devolved governments, we must empower them to decide on major resources in their areas; one of them being land. We must disabuse ourselves of this constant notion that other people will be driven away from where they live. This is a scarecrow that has no meaning at all. We want to correct what has happened in the past. The over concentration of authority and power in the Central Government has led to the abuse of allocation of land which has deprived many people the opportunity to own land, especially in areas that the Central Government has no idea of the sensitivities involved. So, I want us to bite the bullet and take this to the county governments.

Mr. Mwangi: Mr. Speaker, Sir, I stand to oppose the amendment. It is true that we need devolution and we need the counties to manage their resources, but history will judge us and show that we are trying to create enclaves and the fear expressed that people may suffer is not far-fetched. So, we would rather devolve and let land, as emotive as it is, be managed by the Central Government.

I oppose the amendment.

The Assistant Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Cheptumo): Mr. Speaker, Sir, this is one of the very important amendments to this document and I stand to support it.

Article 62 defines public land. Then Article 62(2) goes ahead to vest land on county governments. But the same sub-section goes ahead to negate the very spirit of devolution. It will be very unfair for the counties to own the land, manage it, but the right of ownership is taken away by the NLC. So, I support the amendment.

Mr. Speaker: Order, hon. Members! We will now proceed to Division. Ring the Division Bell!

(The Division Bell was rung)

The Minister for Industrialization (Mr. Kosgey): On a point of order, Mr. Speaker, Sir. We know that when the bell is rung, as it is now, we will not get the requisite numbers. We want to voice our concerns on these articles, particularly, Article 62, because it defines public land as all rivers to be managed by an animal called the---

Mr. Speaker: Order, Member for Tinderet! I have actually allowed you this indulgence, which is completely unprecedented, because I respect your position as the Chairman of a major parliamentary political party. But otherwise, you are out of order!

The Minister for Industrialization (Mr. Kosgey): Thank you, Mr. Speaker, Sir, for that respect. I also respect you as the head of this House.

Mr. Speaker: Order! Please, ring the Division Bell!

The Minister for Industrialization (Mr. Kosgey): Mr. Speaker, Sir, I was going to say that---

Mr. Speaker: Order, hon. Member! Member for Tinderet, give way to the Division Bell!

The Minister for Industrialization (Mr. Kosgey): The Member for Tinderet has a right to be heard in this House.

Mr. Speaker: Order, Member for Tinderet!

The Assistant Minister for Co-operatives Development and Marketing (Mrs. Kilimo): On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order, hon. Members! Close the door and draw the Bar. Ascertain how many Members are present.

*(The door was closed, Bar drawn and
hon. Members were counted by clerks-at-the Table)*

Hon. Members, we have ascertained that 65 Members are present, which is below the threshold. Therefore, the amendment to Article 62 is negatived.

(Proposed amendment to Article 62 negatived)

The Assistant Minister for Energy (Mr. Keter): On a point of order, Mr. Speaker, Sir. I want to seek direction. Since yesterday, no amendment has been passed here. Would I be in order to request that in areas where most of us have interest, you allow more time for Members to speak? Otherwise, if we will continue like this, could we withdraw from the House? Land is an emotive issue and very crucial to some of us. It forms part of this Constitution and is very important to some of us. So, could you give us more time so that we can say what we want to say?

Mr. Speaker: Order, hon. Members! I have heard hon. Keter and the point of order he has raised, which is a legitimate concern. Indeed, I, as Mr. Speaker, have born that in mind, beginning from yesterday and even today; that some articles attract more interest than others. It is for that reason that Members will have noticed that I have not employed

a standard practice of maybe one or two Members only contributing contrary to the general directions which I gave. So, Mr. Keter, your concern is noted. It is just that not everybody will catch the Speaker's eye at any given time. But we will bear in mind that where you have pressing issues, you will also have an opportunity to catch the Speaker's eye. Please, do not leave. We want you to participate in this historical exercise.

Article 63

The Assistant Minister for Regional Development Authorities (Mr. Ole Metito): Mr. Speaker, Sir, I beg to move:-

THAT, pursuant to the provisions of section 33(4) of the Constitution of Kenya Review Act, 2008, this House approves the Draft Constitution submitted by the Committee of Experts and laid on the Table of the House on Tuesday, 2nd March, 2010, subject to the insertion in Article 63 of the following new paragraph immediately after paragraph (iii) appearing in clause (2)-

“(iv) government game reserves, national parks, government animal sanctuaries; or”.

Mr. Speaker, Sir, this is what my colleagues have said about land. In some areas, land is the major resource. We are talking of devolving resources and one of the main resources is land. We are kindly asking that the Draft Constitution be amended to recognize that land be taken as a resource and given to communities in those areas to manage on their behalf and actually, use it to benefit those areas.

So, I move this amendment for the same reasons that have been advanced since Article 60 on Chapter 5 on land. This is a very contentious chapter. If you look at it, there are 12 amendments actually lined up on it. It is because the concerns are there that land should be given to communities to manage it through their counties.

Mr. Speaker, Sir, I beg to move and ask hon. Kosgey to second.

The Minister for Industrialization (Mr. Kosgey): Mr. Speaker, Sir, Articles 62, 63 and 64 try to define what is public land, community land and private land. This particular Article 63 tries to define what community land is. Quite frankly, definitions given to these three categories of land are completely out of this world. Nobody really would have expected a game reserve in Maasai Mara to be classified as community. Nobody can expect that a small river in Nandi cannot be classified as community land. Therefore, this amendment as proposed is relevant. In fact, the complete chapter on land is totally out of what we really expected in a Constitution. The definition of public land, community land and private land--- In fact, the chapter on private land is very small. Articles 62 and 63 are really a cause of concern for some of us. Land is a very emotive issue.

I beg to second the amendment.

(Question of the amendment proposed)

The Minister of State for Public Service (Mr. Otieno): On a point of order, Mr. Speaker, Sir. Having failed to delete this phrase from Article 62, if we now include it in

Article 63, it will be a double allocation. So, technically, this amendment should not be moved, having failed to delete from the other Article.

Mr. Speaker: Order, hon. Otieno! We approved these amendments as proposed after they passed the test that they qualify to be genuine amendments. So, we will take it. At any rate, it has already been proposed and seconded. So, why is this point of order coming too late in the day? You have acquiesced in it being moved and seconded. So, we will proceed.

Hon. Member for Mvita, I am afraid you are in the wrong place. So, if you are lucky, we will come back to you.

Mr. Njuguna: Mr. Speaker, Sir, I rise to very strongly oppose the amendment. My view is that the amendment sought is already catered for in the public land arrangement.

I beg to oppose the amendment.

The Minister for Tourism (Mr. Balala): Mr. Speaker, Sir, I rise to support this amendment. We are talking about community land. If you do not want to recognize communities and give them responsibilities, then the whole gist of devolving services and empowering the people will go in vain. We have a good example: In the Coast Province, all the national parks and national reserves are owned by the Government and the people in that area, particularly the Taita, are denied the opportunity to manage and protect those natural resources. It is important that we start devolving resources, empowering people and building capacity in protecting these natural resources.

Mrs. Noor: Mr. Speaker, Sir, I beg to support the amendment. We are restructuring the Government, our systems and also designing different systems. This is because Kenyans said that they wanted to be involved in decision-making in governance, social and economic participation. We are saying that land is a very important resource and the community owns it. Traditional societies own land. So let us give them the chance to manage their own affairs. We have already appreciated a devolved system of government. So, why are we giving with one hand and taking away with the other?

Mr. Letimalo: (*Off-record*)

Mr. James Maina Kamau: Mr. Speaker, Sir, I stand to oppose this amendment. Land issues in the country are very sensitive. Some Kenyans went to war over land and I think we are not ready to manage our land as communities. We know that land has been grabbed even in Coast Province, Nairobi and everywhere else. There are land grabbers even in the Ndung'u Report. So, I do not support this amendment.

Mr. Dhadho: Mr. Speaker, Sir, I stand to truly support the amendment. We are failing as a country to apply the principle of devolution properly. We have achieved to some degree, the principles of popular democracy but we are failing to add up by applying the principles of popular sovereignty so that this country can be able to move forward. We have failed to understand which assets should belong to the nation and assets belonging to communities. If we take land, national sanctuaries and put them under national assets, then what is left, the communities are allowed to manage. In fact, in the Coast Province, we practice our community rituals but it is now being taken away to the National Land Commission. I think it is unfair.

I support.

Mr. Langat: Mr. Chairman, Sir, I stand to support the amendments because this Constitution is about devolution of resources. Land is a resource which people must be

allowed to manage. The fears over corruption are unfounded because quite a number of resources have been lost from the Central Government compared to the lower level of Government. So, we need to give people their land to manage it so that they can benefit from it.

I support.

Mr. Kioni: Mr. Speaker, Sir, I want to support this amendment for the reasons that, during our deliberations, we had recommended that this should be left to legislative agenda because there are many issues that need to be dealt with. We need to isolate many of the issues that are being brought forward by hon. Members.

For that reason, I support.

The Assistant Minister for Livestock Development (Mr. Duale): Mr. Speaker, Sir, I strongly support this amendment. We must be honest to each other. Kenya is made up of communities which are represented by the land mass. The community that I represent in this House occupies 22 per cent of the land mass of Kenya. If you have no land to manage, give us time to manage our land. That is why I am saying that those of us who have land and come from areas where there are game parks, part of the devolution of resources begins at home. We must manage our land. If you have no land to manage, please, shut up.

Mr. Speaker: Order, hon. Member for Dujis. You cannot direct your colleagues to shut up. You will have to withdraw that word because it is unparliamentary, used in that context.

The Assistant Minister for Livestock Development (Mr. Duale): Mr. Speaker, Sir, I withdraw and apologize.

Mr. Mwatela: Bw. Spika, naunga mkono kwa dhiti kwa sababu sisi tunaoishi na wanyama tumejua hatari inayotokana na kuishi na hao wanyama. Kwa hivyo, tunaunga mkono marekebisho hayo.

Mr. Speaker: Hon. Members, please note that he did not lobby the Speaker. I had intended that he would catch my eye.

Mr. Chepkitony: Mr. Speaker, Sir, this is very important to me because I have a game reserve currently owned by the county council and managed by the Kenya Wildlife Service (KWS) on their behalf. If it will revert to the national Government or State, that is against the spirit of the day.

I do support the amendment.

Dr. Nuh: Mr. Speaker, Sir, I beg to support this amendment for the same reason that those who support and oppose have given. Those who are opposing it are saying that land is very emotive and sensitive. I would like to ask: Is it logical that you would want to take something so dear to the people to a centre far away? I thought that way, you would be bringing accountability near to them. I would like to tell my colleagues that the same land that we are proposing to be managed by the counties was donated by the same counties to the national Government. This is not land acquired from nowhere.

So, I urge my colleagues that, let sense prevail and the land be managed by the counties. We are saying that we are devolving power to them. The counties will manage the land and we will give them more authority.

The Assistant Minister for Agriculture (Mr. Mbiuki): Thank you, Mr. Speaker, Sir. I beg to support this amendment. This item on communities and the councils--- The

county governments will need to manage the game reserves and the national parks. National parks are all demarcated and nobody will go and start grabbing them.

Mr. Speaker, Sir, I strongly support the amendment.

The Assistant Minister for Energy (Mr. Keter): Thank you, Mr. Speaker, Sir. I beg to support this amendment.

Mr. Speaker, Sir, there have been arguments that these game reserves and other facilities will not be managed properly by the counties. I thought that we were making a new Constitution, a Constitution whereby we are going to empower our counties. Why are we basing our facts on the current situation? I want to plead with hon. Members that we focus ahead. If we are going to devolve from the national level to the counties, which means that we are going to have there more systems and accountability--- Therefore, community land and all other resources will be managed properly.

So, Mr. Speaker, Sir, I wish to support this amendment.

Mr. Speaker: Order, hon. Members! I think we have captured as many views as we can on this matter, and further debate is tending to be repetitive. So, we will proceed to Division.

Ring the Bell!

(The Division Bell was rung)

Order, hon. Members! Will you, please, close the doors and draw the Bar?

(The doors were closed and the Bar drawn)

We will now ascertain the numbers present for us to go to the Division.

*(The Clerks-at-the-table took count
of the hon. Members present)*

Order, hon. Members! It has been ascertained that there are 77 hon. Members present for the Division, which is below the threshold set by the Constitution. In the circumstances, therefore, the amendments proposed to Article 63 are negatived!

(Proposed amendment to Article 63 negatived)

Open the doors!

(The doors were opened and the Bar undrawn)

Proceed, hon. Member for Chepalungu!

Article 63

Mr. Ruto: Mr. Speaker, Sir, I beg to move:-

THAT pursuant to the provisions of section 33 (4) of the Constitution of Kenya Review Act, 2008, this House approves the draft constitution submitted by

the Committee of Experts and laid on the table of the House on Tuesday 2nd March, 2010 subject to amendments to Article 63 by—

(a) deleting the words “ethnicity, culture or similar community of interest” in clause (1), and substituting therefor the words “geographical area or community of interest”;

(b) inserting the word “other” immediately after the words “ancestral lands and” appearing in paragraph (d)(ii) of clause (2);

(c) inserting the words “or any land classified as private land under this Constitution” immediately after the expression “Article 62(2)” appearing at the end of paragraph (d) of clause (2).

Mr. Speaker, Sir, the reasons are simple; that, this is a country in which we are trying to create harmony; we are trying to ensure that we do not manage our systems using ethnicity. Here, we are actually entrenching it into the Constitution. Ethnicity and culture are likely to perpetuate tribalism, increased tension between communities and, in fact, it contradicts Article 27 (a), which prohibits discrimination on the basis of ethnicity, social, origin, culture and others. By using geographical areas to define community, the above issues, which I have mentioned, will, therefore, be mitigated. These are not petty amendments; these are amendments that are meant to solidify the country called Kenya.

Mrs. Odhiambo-Mabona: Thank you, Mr. Speaker, Sir. I beg to second this amendment. In seconding it, I want to note that I listened very carefully when people were talking about the issue of regional governments. One of the reasons for opposing them was that people said they would balkanize the country. If our intention is not to balkanize the country, this Article, actually, would achieve that; it will prevent balkanizing of the country along ethnic lines. It is actually a problem for those of us who are in cross-cultural marriages. How will you define my children if they want to own community land? Will they be defined as Zulus, Luos or as Subas?

Mr. Speaker, Sir, this one is ridiculous, and I would want to go on record that even if it does not pass now, in future, we need to look at it and deal with it appropriately.

Mr. Speaker, Sir, I beg to second.

(Question of the amendment proposed)

Mr. Pesa: Mr. Speaker, Sir, I want to support the amendment by hon. Ruto because when you look at Section 63(1), as it is written here, you will see that it does not take care of many constituencies in this country. For instance, when you talk about Migori with regard to land being given out according to ethnicity, we will create a lot of problems. I think the substitution of communities is not also very good because that is what caused us problems the other time. We should rather, as Mr. Ruto puts it, delete those sections and replace with what he is suggesting so that we bring the country together and all areas of this country.

I beg to support.

The Assistant Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Cheptumo): Thank you Mr. Speaker, Sir. I also stand to support the amendment. The usage of the word “ethnicity” is not very good. We are working on a document which is supposed to serve us for many years. We, as a country, are trying to see how best we can have a cohesive society. We now have a Commission to deal with

cohesion in our country. If we can avoid having such phrases or words that can separate us, I think that will be important.

Therefore, I support the amendment.

Mr. Kioni: Thank you, Mr. Speaker, Sir. I also want to support the amendment for the reasons mentioned. First, the use of the word “ethnicity” should be deleted. I know that he has not asked for the deletion of the words “ancestral land.” These words do not help us to come together. They only make the country move apart.

For those reasons, I wish to support.

Mr. ole Lankas: Thank you, Mr. Speaker, Sir. I stand to oppose this amendment. We all belong to our ethnic groups. We also have our own identities. If you asked the Mover of the amendment the question; what is in a name? When we talk about communities, I think that these can also be identified in terms of ethnicity. However, when it suits some people, that is when they say they want to unite the country. When it does not suit them, they say they want to go national.

I oppose this on the ground that we must be identified. With regard to the issue of minorities, we only get to know these people when they are identified by name.

I oppose this amendment.

Mr. Speaker: Order! Mr. ole Lankas, time is up. We will now proceed to Division. Please, ring the Division Bell.

(The Division Bell was rung)

Hon. Members, we have ascertained that 62 Members are present, which falls below the threshold. Therefore, the amendment to Article 63 as moved by the Member for Chepalungu is negated.

(Proposed amendment to Article 63 negated)

Article 65

Mr. Ruto: Mr. Speaker, Sir, I wish to withdraw the next amendment which is on Article 65 on the basis that my intention, initially was to protect shareholding and possibly not to create a shake on the Kenyan economy. Otherwise, the other side of the coin is equally important. In any case, this Parliament is, at the moment, not serious on passing any of these amendments.

Mr. Speaker: Order, Mr. Ruto! If you are withdrawing, just say so, and leave it there.

Hon. Members, with that indication by the hon. Member for Chepalungu, amendment to Article 65 is withdrawn. The amendment is, therefore, negated.

(Proposed amendment to Article 65 withdrawn and negated)

Article 65

Ms. Shakila Abdalla: Thank you, Mr. Speaker, Sir. On the same note, the land issue is very sentimental to me. However, given the mood of the House since yesterday, I wish to withdraw my amendment.

Mr. Speaker: Hon. Members, with that indication from hon. S. Abdalla, the proposed amendment to Article 65 stands withdrawn. The amendment is, therefore, negated.

(Proposed amendment to Article 65 withdrawn and negated)

Article 67

Mr. Ruto: Mr. Speaker, Sir, I beg to move:-

THAT, pursuant to the provisions of section 33 (4) of the Constitution of Kenya Review Act, 2008, this House approves the draft constitution submitted by the Committee of Experts and laid on the table of the House on Tuesday 2nd March, 2010 subject to amendment of Article 67 by—

(a) deleting clause (2) and substituting therefor the following new clause—

“(2) Parliament shall enact legislation to provide for the functions of the National Land Commission.”

(b) deleting clause (3).

Mr. Speaker, Sir, I accept that there may be some merit in creating a National Land Commission. But I do not think the function of such a Commission should necessarily be as indicated in the Draft Constitution. I believe this is a matter that can be allowed to fall within the realm of legislation. I think if it is important to establish it; it will be established but its functions should be subjected to serious debate. We cannot put a land Commission in place and then you start telling us that they will even be regulating taxes on land. At the moment, land is very unproductive. It is basically held by peasants and a lot of them for sentimental value. We want to start giving functions to the Land Commission that is only answerable to a President and we have put in place a Presidency that is not even feasible to sanction its activities.

Mr. Speaker, Sir, I want to say the Land Commission has no business doing what is presumed that it can do under this Article.

The Minister for Industrialization (Mr. Kosgey): Mr. Speaker, Sir, I rise to second this amendment. The functions of the Land Commission as enumerated in Article 67 are not different from what the Commissioner of Lands has been doing. The whole purpose of rewriting this Constitution is to be able to redress some of the injustices that have happened in the past. One of those things has been the centralized management and allocation of land. Although we are saying there will be a land commission, we want to have a situation where the Commission or the land within the counties and within communities can be managed by those who are responsible or who own that land. It should not to be managed by the land commission. Since we do not have sufficient time to debate this, the amendment proposed that the functions of the land commission will be clearly spelt in a statute by parliament is quite appropriate.

I beg to support.

(Question of the amendment proposed)

Dr. Kones: Thank you, Mr. Speaker, Sir. I rise to support the amendment and in line with the arguments which have been given earlier, it is important that we give value to devolution. By giving all these powers to a National Land Commission to control land at Central Government, it goes against the basis for which devolution was meant. I should also think that looking at the functions which have been given here, one wonders whether we really need a Ministry of Lands thereafter because all the functions that a Ministry does have been given to that National Land Commission.

So, I support the amendment that the functions of this Commission be defined through legislation.

The Minister for East African Community (Mr. Kingi): Mr. Speaker, Sir, I rise to support this amendment. The framework of the Constitution is not really to give the entire details of the Commission we are creating. It is important and enough just to state that we create the National Land Commission. The functions of that Commission ought to be left to an Act of Parliament.

If you look at the functions stipulated under the proposed Constitution, you will find that they fly in the face of the principles and objectives given for devolution in the same draft. Therefore, these are the functions that require serious interrogation before this House as we pass a proper Act of Parliament that will regulate and give the functions of the National Land Commission as created under the proposed Constitution.

I support the amendment.

Mr. Ogindo: Mr. Speaker, Sir, I rise to support the amendment. The whole idea of a new Constitution has always been that we take services and decision-making closer to the people. We will be running against the grain if we do not embrace and support this. As you know, land is a very critical resource. At the national level, it is not very easy to know how well distributed this resource is. It is only by devolving this that the right amount of focus will be given to different parts and citizens of this country.

Mr. Speaker, Sir, with those reasons, I beg to support the amendment.

Mr. Njuguna: Mr. Speaker, Sir, I stand once again to oppose this amendment as presented. The Committee of Experts (CoE) had a very noble idea when it created this creature. It spelt out the functions of the same. It is, therefore, important that this creature in the draft should not be watered down.

I oppose this amendment.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Lesrima): Mr. Speaker, Sir, I support the proposed amendment. This Article creates a super Commissioner of Lands who will also encroach on other areas such as natural resources and registration of titles. It is also against the spirit of devolution which allows the counties to control their resources, including land.

Mr. Cheruyiot: Thank you, Mr. Speaker, Sir for allowing me to contribute on this amendment. I beg to support it on the ground that the amendment will ensure that the Government does not own land all over the country. The Government has no business owning property and having powers to grab people's property.

Secondly, as a Government, we do not have any intention to do an agrarian revolution or an industrialization revolution. So, what do we need land for?

I support.

Mr. Yakub: Ahsante sana, Bw. Spika. Ninasimama kuunga mkono marekebisho haya. Kwa sababu tunataka kuipitisha Katiba hii yetu mpya, tumekubali kuzipa nguvu wilaya na serikali za mitaa. Ninaona kuna haja kubwa ya kushughulikia masuala ya ardhi kwenye hizo wilaya. Itakuwa ni kinyume kwa sababu miaka 47 iliyopita ardhi ilikuwa ikitolewa kiholela. Hata jana kule kwetu eneo la Watamu, Malindi, kumetokea fujo kwa ajili ya masuala ya ardhi. Watu watatu wamefariki kwa sababu ofisi kuu ya Wizara ya Ardhi ilitoa ardhi.

Ningependa kuunga mkono pendekezo hili ili tuondoe ufisadi katika masuala ya ardhi wilayani.

The Assistant Minister for Co-operative Development and Marketing (Mrs. Kilimo): Thank you, Mr. Speaker, Sir. I rise to support this amendment. This is because development should be bottom up in this country. Power emanates from the people. The power to own land and decide comes from the people. If we decide for them about their land, what will they be doing? This is about knowledge versus wisdom. There is wisdom in the lands boards which consist of the elderly in this country. This applies to the the Arid and Semi-Arid Lands and those lands without title deeds. I can see that this National Lands Commission is out to grab land from people who do not have title deeds. I come from a constituency where only one-tenth of its people have title deeds. The rest is public land. We need to manage the land ourselves and decide how we want to use it and not the National Land Commission.

I support.

Mr. Speaker: Hon. Members, I conceive that we have captured the diversity of views here. We will proceed to Division. Ring the Division Bell.

(The Division Bell was rung)

Mr. Speaker: Order! Order, hon. Members! Close the doors and draw the bar.

(The Clerks-At-The Table counted the hon. Members present)

Hon. Members, we have 55 Members present, which is below the threshold. Therefore, the amendment to Article 67 is negatived.

(Proposed amendment to Article 67 negatived)

Yes, Member of Parliament for Chepalungu!

Article 68

Mr. Ruto: Mr. Speaker, Sir, I beg to move:-

THAT, pursuant to the provisions of section 33 (4) of the Constitution of Kenya Review Act, 2008, this House approves the draft constitution submitted by the Committee of Experts and laid on the table of the House on Tuesday 2nd March, 2010 subject to amendment of Article 68 by deleting paragraph (c) and substituting therefor the following new paragraph—

“(c) enact legislation to give effect to the provisions in this Constitution.”

[Mr. Speaker left the Chair]

*[The Temporary Deputy Speaker
(Prof. Kamar) took the Chair]*

Madam Temporary Deputy Speaker, Sir, I say so, because the listed activities under paragraph (c) include, for instance, prescribed minimum and maximum land holding acreages in respect of private land. I do not think we should put into the constitution this sort of thing. We have to be allowed to debate whether we now want to set a maximum and minimum land holding.

I want to refer you to the first amendment I tried to do to Article 43(a), where it says that if we set the minimum at 10 acres and the maximum at 20 acres, whatever variation that will arise thereof, will not be subject to any compensation of whatever nature. We did not pass that amendment, anyway. So, it means that we are setting a stage to take away people’s land free of charge, without caring about the anguish such action will cause them.

Madam Temporary Deputy Speaker, Sir, another mischief contained in this Article under sub-Article (3) says that it will regulate the recognition and protection of matrimonial property, and in particular the matrimonial home, during and on termination of the marriage. I do not know whether we have to put these things into the constitution. These are matters for Kadhi’s Courts, *baraza la wazee*, and for mutual agreements between the persons concerned. Why are we going so far? Let us delete these provisions. They are irrelevant. They are the issues that destroyed the Wako Draft, and they are the same ones that will destroy this Draft Constitution.

The Temporary Deputy Speaker (Prof. Kamar): Time up, Mr. Ruto! Who is seconding?

Mr. Linturi: Madam Temporary Deputy Speaker, Sir, I rise to second this amendment, the reason being that Kenya is, and shall continue to be, a capitalist state. We cannot limit people’s abilities. Today we are in a generation where most of us are buying land. We cannot allow a situation whereby if I want to buy as much land as possible, because I have something to do on that land, I cannot be allowed. If the problem is under-utilisation of land, we should be thinking of how we can introduce land taxes for purposes of making sure that idle land is used. Otherwise, this idea is retrogressive. In my view, it is something that should not be entertained in this Century.

Finally, let me say that investors who may want to invest in this country, and who may require more land than the maximum specified amount, may find it very difficult to do business in this country.

With those remarks, I beg to support.

(Question of the amendment proposed)

The Minister for Higher Education, Science and Technology (Dr. Kosgei): Madam Temporary Deputy Speaker, Sir, I rise to support the amendment.

My reason for supporting the amendment is that, among other things, Kenya is an agricultural country. Unless I am otherwise informed, we have no other way of earning external revenue for this country. There is no way you can have viable agriculture on 20 acres. You cannot put a limit on the maximum amount of land that one should own, especially if one can buy and use it. We should not use the constitution to “kill” the very survival of our economy. Today, there are large acreages that have tea and coffee, and we want to grow wheat and maize. Are we going to do that on 20 acres? Let us remove the idea that anybody who owns land in Kenya has stolen it, or wants to steal it. Land is property like any other property. We should not have different laws for property that is land, and another law for other property.

With those remarks, I beg to support.

Mr. K. Kilonzo: Madam Temporary Deputy Speaker, I rise to support this amendment. Clearly, this law is retrogressive. It is, in other words, introducing socialism to this country. So, on the issue of distribution of land, let the people be allowed to exercise their capacities and abilities as far as wealth creation is concerned.

Secondly, if we allow this Draft Constitution to go through the way it is, we might find ourselves in a situation similar to that of Zimbabwe, where land is being taken away from farmers for redistribution to other people.

With those remarks, I beg to support.

The Assistant Minister for Livestock Development (Mr. Duale): Madam Temporary Deputy Speaker, I stand to support the amendment.

I want to say again that the Chapter on Land and Environment is so contentious that the Membership of this House must take it very seriously. When you set minimum and maximum limits, you are basically setting the stage for a major redistribution of land in this country. The moral question is: Who are you redistributing this land for? Who do you have in mind? The 22 per cent land in the North Eastern Province belongs to the communities that live there. It is our business to know how to deal with it.

This Article gives the impression that some parts of this country need some redistribution of land. We want to say categorically that land is the number one resource, under this document.

With those remarks, I beg to support.

Mr. Magerer: Madam Temporary Deputy Speaker, I also stand to support the amendment. If we are going to set a stage where we can now look at maximum and minimum, in terms of property ownership, I am afraid that this House is very soon also going to determine the number of cows or camels that one can own.

So, without using many words, I want to support the amendment as proposed, so that this House can have a chance to legislate on how the issue of land ownership is going to be handled.

Ethuro: Madam Temporary Deputy Speaker, I also wish to support the amendment moved by Mr. Isaac Ruto.

You cannot put a ceiling on the maximum land holding, especially in pastoral areas. The only reason as to why we keep on fighting and killing each other is to try to access this animal known as “pasture and water” for the sake of our animals. We seem to be forgetting. During our Parliament Select Committee retreat, we removed all these provisions. The Committee of Experts (CoE) is setting us against each other. The wisdom

here is that if we do this, we will go through what we went through in the 2005 referendum.

I beg to support.

The Minister for Agriculture (Mr. Samoei): Thank you, Madam Temporary Deputy Speaker. I stand to support this amendment. We agreed to these amendments through consensus in Naivasha. The issue of land is a very serious one, because if we put these items in the constitution, we will make it impossible for any future Government to deal with the issue of land.

Madam Temporary Deputy Speaker, there is something fundamentally wrong with the chapter on land in this draft Constitution. Land being an emotive issue, we are actually setting the stage for the defeat of this draft Constitution in the referendum, if we do not eliminate some of the obvious flaws that we can see here. We had developed consensus in Naivasha to eliminate these things, and then take them to legislation. Speaking as the Minister for Agriculture, the biggest threat that agricultural land faces is land subdivision. We are actually going the wrong direction by trying to sub-divide land into small pieces, and trying to give everybody a piece. This is really retrogressive in the simplest words that can be used.

Madam Temporary Deputy Speaker, I support.

The Assistant Minister for Lands (Mr. Wakoli): I rise to support this amendment.

Hon. Members: On a point of order, Madam Temporary Deputy Speaker!

The Assistant Minister for Lands (Mr. Wakoli): I do not know whether I am an MP or not. What is all this hassling about?

The Assistant Minister for Livestock Development (Mr. Duale): On a point of order, Madam Temporary Deputy Speaker. There was a ruling several times in the House, and even this morning before you took the Chair, that Members of the Government should come and address you from this side of the House.

The Temporary Deputy Speaker (Prof. Kamar): Mr. Wakoli, could you go to the right side of the Chair?

(Loud consultations)

Hon. Members, the ruling did not say that he loses his chance to contribute. Mr. Wakoli, could you contribute from the right side of the House?

The Assistant Minister for Lands (Mr. Wakoli): Madam Temporary Deputy Speaker, I want to say that as the next Head of State I should talk from here.

Madam Temporary Deputy Speaker, I rise to support the amendment. The truth of the matter is that we cannot say how much land one should own, minimum or maximum. Secondly, land belongs to two people. When you marry a woman or women and you set up a home, the land belongs to all of you.

With those few words, I support.

The Temporary Deputy Speaker (Prof. Kamar): Hon. Members, I think we have received enough evidence and discussion on this. We have a number of clauses that relate to the same issue. May I, now put the question?

Hon. Members: No!

The Temporary Deputy Speaker (Prof. Kamar): Hon. Members, we will now go for Division. Ring the Division Bell.

(The Division Bell was rung)

The Temporary Deputy Speaker (Prof. Kamar): Order, hon. Members. The total number of hon. Members who should be voting now is 66 and this does not meet the threshold for voting. So, the amendment is negated.

(Proposed amendment to Article 67 negated)

Could you open the doors and unddraw the Bar?

(The doors were opened and the Bar undrawn)

Let us move to the next one.

The Temporary Deputy Speaker (Prof. Kamar): Proposed amendment to Article 68 was withdrawn by the owner of the Motion and so stands negated.

Article 69

Mr. Ruto: Madam Temporary Deputy Speaker, the most important I wanted was that of Article 68 and a number of others that were supposed to protect land. I think Article 68 was a mistake. Maybe, we can just say we reject this whole Constitution because it has refused to protect land.

I beg to withdraw my proposed amendment to Article 69.

The Temporary Deputy Speaker (Prof. Kamar): Hon. Ruto has withdrawn his proposed amendment to Article 69. Therefore, the amendment is negated.

(Proposed Amendment to Article 69 withdrawn)

Is hon. Ojode not here? His proposed amendment to Article 76 is dropped. Therefore, it is negated.

(Proposed Amendment to Article 69 dropped)

Article 79

Dr. Eseli: Madam Temporary Deputy Speaker, I beg to:-

THAT pursuant to the provisions of section 33(4) of the Constitution of Kenya Review Act, 2008, this House approves the draft Constitution submitted by the Committee of Experts and laid on the table of the House on Tuesday, 2nd March, 2010, subject to the deletion of Article 79 and substitution with the following new Article-

Ethics and Anti-Corruption Commission

79. (1) There is established the Ethics and Anti-Corruption Commission.

(2) The functions of the Commission are to—

(a) investigate any matter that, in the Commission's opinion, raises suspicion that conduct constituting corruption or economic crime, as provided for in an Act of Parliament, has occurred or is about to occur;

(b) receive and retain custody of declarations required by this Chapter;

(c) ensure compliance with and enforce the provisions of this Chapter; receive and investigate complaints about non-compliance with this Chapter and, if appropriate, to refer a complaint to the relevant authorities for action;

(d) institute and conduct civil proceedings for purposes of recovery, protection, confiscation and forfeiture of unlawfully acquired public property or unexplained assets;

(e) put in place measures aimed at the prevention of corruption, including issuing guidelines to State organs; and,

(f) take measures for the promotion of ethics and integrity in the public and private sector.

(3) Parliament shall provide for the structure of the Commission.

(4) The Commission shall not investigate any matter pending before a court or a judicial tribunal.

(5) The Commission shall establish and maintain a register in which the assets and liabilities of State officers are recorded and shall make the register available for public inspection.

Madam Temporary Deputy Speaker, I have put in a new Article 79 regarding Ethics and Anti Corruption Commission. I decided to bring this amendment because the lack of development in this country is purely premised on the high level of corruption in this country. It is unfortunate that as we went through drafting this Constitution, we seem to have relegated corruption to the back banner. So, in other words, we are enacting a new Constitution and laying firm ground for the perpetuation of corruption in the next dispensation.

Madam Temporary Deputy Speaker, I believe that is a very unfortunate state of affairs. If anybody was involved in making sure that corruption goes back on the back banner, I think this is the time they should stand and be counted and support the change we are trying to do here. Many at times, there have been moves to disband the Kenya Anti Corruption Commission (KACC) previously. For those reasons, I beg to move the amendment and ask Dr. Munyaka to second.

Dr. Munyaka: Madam Temporary Deputy Speaker, I beg to second the proposed amendment by Dr. Eseli.

Madam Temporary Deputy Speaker, many corrupt Kenyans are enjoying their fruits of corruption because the KACC has got no teeth to bite. We need to give KACC teeth to bite to be able to prosecute and recover stolen property.

With those few remarks, I beg to second.

(Question of the amendment proposed)

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang): Madam Temporary Deputy Speaker, I beg to oppose because corruption is not our culture.

First of all, it is a cancer we would want to get rid of. We cannot enshrine something like corruption in our Constitution as if it is some kind of beautiful thing that we aspire to even if we want to eradicate it. Let us deal with corruption the way we are dealing with it. We hope that one time it will end. But we cannot put this in our Constitution, in a country which we would live for another thousand years. People will wonder what corruption is doing in our Constitution. I oppose it for the same reason I opposed it before when it came here. We cannot have more than two institutions prosecuting in this country. It will be a mess for this country.

With those few remarks, I beg to oppose.

Mr. Shakeel: Madam Temporary Deputy Speaker, I rise to support this amendment. This is because the Kenya Anti-Corruption Commission (KACA) needs teeth in order to be effective. We have seen this even in the “Commission” that we set up to look into the cemetery case. They were not allowed to take evidence and prosecute. I would like to support this amendment so that the KACA is powerful. Corruption has been there since time immemorial and will be there today. Corruption was there during the time of Adam and Eve and it will be there at the end of life. So, we must put it into perspective and take action.

Thank you.

The Minister for Tourism (Mr. Balala): On a point of order, Madam Temporary Deputy Speaker. Is the hon. Member in order to invoke Adam and Eve in the issue of corruption?

Mr. Shakeel: Madam Temporary Deputy Speaker, Eve corrupted Adam.

Mrs. Odhiambo-Mabona: On a point of order, Madam Temporary Deputy Speaker. Is the hon. Member in order to be giving us sexist statements that Eve corrupted Adam when we actually know that Adam is the one who was corrupt by being a very weak person?

(Laughter)

The Temporary Deputy Speaker (Prof. Kamar): Order, hon. Members! Yes Mr. Muthama!

Mr. Muthama: Thank you, Madam Temporary Deputy Speaker, for this opportunity.

I rise to oppose this amendment. It is not the commissions that will eliminate corruption in this country. It is the obedience to the laws that are already in place that will do that. To say that we want to give more strength to the commission that is in place to bite, would not work. We need to trust the institutions which are in place, managed by Kenyans and give them the opportunity to deal with corruption that is actually “eating” this country.

I beg to oppose.

Mrs. Odhiambo-Mabona: Thank you, Madam Temporary Deputy Speaker. I beg to oppose.

The reason is that if you look at Article 79, you will find that it already establishes the commission and all these provisions that are being indicated here can be provided for under an Act of Parliament. We cannot put Acts of Parliament in the Constitution.

I beg to oppose.

The Minister for Foreign Affairs (Mr. Wetangula): Thank you, Madam Temporary Deputy Speaker. Ordinarily, I would not oppose Dr. Eseli, but today I have to. This is because we looked at the Draft very carefully in Naivasha. What the Hon. Member has drafted in his amendment is exactly what would go into a statute to deal with corruption issues.

Secondly, corruption is not a permanent feature of this country. We cannot enshrine it in the Constitution as if our great, great, great grandchildren will misbehave like we do today.

Madam Temporary Deputy Speaker, finally, I would like to tell Mr. Shakeel and Mr. Balala that Adam and Eve are the first recorded human beings in the issue of moral corruption.

Mr. C. Kilonzo: Madam Temporary Deputy Speaker---

(Loud consultations)

Madam Temporary Deputy Speaker, can you protect me from the only Member of the Opposition here?

The Temporary Deputy Speaker (Prof. Kamar): Hon. Members, can you consult quietly? Mr. C. Kilonzo, go ahead!

Mr. C. Kilonzo: Madam Temporary Deputy Speaker, I oppose.

There is a wrong perception in this country that for anything to work, it has to be put in the Constitution. This is very wrong. There are very many evils in this society.

One of the oldest trade—

A hon. Member: *Utatembea leo! Leo utatembea!*

Mr. C. Kilonzo: Exactly! It is prostitution. We are not forming any body and putting it in the Constitution to fight it.

Madam Temporary Deputy Speaker, the perception that we have to put everything in the Constitution has gone to the level that we want to put by-laws in the Constitution. We also want to put rules and regulations in the Constitution. That cannot work. Let statutes do their work. The smaller the Constitution the better.

How do countries like the United Kingdom operate and yet they do not have these little Constitutions.

I oppose.

The Temporary Deputy Speaker (Prof. Kamar): Your time is up! I think we have ventilated enough on that. We will now go into the Division. Ring the Division Bell!

(The Division Bell was rung)

The Temporary Deputy Speaker (Prof. Kamar): Hon. Members, please, take your seats! The total number of Members in the House is 75, which does not meet the threshold for voting. So, the amendment is negatived. Open the Bar!

(The proposed amendment to Article 79 negatived)

The Assistant Minister for Youth Affairs and Sports (Ms. Ndeti): On a point of order, Madam Temporary Deputy Speaker. I think we are wasting a lot of time on this because hon. Members seem to have made up their minds.

Mrs. Noor: On a point of order, Madam Temporary Deputy Speaker.

The Temporary Deputy Speaker (Prof. Kamar): You are out of order! Hon. Noor, I am on my feet. You do not have to correct Ms. Ndeti. I can only correct her from the Chair. I want to tell her that, that was done before. We have said we will go as per the Order Paper.

Mr. C. Kilonzo: On a point of order, Madam Temporary Deputy Speaker. You might have missed what Ms. Ndeti said. She said that Members of Parliament are wasting time, which is unparliamentary. She owes this House an apology and withdrawal of that remark. She has just come to spoil everything. This means that she is demeaning what we have been doing here since morning.

The Temporary Deputy Speaker (Prof. Kamar): Hon. Ndeti, was actually here. She has tried to catch my eye, which I noticed. But the words “wasting time” are unparliamentary, hon. Ndeti. Could you withdraw them and apologize?

The Assistant Minister for Youth Affairs and Sports (Ms. Ndeti): Madam Temporary Deputy Speaker, I did not say that the Members are wasting time.

The Temporary Deputy Speaker (Prof. Kamar): Could you withdraw the words “wasting time” and apologize?

The Assistant Minister for Youth Affairs and Sports (Ms. Ndeti): Madam Temporary Deputy Speaker, I apologize although I did not say so.

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang): Madam Temporary Deputy Speaker, this amendment is in the personal interest of all Members and one day, it might happen to you. I am saying so because the provision says that for you to offer yourself---

Mr. Mbadi: On a point of order, Madam Temporary Deputy Speaker. Is the Member in order to start arguing before he even moves the amendment?

The Temporary Deputy Speaker (Prof. Kamar): Hon. Mbadi, you are out of order! He has just made a statement.

The Minister for Immigration and Registration of Persons (Mr. Kajwang): Madam Temporary Deputy Speaker, hon. Mbadi is my neighbour at home, but he should learn the procedure. I am introducing the Motion. I am saying that the Motion I am about to move is of personal interest to you. This may one day happen to you.

Article 85

Madam Temporary Deputy Speaker, I beg to move the following amendment:-

THAT, pursuant to the provisions of section 33(4) of the Constitution of Kenya Review Act, 2008, this House approves the draft

Constitution submitted by the Committee of Experts and laid on the table of the House on Tuesday, 2nd March, 2010, subject to the amendment of paragraph (a) of Article 85 by deleting all the words appearing after the words “is not a member of a registered political party.”

The section says that for you to offer yourself as an independent candidate, you must have been out of a party membership for the previous three months before you can stand. The consequence is that if you are a rebel Member of whatever party, and you quarrel with your party leader three weeks to nominations and your party leader removes you from the party, you cannot stand as an independent candidate. That is what it means.

I ask hon. Duale to second the amendment.

The Assistant Minister for Livestock Development (Mr. Duale): Madam Temporary Deputy Speaker, I second this amendment with my heart.

Madam Temporary Deputy Speaker, we know the culture and corruption that goes on in political parties. We also know the role the big boys play in political parties. This Constitution must, first and foremost, bring sanity and freedom to the political parties in this country. That is why Kenyans asked for the provision of independent candidates. When you differ with the chairman or secretary-general of your political party on opinion or matters concerning your people and you are thrown out of the party, you have a recourse or safety net.

I second this amendment on the basis that you can leave your party or disagree with your political party leader and still be a Member of this House.

(Question of the amendment proposed)

Mr. Keynan: Madam Temporary Deputy Speaker, I rise to support this amendment.

Madam Temporary Deputy Speaker, in 1997, I stood for election on one of the great parties at that time and, indeed, won the nomination. Instead of being allowed to contest, simply because somebody considered that at that particular time, I was not eligible to be elected, I was denied the ticket. If this provision is enacted as it is right now, such opportunities will not be there. I want to remind most hon. Members here who are serving their first term in Parliament that if you disagree with the head of your political party--- In most cases, these political parties are mostly one-man centered, one-man driven and one-man oriented. The safety net you have is to make sure that the law allows you to walk in or out of the parties, so that if you disagree with the head of your political party at midnight, the following morning, you can join another party.

I beg to support.

The Assistant Minister for Foreign Affairs (Mr. Onyonka): Madam Temporary Deputy Speaker, I stand in this House to give a testimony. I am a living testimony of somebody who was being kicked out by his party. I was being kicked out of this party and if it was not for the wise ruling of the Speaker, I would most probably be at home right now.

I beg to support.

Dr. Nuh: Thank you Madam Temporary Deputy Speaker. I rise to support this amendment for the same reasons that have been advanced by my colleagues.

Madam Temporary Deputy Speaker, I would want to ask whether independence can have a limit. If you have not sought a limit of time within which one can contest within the political party he has registered, independence can even be for 24 hours.

I beg to support.

The Minister for Development of Northern Kenya and other Arid Lands (Mr. I.E. Mohammed): Madam Temporary Deputy Speaker, I rise to oppose.

As Africans, we have decided to take democracy. We cannot have our cake and eat it. We need party discipline. What we see in this Parliament, where there is no direction or leadership, is because of lack of party discipline.

Madam Temporary Deputy Speaker, I beg to oppose.

The Minister for Trade (Mr. Kimunya): Madam Temporary Deputy Speaker, I beg to support this amendment.

I think it is very important for Members to appreciate one fact; that the three months was valid when the dissolution of Parliament was an issue. But under the current proposed Draft, Parliament goes on until the next Parliament is elected. So, there is actually no time between one Parliament and the next one for Members even to make adjustments within their parties. Even as we are working on here, it is very clear that we are actually all independent.

I beg to support.

Ms. Karua: Madam Temporary Deputy Speaker, I think we have to appreciate as Members that we have to invest---

Mr. Ruto: On a point of order, Madam Temporary Deputy Speaker, is it in order for party leaders to contribute when we know that they are the greatest culprits of these problems?

Ms. Karua: Madam Temporary Deputy Speaker, I will ignore that and continue.

What I was saying is that Members have to realize that until we invest in political parties, so that we make democratic parties--- We join our parties---

ADJOURNMENT

The Temporary Deputy Speaker (Prof. Kamar): Time up! Ms. Karua will have one minute to finish her presentation when we come back in the afternoon.

Hon. Members, it is now time for the interruption of business. The House is, therefore, adjourned until this afternoon, at 2.30 p.m.

The House rose at 12.30 p.m.