

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 1st April, 2010

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

PAPER LAID

The following Paper was laid on the Table:-

The Parliamentary Service Commission Annual Report, 2009

(By Mr. Mwathi)

QUESTIONS BY PRIVATE NOTICE

DISAPPEARANCE OF 2009 KCSE ARABIC PAPER FOR GRIFFU/HONOURABLE KHALIF SCHOOLS

Mr. Keynan: Mr. Speaker, Sir, I beg to ask the Minister for Education the following Question by Private Notice.

(a) What were the circumstances surrounding the disappearance of the 2009 KCSE Arabic Paper 503/1 for the candidates of Griffu Boys' and Honourable Khalif Girls' Schools, and the subsequent awarding of arbitrary marks to the students?

(b) Why were all students from the said schools awarded a "D" grade in the paper?

(c) What measures will the Ministry take to correct the mistake and properly grade the affected students?

The Assistant Minister for Education (Mr. Mwatela): Mr. Speaker, Sir, I beg to reply.

(a) I am not able to explain the circumstances for the disappearance of the 2009 KCSE Arabic Paper 503/1 since the matter is still under investigation.

(b) The candidates were awarded grade "D" plain based on paper 2 only since paper 1 scripts were unavailable.

(c) I have instructed the Kenya National Examinations Council (KNEC) to withdraw the results for Paper 2, until the investigations are completed before the end of year 2010.

Mr. Keynan: Mr. Speaker, Sir, the Assistant Minister, first of all, admits, in his answer to part "a" that this issue is under investigation. Two, he has instructed KNEC to withdraw the results. It means, therefore, that he did not come here to answer the

Question. He should have requested for this Question to be deferred until the investigations are complete, because right now he is not giving any solution. What do we tell the young ones, because they are anxious? Let me say that this actually is one of the easiest examinable subjects by KNEC, yet all the students have been given marks arbitrarily!

Mr. Speaker, Sir, three weeks before the official national examination results were released, officials of KNEC, through the District Education Officer, called the respective schools inquiring as to whether these particular students sat for this particular paper. That, itself, is an indication that these marks were awarded arbitrarily. This again puts into question the integrity and credibility of KNEC. If it has happened to these particular two schools, then it means that it must have happened to many other millions of young Kenyans. So, can the Assistant Minister tell us how this issue is going to be handled?

Mr. Mwatela: Mr. Speaker, Sir that is why I have instructed the KNEC to withdraw the results of that paper. It is true that the marks awarded were based only on Paper 2, leaving out---

Mr. Affey: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to evade the Question? The Question is, what are the circumstances surrounding the disappearance of Paper 1, and the Assistant Minister is suggesting that the matter is under investigation. The House wants to know what he has investigated so far. What were the circumstances? He seems to be evading this very important Question---

Mr. Speaker: Order! You have made your point!

Mr. Assistant Minister, answer the question!

Mr. Mwatela: Mr. Speaker, Sir, the circumstances surrounding the disappearance of this particular paper can only be established after the investigation. We are investigating to actually find out the circumstances that led to the disappearance.

Mr. Speaker: Order, Mr. Assistant Minister! How long is it going to take before the investigations are concluded?

Mr. Mwatela: We should have an answer and a complete result before the end of this month, which has begun today.

Mr. Speaker: Hon. Member for Wajir West, in view of that indication, do you still want to pursue this matter, or should we have it deferred so that we use our time beneficially?

Hon. Members: Defer!

Mr. Keynan: Mr. Speaker, Sir, taking into account the sensitivity of this issue, because it touches on the lives of very young Kenyans, I would not mind giving the Ministry more time, so that they can come up with an appropriate answer on when that is going to be. One thing is that under the examination rules, students are entitled to re-marking. But in this particular circumstance, the papers are not there. Actually, I would have no problem in giving the Ministry the time they have requested as long as that will give them time to come up with an appropriate answer.

Mr. Speaker: Mr. Assistant Minister, I will order this matter to be deferred to appear on the Order Paper again three weeks hereafter. Please, complete your investigations within that time!

Proceed, the hon. Member for North Imenti!

ESCALATION OF COST OF BUILDING CLASSROOMS
UNDER ECONOMIC STIMULUS PACKAGE

Mr. Ruteere: Mr. Speaker, Sir, I beg to ask the Minister for Education the following Question by Private Notice.

(a) Could the Minister confirm that headteachers at “Centres of Excellence” under the Economic Stimulus Package attended a meeting at the Kenya Institute of Education (KIE) on 22 March, 2010 where they were instructed to escalate the cost of building classrooms from an average cost of Ksh450, 000 - Ksh500, 000 (for a standard classroom) to three times that price and spend Ksh1,500,000 per classroom?

(b) What was the justification for the directive?

(c) Could the Minister take over the whole construction work and hand over the projects to the BOGs?

The Assistant Minister for Education (Mr. Mwatela): Mr. Speaker, Sir, first, I want to apologize for not giving a written answer to the hon. Member.

Mr. Speaker, Sir, I beg to reply.

(a) I have not given any directive to escalate the cost of building a classroom from average cost of Ksh450,000 to Ksh500,000 (for a standard classroom) to three times that price and to spend Ksh1,500,000 per classroom;

(b) Because of my answer to part “a”, part “b” does not warrant being addressed.

(c) The Ministry has made arrangements together with the Ministry of Finance---

(Loud consultations)

Mr. Speaker, Sir, may I be heard?

Mr. Speaker: Order, hon. Members! Will you lower the level of your consultations so that we can hear the Assistant Minister for Education?

Proceed, Mr. Assistant Minister!

The Assistant Minister for Education (Mr. Mwatela): Mr. Speaker, Sir, this is very important for hon. Members to know. The Ministry, Office of the Deputy Prime Minister and Ministry of Finance, and the CDF Board have made arrangements for the implementation of the projects. The construction of the Centres of Excellence will be carried through labour contracts under the management of Boards of Governors (BOGs) in existing schools. Where there are no existing schools, the District Education Boards (DEBs) will take charge. In any event, the cost should not exceed Kshs500,000.

Mr. Ruteere: Mr. Speaker, Sir, the Assistant Minister has not told us why he had called a meeting at the KIE on 22nd March, 2010. It was in that meeting where it was clearly said that the cost of a classroom should be Kshs1.5 million. Having constructed classrooms using CDF funds, it would be tantamount to stealing from parents and the country if one classroom will cost Kshs1.5 million. Why is it that all you are doing under the Economic Stimulus Package is shoddy work and much hidden deals that you are not explaining? The men and women you called are the ones who said that you should escalate the cost. The DEOs and principals were there. Why did you ask them to escalate the costs?

Mr. Mwatela: Mr. Speaker, Sir, my answer was very clear. I have not issued such instructions. The Ministry of Education had consultations with the Office of the

Deputy Prime Minister and the Ministry of Finance and the National CDF. It was agreed that these projects will be carried out under the management of BOGs in the cases of existing schools. In cases where these projects are totally new, they will be carried out under management of the DEB. They should be labour contracts. The cost of constructing a single classroom should not exceed Kshs0.5 million.

Eng. Gumbo: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to imply that CDF Committees attend Stimulus Package on Education meetings when the truth is that they do not attend? He should give us examples of constituencies where they attend.

Mr. Mwatela: Mr. Speaker, Sir, I have referred to the CDF Board and not to the CDF Committees.

Mr. Speaker: Order, Mr. Assistant Minister! In that case, it is done.

Anybody else interested?

Mr. Waititu: Mr. Speaker, Sir, the normal cost of building a classroom in Nairobi is Kshs700,000. The Assistant Minister has just given a directive that building of classrooms should not exceed Kshs500,000. In Nairobi, especially in areas where there is black cotton soil which need to be scooped, Kshs500,000 will not be enough. Could he leave the cost of construction of a classroom to quantity surveyors? It is them who are supposed to quantify the cost of constructing classrooms.

Mr. Mwatela: Mr. Speaker, Sir, consultations were done between the Office of the Deputy Prime Minister and Ministry of Finance and the Ministry of Public Works. So, they must have taken into account all concerns raised by hon. Member.

Mr. Sambu: Mr. Speaker, Sir, these are projects that will be tendered for. What is the rationale of fixing the maximum price of Kshs500,000?

Mr. Mwatela: Mr. Speaker, Sir, I agree these projects will be tendered for. The rationale behind us fixing the cost to a maximum price of Kshs0.5 million is to protect people's money. As you have seen, the hon. Member wants to know why a classroom should cost Kshs1.5 million. We are only making a ceiling for the highest amount it should cost. That is just being reasonable.

Mr. Mwathi: Thank you, Mr. Speaker, Sir. As a follow up to the question by hon. Waititu, and as an authority in the field of construction, could the Assistant Minister confirm that you undertook a research on the building cost per area? I know in situations of black cotton soil, there is nothing like Kshs500,000 being enough to build a classroom. That would leave it as an empty shell. Did you conduct any research so as to come up with a figure of Kshs500,000?

Mr. Mwatela: Mr. Deputy Speaker, Sir, in all fairness, that question should be directed to the Ministry of Public Works because it was represented in our consultations.

Mr. Linturi: On a point of order, Mr. Speaker, Sir. The Assistant Minister has clearly indicated that no classroom should be built with an amount of money in excess of Kshs500,000. What hon. Mwathi has raised is very important because depending on the land or the kind of topography where the classroom is supposed to be built, the structure becomes very important. Again, there was an allegation that a meeting took place at KIE where directions were given that each classroom should be done at a cost of Kshs1.5 million. Many principals attended that meeting. So, it is true. Is he in order to avoid answering a question concerning a meeting that took place, where these directions were

given? He may not have given the directions, but he should confirm to this House whether a meeting took place or not.

Mr. Speaker: Order! You have already made your point!

Mr. Mwatela: Mr. Speaker, Sir, I want to restate that I did not give that directive. Even if a meeting took place, there was no directive from the Ministry.

Mr. C. Kilonzo: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to avoid answering the question? The question being asked is not whether he gave directions, but whether he is aware that a meeting took place where directions were given. Is it in order for him to avoid answering the question?

Mr. Speaker: Mr. Assistant Minister, are you aware that a meeting took place in which directions were given?

Mr. Mwatela: Mr. Speaker, Sir, I am not aware of that directive.

Mr. Speaker: Member for North Imenti!

(Mr. Mwachhi stood up in his place)

Order, Member for Limuru!

Mr. Ruteere: Thank you, Mr. Speaker, Sir. As you can see, the Assistant Minister is avoiding the instructions they gave. If the meeting took place at the Kenya Institute of Education (KIE) with the principals of Centres of Excellence and the District Education Officers, what exactly did they tell them about those Centres of Excellence?

Mr. Mwatela: Mr. Speaker, Sir, there were a range of issues that were discussed at that meeting which I do not think it is possible to enumerate unless it is a fresh Question where you bring everything that was discussed at that particular meeting. But there was no directive as to the cost of the meeting.

Mr. Bahari: On a point of order, Mr. Speaker, Sir. The Government has had problems in the implementation of projects. There is one very clear case of this ceiling of Kshs500,000. The Ministry of Public Works was not involved in this. The Office of the Deputy Prime Minister and Ministry of Finance and the Constituencies Development Fund Board are not competent to issue that kind of directive without involving the Ministry of Public Works. Will I be in order to ask the Assistant Minister to go and have another meeting with the Ministry of Public Works so that he can report to this House the ceiling, otherwise the projects are going to stall?

Mr. Speaker: Order, Order! I am certain that I have not followed that to be an expression of an opinion on what the Assistant Minister should have done or should have been guided by, but nothing disorderly from the answer that the Assistant Minister gave immediately preceding your rising on a point of order. I rule that to be out of order.

Dr. Eseli: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to continuously mislead the House that he is not aware when the Bills of Quantities (BQs) are out showing that even a multi-purpose hall is supposed to cost Kshs30 million? Is he in order to continue misleading the House? Could he lay the minutes of that meeting on the Table?

Mr. Mwatela: Mr. Speaker, Sir, the Question correctly refers to the cost of construction of a classroom and a hall. The BQs, so referred to, I am not sure whether they are from the Ministry of Education. I am talking for the Ministry of Education and I am the Assistant Minister in the Ministry of Education.

Mr. Mwathi: On a point of order, Mr. Speaker, Sir. I have asked the Assistant Minister previously how he came up with that figure and whether he did a research and he cleverly avoided this Question. Is he in order to come and tell the House that he has given a directive of a maximum of Kshs500,000 for the construction of a classroom without any basis?

Mr. Mwatela: This is not without a basis. There was a meeting and the Ministry of Public Works was present. It is not without basis.

(Several hon. Members stood in their places)

Mr. Speaker: Order, hon. Members! We have spent over 15 minutes on this Question. All matters raised by hon. Members in this House are serious. There is nothing exclusive about the one that you raised that is very serious beyond what Members have raised. Hon. Members, this matter will have to rest there. Hon. Members have other avenues of pursuing this matter further including through the Departmental Committee on Education, Research and Technology. Please, take advantage of those avenues.

HIKING OF SUBSCRIPTION CHARGES BY
MULTI-CHOICE (K) LIMITED

Dr. Khalwale: Mr. Speaker, Sir, I beg to ask the Minister for Information and Communications the following Question by Private Notice.

(a) Is the Minister aware that Multichoice (K) Ltd has notified all its customers that effective April 1, 2010, charges for its various services would increase by US\$3 each despite the current high charges of up to US\$110 (about Ksh8,000), and yet in South Africa, the country of origin, the company charges a mean rate of SA Rands 5 (about Ksh500)?

(b) Could the Minister state what investment the company has made in Kenya to warrant such huge disparity in subscriptions considering that the transmissions are from the same satellites? Could he also explain why the Communications Commission of Kenya (CCK), as the regulator, has allowed the company to use its monopoly in satellite TV transmission to charge Kenyans so exorbitantly?

(c) Could CCK compel the company to review the exploitative charges and levy similar charges in Kenya as South Africa?

The Minister for Information and Communications (Mr. Poghio): Mr. Speaker, Sir, I want to seek indulgence of the Chair and that of the hon. Questioner and the House that I would rather have this Question deferred and give a comprehensive answer next week, if that is possible.

Mr. Speaker: Dr. Khalwale, what is your reaction to this Minister's request for more time?

Dr. Khalwale: Mr. Speaker, Sir, we can give him that. But since these new charges apply with effect from today, could he direct that they suspend them until the Government has given a directive?

Mr. Speaker: Hon. Minister, are you able to accommodate that?

The Minister for Information and Communications (Mr. Poghio): Mr. Speaker, Sir, since the subject matter and the comprehensive answer will include

information about that, I do not think at this point I can commit myself to give that kind of an order.

Mr. Speaker: Fair enough. I order that this Question appears on the Order Paper on Tuesday next week at 2.30 p.m. Mr. Minister, you must answer it without fail. If you are not there, you ensure that your Assistant Minister is there to answer it.

(Question deferred)

FATAL STABBING OF NAKINI LEMOYOG/LMAINO
LEKOLOI BY ADMINISTRATION POLICE

Mr. Letimalo: Mr. Speaker, Sir, I beg to ask the Minister of State for Provincial Administration and Internal Security the following Question by Private Notice.

(a) Could the Minister tell the House the circumstances under which Administration Police officers based at Wamba stabbed to death one Nakini Lemoyog and fatally wounded Lmaino Lekoloi at Kirish area of Uaso Division along Archer's Post-Merile Road on 24th March, 2010?

(b) What prompted the officers to force the two herds boys to take a poisonous chemical and what chemical was it?

(c) What disciplinary action has the Minister taken against the concerned officers and when will the two sheep confiscated by the officers from the boys be returned to the owners?

Mr. Speaker: Minister for Provincial Administration and Internal Security is not here!

Mr. Olago: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order, hon. Member for Kisumu Town West! The Minister of State, Provincial Administration and Internal Security not there! Hon. Members, the Chair is aware that both the Minister and the Assistant have had to travel to an area in this country where there was trouble and a number of citizens were actually killed. The Minister had thought he would be here timeously to attend to business but he is unable to. So, in those circumstances, I will defer this Question to Tuesday next week.

(Question deferred)

Hon. Members, are there any statements ready for delivery?
Any requests for statements? What is it Mr. Mututho?

POINT OF ORDER

CAUSE OF DEATH OF FISH IN LAKE NAIVASHA

Mr. Mututho: Mr. Speaker, Sir, I rose four weeks ago and requested for a Ministerial Statement concerning the death of fish in Lake Naivasha. That Statement has not been forthcoming against your own directive that it should be delivered within one week.

Mr. Speaker: Minister for Fisheries Development, what is the fate of this Statement that was sought three weeks ago? Hon. Members, will the Minister nearest to the Ministry of Fisheries Development, please, give a commitment?

The Minister for Forestry and Wildlife (Dr. Wekesa): Mr. Speaker, Sir, I undertake responsibility to inform the Minister concerned.

The Assistant Minister for Fisheries Development (Mr. A.C. Mohamed): Thank you, Mr. Speaker, Sir. All of us have responsibilities. As far as this matter is concerned, it fall under the Ministry of Environment and Mineral Resources and we have left it there.

Mr. K. Kilonzo: On a point of order, Mr. Speaker, Sir. I am actually at a loss. I thought you had asked for the Minister and in his absence, a Minister serving in a Ministry nearest to the Ministry of Fisheries Development. How can the Assistant Minister escape taking responsibility when it comes to such a Question? Is the Assistant Minister not acting improperly in the House?

Mr. Speaker: Hon. A.C. Mohamed it is just that you were not reasonably diligent at the time this matter was canvassed which is understandable and excusable. So, we will proceed.

(Laughter)

Order, hon. Members! Before we move to the next Order, I wish to make the following Communication.

COMMUNICATION FROM THE CHAIR

RESCISSION OF HOUSE DECISION ON EXTENSION OF SITTING TIME

Mr. Speaker: Hon. Members, as you may notice, we have a Supplementary Order Paper which contains in Order No. 8 a Motion to rescind the decision of the House made yesterday in respect of extending the sitting time of the House.

Pursuant to provisions of Standing Order No. 49, I have, after careful consideration allowed this Motion to be moved notwithstanding yesterday's resolution. In allowing this Motion, I have taken into account the fact that the House is obliged both by Section 33(4) of the Constitution of Kenya Review Act, 2008 and Section 47A(2)(c) of the Constitution to conclude debate on all proposed amendments of the Draft Constitution and any proposed amendments thereto within 30 days of the introduction in the National Assembly of the Draft Constitution. This period ends today at midnight.

As an organ of the Constitutional Review Process and as a law making institution, it is our responsibility to comply with the provisions of the law and discharge the responsibility given to us. It is on this strength that I now allow the next Order to be moved.

Mr. Ruto: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: What is it, the Member for Chepalungu?

Mr. Ruto: Mr. Speaker, Sir---

Mr. Speaker: Order, Mr. Ruto! Order, for a minute!

Hon. Members, there is a Supplementary Order Paper which should be circulated.

Hon. Members: We do not have it!

Ms. Karua: I have one.

Mr. Speaker: At least, the Member for Gichugu has one.

(Loud consultations)

Order, hon. Members! I am advised that this Supplementary Order Paper is fairly bulky and its preparation started at about 1.30 p.m. I have directed that whatever copies are available be brought in immediately. So, hon. Members, you will bear with us because we are doing the best we can to expedite the printing of that Supplementary Order Paper. As I speak, there are a number which have just arrived. Hon. Members, please be patient.

In the meantime, let us hear the Member for Chepalungu.

Mr. Ruto: Mr. Speaker, Sir, this being the last day in which we are going to debate this Motion, there are some gray areas with regard to procedure. I believe that this is the opportune time for you to give us further guidance.

Mr. Speaker: Order, the Member for Chepalungu! As a matter of fact, you have drawn my attention to that matter and the opportune time is not now, but it will come pretty soon and you will be prompted so that you raise that point of order.

Mr. Ruto: Thank you, Mr. Speaker, Sir.

PROCEDURAL MOTION

RESCISSION OF HOUSE DECISION ON EXTENSION OF SITTING TIME

Mr. Midiwo: Mr. Speaker, Sir, I beg to move the following Procedural Motion:-

THAT, pursuant to the provisions of Standing Order No.49, this House rescinds its decision made on 31st March, 2010, afternoon sitting on the extension of the sitting of the House from 6.30 p.m. to 11.50 p.m. on Thursday, 1st April, 2010 and resolve that the sitting time of the House be extended until the business as set out in the Order Paper is concluded.

Mr. Speaker, Sir, I know there are hon. Members who were opposed to this yesterday. However, the truth is that we are cornered. We have run out of time. We could not possibly finish the amendments we have by 6.30 p.m. this evening. So, we are just pleading with hon. Members that the time line set out in the review process was passed by this Parliament. So, I think those are our own rules and I beseech hon. Members that in order for it to be neat for us to exit out of this process, we need to see this process up to its conclusion.

I beg to move and ask Mr. Thuo to second.

Mr. Thuo: Thank you, Mr. Speaker, Sir. In seconding this Motion, I wish, in addition to what Mr. Midiwo has said, to remind hon. Members that even if we wanted to wind up by 6.30 p.m. having presented the Order Paper with all the proposed amendments, unless hon. Members willfully withdraw all of them, even the mere fact of putting them through Guillotine will not allow us to finish by 6.30 p.m. Since we must not act in breach of our own rules, I request hon. Members that we give ourselves extra

time. I know that even if we go through every proposed amendment through Guillotine we still cannot make it by 11.00 p.m., but it gives us time to talk to our colleagues so that some of the amendments get withdrawn eventually. This will also allow us to move with speed.

Mr. Speaker: Order, hon. Members! Before I propose the Question, please, note that even the Guillotine procedure that many hon. Members have talked about entails each of the amendments actually being moved and proceeding to a Division. There is no shortcut to that. Whatever you do, you will not avoid that procedure.

(Question proposed)

The Minister for Nairobi Metropolitan Development (Mr. Githae): Mr. Speaker, Sir, I stand to oppose the Motion.

We have been here since yesterday. What has emerged in this House is that hon. Members are not prepared to pass any single amendment on the basis that out there, *wananchi* are saying that if we make any amendments, that will not be the people's constitution, but rather the constitution of Members of Parliament. Therefore, the way I am seeing it, even if we extend this debate to tomorrow, we will not achieve anything.

Mr. Speaker: Order, Mr. Githae! You can only do what is constitutional. The Constitution does not allow you to extend to even tomorrow. Speak as a matter of fact.

The Minister for Nairobi Metropolitan Development (Mr. Githae): Mr. Speaker, Sir, the fear is that if we make any amendments, when this Draft Constitution goes for referendum, the people will say: "Because Members of Parliament mutilated this Draft Constitution---" In fact, they are saying that we "murdered" this Draft Constitution. Others are saying that we are going to "rape" the Draft Constitution. Therefore, people are reluctant to make amendments. We do not want to---

Mr. Thuo: On a point of order, Mr. Speaker, Sir. Would I be in order to ask why my colleague is debating the issue of amendments when we have made it clear that the purpose of seeking an extension of time is not to amend this Draft Constitution? Even if we apply the Guillotine procedure, the process of moving the amendments, having them seconded and ringing the Division Bell for four minutes, also requires time. Given the number of amendments that we have here, we need that time not only to dispose of them, but to also lobby our colleagues to do precisely what hon. Githae is saying, by withdrawing their amendments and leaving the Proposed Constitution intact.

The Assistant Minister, Ministry of State for Defence (Mr. Musila): On a point of order, Mr. Speaker, Sir. I just want the Chair to caution hon. Githae because he purports to be speaking on behalf of all Members of Parliament by saying that the people out there are saying what he has alleged. I want to confirm to him that the people of Mwingi South are not saying so. If he is talking about the people he represents, he should say so, and not say that it is the people we are all representing.

The Minister for Nairobi Metropolitan Development (Mr. Githae): Mr. Speaker, Sir, I listened to *Musyi* FM yesterday, and that is exactly the discussion that was on air.

(Laughter)

Mr. Speaker: Order! Order, hon. Githae! You have one minute to conclude!

Mr. Githae, whatever “*Musyi*” is, obviously, it does not represent all Kenyans let alone all Members of Parliament.

The Minister for Nairobi Metropolitan Development (Mr. Githae): Mr. Speaker, Sir, for the information of this House, “*Musyi*” is a Kamba vernacular radio station.

On the issue at hand, there is a solution, which is that we pass this Motion without any amendments. That way, it will have taken care of all the amendments. What we are doing is an exercise in futility. We are just going through the Motions for the amendments.

Mr. Olago: On a point of order, Mr. Speaker, Sir. Without appearing to be confusing the debate, having listened to your ruling and advice, would I be in order to kindly ask you to clarify to the House what would happen to the amendments that will not have been debated by 6.30 p.m., in the event that the Motion is defeated?

Mr. Speaker: Hon. Olago, you would have expressed that concern in your contribution. The Chair is never speculative.

Ms. Karua: Mr. Speaker, Sir, I rise to support the Motion. We passed the Constitution of Kenya Review Act, 2008. We gave ourselves a deadline. That deadline is today. We must lead the nation in showing that we can respect the rule of law. By law, we have to dispose of the Motion. It is necessary that we extend our sitting time to give enough time, so that even if we will have to guillotine, there can be time to dispose of the matter at hand.

I would urge hon. Members to agree to this Motion, so that we can do our statutory duty.

I beg to support.

The Minister for Information and Communications (Mr. Poghio): Mr. Speaker, Sir, I stand to support the Motion.

It is a matter of obligation that we conclude this matter today. In case we can accelerate and expedite the matter, we might even finish long before 11.00 p.m. but to be on the safe side, it is better that we rescind what we resolved yesterday and put on new time that is open. So, I would like to confirm to hon. Members that it is very important that we come to this conclusion.

I beg to support.

Mr. Nyambati: Mr. Speaker, Sir, I thank you for giving me this time to contribute. I stand to support the Motion.

First of all, I am saddened that this House is not passing any amendments. It is necessary for us to pass a few amendments but, as it is now, we seem like we are decided not to pass any amendments. In any case, I have some amendments that I have to propose here. I want to be heard; so that even if this House refuses to pass them, I will go on record that I presented the amendments to this House.

So, it is necessary that we all go through these amendments. Even as we refuse to pass them, we want to hear and debate them. Let Kenyans understand that this is a serious House, and that we have amendments that we must put on the Floor.

The Assistant Minister, Ministry of State for Special Programmes (Mr. M.M. Ali): Mr. Speaker, Sir, I stand to strongly support this Motion.

In supporting the Motion, I want to say that the process we are going through is very important. Kenyans want to know what debate we are undertaking in this House. It is going to be very informative. From what is going on in this House, when we go out to the referendum, we are likely to face a very stiff challenge.

Mr. Speaker, Sir, it is not true that Kenyans are saying that we, Members of Parliament, are mutilating the Proposed Constitution. Many Kenyans have not read this document. They are relying on the information that we, Members of Parliament, will give to them. Many of the amendments that have been proposed here are very important. Even if these amendments are defeated, it is important for them to go on record, so that people will know, in future, who said what in Parliament. It is, therefore, very important.

I beg to support.

Dr. Khalwale: Mr. Speaker, Sir, I would like us to remind ourselves that the Parliamentary Select Committee on Constitutional Review has already bound us by sitting and making recommendations, which have been acted upon by the Committee of Experts (CoE). All the amendments that have been proposed here are the same ones we listened to, from hon. Members, when we were at the Kenya Institute of Administration (KIA), at Kabete.

You have seen from yesterday that we have not made any fresh decisions other than the technical arrangement that you have seen in the House to make us move faster. I know that some members of the civil society have kept vigil overnight, praying that this document of theirs, ours and everybody should not---

(Loud consultations)

Yes, they have kept vigil that this document may not be altered in any way. We cannot afford to increase that anxiety by even one minute. We should not adjourn the House. We should conclude the exercise at 6.30 p.m. There should be no fear. If by the time of putting the question, we have not gone through some of the proposed amendments, there is nothing wrong with that. It has happened before. They just die normally; they lapse and then you put the question.

Mr. Speaker, Sir, I oppose.

Ms. Odhiambo: Mr. Speaker, Sir, I wish to support the Motion. We owe it to Kenyans to do our duty, and do it well. Even though yesterday we did not pass this Motion, I know that a wise man and woman is a person who can change their mind. Whether we pass what we have before us now by Guillotine or through discussions requires more time than we have up to 6.30 p.m. We will create a crisis if we do not do that. I, therefore, support.

Mr. Speaker: Order, hon. Members! We have heard as many views as are reflective of the House. I will put the question.

(Question put and agreed to)

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 1.4.2010)*

The Assistant Minister for Roads (Dr. Machage): On a point of order, Mr. Deputy Speaker, Sir.

Mr. Speaker: Order, hon. Members, we are now at Order No.9! What is it Dr. Machage?

The Assistant Minister for Roads (Dr. Machage): Mr. Speaker, Sir, with all due respect to the House, we started looking at this document from the first page. We have also very important articles that deserve amendment, and that are of interest to this country, and more so in the chapter on devolution, which are in the last pages of this document. Would I be in order to request that, to be fair to this document, and to the other hon. Members, who may have found themselves disadvantaged by having their Motions on the last page, we start from the last page and move backwards?

(Laughter)

Mr. Speaker: Order, hon. Members! The Member for Kuria has risen on a point of order which is valid. But, notwithstanding the validity of it, in the sense that it has legitimacy in it, it would be completely unprecedented and it would upset everything that has been done by this House since Independence. We are not about to be that adventurous. Hold your horse, when we get to that chapter, the Chair will exercise its discretion, as it has always done. If you will have any useful input you may very well be accorded time to make that input.

(Resumption of Debate on Article 85)

Let us proceed.

Ms. Karua: Thank you, Mr. Speaker, Sir, I rise to oppose the amendment to Article 85, the reason being that it is incumbent upon us as Members of Parliament to invest in making our political parties democratic. Why the party leadership can rig in favour of a favourite candidate, or be oppressive, is because we have not institutionalized decision-making in a political party. Let each one of us ensure that their political party makes decisions as an institution, and not in a personalized way. We should know that a country is as good as the political party that forms Government. If we do not grow our parties, we shall never grow democracy in Kenya. I beg to oppose.

Mr. K. Kilonzo: Thank you, Mr. Speaker, Sir. I rise to support this amendment. This is an amendment which will cure the tyranny of political party leaders. What has

been happening in Kenya today is that popular candidates win nominations, and because they are not on good terms with the political leader of the party, they are rigged out. This is the only avenue which will give a candidate, who is popular with the *wananchi* an opportunity to stand as an independent candidate. I support.

The Assistant Minister for Lands (Mr. Bifwoli): Thank you, Mr. Speaker, Sir, for giving me this opportunity. I support this amendment, because political leaders are becoming bullies to people who are popular, and who can speak their minds. It is time that people are given the chance to be positively critical, so that when you criticize your leader, you have the freedom to do so and he does not hold you back at the last minute. This is because if you are critical you are viewed as a threat. This is the time for people who are honest and independent-minded to be given the opportunity, so that when they are locked out they can go up to the ballot box and be elected by Kenyans.

The Minister for Tourism (Mr. Balala): Mr. Speaker, Sir, I stand here to support this amendment. We are yet to evolve democratic political parties. So far, what we have are tribal chiefs, and parties which belong to tribes; that is the reality. We need to have democracy within political parties and in regions. We should not allow regions to be under the whims of individuals in political parties.

The Minister for Information and Communications (Mr. Poghisio): On a point of order, Mr. Speaker, Sir. I am a chief of a party. Is the hon. Member in order to mislead the House that the leaders of political parties are tribal chiefs? What tribal chief am I?

Hon. Members: Pokot!

Mr. Speaker: Order, hon. Members! Member for Mvita, have you concluded? Order, Member for Mutito! The Member for Mvita has to respond to a point of order!

The Minister for Tourism (Mr. Balala): Mr. Speaker, Sir, I mentioned very clearly that some of the political parties have been turned into tribal parties. This is what we want to discourage.

I am sorry, hon. Poghisio, I thought he was the chief of the Pokot. But nevertheless it is important to realise---

Mr. K. Kilonzo: On a point of order, Mr. Speaker, Sir. Is it in order for hon. Poghisio to say that he is a political chief of a political party, yet we know that he is the *de jure* leader, there is the *de facto* leader from the community with many members in that party.

(Laughter)

Mr. Speaker: Order! Member for Mvita, please, proceed!

The Minister for Tourism (Mr. Balala): Mr. Speaker, Sir, that is why I support this amendment.

Mr. Speaker: Order, your time is up! Member for Kisumu Town West.

Mr. Olago: Mr. Speaker, Sir, I rise to support the proposed amendment. But my reasons are different from the ones of hon. Members. It has nothing to do with tribal chiefs or leaders of parties.

Mr. Speaker, Sir, this morning Members contributed on this Motion and many of their contributions touched on party leaders. Members forgot that on the ground, there are party apparatchiks; the small leaders on the ground. They have also their own interest. So, it is not just party leaders, but it is party leaders to the apparatchiks on the ground.

So, on that basis, I support because that is the party that we need.

The Minister for Agriculture (Mr. Samoei): Mr. Speaker, Sir, I rise to support this amendment.

It is important that in the process of democratization that we allow as much democratic space as it is practically possible. You are aware that there are still parties who are still living in the past. They are still operating loyalty metres to try and measure who is loyal and who is not. We need to stop that kind of virus that actually leads to dictatorship in political parties. It is important that parties realise the importance of every member. We must eliminate from political parties any thought that any single person can make decisions on behalf of the party.

With those few remarks, I beg to support.

The Assistant Minister for Tourism (Ms. Mbarire): Mr. Speaker, Sir, I rise to support this Motion.

Mr. Speaker, Sir, political party tyranny has been there with us since the one party rule. It is about time we get Kenyans opportunity to run whether or not, they are popular with a leader in a political party. The biggest victims of this tyranny are youth and women who do not have money to give to political parties.

With those few remarks, I beg to support!

The Minister of State for National Heritage (Mr. ole Ntimama): Mr. Speaker, Sir, I wish to oppose this amendment.

Mr. Speaker, Sir, if we were to build democracy in this country, the basis of building democracy in this country is through political parties. If you want to disintegrate democracy, you go ahead and have 100 independent people with different minds, opinions and policies. That way, democracy would have gone down the drain.

With those few remarks, I beg to oppose.

Mr. Joho: Mr. Speaker, Sir, I stand here to support this amendment.

Mr. Speaker, Sir, this amendment does not only give opportunity to electorate to choose leaders of their choice, but it allows fair representation and actually builds on democracy.

I, therefore, beg to support.

Mr. Njuguna: Mr. Speaker, Sir, I rise to energetically support the amendment. I support the amendment because it will guarantee democratization in our national politics.

I beg to support.

Mr. Okemo: Mr. Speaker, Sir, I rise to support this amendment because when you talk about democracy and you are talking about promoting democracy, there are cases where people maybe held hostage to parties that they do not want to belong to. They must have the freedom to move out if they so wish. I, therefore, feel that the only way we can increase democracy, particularly where there is no internal democracy within political parties, is to allow people to have the freedom to move out and be where they want to be.

Ms. Shakila Abdalla: Mr. Speaker, Sir, I can see the mood of the House is that they want to really *pitisha* this amendment. Can we do so?

(Laughter)

Mr. Speaker: Order, hon. Members! Order, Member for Westlands. Indeed, hon. Members, we have extended a lot of latitude to this matter and we more or less have captured the views of Members. So, we will proceed to division. Ring the Bell.

(The Division Bell was rung)

Mr. Speaker: Order, hon. Members! Please, resume your seats!
Close the doors and the Bar!

(The Bar was drawn)

Hon. Members, we have ascertained that the number of hon. Members present is 129. This is below the threshold and, therefore, the proposed amendment to Article 85 is negatived!

(Proposed amendment to Article 85 negatived)

Open the doors! Hon. Members, we will move on to the next amendment by the Member for Ndhiwa!

Mr. Kajwang' is not present; the amendment to Article 85 as proposed by him is dropped and, therefore, negatived!

(Proposed amendment to Article 85 dropped)

The Member for Isiolo South, please, proceed!

Article 89

Mr. Bahari: 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 89 by inserting the following new clauses immediately after the clause (7)-

“(7A) The Commission may depart from the provisions of clauses (5), (6) and(7)(b) in reviewing constituency and ward boundaries in sparsely populated and marginalized areas and, in carrying out the review, shall take into account-

- (a) geographical size and features;
- (b) means of communication;
- (c) community of interests, historical, economic and cultural ties;

and

- (d) boundaries of administrative areas.

(7B) The Commission shall ensure that the reviews of constituencies undertaken in terms of this Constitution shall not result in the loss of any existing constituency.”

Mr. Speaker, Sir, in moving this amendment I am very much aware that the issue of population and representation is important. However, we do realise that this country is not uniform in so many ways, for example, in terms of geographical features, population distribution across the country, the height above the sea level and so many other aspects. It is, therefore, not prudent to apply the formula of population across the board. It may not be sufficient, as has been proposed in the Draft Constitution, because it does not adequately cover the sparsely populated areas.

Mr. Speaker, Sir, world over, provisions have been made for minorities. Provisions have also been made---

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

Mr. Bahari: Mr. Speaker, Sir, I beg to move.

Mr. Otieno will second the amendment.

The Minister of State for Public Service (Mr. Otieno): Mr. Speaker, Sir, I would like to second this very important amendment and plead with the House that for once, let us take this particular one very seriously. The 40 plus or minus population quota formula is not guaranteed to give the likes of the sparsely populated areas due consideration when it comes to boundaries review. Hon. Members will remember that actually the Bill of Rights section which we have already passed, confers the duty on State organs and all State officers to address the issues of the marginalized and this is one serious issue of the marginalized. The Constitution itself already recognizes that the next review will have to take into account the needs of the sparsely populated areas by ensuring that no constituency is lost. But then after that, they will be open to the population quota formula which becomes dangerous to them thereafter. It is not possible to succeed on a run to be able to give enough births so that the population quota formula is sufficient. Future constituencies will remain 349---

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

The Minister of State for Public Service (Mr. Otieno): Mr. Speaker, Sir, with those few remarks, I beg to second.

(Question of the amendment proposed)

The Minister for Livestock Development (Dr. Kuti): Mr. Speaker, Sir, I stand to support this amendment. I just would like to ask the House to be very understanding to the sparsely communities because once this 40 plus rule applies, then many constituencies in the sparsely populated areas will collapse.

Based on that, I beg to support this amendment.

Mr. Chachu: Mr. Speaker, Sir, I strongly support this amendment. Democracy is about effective representation of the population; whether they are sparsely populated or whether they live in very dense urban populations. Whether there are 200 Kenyans living in one corner of the world or 200,000 Kenyans living in our urban areas, each and every one of them needs fair and effective representation. As Kenyans, we should embrace our diversity and the reality of this nation. The world over, there are deviations and there are

provisions that are given to ensure that all the citizens of that country are effectively represented.

With those few remarks, I beg to support.

The Assistant Minister for Roads (Dr. Machage): Mr. Speaker, Sir, I beseech the House and the hon. Members who might be watching televisions in Parliament to come back and support this for the sake of fellow Kenyans. It is only a few people in a country who can raise anarchy and more so, if their basic rights are withdrawn. It will be naïve and unfortunate if this Constitution is passed and members of this country lose a constituency. These people will have pain. They will never accept and they will have a right to revenge. Please, support this! With those few remarks, I beg to support.

Mr. Sirma: Mr. Speaker, Sir, I stand to strongly support this amendment. The people who have, through the whole history of this country, been denied resources because of the perceived nature of their place and low population are further being subjected to this new Constitution where they will further be subjected to lesser representation. It is time we corrected injustices on representation of the marginal areas.

Mr. Speaker: Your time is up!

Order, hon. Members! We will move to Division!

(The Division Bell was rung)

Mr. Speaker: Order, hon. Members! It has been ascertained that the Members present are 107, which is below the threshold. Therefore, the amendment to Article 89 is negatived.

(Proposed amendment to Article 89 negatived)

Open the doors!

The Minister for Livestock Development (Dr. Kuti): On a point of order, Mr. Speaker, Sir. Is it in order for Members to support an amendment Motion, only to end up walking out?

Mr. Speaker: Order, Dr. Kuti! The position on that is that Members are at liberty to participate or not to participate in a Division. That is the practice.

It appears that Maj-Gen. Nkaissey is absent. In those circumstances, therefore, the amendment brought by him to Article 89 is dropped and, therefore, negatived.

(Proposed amendment to Article 89 dropped)

COMMUNICATION FROM THE CHAIR

APPLICATION OF GUILLOTINE PROCEDURE ON AMENDMENTS TO DRAFT CONSTITUTION

Mr. Speaker: Hon. Members, before we proceed with the rest of the amendments, I have the following Communication to make. As hon. Members are aware, the Chair made a Communication on Tuesday, 23rd March, 2010, regarding the procedure of considering the business currently before the House, namely, Motion to

approve the Draft Constitution submitted by the Committee of Experts. For the benefit of Members, I will refer the House to the provisions of Section 33(4) of the Constitution of Kenya Review Act, 2008, which states:-

“The National Assembly shall within 30 days of the tabling of the Draft Constitution under sub-section 3 debate it and (a) approve the Draft Constitution without amendments and submit it to the Attorney-General for publication or (b) propose amendments to the Draft Constitution and submit the Draft Constitution and proposed amendments to the Attorney-General who shall within seven days submit them to the Committee of Experts for construction and redrafting.”

Hon. Members, the Draft Constitution was laid on the Table of the House on Tuesday, 2nd March, 2010, and pursuant to the foregoing provision, the House must conclude debate and any amendments on the draft by the end of today, Thursday, 1st April, 2010, coincidentally, the Fools Day. The current process, as you all appreciate, is very unique and our procedures may not be entirely suited to address the situation and that is one of the reasons the Standing Order No.1 is included in our rules, which empowers the Speaker to decide in all cases where matters are not expressly provided for by the Standing Orders.

Hon. Members, the House has considered the Draft Constitution now up to Article 89 of the total 264 Articles and six Schedules, which must be considered and disposed of. The House must, therefore, expedite the process of considering the draft. I now direct that with effect from 4.15 p.m., the House applies the Guillotine procedure for the consideration of the remaining parts of the draft. This means that any Member with a proposed amendment will be called upon to move his or her proposal and make a two minute speech on the merits of the proposed amendment. Members may also decide to move the Motion without making a speech. The proposal will be seconded and thereafter, the question will be put forthwith. The process of establishing whether or not there is the requisite number of Members will ensue. About half an hour before the end of the sitting, the Chairperson of the Parliamentary Select Committee will be called upon to reply and the Question will thereafter be put.

Hon. Members, let me remind the House that to defeat the approval of the Motion will require the support of at least 65 per cent of all Members of the Assembly. Approval of the draft will, however, require the support of a majority of the Members present and voting. I urge the House to be guided accordingly.

Hon. Members, note that, therefore, beginning from 4.15 p.m., those of you who are inclined to support our effort to steer through the balance of the amendments may move their amendment by referring to it “as it is on the Order Paper”, but you have the option. Those who feel that they must read through will be at liberty to do so.

(Resumption of Debate on Article 89)

The Assistant Minister for Nairobi Metropolitan Development (Ms. Ongoro):
Mr. Speaker, Sir, sometimes you have to allow wisdom to rein. Having considered the proceedings taking place in this House from yesterday and the limitation of time and the outcome of every proposed amendment, I beg to withdraw my proposed amendment to Article 89.

Mr. Speaker: Hon. Members, given the indication by the Member for Kasarani, the amendment proposed to Article 89 stands withdrawn and is, therefore, negatived.

(Proposed amendment to Article 89 withdrawn)

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 the amendment of Article 89 by deleting clause (9) and substituting therefor the following-

(9) Subject to clauses (1), (2), (3) and (4), the names and details of the boundaries of constituencies and wards determined by the Commission shall-

(a) be approved by the National Assembly by a simple majority of its members but an alteration or rejection of the recommendations of the Commission shall require the support of at least half of all the Members of the Assembly; and,

(b) be published in the Gazette after approval under paragraph (a) and shall come into effect on the dissolution of Parliament first following their publication.

Mr. Speaker, Sir, this is to ensure that no gerrymandering is rushed and gazetted and affect the country adversely.

Mr. Affey: Mr. Speaker, Sir, I strongly second this proposal in order to deal with the possible mischief from the Commission. It also addresses the fears that those from sparsely populated areas have, such that if this proposal comes from the Commission, we have the other option of Parliament to reject or accept it.

I beg to second.

(Question of the amendment proposed)

Mr. Speaker: Hon. Members, I call for the Division Bell to be rung.

(The Division Bell was rung)

Mr. Speaker: Order, hon. Members! We will now have the door closed and Bar drawn. Ascertain the number of Members present.

(The hon. Members were counted)

Order hon. Members! We have ascertained that 90 Members are present, which is below the threshold. Therefore, the amendment to Article 89 is negatived. Please, open the door.

(Proposed amendment to Article 89 negatived)

Article 90

Dr. Eseli: 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 deletion of the words “seats won by candidates of” appearing in Clause (3) of Article 90 and substituting therefor with the words “votes garnered by”.

Mr. Speaker, Sir, I have insisted on this amendment because there is a serious technical flaw in this Constitution. In Article 81, they talk of universal suffrage and equality of the vote. If it is equality of the vote, then nomination should be based on the number of votes garnered by every political party and not the number of members. So, there is a serious technical flaw and that is the reason I am moving this amendment. The other reason is that when we talk of “first past the post” or “the winner takes it all”, these are the main problems in this country. This particular Article defeats the issue that we are trying to bring down, where “the winner takes it all”.

With those few remarks, I beg to move and ask Mr. Wamalwa to second.

Mr. Wamalwa: Mr. Speaker, Sir, for reasons already stated by the Mover, I beg to second.

Mr. Speaker: The procedure for Guillotine commenced five minutes ago and therefore we will proceed to Division.

Ring the Division Bell.

Mr. Kivuti: On a point of order, Mr. Speaker, Sir. With your permission, would I be in order to request - so that we save time - that the ringing of the bell also be reduced from four minutes to two minutes?

Mr. Speaker: We will consider effecting that but we will have liberty to a maximum of four minutes.

(The Division Bell was rung)

Close the doors and draw the Bar and ascertain the number!

*(The Clerks-at-the Table took
count of the Members present)*

Hon. Members, we have ascertained that there are 77 Members present which is below the set limit. So, Article 90 is negatived. Open the doors.

(Proposed amendment to Article 90 negatived)

Articles 93, 94 and 95

The Minister for Lands (Mr. Orengo): Mr. Speaker, Sir, as you can see from the Order Paper, these are the kind of amendments that I would need to persuade hon.

Members and certainly I cannot be able to do that in two minutes. For that reason, I wish to withdraw the amendments.

Mr. Speaker: Hon. Members in the light of the indications given by the hon. Member for Ugenya, the amendment to Article 93 stands withdrawn and it is therefore negated.

(Proposed amendments to Article 93, 94 and 95 withdrawn)

We now move to the proposed amendment by the hon. Member for Mwingi South! Is the hon. Member for Mwingi South not here?

Given that the hon. Member for Mwingi South is absent, the amendment to Article 95 as appears on page 478 of the Order Paper is dropped and therefore negated.

(Proposed amendment to Article 95 dropped)

Article 97

Hon. Member for Ugenya!

The Minister for Lands (Mr. Orengo): Mr. Speaker, Sir, for the same reasons, I wish to withdraw that particular amendment to Article 97.

Mr. Speaker: Hon. Members, with that indication from the hon. Member for Ugenya, the amendment to Article 97 stands withdrawn and is therefore negated.

(Proposed amendment to Article 97 withdrawn)

Prof. Kamar: 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 97(1) by deleting the word “forty-seven” appearing in paragraph (b) immediately before the word “women”.

Mr. Speaker, Sir, that means that paragraph (b) will read “women each elected by registered voters of the counties, each county constituting a single member constituency”. I am removing the restriction of 47, basically because there is fluctuation on the number of counties. Just in case later on we pass the amendment of 80 counties, the women will not be affected. I request Mrs. Noor to second.

Mrs. Noor: Mr. Speaker, Sir, I second this amendment. The reason why I am seconding is as Prof. Kamar has indicated. We foresee that if we have the additional 80 constituencies, then we need the women to be elected on the basis of that number and the Senators to be elected on regional basis.

Mr. Speaker: Order, hon. Members! 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)

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)*

Order, hon. Members! We have ascertained that there are 76 hon. Members present for the Division; this number is below the threshold set out by the Constitution. Therefore, the amendment proposed to Article 97, as moved by the hon. Member for Eldoret East, is negatived!

(Proposed amendment to Article 97 negatived)

Open the doors!

(The doors were opened and the Bar undrawn)

Proceed, the hon. Member for Igembe!

Mr. M'Mithiaru: Thank you, Mr. Speaker, Sir. I had registered to move an amendment to Article 97, but considering the mood that the country is in--- I also wanted to effectively recognize the effectiveness of the way our women have been fighting in the political world I wanted to recognize their might. That is why I wanted to abolish their special seats. But, now, at the risk of disappointing all those women who had called me to say that they did not want special seats, and they want to compete effectively with men, I withdraw this Motion.

(Applause)

Mr. Speaker: Order, hon. Members! With that indication from the hon. Member for Igembe North, the amendment as proposed stands withdrawn and, therefore, is negative!

(Proposed amendment to Article 97 withdrawn)

Proceed, the hon. Member for Kasarani!

An hon. Member: She is not here!

Mr. Speaker: Hon. Members, as the hon. Member for Kasarani is not in the House at the moment the proposed amendment is, therefore, dropped and negatived.

(Proposed amendment to Article 97 dropped)

Proceed, the hon. Member for Kimilili!

Article 98

Dr. Eseli: Mr. Speaker, Sir, in view of the mood of the House, and the fact that this amendment is also related to the other amendment that was negatived, I wish to withdraw it.

(Applause)

Mr. Speaker: Order, hon. Member! With that indication from the hon. Member for Kimilili, that amendment as proposed by him stands withdrawn and, therefore, is negatived!

(Proposed amendment to Article 98 withdrawn)

Proceed, the hon. Member for Ugenya!

The Minister for Lands (Mr. Orengo): Mr. Speaker, Sir, I beg to withdraw the amendment.

Mr. Speaker: Order, hon. Members! With that indication from the hon. Member for Ugenya, the amendment to Article 98 as proposed by him stands withdrawn and is, therefore, negatived!

(Proposed amendment to Article 98 withdrawn)

Proceed, the hon. Member for Mvita!

The Minister for Tourism (Mr. Balala): Mr. Speaker, Sir, in view of the lack of numbers, I wish to withdraw the amendment.

Mr. Speaker: Hon. Members, with that indication from the hon. Member for Mvita, that amendment to Article 98 as proposed by him stands withdrawn and is, therefore, negatived!

(Proposed amendment to Article 98 withdrawn)

Proceed, the hon. Member for Nithi!

Article 101

The Assistant Minister for Agriculture (Mr. Mbiuki): Thank you, Mr. Speaker, Sir. Due to lack of sufficient numbers, I also beg to withdraw this amendment.

(Applause)

Mr. Speaker: Order, hon. Members! With that indication by the hon. Member for Nithi, the amendment as proposed stands withdrawn. Although the reason has to go to the HANSARD it cannot be because of want of numbers. Since the Division Bell has not been rung, we cannot talk about numbers in anticipation. So, that amendment is negatived!

(Proposed amendment to Article 101 withdrawn)

Proceed, the hon. Member for Isiolo South!

Article 103

An hon. Member: He is not here!

Mr. Speaker: Hon. Members, as the hon. Member for Isiolo South is absent, the amendment proposed by him to Article 103 is dropped and, therefore, negated!

(Proposed amendment to Article 103 dropped)

Proceed, the hon. Member for Mosop!

Mr. Koech: Thank you, Mr. Speaker, Sir. Cognizant of the mood of the House and noting that hon. Members have seen my concerns, I wish to withdraw this amendment.

(Applause)

Mr. Speaker: Order, hon. Members! With that indication from the hon. Member for Mosop, the amendment as proposed by him to Article 103 stands withdrawn and, therefore, is negated!

(Proposed amendment to Article 103 withdrawn)

Article 106

Mr. Ethuro: Mr. Speaker, Sir, I also wish to withdraw this amendment for two reasons: One, it can be provided for in the Standing Orders. Two, to allow you under Standing Order No.36, since I have more substantive agenda, to use your discretion to bring it forward.

Mr. Speaker: Order, hon. Members! With that indication from the Member for Turkana Central, the amendment proposed by him stands withdrawn and is, therefore, negated. I will not use my discretion for a purpose that I do not understand.

(Proposed amendment to Article 106 withdrawn)

Article 107

Mr. Ethuro: Mr. Speaker, Sir, I will do the same. However, I had requested you in my second reason, which I think is an appropriate opportunity for you now, under Standing Order No.36 (b) (2), to do what is contained therein. It says:-

“Business shall be disposed of in the sequence in which it appears in the Order Paper or in such other sequence as the Speaker may, for the convenience of the House, direct.”

Since I have another one in Article 206, I would like to substitute these others.

Mr. Speaker: Hon. Members, with that indication from the Member from Turkana Central, the proposed amendment to Article 107 stands withdrawn and, is therefore, negatived.

(Proposed amendment to Article 107 withdrawn)

With respect to his sentiments on Standing Order No.36, I am well aware of those provisions. However, the exercise of discretion entails fairness and justice. I must exercise that discretion justly and fairly. In the prevailing circumstances, I decline to exercise that discretion.

Article 127

Mr. Nyambati: Thank you, Mr. Speaker, Sir. Given the mood of the House, I also wish to withdraw my proposed amendment. However, I want to inform the House that this is extremely important. I will bring it back.

With your kind permission before you make your ruling, I also have another proposed amendment on Article 128(a). Even if it has not yet come up, I would like to give notice that I will be withdrawing it.

Mr. Speaker: Hon. Members, with that indication from the hon. Member of Kitutu Masaba, the proposed amendment to Article 127 stands withdrawn and, is, therefore, negatived.

(Proposed amendment to Article 127 withdrawn)

Hon. Member for Naivasha! Is he not in?

An hon. Member: He is not here!

Article 131

Mr. Speaker: Hon. Members, given that the hon. Member for Naivasha is absent, the amendment stands dropped and, is, therefore, negatived.

(Proposed amendment to Article 131 dropped)

[Mr. Speaker left the Chair]

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

Article 138

Mr. Affey: 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 of Article 138(4)(b) by deleting the words “more than half” and substituting therefore the words “at least two-thirds.”

The intention of this amendment is to ensure that the 47 counties envisaged in this Constitution have equal access in terms of being relevant; in terms of who becomes the next President of this country. Under the current Constitution, of the eight Provinces, a Presidential candidate must garner at least 25 per cent of five Provinces. What this amendment intends to achieve is to maintain the same threshold, so that if a President is to be elected, he is elected by a majority of the counties in this country. My suggestion is that we raise the number from 23 to 30 counties, so that counties in sparsely populated areas in the country become as relevant as those in highly populated areas. Therefore, this is for the benefit of the country because what we intend to do is to give the country a very powerful President. Therefore, we must ensure that the President has a national appeal in order to carry the country across.

I beg to move and hope that hon. Members will support this.

The Temporary Deputy Speaker (Prof. Kaloki): Ambassador Affey, who is seconding?

Mr. Ruto: Mr. Temporary Deputy Speaker, Sir, let me assist the pastoralist. I second. I think it is useful.

The Temporary Deputy Speaker (Prof. Kaloki): Could you, please, ring the Division Bell?

(The Division Bell was rung)

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Members, on Article 138, the Members present here are 74, which is way below the threshold set by the Constitution. So, Article 138 is negatived.

(Proposed amendment to Article 138 negatived)

Article 139

The Temporary Deputy Speaker (Prof. Kaloki): Let us proceed to Article 139. Hon. Mututho not there? That amendment is dropped and negatived.

(Proposed amendment to Article 139 negatived)

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Kimunya actually withdrew Article No. 139.

(Proposed amendment to Article 139 withdrawn)

Now we move to hon. Ogingo on Article 142.

Article 142

Mr. Ogindo: Thank you, Mr. Temporary Deputy Speaker, Sir. In view of the fact that this House is in no mood of debating my amendment, I hereby withdraw.

The Temporary Deputy Speaker (Prof. Kaloki): Order, hon. Members! Article No. 142 is withdrawn and negatived.

(Proposed amendment to Article 142 withdrawn)

Articles 146 and 147

The Temporary Deputy Speaker (Prof. Kaloki): Let us move to Article 146 by Mr. Mututho! Hon. Mututho is not here, so it is dropped and negatived. Hon. Members, Article 147 was also to be moved by Mr. Mututho and so it is too dropped and negatived.

(Proposed amendments to Articles 146 and 147 negatived)

Articles 148, 149, 150 and 152

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Members, the same applies to Articles No. 148, 149, 150 and 152. Again these articles were to be moved by Mr. Mututho. He is not here and so all those proposed amendments are dropped and negatived. Let us proceed to Article 156.

(Proposed amendments to Articles 148, 149, 150 and 152 negatived)

Articles 156

Mr. Ngugi: Mr. Temporary Deputy Speaker, Sir, this Article was intended to make it consistent with the provisions of Article 132 (2) (b) and to avoid a future constitutional crisis. But considering the prevailing circumstances, I withdraw.

The Temporary Deputy Speaker (Prof. Kaloki): Article 156 by Mr. Ngugi is withdrawn and negatived.

(Proposed amendment to Article 156 negatived)

Let us move to Article 166 by Mr. Konchella.

Articles 166

Mr. Konchella: Thank you, Mr. Temporary Deputy Speaker, Sir. This particular Article was supposed to address the long-term issue of corruption in this country. If I sense the mood of my colleagues here, if actually it was any better, I would have wished to move this Motion but now I wish to withdraw, not just this one but also the other Articles that follow later. I also withdraw Article 248 and the Second Schedule.

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Konchella, you will withdraw them when we get there.

(Proposed amendment to Article 166 negatived)

The Temporary Deputy Speaker (Prof. Kaloki): Order, Mr. Konchella! You will withdraw the amendment when we get to that Article.

Mr. Konchellah: Thank you, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Prof. Kaloki): The proposed amendment to Article 166 by Mr. Konchellah has been withdrawn and so, is negatived.

(Proposed amendment withdrawn)

Article 168

The Assistant Minister for Transport (Mr. Mwau): Thank you, Mr. Temporary Deputy Speaker, Sir. The genesis of this particular amendment is the fact that no matter what type of Constitution this House will make, if the Judiciary is not functional, the Constitution will become a useless tool. Therefore, the intention was to create a strong supervisory authority so that the Judiciary can be put on check. Due to time factor and the nature of the argument that would be elicited, I beg to withdraw.

The Temporary Deputy Speaker (Prof. Kaloki): Very well, Mr. Mwau. The proposed amendment to Article 168 is, therefore, withdrawn and negatived.

(Proposed amendment to Article 168 withdrawn)

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Musyimi is not in the Chamber. Therefore, the proposed amendment is dropped.

(Proposed amendment to Article 168 dropped)

Article 169

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Elizabeth Ongoro is not here. Therefore, that proposed amendment is dropped.

(Proposed amendment to Article 169 dropped)

Article 170

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Members, Mr. Musyimi is still not here. Therefore, the proposed amendment to Article 170 is dropped and will stay negatived.

(Proposed amendment to Article 170 dropped)

The Temporary Deputy Speaker (Prof. Kaloki): On the same Article 170, is hon. Ongoro present? She is not and so the proposed amendment to Article 170 is dropped and will stay negative!

(Proposed amendment of Article 170 dropped)

Article 171

The Assistant Ministry for Transport (Mr. Mwau): Thank you, Mr. Temporary Deputy Speaker, Sir. Again, the genesis of this particular amendment was intended to regularise the Judicial Service Commission (JSC) so that we create a proper supervisory authority which is not compromised or which does not fall in conflict. We would require more time to debate this proposed amendment. Therefore, I beg to withdraw since we do not have time.

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Members, the amendment to Article 171 has been withdrawn by Mr. Mwau.

(Proposed amendment to Article 171 withdrawn)

Article 175

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Speaker, Sir, I wish to withdraw the proposed amendment.

The Temporary Deputy Speaker (Prof. Kaloki): All right. Hon. Members, the proposed amendment to Article 175 by Mr. Orengo has been withdrawn.

(Proposed amendment to Article 175 withdrawn)

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Members, Mr. Musyimi is still absent. Therefore, the proposed amendment to Article 175 is dropped and will stay negative.

(Proposed amendment Article 177 dropped)

Article 177

The Temporary Deputy Speaker (Prof. Kaloki): Is Dr. Eseli present? He is not. The proposed amendment to Article 177 is, therefore, dropped and will stay negative!

(Proposed amendment to Article 192 dropped)

Article 192

The Temporary Deputy Speaker (Prof. Kaloki): Order, hon. Members! Maj-Gen. Nkaisserry has indicated to the Clerk of the Kenya National Assembly that he

wishes to withdraw his proposed amendment to Article 192. Therefore, the amendment has been withdrawn and will stay negatived.

(Proposed amendment withdrawn)

Article 248

The Minister of State for Planning, National Development and Vision 2030 (Mr. Oparanya): Mr. Temporary Deputy Speaker, Sir, this amendment was made to align planning, economic policies, and development programmes at the devolved units to be in line with the national planning. Unfortunately, reading the mood of the House, I wish to withdraw this particular amendment and also withdraw my proposed amendments to Article 248---

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Oparanya, when we get to that you will withdraw them.

The Minister of State for Planning, National Development and Vision 2030 (Mr. Oparanya): Mr. Temporary Deputy Speaker, Sir, I want to leave so I better withdraw everything.

(Laughter)

I am also withdrawing my proposed amendment on the New Part. So, for the three amendments, do not bother to call out my names!

The Temporary Deputy Speaker (Prof. Kaloki): Order! Order, Mr. Oparanya! I will definitely call you when we get there.

The Hon. Member has withdrawn that amendment. So, it will stay negatived.

Hon. Members, there is a proposed amendment to Article 202 by hon. Benjamin Langat.

(Proposed amendment withdrawn and negatived)

Article 202

Mr. Langat: Mr. Temporary Deputy Speaker, Sir, this amendment was meant to ensure that constituencies also benefit from the national revenue, which had been shared between the national government and the county governments but, because of the general mood of the House, I also want to follow suit and withdraw the amendment.

The Temporary Deputy Speaker (Prof. Kaloki): Very well. The amendment that had been proposed by hon. Langat has been withdrawn, and it will stay negatived.

(Proposed amendment withdrawn and negatived)

Hon. Members, there is a further amendment to Article 202 to be moved by Mr. James Orengo.

Articles 202 and 203

The Minister for Lands (Mr. Orenge): Mr. Temporary Deputy Speaker, Sir, since my amendments to Articles 202 and 203 are coming sequentially, I humbly request that I withdraw both of them.

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Members, the amendments to Articles 202 and 203 have been withdrawn and, they stay negated.

(Proposed amendments to Articles 202 and 203 withdrawn and negated)

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Members, there is an amendment to Article 203 by hon. Benjamin Langat.

Article 203

Mr. Langat: Mr. Temporary Deputy Speaker, Sir, that amendment was meant to increase the allocation to devolved units, and specifically the constituencies, to 10 per cent. However, for the reasons I mentioned earlier, I wish to withdraw this amendment.

(Proposed amendment withdrawn and negated)

Mr. Midiwo: On a point of order, Mr. Temporary Deputy Speaker, Sir. You seem to be referring to “Articles” but what we are withdrawing are the amendments pertaining to the Articles.

The Temporary Deputy Speaker (Prof. Kaloki): Yes, that amendment is already there.

Thank you.

Hon. Members, hon. Langat has withdrawn Article 203, and that Article will stay negated.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): On a point of order, Mr. Temporary Deputy Speaker, Sir. Would I be in order to suggest that what hon. Midiwo has said be taken seriously? The HANSARD will show that we have negated an Article, which we have not. All that has been negated is the proposed amendment to the Article. If that could be corrected, it will be very nice.

Thank you.

The Temporary Deputy Speaker (Prof. Kaloki): Definitely, we are dealing with amendments. So, again, the amendment dealing with Article 203 has been withdrawn.

(Proposed amendment withdrawn and negative)

Hon. Members, there is a proposed amendment to the same Article 203 by Dr. Eseli Simiyu. Is Dr. Eseli not here?

Since Dr. Eseli is not here, his proposed amendment to Article 203 is dropped and, therefore, it will stay negated.

(Proposed amendment dropped and negated)

Hon. Members, there is another proposed amendment to Article 203 by the Member of Parliament for Bura.

Dr. Nuh: Mr. Temporary Deputy Speaker, Sir, the purpose of this amendment was to anchor the Constituencies Development Fund (CDF) in the constitution since it is a Fund that has inspired so much hope in Kenyans. However, reading the mood of the House, it is only through a miracle that we could pass this amendment – miracles are known to happen at night, but we have not gotten there. So, in that light, I wish to withdraw this amendment.

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Members, Dr. Nuh has withdrawn that amendment and, therefore, it will stay negated.

(Proposed amendment withdrawn and negated)

Hon. Members, we have another amendment to Article 203 by Prof. Kamar. Is hon. Kamar not here?

The amendment that was to be moved by Prof. Kamar has been dropped and it stays negated.

(Proposed amendment dropped and negated)

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Members, we have a further amendment to Article 203 by Mrs. Noor.

Mrs. Noor: Mr. Temporary Deputy Speaker, Sir, this amendment was meant to increase resources to the devolved units. That is where we need resources but due to the fact that this House, for the last two days has acted irresponsibly, I withdraw my amendment.

The Temporary Deputy Speaker (Prof. Kaloki): Order, Mrs. Noor! Can you withdraw that statement and apologise?

Mrs. Noor: Mr. Temporary Deputy Speaker, Sir, I withdraw and apologise.

The Temporary Deputy Speaker (Prof. Kaloki): Thank you.

Hon. Members, Mrs. Noor has withdrawn her proposed amendment to Article 203. So, it will stay withdrawn and negated.

(Proposed amendment withdrawn and negated)

Hon. Members, there is another amendment by Dr. Nuh.

Dr. Nuh: Mr. Temporary Deputy Speaker, Sir, this particular amendment was to increase by one more half the Equalisation Fund that has been put as one half in the Proposed Draft Constitution. However, in the same words I expressed myself earlier, I wish to humbly withdraw the amendment.

The Temporary Deputy Speaker (Prof. Kaloki): Thank you, Dr. Nuh. He has withdrawn that amendment and so it will stay withdrawn and negated.

(Proposed amendment withdrawn and negated)

Hon. Members, we have another amendment by Mr. Orengo.

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Speaker, Sir, I have a series of amendments coming sequentially, to Article 207, 209---

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Orengo, let us dispose of the one on Article 205 first.

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Speaker, Sir, I want us to work more efficiently, instead of standing up every time and saying the same things.

The Temporary Deputy Speaker (Prof. Kaloki): Let us dispose of that one first and then we deal with the rest of the amendments together.

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Speaker, Sir, it is because they are coming sequentially; one after the other.

The Temporary Deputy Speaker (Prof. Kaloki): Order! There is another one behind.

The Minister for Lands (Mr. Orengo): I am sorry, I did not see the other one.

Article 205

So, I withdraw the amendment to Article 205.

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Members, that amendment on Article 205 by hon. Orengo has been withdrawn and will stay negated.

(Proposed amendment withdrawn and negated)

Hon. Members, we now move to the amendment on Article 206 by hon. Ekwe Ethuro.

Article 206

Mr. Ethuro: Mr. Temporary Deputy Speaker, Sir, the amendment has the sole purpose of entrenching the CDF into the Constitution but since the mood of the House is such that we want this document not be mutilated, and since I am a firm believer of anti-FGM, I want it to remain intact.

However, let the point be made from the Floor of this House; that the craze for devolution and fiscal decentralisation has been demonstrated by this Fund to the extent that Uganda, Tanzania and Southern Sudan are already incorporating it, even when Uganda has devolved units.

I beg to withdraw the amendment.

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Members, that amendment on Article 206 by hon. Ekwe Ethuro has been withdrawn and it stays negated.

(Proposed amendment to Article 206 withdrawn and negated)

Articles 207, 209 and 212

Hon. Members, hon. James Orengo has amendments to Articles 207, 209 and 212.

Mr. Orengo, you can proceed and move those three amendments.

Articles 207, 209, 212, 218

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Speaker, Sir, I beg to withdraw my proposed amendments to Articles 207, 209, 212 and 218.

The Temporary Deputy Speaker (Prof. Kaloki): The four amendments to Articles 207, 209, 212 and 218 have been withdrawn by Mr. Orengo. The four amendments to those Articles remain negatived.

*(Proposed amendments to Articles 207, 209, 212
and 218 withdrawn and negatived)*

The Temporary Deputy Speaker (Prof. Kaloki): Is Dr. Eseli in the Chamber? Hon. Members, Dr. Eseli did indicate that he would withdraw his proposed amendment to Article 229. Therefore, the amendment to Article 229 is negatived.

*(Proposed amendment to Article 229
withdrawn and negatived)*

The Assistant Minister for Environment and Mineral Resources (Mr. Kajembe): On a point of order, Mr. Temporary Deputy Speaker, Sir. It is really disturbing to hear that a proposed amendment to a certain Article has been withdrawn, because the Mover of the amendment has indicated his intention to do so. To whom did that Mover indicate his intention to withdraw the amendment?

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Members, the Chair is completely satisfied. We have communication to that effect. So, we just want to proceed.

Hon. Members, Mr. Amos Kimunya did withdraw the proposed amendment to Article 231, and so, it is negatived.

*(Proposed amendment to Article 231
withdrawn and negatived)*

Hon. Members, Maj.-Gen. Nkaisery is not present, and so, the amendment pertaining to Article 238 is dropped and, therefore, is negatived.

*(Proposed amendment to Article 238
dropped and negatived)*

Article 238

Mr. Mwathi: Mr. Temporary Deputy Speaker, Sir, this amendment was intended to rearrange the words, so that it had more meaning and meat, and so that it could be clearer. But guided by the very wisdom I used in the morning, and gauging the mood of the House, I wish to withdraw it.

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Members, Mr. Mwathi has withdrawn his amendment to Article 238 and it is, therefore, negatived.

*(Proposed amendment to Article 238
withdrawn and negatived)*

Articles 239

Hon. Members, Maj-Gen. Nkaiserry is not in the Chamber and, therefore, his proposed amendment to Article 239 is dropped. It is negatived.

*(Proposed amendment to Article 239
dropped and negatived)*

Article 241

Is hon. Musila in the House? He is not. Therefore, his proposed amendment to Article 241 is dropped, and so negatived.

*(Proposed amendment to Article 241
withdrawn and negatived)*

Article 241

Mr. Mwathi: Mr. Temporary Deputy 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 (3) of Article 241 by deleting the words “National Assembly” appearing in paragraph (c) and substituting therefor the words “National Security Council and report to Parliament”.

Mr. Temporary Deputy Speaker, Sir, I do this knowing that we may have instability and unrest in any part of Kenya, and Parliament may be on recess. It might be necessary that this force be used to quell the unrest.

I beg to move and ask Mr. Koech to second me.

Mr. Koech: Mr. Temporary Deputy Speaker, Sir, I stand to second.

(Question of the amendment proposed)

The Temporary Deputy Speaker (Prof. Kaloki): Ring the Division Bell.

(The Division Bell was rung)

The Temporary Deputy Speaker (Prof. Kaloki): Serjeant-At-Arms, close the doors and draw the bar. The Clerk, can you ascertain that we have 145 Members present to continue with this process?

(Loud consultations)

(The hon. Members were counted by the Clerks-at-the Table)

Order, hon. Members! We needed 145 Members to be present here to continue with the process of voting. We have 65 Members present. So, that particular amendment has lost and is negated.

(Proposed amendment to Article 241 negated)

Article 241

The proposed amendment to Article 241 by hon. Clement Wambugu is dropped and negated.

(Proposed amendment to Article 241 dropped and negated)

Article 241

We have a note from hon. Kimunya withdrawing this amendment, among others. So, that amendment is withdrawn and negated.

(Proposed amendment to Article 241 withdrawn and negated)

Mrs. Odhiambo-Mabona: On a point of order, Mr. Temporary Deputy Speaker, Sir. I just want to draw to the attention of the House that I have been informed that one of the informed Houses is reporting that this House is not serious. I am being given as an example; that, I have supported a Motion and walked out.

Mr. Temporary Deputy Speaker, Sir, I have been sitting here faithfully since morning. When I walked out was when I was asked by Parliament to go out and sign a document. If they want to show a caption, they need to show that. I do not want to be shown as an example, especially when the facts are not correct. Could you, please, rule on that?

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Member, the Chair without any evidence of a report on what you are alleging to have transpired here, I am not able to rule on that.

If there was a clip showing that you walked out, maybe, that definitely can be shown because our proceedings are being recorded live. So, I am urging the media to report accurately. I believe we will be able to get additional information. But at the moment, let us just proceed on and you have made your case and it is well recorded. If

there is any evidence that the coverage was to portray you in negative way, I know an action will be taken.

Mr. Ruto: On a point of order, Mr. Temporary Deputy Speaker, Sir. Yesterday, I rose on a point of order under Standing Order No.63 after Division. I asked the fate of the Members of Parliament who were present and did not vote or record their abstention with the Clerk---

The Temporary Deputy Speaker (Prof. Kaloki): What is your point order, Mr. Ruto.

Mr. Ruto: Mr. Temporary Deputy Speaker, Sir, I have just said that I stood on a point of order under Standing Order No.63 yesterday and I was expecting a Communication from the Chair on the same. There were Members of Parliament who were present, but did not, contrary to the Standing Order No.63, record their abstention. I was promised by the Chair that the information would be given.

Mr. Kivuti: On a point of information, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Members, we have to proceed. Hon. Ruto, please, let us proceed and the Chair will address your concern.

Article 242

Dr. Eseli, please, proceed!

Dr. Eseli: Mr. Temporary Deputy Speaker, Sir, I withdrew all my amendments in writing, including that one.

The Temporary Deputy Speaker (Prof. Kaloki): Thank you. When we get to it, you can do that.

Dr. Eseli has withdrawn that amendment. It, therefore, stays negatived.

(Proposed amendment to Article 242 withdrawn)

Dr. Eseli, can you withdraw the next amendment?

Article 248

Dr. Eseli: Mr. Temporary Deputy Speaker, Sir, I wish to withdraw the amendment to Article 248 despite the oversight of not including the National Health Services Commission among the Constitutional Commissions in this Draft Constitution.

The Temporary Deputy Speaker (Prof. Kaloki): Thank you, Dr. Eseli. That amendment on Article 248 has been withdrawn and is, therefore, negatived!

(Proposed amendment to Article 248 withdrawn)

Yes, Mr. Gideon Konchella!

Mr. Konchella: Mr. Temporary Deputy Speaker, Sir, this is a purely technical matter but anyway, I wish to withdraw the amendment.

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Konchella has withdrawn that amendment. It is recorded negatived!

*(Proposed amendment to Article 248
withdrawn and negatived)*

Prof. Anyang'-Nyong'o, please, proceed!

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Mr. Temporary Deputy Speaker, Sir, this amendment which reads:-

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 paragraph in clause (2) of Article 248-

“(k) the National Health Service Commission”

This was meant to be one of the Commissions and independent offices in Chapter 12 of this Draft Constitution in line with the importance of the medical profession and the services that doctors, nurses and all health personnel render to the health of this nation, including the health of the Members of the National Assembly.

However, given your mood; notwithstanding the importance of this amendment, Prof. Anyang'-Nyong'o, the Member of Parliament for Kisumu Rural wishes to withdraw.

The Temporary Deputy Speaker (Mr. Kaloki): Hon. Members, Prof. Anyang'-Nyong'o has withdrawn the amendment on Article 248. The amendment will remain negatived.

*(Proposed amendment to Article 248
withdrawn and negatived)*

Dr. Otichilo, please, proceed!

Dr. Otichilo: Mr. Temporary Deputy Speaker, Sir, this amendment was meant to create a National Environmental and Climate Change Commission. This is because matters of environmental management in this country are not well co-ordinated. The issue of climate change is an issue of international importance. The aim of this was to create a strong commission to manage environmental issues in this country.

Currently, we have institutions that are very weak like the National Environmental Management Authority (NEMA) which cannot handle environmental issues. That is why we have very many environmental problems in this country.

However, because of the mood of this House, I would like to withdraw this amendment.

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Members, Dr. Otichilo has withdrawn the amendment on Article 248. The amendment will stay negatived in the records!

*(Proposed amendment to Article 248
withdrawn and negatived)*

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Oparanya, please, proceed!

Article 248

The Minister for Planning, National Development and Vision 2030 (Mr. Oparanya): Mr. Temporary Deputy Speaker, Sir, I think I had earlier informed you that I have withdrawn all my amendments. So they stand withdrawn.

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Oparanya, you have to withdraw the amendment when we come to that particular Article on the Order Paper.

So, Mr. Oparanya has withdrawn that particular amendment on Article 248. Therefore, the amendment will stay negated.

*(Proposed amendment to Article 248
withdrawn and negated)*

Mr. Musila, please, proceed!

Article 260

Hon. Members, that amendment by Mr. Musila on Article 260 has been dropped and will stay negated in the records.

*(Proposed amendment to Article 260
dropped and negated)*

Mr. Joseph Lekuton, please, proceed!

Mr. Lekuton: Mr. Temporary Deputy Speaker, Sir, the amendment on Article 260 was intended to create and include the office of the Speaker of the National Assembly and his Deputy into the State Offices. Given the importance of our Speaker; being the person in control of this country, I thought it was very important that we looked that section. However, looking at the mood of the House, it looks like nothing will go through. I now withdraw that amendment.

The Temporary Deputy Speaker (Prof. Kaloki): Very well! Mr. Lekuton has withdrawn that amendment on Article 260. Therefore, the amendment is now negated.

*(Proposed amendment to Article 260
withdrawn and negated)*

Mr. ole Lankas, please, proceed!

Mr. ole Lankas: Thank you, Mr. Temporary Deputy Speaker, Sir. I wish to withdraw the amendment on Article 260.

The Temporary Deputy Speaker (Prof. Kaloki): Thank you. Mr. ole Lankas has withdrawn that particular amendment on Article 260. So, the amendment is negated for the record.

*(Proposed amendment to Article 260
withdrawn and negated)*

Mr. John Mututho, please, proceed!

Mr. Mututho: Mr. Temporary Deputy Speaker, Sir, this amendment was meant to remedy the mess done by denying the magistrates and judges provisions under Article 27 and Article 48, specifically. However, looking at the chorus and what is going on here, I join the queue and withdraw the amendment.

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Members, Mr. Mututho has withdrawn that particular amendment. So, that amendment will stay negatived.

*(Proposed amendment to Article 260
withdrawn negatived)*

Mr. Adan Keynan, please, proceed!

Mr. Keynan: Thank you Mr. Temporary Deputy Speaker, Sir. The essence of this amendment under the transitional and consequential provisions was meant to protect the Members of this august House.

Mr. Temporary Deputy Speaker, Sir, if you look at this document, we have put a benchmark for the Judiciary. If this document passes as it is, the Chief Justice of the Republic of Kenya is required to resign six months after this document becomes law. The Attorney-General is also required to resign within a year. We have set very stringent conditions for the re-appointment of any judge. Equally, under the Schedule, there are a number of activities that this Parliament is expected to fulfill and if we fail, and this is what my amendment is concerned about--- I want to bring this to the attention of the Members, the amendments that I have proposed which concerns the deletion of---

Hon. Members: Withdraw! Withdraw!

Mr. Keynan: Mr. Temporary Deputy Speaker, Sir, I have a right to be heard!

*[The Temporary Deputy Speaker
(Prof. Kaloki) left the Chair]*

[Mr. Speaker resumed the Chair]

Mr. Speaker, Sir, Article 261(6) and all of them; just for purposes of us, this is what it says. If this august House fails to implement the Schedule attached to this document, the consequence is the same; judges whom you have asked to be vetted or resign, any member of the public can go to court, petition and the court shall make a declaratory order, that order is presented to Parliament and the Attorney-General and, if Parliament fails, the Chief Justice advises the President and he “shall” dissolve Parliament. But taking into account the mood of hon. Members, I wish to withdraw this amendment.

Mr. Speaker: Hon. Members, with that indication from the hon. Member for Wajir West, the amendment proposed to Article 261 stands withdrawn and is therefore, negatived.

(Proposed amendment withdrawn and negatived)

First Schedule

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

THAT, pursuant to 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 the First Schedule and the replacement therefor with the following:-

First Schedule

(Article 6 (1))

Counties

1. Kwale
2. Mombasa
3. Taita
4. Taveta
5. Kilifi
6. Lamu
7. Tana River
8. Malindi
9. Makeni North
10. Makeni South
11. Machakos East
12. Machakos West
13. Kitui
14. Mwingi
15. Meru South
16. Meru North
17. Tharaka
18. Nithi
19. Mbeere
20. Embu
21. Isiolo
22. Marsabit
23. Moyale
24. Garissa
25. Ijara
26. Mandera
27. Wajir
28. Kajiado
29. Narok
30. Trans Mara

31. Kuria
32. Kisii
33. Gucha
34. Nyamira
35. Teso
36. Bungoma East
37. Bungoma West
38. Busia
39. Lugari
40. Kakamega
41. Vihiga
42. Butere/Mumias
43. Lokitaung
44. Lodwar
45. West Pokot
46. Marakwet
47. Trans Nzoia
48. Mt. Elgon
49. Keiyo
50. Uasin Gishu
51. Nandi North
52. Nandi South
53. Kericho
54. Bureti
55. Bomet
56. Baringo
57. Koibatek
58. Molo
59. Nakuru
60. Naivasha
61. Samburu
62. Laikipia
63. Kisumu
64. Bondo
65. Nyando
66. Siaya
67. Suba
68. Rachuonyo
69. Homabay
70. Migori
71. Githunguri
72. Limuru
73. Kirinyaga
74. Thika
75. Murang'a

- 76. Maragua
- 77. Nyandarua
- 78. Nyeri
- 79. Nairobi

Mr. Speaker, Sir, let me make one quick clarification that Ndaragwa is not a county and Nyandarua, where I come from is not included. So, it is not meant for my benefit. This should help devolve the Government nearer to the people, get the resources nearer the people and help the people get the expertise that is required from the personnel that would be employed by the county. The size of the counties has been taken into consideration; the population, geographical factors and community of interest have all been taken into consideration. This is meant to address the fear of the minority communities within some very large counties. The fear is that they will be marginalized and the resource allocation will not get to them. There are a lot of things I would have said but because of the interest of time, I call upon Dr. Machage to second

The Assistant Minister for Roads (Dr. Machage): Bw. Spika, leo tarehe 1 Aprili, inajulikana kama siku ya wajinga. Lakini, hiyo ilikuwa mpaka saa sita mchana. Tangu saa sita mchana hadi saa hizi, nafikiri uerevu umeingia ndani ya hili Jumba.

Jambo la utawala kufikia jamii zilizonyanyaswa tangu siku za awali za ukoloni mpaka sasa, namshukuru sana Bw. Kioni, hata ingawa anatoka kwa jamii kubwa, amependekeza hayo mabadiliko, kusudi sisi tuone kwamba sio jambo ambalo linasisitizwa tu na jamii ndogo; hata zile kubwa za wenzetu, ndugu na dada zetu walioko katika hili Jumba, nashukuru. Lakini hiyo shukrani itapita na upepo kama sisi wote hatutajitolea na kuonekana kwa taifa hili kwamba Kenya ni nchi ya wote. Historia itaandikwa leo kwamba jamii kubwa, hasa wale ambao wamejitokeza na kwenda nyumbani, kwamba hawajali maslahi ya wanyonge. Kwamba, wao hawatakuwa na shida kesho wakija kwetu kutafuta kura. Naomba; napiga magoti, wote ambao tuko hapa kama hata hatutoshi, tuweke sahihi kwamba, tunaona wanyonge Kenya hii.

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

Hon. Members: Not yet!

(The Division Bell was rung)

Mr. Speaker: Order, hon. Members! You will have to stop that Bell.

(The Division Bell was stopped)

Hon. Members, I will ask to be excused because I have just come in and I did not realize that there is something we had not done on this particular amendment. So, I will proceed to remedy that.

(Question of the amendment proposed)

(Several hon. Members stood up in their places)

Order, hon. Members! I gave directions earlier that beginning 4.15 p.m., we will proceed to guillotine. Some hon. Members may not have been here but I specified what the guillotine will entail and, among other things I said, what we will do in the guillotine stage is that the Mover will move and he will be seconded and after that, we will proceed to Division where the Article has been moved. So, I direct that the Bell be rung so that we move on to Division.

(The Division Bell was rung)

Mr. Speaker: Order, hon. Members! Please, close the door and draw the bar. Ascertain how many Members are in the House!

(The Bar was drawn)

(The hon. Members were counted by the clerks-at-the-Table)

Hon. Members, we have ascertained that there are 100 Members present in the House, which is below the threshold set by the Constitution. Therefore, the amendment to the First Schedule moved by the Member for Ndaragwa is negated.

(Proposed amendment to First Schedule negated)

Mr. Mbugua: On a point of order, Mr. Speaker, Sir. I have noted that there are 99 Members in the House. There is a stranger in the House.

Mr. Speaker: Order, Member for Kamkunji! Which point of order are you pursuing?

Hon. Members: He is confused!

First Schedule

Mr. Speaker: Member for Khwisero! Hon. Members, apparently the Member for Khwisero is not present in the House. The amendment by him as proposed on page 515 of the Order Paper, stands dropped. Therefore, it is negated.

(Proposed amendment to First Schedule dropped and negated)

First Schedule

The Minister for Lands (Mr. Orengo): Mr. Speaker, Sir, in view of what has happened to the amendment by my friend, the Member for Ndaragwa, I wish to withdraw this amendment.

Mr. Speaker: Hon. Members, given that indication by the Member for Ugenya, the amendment as proposed to the First Schedule by the said Member stands withdrawn. It is, therefore, negated.

(Proposed amendment to First Schedule negated)

First Schedule

Mr. Chepkitony: Thank you, Mr. Speaker, Sir. The intention of this amendment was to make the name to be consistent with the current name. The name which is listed in the First Schedule is an old name, in which the district was known, but all along, the county council has been known by the current name and I want to make it uniform.

Mr. Speaker: Order, Mr. Chepkitony!

Mr. Chepkitony: Mr. Speaker, Sir, I want to move the amendment.

Mr. Speaker: Do you intend to move this amendment?

Mr. Chepkitony: Mr. Speaker, Sir, I want to finalize now. Because of the uncooperative mood in the House, I wish to withdraw the amendment.

Mr. Speaker: Hon. Members, given that indication by the Member for Keiyo North, the proposed amendment to the First Schedule is, therefore, withdrawn and negated.

*(Proposed amendment to the First Schedule
withdrawn and negated)*

The Minister for Industrialization (Mr. Kosgey): On a point of order, Mr. Speaker, Sir. In view of the fact that this is just a spelling error, does it really require an amendment to be moved in this House to correct it?

Hon. Members: It is the law!

The Minister for Industrialization (Mr. Kosgey): It is just a spelling mistake!

Mr. Speaker: Order, Member for Tinderet! You will address the Speaker or the House. Do not engage yourself in side shows!

Hon. Members, the point of order raised by the Member for Tinderet, obviously, is legitimate but, unfortunately, falls within the ambit of alteration. If you care to look at the ordinary English dictionary, let alone a legal dictionary, you will find that the word “alter” among other things means change, correct and so on.

So, Member for Tinderet, I know that you are a good scientist, but you were trained in English. That is the position.

(Laughter)

The Assistant Minister for Transport (Mr. Mwau): Mr. Speaker, Sir, taking into consideration the benefit that this amendment was going to assist the people of Kilome and also the prerequisite of the threshold that is required and the time that is necessary, which would not be available, I take this opportunity to withdraw.

Mr. Speaker: Hon. Members, with that indication from the Member for Kilome, the amendment proposed by him to the First Schedule stands withdrawn and is, therefore, negated.

*(Proposed amendment to the First Schedule
withdrawn and negated)*

The Minister for Tourism (Mr. Balala): Mr. Speaker, Sir, in view of the excitement that now hon. Members are back in the House, I beg to move:-

First Schedule

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 deletion of the First Schedule and its replacement with the following new First Schedule—

First Schedule

(Article 6(1))

Provinces and Counties

The provinces into which Kenya is divided are—

Provinces

1. Nairobi
2. South Coast
3. North Coast
4. West Coast
5. Lower North Eastern
6. Upper North Eastern
7. Upper Eastern
8. Central Eastern
9. Embu
10. Kitui
11. Machakos
12. Nyandarua
13. North Central
14. East Central
15. Upper North Rift
16. North Rift Valley
17. South Rift Valley
18. Central Rift Valley
19. East Rift Valley
20. Lower Western
21. Upper Western
22. Busia

23. Nyanza Central
24. Nyanza East
25. South Nyanza

The following are the counties that make up the provinces—

- 1) Nairobi**
 - Nairobi
- 2) South Coast**
 - (a) Kilifi
 - (b) Mombasa
- 3) North Coast**
 1. Lamu
 2. Tana River
 3. Malindi
- 4) West Coast**
 - (a) Kwale
 - (b) Taita
 - (c) Taveta
- 5) Lower North Eastern**
 - (a) Ijara
 - (b) Garissa
- 6) Upper North Eastern**
 - (a) Mandera
 - (b) Wajir
- 7) Upper Eastern**
 - (a) Isiolo
 - (b) Marsabit
 - (c) Moyale
- 8) Central Eastern**
 - (a) Tharaka
 - (b) Meru Central
 - (c) Meru North
- 9) Embu**
 - (a) Mbeere
 - (b) Embu
- 10) Kitui**
 - (a) Kitui
 - (b) Mwingi
- 11) Machakos**
 - (a) Makueni
 - (b) Machakos
- 12) Nyandarua**
 - (a) Nyandarua
- 13) North Central**
 - (a) Kirinyaga
 - (b) Nyeri

14) East Central

- (a) Limuru/Kabete
- (b) Maragwa
- (c) Thika
- (d) Githunguri/Lari
- (e) Murang'a

15) Upper North Rift

- (a) West Pokot
- (b) Upper Turkana
- (c) Lower Turkana

16) North Rift Valley

- (a) Nandi South
- (b) Marakwet
- (c) Keiyo
- (d) Nandi North
- (e) Uasin Gishu
- (f) Trans-Nzoia

17) South Rift Valley

- (a) Kajiado
- (b) Narok
- (c) Trans Mara

18) Central Rift Valley

- (a) Nakuru West
- (b) Bureti
- (c) Kericho
- (d) Baringo
- (e) Koibatek
- (f) Nakuru East
- (g) Bomet

19) East Rift Valley

- (a) East Pokot
- (b) Laikipia
- (c) Samburu

20) Lower Western

- (a) Vihiga
- (b) Kakamega
- (c) Butere-Mumias
- (d) Lugari

21) Upper Western

- (a) Bungoma North
- (b) Bungoma South
- (c) Mount Elgon

22) Busia

- (a) Busia
- (b) Teso

23) Nyanza Central

- (a) Siaya
 - (b) Nyando
 - (c) Kisumu
 - (d) Bondo
- 24) Nyanza East**

- (a) Homa Bay
- (b) Rachuonyo

25) South Nyanza

- (a) Kuria
- (b) Nyamira
- (c) Suba
- (d) Gucha
- (e) Kisii
- (f) Migori

Mr. Speaker, Sir, the First Schedule talks about devolution. Here is where we have made a sober decision to change this Constitution because we want to serve the people on the ground. We cannot change the Constitution and not be able to reach the grassroots, so that people can be empowered and given those services. My proposal here is to have 25 provinces and then subdivide them into 76 counties. That is where you are going to have services to the people.

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

Mr. Kivuti: Mr. Speaker, Sir, I would like to second this amendment because of two reasons. I am aware that the mood of the House has been very negative to any alterations and amendments. But before we come to the end of these amendments, this is the only chance that we have to bridge what hon. Orengo and hon. Kioni brought to the House. This is the last chance that the poor and marginalized communities have. This is because the provisions of Article 255 will not allow us to have this chance forever.

Mr. Speaker, Sir, I beg to second for the sake of the people of Mbeere.

(Question of the amendment proposed)

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

(The Division Bell was rung)

Mr. Speaker: Order, hon. Members! Close the doors and draw the Bar. Hon. Ndeti and hon. Mwau, please, walk into the Chamber, so that you are within the Bar. Ascertain how many Members are present.

(The hon. Members were counted by the Clerks-at-the Table)

Mr. Speaker: Hon. Members, it has been ascertained that there are 123 hon. Members in the House. The effect of that is that the number of hon. Members does not

meet the threshold and that, therefore, the amendment moved by the hon. Member for Mvita is negatived. Open the doors.

(Proposed amendment negatived)

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 the deletion of the First Schedule and its replacement with the following new Schedule—

First Schedule

(Article 6(1))

Provinces and Counties

The provinces into which Kenya is divided are—

- 1) Coast Province
- 2) Eastern Province
- 3) North Eastern Province
- 4) Rift Valley Province
- 5) Nyanza Province
- 6) Western Province
- 7) Central Province
- 8) Nairobi Metropolis

The following are the counties that make up the provinces—

- 1) Coast Province**
 - a) Kwale
 - b) Mombasa
 - c) Taita
 - d) Taveta
 - e) Kilifi
 - f) Lamu
 - g) Tana River
 - h) Malindi
- 2) North Eastern Province**
 - a) Garisa
 - b) Ijara
 - c) Mandera
 - d) Wajir
- 3) Eastern Province**

- a) Makueni
 - b) Machakos
 - c) Kitui
 - d) Mwingi
 - e) Meru Central
 - f) Meru South
 - g) Meru North
 - h) Tharaka
 - i) Mbeere
 - j) Embu
 - k) Isiolo
 - l) Marsabit
 - m) Moyale
- 4) Rift Valley Province**
- a) Kajiado
 - b) Narok
 - c) Trans Mara
 - d) Upper Turkana
 - e) Lower Turkana
 - f) West Pokot
 - g) East Pokot
 - h) Marakwet
 - i) Trans Nzoia
 - j) Keiyo
 - k) Uasin Gishu
 - l) Nandi North
 - m) Nandi South
 - n) Kericho
 - o) Bureti
 - p) Bomet
 - q) Baringo
 - r) Koibatek
 - s) Nakuru
 - t) Samburu
 - u) Laikipia
- 5) Nyanza Province**
- a) Bondo
 - b) Nyando
 - c) Siaya
 - d) Suba
 - e) Kuria
 - f) Rachuonyo
 - g) Kisii Central
 - h) Gucha
 - i) Nyamira
 - j) Kisumu

- k) Homa Bay
- l) Migori
- 6) Western Province**
- a) Busia
- b) Bungoma North
- c) Bungoma South
- d) Teso
- e) Mt. Elgon
- f) Lugari
- g) Kakamega
- h) Vihiga
- i) Butere/Mumias
- 7) Central Province**
- a) Kiambu
- b) Thika
- c) Murang'a
- d) Maragua
- e) Nyandarua North
- f) Nyandarua South
- g) Nyeri
- h) Kirinyaga
- 8) Nairobi Metropolis**

Mr. Speaker, Sir, you will notice that I am just restating the provinces as they are. I am not saying where the counties will be but actually, we are retaining the provinces. This is so obvious that it does not need any controversy. I am even made to understand that the two Principals have also come to specifically support this. I am sure that once you ring the bell, they will move in. So, I suggest that we accept it. I ask Mr. Ogindo to second while the Principals are walking in.

Mr. Ogindo: Mr. Speaker, Sir, I rise to second the Motion. We all appreciate that this does not make a difference other than to define where the counties are and the benefit goes to every corner of this country.

With those few remarks, I beg to second.

(Question of the amendment proposed)

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

(The Division Bell was rung)

The Minister for Agriculture (Mr. Samoei): Point of order, Mr. Speaker, Sir.

Mr. Speaker: I have already given direction on what happens when the Division Bell is ringing. I gave the directive earlier on.

The Minister for Agriculture (Mr. Samoei): Mr. Speaker, Sir, I wanted to raise a procedural matter.

Mr. Speaker: Order, hon. Member for Eldoret North!

Order! Please close the doors, draw the Bar and ascertain how many hon. Members are in the House.

Hon. Members, it has been ascertained that there are 128 hon. Members present in the House which is below the threshold. Therefore, the amendment to the First Schedule moved by the hon. Member for Chepalungu is negatived.

Open the doors.

(Proposed amendment negatived)

Second Schedule

Mr. Konchella: Thank you, Mr. Speaker, Sir. I wish to withdraw this Motion.

Mr. Speaker: Order, hon. Members! With that indication from the hon. Member for Kilgoris, the amendment to the Second Schedule, as proposed stands withdrawn and, therefore, is negatived!

(Proposed amendment withdrawn and negatived)

Proceed, the hon. Member for Naivasha!

Third Schedule

Mr. Mututho: Thank you, Mr. Speaker, Sir. I stand to withdraw the amendment.

The Minister for Agriculture (Mr. Samoei): On a point of order, Mr. Speaker, Sir. As you may have noticed, there is a small group of Ms. Karua, Mr. Imanyara and Dr. Khalwale which has made about 100 trips in and out of this House.

(Laughter)

Mr. Speaker, Sir, in solidarity with them, because they have demonstrated a lot of zeal, I want to request that you direct the Sergeant-at-Arms to provide for them permanent seats outside, so that they do not have to keep on coming in and going out.

(Laughter)

Mr. Speaker: Order, hon. Members! Order! Hon. Members, that is a gesture of generosity and magnanimity that is not so common with the hon. Member for Eldoret North! Maybe, the hon. Members mentioned will want to take up that offer.

(Laughter)

Hon. Members, with that indication from the hon. Member for Naivasha, that amendment, as proposed by him stands withdrawn and, therefore, is negatived!

(Proposed amendment withdrawn negatived)

Proceed, the hon. Member for Kaloleni!

Fourth Schedule

Mr. Kambi: Thank you very much, Mr. Speaker, Sir. In view of the mood of the House and gauging their thoughts, I beg to withdraw my amendment.

Mr. Speaker: Hon. Members, with that indication from the hon. Member for Kaloleni, the proposed amendment to the Fourth Schedule stands withdrawn and is, therefore, negated!

(Proposed amendment withdrawn and negated)

Proceed, the hon. Member for Ugenya!

Fourth Schedule

The Minister for Lands (Mr. Orengo): Mr. Speaker, Sir, being committed to devolution with my heart and soul, I had really sat down to set out functions of the different tiers of Government, so that there are functions which are exclusive and others which are concurrent, so that there would not be a matter of conflict or controversy. But since there is no constitutional foundation or framework for a third tier of Government, which is the provincial government, this amendment would be superfluous. So, I withdraw it.

(Applause)

Mr. Speaker: Hon. Members, with that indication from the hon. Member for Ugenya, the proposed amendment to the Fourth Schedule stands withdrawn and is, therefore, negated!

(Proposed amendment withdrawn)

Proceed, the hon. Member for Eldoret East!

Fourth Schedule

Prof. Kamar: Mr. Speaker, Sir, this amendment was, again, in my belief that counties cannot be left hanging, and that they needed to be converged at a provincial government; I had given a proposal of duties and functions of the national Government, the provincial government and the county government. But so that my neighbor, hon. Imanyara does not have to go out, I would wish to withdraw this amendment.

(Laughter)

Mr. Speaker: Order, hon. Members! With that indication from the Member for Eldoret East, the proposed amendment to the Fourth Schedule stands withdrawn and, it is, therefore, negatived.

(Proposed amendment withdrawn and negatived)

The Fifth Schedule

Mr. ole Lankas: Thank you Mr. Speaker, Sir. I would like to withdraw the amendment.

Mr. Speaker: Hon. Members, with that clear indication from the Member for Narok South, the proposed amendment to the Fifth Schedule stands withdrawn and it is, therefore, negatived.

(Proposed amendment to the Fifth Schedule withdrawn and negatived)

The Sixth Schedule

Mr. Mututho: Thank you, Mr. Speaker, Sir. I stand to withdraw my proposed amendment.

Mr. Speaker: Hon. Members, given that indication from the Member for Naivasha, the proposed amendment to the Sixth Schedule stands withdrawn. It is, therefore, negatived.

*(Proposed amendment to the Sixth Schedule
withdrawn and negatived)*

The Sixth Schedule

Mr. Bahari: Thank you, Mr. Speaker, Sir. This amendment was for the purpose of coherence, if my earlier amendment was to go through. Since that one did not see the light of day, I beg to withdraw.

Mr. Speaker: Hon. Members, with that indication from the Member for Isiolo South, the proposed amendment to the Sixth Schedule stands withdrawn. It is, therefore, negatived.

*(Proposed amendment to the Sixth Schedule
withdrawn and negatived)*

The Sixth Schedule

Dr. Eseli: Mr. Speaker, Sir, in view of the fact that I am meant to understand that Kenyans are anxiously waiting for this document to vote on it, I do not wish to delay it any further. I withdraw that amendment.

Mr. Speaker: Hon. Members, with that indication by the hon. Member for Kimilili that he does not want to delay Kenyans, the proposed amendment to the Schedule stands withdrawn. It is, therefore, negated.

*(Proposed amendment to the Sixth Schedule
withdrawn and negated)*

The Sixth Schedule

Mr. Mwathi: Mr. Speaker, Sir, this amendment was premised on the fact that the National Accord has its own sunset clause and it was not necessary to have it in the draft Constitution. We are making it too wordy for nothing. However, going by my earlier wisdom, I wish to withdraw.

Mr. Speaker: Order hon. Members. Given that indication by the hon. Member for Limuru, the proposed amendment to the Sixth Schedule stands withdrawn and, is therefore, negative.

*(Proposed amendment to the Sixth Schedule
withdrawn and negated)*

The Minister for Nairobi Metropolitan Development (Mr. Githae): Mr. Speaker, Sir, since what we are considering, the draft Constitution is the best constitution that the Committee of Experts were able to come up with, I feel that I should withdraw my amendment. We have the best Constitution.

Mr. Speaker: With that indication by the hon. Member for Ndia, the proposed amendment to the Sixth Schedule stands withdrawn. It is, therefore, negated.

(Proposed amendment to the Sixth Schedule withdrawn)

New Article 72A

Mr. Otichilo: Mr. Speaker, Sir, given the mood of the House, I wish to withdraw the amendment.

Mr. Speaker: Hon. Members, with that indication, the proposed amendment to the New Article 72A stands withdrawn. It is, therefore, negated.

*(Proposed amendment to the New
Article 72A withdrawn and negated)*

The Minister for Trade (Mr. Kimunya): On a point of order, Mr. Speaker, Sir. I just want to draw the attention of whoever will be redrafting this to a fundamental error on page 199. It needs to be corrected within the wider issues of correction. Article 7(2) (b), the “or” at the end changes the entire meaning of that clause. So, it needs to be deleted as part of the corrections. It is not for this; I am just drawing the attention of those who will be redrafting, so that they can correct.

Mr. Speaker: Order! Order, the hon. Member for Kipipiri! You have made your point but the directions that I made with respect to the point of order raised by the Member for Tinderet apply to you with equal weight. You will leave that to the hon. Attorney-General, if he interprets the law differently from the directions that I gave.

ARRIVAL OF HIS EXCELLENCY THE PRESIDENT

Order, hon. Members! Hon. Members, we will allow the Member for Othaya to come in.

(Applause)

*(His Excellency the President entered
the Chamber at 6.35 p.m.)*

Hon. Members, we respect the prophetic song of the Member for Chepalungu that His Excellency the President would be here presently and indeed he is here, and we want to assure him that he is welcome to this business.

New Article 113 (a)

The Minister for Lands (Mr. Orengo): Mr. Speaker, Sir, I am not saying it is very exciting to have the hon. Member for Othaya in this Assembly.

Looking at the amendments, the whole intention was to give the Senate some teeth, knowing that some of you would want to go the Senate so that you do not end up in a toothless Chamber. But judging on the basis that the devolution in terms of provincial governments, which are proposed, do not have the constitutional foundation, I wish to withdraw the amendment.

Mr. Speaker: Hon. Members, with that indication by the Member for Ugenya, the proposed amendment to the New Article 113(a) stands withdrawn and negated.

(Proposed amendment to Article 113(a) negated)

New Article 128A

Mr. Speaker: Hon. Members, it is apparent that the hon. Member for Kitutu Masaba is not present in the House. Therefore, the proposed amendment to the New Article 128A is dropped and negated.

(Proposed amendment to New Article 128A negated)

The Minister for Lands (Mr. Orengo): Mr. Speaker, Sir, I continue to be in the process of the self-destruction. So I withdraw the proposed amendment.

New Part

Mr. Speaker: Hon. Members, given that indication from the Member for Ugenya, the proposed amendment to the new part as appears on the Order Paper stands withdrawn and is, therefore, negated.

(Proposed amendment on New Part negated)

New Part

The Minister for Planning, National Development and Vision 2030 (Mr. Oparanya): Mr. Speaker, Sir, this particular amendment is related to my earlier amendments which I withdrew. Because of that, I also wish to withdraw this one.

Mr. Speaker: Hon. Members with that indication by the Member for Butere, the proposed amendment moved by him to the New Part as it appears on Page 551 of the Order Paper stands withdrawn and is, therefore, negated.

(Proposed amendment withdrawn and negated)

New Article 238A

The Minister for Medical Services (Prof. Anyang'-Nyong'o): Mr. Speaker, Sir, I wish to move an amendment to add a New Article 238A which will give functions to a National Health Services Commission.

In my earlier contribution, I said that it is extremely important for the good governance of this nation since health is a basic need for all Kenyans. However, realising that within this Constitutional provision, this may not be possible, I will subsequently, proceed to draft a Bill for an Act of Parliament to establish a National Health Services Commission and my parliamentary counsel, Mr. Orengo, will obviously come in handy in helping my Ministry draft that Bill and sailing it through the House. In the meantime, God forgive us, I wish to withdraw the amendment.

(Laughter)

Mr. Ruto: On a point of order, Mr. Speaker, Sir. Is the hon. Member in order to refer to the Minister for Lands as his parliamentary counsel?

Mr. Speaker: Order, hon. Members! The only person who can possibly give us an answer to that is the hon. Member for Ugenya. Otherwise, the information would be privileged as far as I know. However, let me hear the Member for Ugenya.

(Laughter)

The Minister for Lands (Mr. Orengo): Mr. Speaker, Sir, you are right on the spot. The relationship is between me and the Minister for Medical Services and goes a little beyond his position as the Minister for Medical Services. So, I will leave it that way.

Mr. Speaker: Thank you. Indeed, that is the position in law. The relationship between counsel and client is privileged.

Hon. Members, with that indication by the Member for Kisumu Rural, the proposed amendment to New Article 238A stands withdrawn and is, therefore, negated.

(Proposed amendment withdrawn and negated)

New Article 238A

Dr. Eseli: Thank you, Mr. Speaker, Sir. For the same reasons given by Prof. Anyang'-Nyong'o, and given the fact that he has asked God to forgive the people who caused this, I would like specifically to ask God to forgive the Committee of Experts and the Parliamentary Select Committee. Those who are Catholics in those committees should go to church and say: "*Tumekosa, tumekosa, tumekosa sana.*"

I beg to withdraw.

(Laughter)

Mr. Speaker: Order, hon. Members! Given the indication by the Member for Kimilili with respect to his proposed amendment to New Article 238A, the amendment stands withdrawn and is, therefore, negated!

(Proposed amendment withdrawn and negated)

Seventh Schedule

The Minister for Lands (Mr. Orengo): Mr. Speaker, Sir, it is only hon. Martha Karua who is a member of FIDA. This amendment to the Seventh Schedule was supposed to empower our women to have special seats but now that I do not see any other people who are potential members of FIDA in the House, I withdraw the amendment.

Mr. Speaker: Hon. Members, with that indication from the Member of Parliament for Ugenya, intimating that he lost the solidarity of the Member of Parliament for Gichugu, the proposed amendment of inserting the New Schedule as appears on Page 553 stands withdrawn and is, therefore, negated.

(Proposed amendment withdrawn)

Yes, Member of Parliament for Nyeri Town!

New Part

Part 6 – The Gender Commission

The Minister for Gender, Children and Social Development (Ms. Mathenge): Mr. Speaker, Sir, it is very unfortunate, because this constitution was, for the first time in

Kenya, going to articulate issues that affect women. That is why we felt that the Gender Commission had to be separated from the Human Rights Commission. However, since this House has shown that it has no faith in what we are doing, I wish to withdraw my proposal of insertion of a New Part. God forgive us all!

Mr. Speaker: Hon. Members, with that indication from the Member of Parliament for Nyeri Town, the proposed amendment of inserting a New Part as appears on page 555 of the Order Paper stands withdrawn and is, therefore, negated.

(Proposed amendment withdrawn and negated)

Hon. Members, that brings us to the end of amendments as proposed and captured on the Order Paper. I will proceed to ascertain if, in fact, there have been any amendments. So, you will allow three minutes for me to be advised.

*(Mr. Speaker consulted the Clerk
of the National Assembly)*

Mr. Speaker: Order, hon. Members! I have been brought up to speed. I have been advised that other than the amendments proposed as appeared on the Order Paper, no further amendments have been received. That, therefore, brings us to the end of the proposed amendments.

Hon. Members, I am further advised that no amendment has succeeded. So, under those circumstances, we revert to the Motion in its original form which is:

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.

Hon. Members, at this point in time, it may be appropriate for the official Government Responder to prepare to make his contribution.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Speaker, Sir, I rise to very firmly thank this hon. House for one of the most historic events in the history of the country. The fact that today we are putting forward a draft Constitution to the Attorney-General for publication and thereafter, after civic education, to a referendum, is a truly amazing event for the future of this country.

Mr. Speaker, Sir, I want to pay tribute to you, particularly for the interventions that you have made since this process began about 30 days ago. Your interventions on several occasions have enabled this House to come to the point that it has come.

I would like first of all, to pay tribute to those hon. Members who proposed amendments to the draft Constitution, partly because it is acknowledged worldwide that a constitution is merely a framework for debate, and that debate will continue.

To the extent that the HANSARD is full of proposals from all manner of Members of Parliament; from all manner of issues; from land to those marginalized areas of our country; from issues like impeachment to issues covering devolution; that is a landmark position for this country, and the HANSARD will provide a useful tool for the ensuing debate that will occur in this country from now to eternity.

Mr. Speaker, Sir, we have now, for the first time in the history of this country, come up with the single most advanced framework for a constitution ever imagined. We have a Bill of Rights and principles governing representation of the people. For the first time, we have clearly stated that sovereignty belongs to the citizens of this country. We have a leadership and integrity provision. We have all issues that are so important for the future of this country. It reminds me of the famous words of Shakespeare, and allow me to quote them, if anything, to ease the burden of debate that has downed on us.

Shakespeare's book, Hamlet III says this:

"What a piece of work is a man. How noble in reason. How infinite in faculty, in form in moving. How exposed and admirable in action. How like an angel in apprehension, how like a god! The beauty of the word, the paragon of all animals".

Mr. Speaker, Sir, I fully embrace these words in reference to the distinguished hon. Members of this House who have distinguished themselves in making sure that a new Constitution finds its way to the Referendum. I say so, because the law that has put the deadline of tonight is a law that we made ourselves. The Committee of Experts is a Committee that we established ourselves. The Parliamentary Select Committee is drawn from this House. We elected those people who have guided this process. I want to pay tribute to hon. Abdikadir and hon. Namwamba. These are wonderful people who have helped us dramatically in coming to where we are. Therefore, allow me to recognise those individuals for that purpose.

Mr. Speaker, Sir, allow me to quote from a book called: *Law and Justice: An Anthology* by Solisa Ramji, published in 2003. This is what he says:

"True development is not of things, but of the human members of a given society, individually and collectively spiraling upwards. Groups with ethnic, cultural and other identities may in full or partial measure desiderate self determination, sufficient to manifest and enjoy autonomy and latent greatness."

Mr. Speaker, Sir, that is the stage at which we are. I want to plead with hon. Members, those who proposed amendments and those who did not, those who may have issues with the draft, to borrow from past experiences in Constitution making. The history of Constitution making is that not everybody gets satisfied. Even those who are satisfied are left with doubts. It is a continuous debate. Therefore, I am hoping and I am so happy to be addressing this honourable House in the presence of His Excellency the President and the Right Hon. Prime Minister. We require to urge our country to embrace this document when it comes to the referendum, to vote for it and to avoid bananas and oranges, as happened in the past.

Mr. Speaker, Sir, with those few remarks I want to conclude again with the remarks I made here two, three days ago of Bob Kennedy and they are as follows.

(Loud consultations)

Kindly listen to me because I am finishing.

"Some men see things as they are and they are they say "why". I dream things that never were and say "why not."

I want to ask my country Kenya; why not? Why not? Why can we not produce a new Constitution?

Mr. Speaker, Sir, I beg to support. Thank you very much.

(Applause)

Mr. Speaker: Order, hon. Members! We have just a few minutes for those Members who may not have said anything previously and, perhaps, want to contribute. We will allow you a maximum of two minutes for very few, indeed. Extremely few.

The Minister for Education (Prof. Ongeru): Mr. Speaker, Sir, I want to join hands with hon. Members in this House and say that, once again, we have a document that we can work on, and be able to increase the integrity of this nation. We will be able to create an enabling environment where we can all stay together as Kenyans, as people of one nation; where we can see each other as friends and not enemies. Therefore, this document will be an enabler for the future of this nation.

God bless this nation.

Mr. Speaker: Ms. Milly Odhiambo, I hope you have not contributed previously.

Ms. Odhiambo: No, I have not, Mr. Speaker, Sir.

Thank you for giving me this opportunity. I would like to say that I have sat here for two days up to 8.00 p.m. but I was not given a chance. I wish we had made certain amendments. However, other than that I fully support this because, it speaks on the issue of equalization and the issue of exclusion through principles, institutions and other mechanisms; an expanded Bill of Rights, human rights based approach to programming, policy making and legislations making.

It has included marginalized groups and special interests like children, women and has given special seats for women who, because of difficulties that they face especially violence and lack of finances, are not able to be here. That is why today we are only 22 and we are number 105 in the whole world against other countries whose names I cannot remember.

With those remarks, I beg to support.

Mr. Kivuti: Thank you, Mr. Speaker, Sir. I would like to state two things.

I know we needed this Constitution even before I came to this Parliament. I know Kenyans need this Constitution. I know we may all not be able to get every change that we may have wanted. I may have wanted to have Mbeere County. I know other Members here may have wanted to get all the changes that they proposed. The fact that we did not get those changes does not negate the need for prosperity for this country.

Mr. Speaker, Sir, it is very important that we take this Constitution as a first step for this country because the country needs to move forward. We need to look at the changes and Agenda 4, which will be addressed in a big way by this Constitution.

Secondly, I would like to look at Kenya from a different point of view. The fact that we have been debating as a group or as Parliamentarians means that at the next step, we will talk to the same people whom we represent to tell them what we have done. When that time comes I hope we shall all go with one voice.

I beg to support.

The Assistant Minister for Higher Education, Science and Technology (Mr. Kamama): Mr. Speaker, Sir, I stand here to represent the minority in this country---

Mr. Speaker: Order, Mr. Kamama! You will have to find your right place as per the directions which I have given in this House many times!

In the meantime, Dr. Mwiria, please, proceed!

The Assistant Minister for Higher Education, Science and Technology (Dr. Mwiria): Thank you, Mr. Speaker, Sir, for giving me this opportunity to congratulate all Members of Parliament for unanimously approving this document.

Hon. Members: No! No!

The Assistant Minister for Science and Technology (Dr. Mwiria): By not approving any amendment, it is a clear indication that we support the document, and for this we are grateful.

Mr. Speaker, Sir, I hope the way we are going, even when it comes to the referendum--- We have every reason to be confident that we will support it. If you look at the referendum of 2005, you will find that we were divided along bananas and oranges. This time bananas and oranges are in the same Government. Therefore, there is no reason at all for division. I hope we will carry this forward for the sake of the people of this country; for those many who have been waiting for this Constitution. Those of us who are not happy with the things they did not get will not get out there and poison a public that is eager for a new Constitution.

I wish you a Merry Easter!

Mr. Sirma: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order, Mr. Kamama! You caught the Speaker's eye but you were in an inappropriate place. So you will have to bide your time.

Mr. Sirma: On a point of order, Mr. Speaker, Sir. Dr. Shaban is also on the wrong side of the House and, therefore, they are taking up our positions to contribute. We have not spoken and we have been here!

Mr. Speaker: Order! That is correct! Will you proceed with your contribution?

(Laughter)

Dr. Shaban, move to the right place!

(Dr. Shaban moved to the Government Benches)

Mr. Sirma: Mr. Speaker, Sir, this is a sad day for Kenya. I want to say this Parliament and this Constitution has not captured the wishes, aspirations and the hope Kenyans wanted in a Constitution.

(Applause)

As leaders, we have failed Kenyans and I want to say it is a big shame and we are going to make sure that this Constitution does not go through because it does not capture the aspirations of Kenya.

(Applause)

The Minister of State for Special Programmes (Dr. Shaban): Bw. Spika, asante sana kwa kunipatia fursa hii na mimi pia niweze kujumuika na wenzangu katika swala hili ambalo limetutaliza hapa kwa muda wa siku 30. Miaka 47 baada ya Uhuru, tunasikitika ya kwamba Wakenya bado hatujakubaliana kuwa sisi ni watu wamoja na

wanyonge wanaonekana kuwa hawana haki. Bunge hili lingekuwa limefanya uamuzi kuwa hata wale ambao ni wanyonge; wale ambao ni makabila ambayo hayana nguvu, pia wangeweza kuhusishwa ili tukiwa na Senate, iwe pia inawabeba hao waweze kusikika sauti zao za unyonge. Leo ni siku ya masikitiko kwa muda wa siku mbili tumefanya sarakasi; tumekuwa wanasarakasi badala ya kuwa Bunge la kuheshimika. Baada ya hapo, bado tunarudi kwa wananchi tukiwadanganya na kuwaambia maneno ya uongo ambayo si ya kweli. Hatuna huruma na Wakenya. Na huo ndio ukweli uliopo, kwa hivyo ninasikitika sana.

(Several hon. Members stood up in their places)

Mr. Speaker: Order! Hon. Members, please be advised that we have a record of those of you who have previously contributed. The record shows that Dr. Shaban contributed on 24th March, 2010. Please be men and women of honour! Any other incidences of previous contribution, I am afraid, will be found to be grossly out of order and will be dealt with accordingly.

The Minister for Lands (Mr. Orengo): Jambo la nidhamu, Bw. Spika!

Hon. Members: Aah!

The Minister for Lands (Mr. Orengo): Ni jambo la nidhamu. Bw. Spika, umesikia matamshi ya Dr. Shaban akisema ya kwamba tumekuwa tukifanya sarakasi na sijui kama Bunge linaweza kufanya sarakasi.

Mr. Speaker: Dr. Shaban, unajibu lolote kuhusu hio hoja ya nidhamu?

The Minister of State for Special Programmes (Dr. Shaban): Bw. Spika, sarakasi ni kuwa, kila saa na wakati, watu ni kutoka; watu hawataki kufanya shughuli yoyote ya Bunge hili. Tumetupilia mbali shughuli iliyotuleta Bungeni kusaidia Wakenya kuwa na maisha bora kuliko wakati ule tukija hapa.

(Applause)

Mr. Nyambati: Mr. Speaker, Sir, thank you for giving me this chance also to contribute because I have not had a chance to do so. I want to say here and now that while we have sent this Constitution to the people of Kenya to go and make a decision, I think it is fair for us to say that given the number of amendments that hon. Members have come up with, it shows that this Constitution is wanting. But that is not to say that it is not a good Constitution.

Mr. Speaker, Sir, anything good can be made better. We wanted to make this Constitution better as Members of Parliament. Unfortunately, we did not do anything towards that. Now we are forced to go out there, and ask Kenyans to support this Constitution. It might be very difficult for us to do that kind of work because it is apparent and evident that we have not done our work as Members of Parliament. There are some good amendments in relation to the security of this country, which we should all have supported, but we did not. Those of us who have power to help the people of this country have failed this country. I want to say here and now that we, as a House, have failed the people of this nation because we have not passed the amendments. We must be serious in what we are doing.

I beg to support.

(Mr. Kamama stood up in his place)

Mr. Speaker: Order, Mr. Kamama! The record that has been given indicates that you have previously contributed. So, I am afraid, I cannot give you another opportunity.

The Assistant Minister for Energy (Mr. Keter): Thank you, Mr. Speaker, Sir, for giving me this opportunity to contribute. What is the need of having a new Constitution or what was the need for us to have a new Constitution? It was meant to devolve power from the imperial presidency to other institutions. However, what I have seen in this draft which you want to pass today is that, we have even given more powers to the presidency. We have not done enough in devolution. The land issues which are here are socialist. We wanted to have a Constitution which will protect every Kenyan, namely, the minority and the majority. We wanted to have a Constitution for all Kenyans. We wanted to have listened to the views of Kenyans.

When we were in Bomas, the Commissioners went round the country collecting views and everybody said that they wanted to elect a President. We want to devolve the powers of the President. We also wanted to devolve the resources. Today we have lumped everything together. Therefore, it is very hard for me to say that we have done a good job today. Should we ask Kenyans to vote for it? We have allowed the Armed Forces to hold demonstrations. Are we right to say that we will have the right Constitution?

Therefore, I say “no” to this draft Constitution.

Mr. Ngugi: Mr. Speaker, Sir, in 20 years, this is the closest we have got to getting a new Constitution. When the PSC came from Naivasha, the whole country heaved a sigh of relief. The team that went to Naivasha thought as Kenyans. For 11 days, they sat together and produced a good document for this country. Since then, we have retreated to our communities, regions and our interests.

My appeal to the Members is: Let us not deny Kenyans what they have been waiting for, for 20 years. If we compare this Constitution with the current one, there are so many good things in it. Therefore, we cannot afford to throw away the baby with the bath water. I appeal to the Members not to deny Kenyans a new Constitution.

(Mr. Kosgey stood up in his place)

Mr. Speaker: Hon. Members, as I indicated, those of you who have previously contributed should not make efforts to catch the Speaker’s eye. Just be honourable! I have a clear record and, indeed, my memory serves me right that the hon. Member for Tinderet did, in fact, contribute on 30th March this year. So, hon. Kosgey, please, give way to others.

Mr. Affey: Mr. Speaker, Sir, this is a great day for this country and I am very happy to participate in this great occasion. From the outset, I would like to thank my party ODM-(K) for giving me this opportunity to witness this occasion through nomination to this Parliament.

Mr. Speaker, Sir, secondly and most importantly, history is being made today, for us from the north-east, particularly, because we never had the unique opportunity to participate as a province, in the making of the current Constitution in 1963. Today, we

have the unique opportunity as a province to participate and own this document. I would like to thank Parliament, particularly the Parliamentary Select Committee, for giving one of us, hon. Abdikadir---

Mr. Keynan: On a point of order, Mr. Speaker, Sir. Is it in order for hon. Affey to mislead the hon. Members, when I know that the majority of the Members of---

(Hon. Affey remained standing)

Mr. Speaker: Order, hon. Affey! Order, hon. Keynan! Hon. Members, the rules of this House as captured in the Standing Orders are clear that only one Member will be on his feet at any given time. We cannot have Mr. Keynan and Mr. Affey both on their feet. So, one of you is grossly out of order and it is hon. Affey. But, perhaps, because you did this just out of a lapse or omission, I will pardon you for the moment.

Mr. Keynan: Mr. Speaker, Sir, I was on a point of order. Is it in order for hon. Affey to mislead Kenyans and this Tenth Parliament when I know that the residents of northern Kenya, not only in North-Eastern Province, but the entire former North Eastern Province (NEP) region – and I can bet – are going to vote against this document? This is because through this document their rights have been reduced to privileges---

Mr. Speaker: Order, hon. Keynan! I have followed your presentation and I am afraid that it falls outside the ambit of a point of order. What you have staged is a point of argument, or at the very best, an opinion which differs from that of hon. Affey.

Mr. Affey: Mr. Speaker, Sir, we will know whether people at home will reject it or otherwise, in due course.

Mr. Speaker, Sir, because of the historic moment in which we are and the unique circumstances we find ourselves in, I want to take this opportunity to thank the Parliamentary Select Committee for giving hon. Abdikadir an opportunity to chair this important historic function. It only confirms that we have---

The Assistant Minister for Information and Communications (Mr. Khaniri): On a point of order, Mr. Speaker, Sir. I think we are going round in circles and not adding any value to this document. Would I be in order to request that the Mover be called upon to reply?

Mr. Speaker: Order! The Member for Hamisi, you have been here for a long time. If my memory serves me right, you are serving your fourth term. If you have contributed to a Motion, you cannot move that the Mover be called upon to reply. My memory indicates to me that you contributed. Until I ascertain the record, I am afraid I will have to go by my memory.

Proceed, Mr. Affey!

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

Mr. Speaker: Order, the Member for Ikolomani! Please, relax!

Mr. Affey: Mr. Speaker, Sir, this is a historic day. It is not every other day you get an opportunity like this. It has come to us after 45 years to stand on the Floor of the House and say what we want.

Mr. Speaker, Sir, I just wanted to add as I give the vote of thanks, because it is a day to thank Kenyans---

Mr. Speaker: Order! Mr. Affey, your time is up!

Yes, the hon. Member for Sirisia!

Dr. Khalwale: On a point of order, Mr. Speaker, Sir. With all due respect, I beg that you bear with me. I am completely at a loss because to my understanding, we have come to the end of the Motion. If that is the case, my understanding is that this was going to be an opportunity for Mr. Abdikadir to address us briefly and then the Prime Minister and the President. That we are doing what we are doing, it is my submission that we are not helping the constitutional process in this country. I beg to be guided.

Mr. Speaker: Hon. Member for Ikolomani, I appreciate your concern and indeed, you rose on a point of order which seems to want to vary the procedure of this House. At any rate, your argument is self-defeating because you opened your statement by saying that we have come to the end of this Motion and then you said that what is left, is for his Excellency the President and the Mover of the Motion to address the House. That, therefore, means, by logical implication, that we have not come to the end of the Motion. So, it is self-defeating and I am afraid you are out of order.

The Minister for Foreign Affairs (Mr. Wetangula): Mr. Speaker, Sir, I will speak for a very short time. This is an important day. I do not want us to bury our heads in the sand. I do not want us to shower praises on ourselves unfairly. For 150 amendments to have been brought by hon. Members who burned their midnight oil to prepare, it meant something. I want to suggest that for us to rush this document simply because we have come to an end of the debate may be self-defeating. We have an Act that guides this process. We still have issues in this document on land, devolution, armed forces, transitional clauses and many others.

I want to urge the House and it is entirely within your hands and your competence, to relook at the process set out in the Act and see whether we can still take time out before rushing this draft to the Attorney-General for printing and then taking it to the public for a referendum and then we go there and replicate what happened in 2005. There are issues that we must address and, as leaders, we must be true to ourselves and the people we represent. There are people here who are uncomfortable and we must address that.

Mr. Speaker: We have time for just two more. One from my left and one from my right, and that will be it.

(Eng. Rege raised his hand)

Order, hon. Member for Rangwe! I am afraid you cannot catch the eye of the Speaker because of your conduct. In this House we do not raise hands. You stand up and catch the Speaker's eye.

Mr. Waititu: Mr. Speaker, Sir, I rise to support this Motion. For a long time this country has been waiting for a new constitution. You know very well that it cannot be perfect. The amendments in this Draft Constitution were brought in this House and hon. Members could not agree. We are not sure that in future that they are going to agree. So, the only thing is for the draft to go to the people so that they can vote for it. We know very well that some people in this country are under-represented. Like for my case in Embakasi. In this constitution, we have hope that constituencies will be increased and our people will get representation in this House.

Mr. Speaker, Sir, we have been told and it is documented that countries like Singapore, Malaysia and Indonesia, which were at par with our country Kenya at

Independence, are way ahead because of their constitutions. We are also told that our Constitution is the cause of all the problems that we have. It is my believe that having a new Constitution is a chance for this country.

Mr. Speaker: Order, hon. Member for Embakasi! Your time is up!

The Assistant Minister for Youth Affairs and Sports (Ms. Ndeti): Thank you, Mr. Speaker, Sir---

Hon. Members: She has already spoken!

Mr. Speaker: Order, Ms. Ndeti! All the while, I have believed you are a lady of honuor!

(Laughter)

Unfortunately, my record, which has been served on me by the Clerks-at-the-Table, and which I have no reason to doubt, indicates that you contributed only yesterday. You must have been able to remember that!

Proceed, hon. Mwau!

The Assistant Minister for Transport (Mr. Mwau): Thank you, Mr. Speaker, Sir. First of all, I would want to thank all hon. Members of this House; if you look at the number of these amendments, it means that all of us have taken the trouble to read the draft Constitution. Every hon. Member, even those who have walked out and even those who have not supported, have failed to do so because they are informed. So, for that reason, I would want to thank all of you. Many people out there think we do not read; they think we do not look at the document, but this is one document that I thank all of you for having taken the trouble to go through with a tooth comb.

Secondly, Mr. Speaker, Sir, the draft Constitution that we have, if you read it, you will see that it reflects pain; it reflects the agony of our people; it reflects the impunity that has been meted out to our people. We want to address that impunity. Wherever the Constitution will go, we are sure that it will come back again here, and I am sure that we are well advised. One thing that we need to do, surely, is to ensure that we have a judicial system that is functional. Because no matter what Constitution you have, if you do not have a functional judicial system, then the Constitution has no value! Therefore, let us make sure there are proper checks and balances for the constitutional system.

Thank you, Mr. Speaker, Sir. I beg to support.

Mr. Speaker: Order, hon. Members! We must now move towards contributions from the main players---

POINT OF ORDER

PROCEDURE FOR APPROVING DRAFT CONSTITUTION

Mr. Ruto: On a point of order, Mr. Speaker, Sir. I am standing on a point of order to seek further guidance on the procedure which we shall adopt hence. Before us is a Motion which we expect the Chairman of the Parliamentary Select Committee to now, I think, respond to and finalize, and then we shall go to voting.

Mr. Speaker, Sir, you have given us guidance on the procedure we may have to adopt. It was very clear to us after your last ruling that any amendments would require

two-thirds majority, or 65 per cent, and that was based on the amendment we made to Section 47A (2)(b) of the Constitution. That only speaks to the question of amendments. It does not speak to the question of approval.

Mr. Speaker, Sir, the review Act at Section 33 says we are expected to either approve or to make amendments. We have not made the amendments and we are going towards the approval. Approval, in my view, means we shall be voting, and I accept that we shall be guided by Section 44 of the existing Constitution, and also by the normal practice in Parliament, because this is a Motion.

Mr. Speaker, Sir, Section 54 states that:-

“Except as otherwise provided in this Constitution, any question proposed for decision in the National Assembly shall be determined by a majority of the votes of the Members present and voting.”

Mr. Speaker, Sir, I have not read much on law, but I would like to be advised where exactly the wisdom--- If we were to say “no”, we are to need two-thirds majority; where is it in either any of the Standing Orders or the Constitution?

Where does it emanate from? Is it in the Standing Orders or in the Constitution? My understanding is that we will be guided by Section 54 and that should be the simple majority. If we say “aye” or “noe” and the “noes” have it, what will you say? Will you force us to go for a division? If we are expected to approve the proposed draft, but we fail to approve it, must our failure to approve it be subjected to 65 per cent?

If, for example, we were to go on division and vote and the “ayes” get 100 while the “noes” get 95 or the “nays” have 105 and the “ayes” have 100; what will you declare? I think we need to be guided, so that we are clear in what we are about to do. I beg you to allow us two or three minutes to canvass on this issue, so that it is clear. Those who know about it should help us understand it. Otherwise, on that basis, I believe that under the normal practice, we can be guided by Section 54 or the ordinary practice of Parliament under the Standing Orders.

Mr. Speaker: Order, hon. Members! Is there any hon. Member who wants to ventilate on this matter?

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Speaker, Sir, further to the contribution by the hon. Member for Chepalungu, in my own mind, it is clear that if we are to strictly construe the provisions of Section 47(A) as amended, which governs conduct of this present exercise, you will have to ascertain whether as presently assembled we do constitute the quorum. The quorum is 145. In the event that this Motion is negated, then you will have to ascertain whether, indeed, we had 145 Members.

That is my own interpretation. This is a Motion that is specifically governed by the Constitution as amended. I, therefore, must congratulate the Member for Chepalungu. I think he makes a perfect student of law.

Mr. Mbadi: Mr. Speaker, Sir, the hon. Member for Chepalungu has brought a very strong argument based on the Act that this House passed, the Constitution of Kenya Review Act. Even though I am not a lawyer, I want to make my contribution with regard to how I understand the whole process until where we are. We must accept that the Review Act was constitutionalized. That is why we made an amendment to Section 47 of the Constitution. If you look at the Constitution, you will see that there are some provisions of the Act that have already been overridden by the Constitution. If you look

at that Act, it talks about 15 days. We are now talking about 30 days. That is because of the Constitution. If you look at the provisions of Section 47(A), you will see that we only have two alternatives. There is no other. The alternatives are that we pass this document as it is if we do not want to make amendments which must attract the two-thirds. Therefore, by implication, for us to defeat this document, the Constitution has raised the threshold that we cannot do it with the simple majority based on the Act, yet the Constitution is superior to the Act.

The Minister for Agriculture (Mr. Samoei): Mr. Speaker, Sir, this is an extraordinary moment. In moments like this, we need extraordinary leadership and decision. It is incumbent upon you to guide this House so that we can make decisions that are consistent with the Act and the Constitution.

I say that we are in an extraordinary moment because we have to make decisions for this country at this moment on how to proceed with the document we are about to deal with. We are either to approve or disapprove. I want to agree with the hon. Member for Sirisia that we should find in our wisdom another avenue for us to engage this document so that we can present a document that is agreed upon, to the referendum. This is within our power, especially if you interpret these particular provisions appropriately.

There are two issues here. Section 47 is very clear that to alter the Draft Constitution, you need the super majority. Nowhere in the Constitution, the Act, or the Standing Orders is there provided a super majority for the passage of a Motion. What hon. Abdikadir is about to stand here and move is a Motion. If it is a Motion because my reading of basic English tells me that Order No.8 is a Motion. Unless it is provided for in the Constitution that a certain Motion will require a super majority, it should be interpreted in its basic meaning that it requires a simple majority to pass.

Mr. Speaker, Sir, secondly, please, exercise your mind. How is it possible that it can be said that for you to pass this document you need a simple majority and for you to reject the same document you need a super majority. It is the same document! Does it make sense? It is not written anywhere that you need a simple majority to pass this document. It is just the interpretation. What is written in this document is that you need a super majority, that is, 65 per cent to alter the Draft Constitution. It does not say anything else apart from that. We want to request you to find it in your interpretation and wisdom and assist this House access this alternative avenue. Indeed, there is an alternative avenue provided for in the Act.

The framers of the Act, in their wisdom, made a provision that in the event this House faces challenges with this document, the way we have, we can relook at it. For us to access that provision, you need to interpret the provisions correctly so that we can go back to the Committee of Experts and the Parliamentary Select Committee who will iron out the issues. The document will come back to this House, and then we will take a document that unifies this country to the referendum. As I can see, we are actually setting the stage for a repeat of what happened in 2005, if we do not interpret the law in the correct way.

Mr. Speaker, Sir, I want to plead with you that in order for us to access the provisions of Sub-Sections 6, 7, 8, 9 and 10 of Section 33 of the Constitution of Kenya Review Act, you need appropriate interpretation of the law. I want to request that you find it in your judgment, that it is not reasonable to say that, one document, to take it this

way, you need a different majority than taking it the other way. I think there is an issue there.

Lastly, a Motion cannot necessarily attract a simple majority---

Mr. Gabbow: On a point of order, Mr. Speaker, Sir. I am a little bit confused because what we have been discussing was the Proposed Constitution of Kenya. At the commencement of business we find, in the Motion, the words “to approve the Draft Constitution”. When did the Proposed Constitution become “Draft Constitution”?

(Laughter)

Mr. Speaker: Yes, Mr. Githae!

The Minister for Nairobi Metropolitan Development (Mr. Githae): Mr. Speaker, Sir, we have almost come to the end of this exercise. It is very clear that the people who structured the constitutional review process did not want to give Parliament a lot of powers. That aspect comes out very clearly when you read the Act itself. It clearly says that in order for Parliament to make an amendment to the draft, we require 65 per cent majority. That is what we have been trying to do since yesterday, but we have been unable to do so.

It is also very clear that in order to pass this document, it just requires a simple majority. That is, again, to avoid the possibility of Parliament denying Kenyans an opportunity to vote on the draft constitution. That is the whole basis of the constitutional review process. We have read the draft. We have been told by the experts that this has been the position all along. So, I am wondering how the position has changed now. This has been the position from the beginning. Let us proceed and vote, and give Kenyans an opportunity to vote on the draft constitution. We should not deny Kenyans that opportunity.

Thank you.

(Several hon. Members stood up in their places)

Mr. Speaker: Order! Order! All these hon. Members are standing on points of order. It is just that I am seeking to have their views on these matters as raised by the Member of Parliament for Chepalungu. The Member of Parliament for Ugenya has been on his feet for a long time. So, I will take him first.

The Minister for Lands (Mr. Orenge): Mr. Speaker, Sir, I think with the wisdom of hindsight, we may be seeing things that we never saw before, but I would like to invite the House to look at what the Constitution itself says in Section 47A. I think this is critical, particularly when you are looking at this issue from the point of view that after this very important position that we have reached, what happens next? If you look at what the next step is, then you may be able to get the answer. I think the answer is in Section 47A, Sub-Section 2(c). I want to read it very carefully, so that we may understand it, because I think it is a question of pure interpretation of the Constitution. It says as follows:-

Section 47A

“The National Assembly shall, within 30th days of the introduction in the Assembly, of the Draft Constitution proposing replacement of this Constitution, debate all proposed amendments.”

Mr. Speaker, Sir, I emphasise that what the House is supposed to do is debate all proposed amendments to the Draft Constitution and submit to the Attorney-General. I think this is critical. After this, what do we submit to the Attorney-General? We submit to the Attorney-General the Draft Constitution and any proposed amendments as may be approved by the Assembly in accordance with Paragraph (b).

Paragraph (b) says that you cannot alter the Draft Constitution unless we get 65 per cent majority. So, what we are supposed to give the Attorney-General is the Draft Constitution itself.

Mr. Speaker, Sir, what we are supposed to give the Attorney-General is the draft Constitution as it is. As to the question of the Motion, I think we are trying to grapple with the mechanism of introducing the draft Constitution into the National Assembly. That was a mechanism which was totally unnecessary. We do not need to approve a Motion. We need to debate the proposed amendments, and then take to the Attorney-General the draft with the proposed amendments.

In my view, although hon. Members may be persuaded otherwise, we do not need to vote on the Motion. That is the true interpretation of these particular provisions. When you were giving guidance on this matter, you read Subsection (2) of Section 47A, which says: “Notwithstanding anything to the contrary in this Constitution---“

So, Mr. Ruto should not look at any other section in the constitution which is contrary to what I have read. I think the law is clear and the next step is very clear.

(Mr. Ruto stood up in his place)

Mr. Speaker: Order, Mr. Ruto! You did make your contribution. You opened this matter as a matter of fact, and I am afraid you are precluded from further contribution.

Mr. Ruto: I wish to point out a---

Mr. Speaker: Order, Member for Chepalungu. You must prepare yourself well when you come to move a point of order of this magnitude.

Mr. Farah: Mr. Speaker, Sir, I think it is important for us to understand the spirit and object of the exercise that we have already undertaken. It is a pity when two years after passing this Act, we question right now the constitutionality of the Act that we passed which has constitutional authority.

Mr. Speaker, Sir, it is apparent in Section 5 of the Constitution of Kenya (Amendment) Act, 2008 there is a presumption that there is loss in faith in Parliament to deliver a Constitution to Kenyans. It says:-

“The sovereign right to replace this Constitution with a new Constitution rests collectively in the people of Kenya and shall be exercisable by the people of Kenya through a referendum in accordance with this section.”

Mr. Speaker, Sir, it is assumed that the Committee of Experts (COE) have brought in the draft form what essentially is the will of Kenyans to be finally exercised also through the referendum. It goes further, just to strengthen the position which was articulated by Mr. Orengo, as follows:-

“Notwithstanding anything to the contrary in this Constitution---“ I think this is very clear. It says: “When a draft constitution proposing the replacement of this Constitution has been introduced into the National Assembly, no alteration shall be made in it, unless such alteration is supported by the votes of not less than 65 per cent of all the hon. Members of the Assembly, excluding the ex-officio Members.

Basically, this will be approved by the people of Kenya through a referendum. This is a Motion and as per the Standing Orders, any Motion contains the basic issue of finding out who has won and who has lost. But in this case, the Standing Order is subordinate to the provisions in the Constitution. So, anything less than two-thirds percent on this---

The Assistant Minister for Livestock Development (Mr. Duale): On a point of order, Mr. Speaker, Sir!

Mr. Farah: Order! I am on a point of order!

(Laughter)

I always forget. So, anything to the contrary of that---

Mr. Speaker: Order, Member for Lagdera. Member for Dujis, the Member for Lagdera is on a point of order. Until he has finished, you will not catch the Speaker’s eye. Please learn your rules and practise quickly.

Mr. Farah: Mr. Speaker, Sir, the only way we can defeat this draft Constitution ourselves is if we have a two-third majority as is indicated in the law.

So, a two-third majority is required. No alternation shall be made in it unless such alteration is supported by a two-third majority. In law, there is a spirit and the object. Everything does not have to be written in black and white. The assumptions are there because you have been told exactly how to replace. Anything short of that means, otherwise, the opposite. In this case, I think we should just go for the vote. In my opinion, this should be as a tradition of the House itself because it is not indicated here and the Constitution is now subjected to the Kenyan people.

Mr. Speaker: Order, hon. Member! I will take four more contributions, two from my left, two from my right and we must stop there.

Member for Gichugu!

Ms. Karua: Mr. Speaker, Sir, I think we are now engaging in hypothesis. You ruled on how the amendments should be conducted. We have conducted all the amendments. You also ruled on how the debate will proceed from here. We ought to proceed to approve or not approve in accordance with Section 33(4) of the Constitution of Kenya Review Act. The word “approve” means in the manner the National Assembly approves. The only way we approve something is by a vote. That would be guided by Standing Orders. It is by simple majority. Once we approve, if any other hurdle comes, then we can address you at that stage. But to try to prevent the vote amounts to filibustering because we are trying to stop the process from moving forward with hypothetical arguments. We do not know that the “yes” for the Constitution is going to be a simple “yes” or an overwhelming “yes” that does not require further debate. But to suggest that we do not need to vote, approval means in the manner the National Assembly normally approves. Section 47 is very clear.

I urge that we move forward and anybody who wishes to challenge your ruling on how we should proceed after the vote, should there be need for further engagement, it is at that stage that we must engage you. But for now, I am pleading with you, Mr. Speaker, Sir, to give direction. We proceed in this clear manner set out in the Act.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): I thank you, Mr. Speaker, Sir.

In fact, in the Government response, I humbly congratulated you on your interventions. I come back to repeat that congratulation.

The fact of the matter has been read by hon. James Orengo whose views I identify with and hon. Karua has also stated it clearly. Therefore, I would not bother taking you to Section 2(c).

But allow me, if it is necessary to remind you, Sir, that you have already ruled that there is a draft Constitution on the Floor of the House. If, indeed, this House respects the sovereignty that it has been given by this country, you cannot go back on that ruling. There is a draft Constitution on the Floor of the House.

Mr. Speaker, Sir, secondly you have also ruled that the sovereign right to replace the Constitution belongs to the people. You even went further and said that even if an Act of Parliament were to provide an additional qualification to Section 47(a), it would be superfluous.

So, therefore, let me with respect, read you sub-section 3 that my learned friend hon. Orengo did not read to you. It says:-

“Proposals for amendment to a draft Constitution under Sub-section 2 shall be considered and the draft Constitution published in such manner as maybe prescribed by or under an Act of Parliament”

Therefore, unless this hon. House at this point is suggesting that it wants to amend an Act of Parliament at the conclusion of debate, I am afraid, as Ms. Karua said, we are engaging in an argument that has no basis. The word, “approval” has been advanced by Ms. Karua and I agree.

I want to remind this hon. House and the country at large, because this document is headed to the people now. There is no choice. No amendment has been adopted on this Floor. So, to a large extent, Mr. James Orengo is right. So, even as we do the approval we must remember we are only approving that which came to this Floor. We have not passed an amendment. Therefore, there is no amendment under sub-section (3). So, the approval is a matter of formality under Section 54 of the Constitution---

(Applause)

The Assistant Minister for East African Community (Mr. Munya): On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order, Mr. Munya!

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): I am on a point of order, Mr. Speaker, Sir.

The other thing I wanted to say and if you could ask my---

Mr. Speaker: Conclude your---

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): I would like now to take you back to the Act because we are shying away from it. We passed the Act.

Allow me to read this on record because this is an historical event. Section 6 says:-

“In the exercise of the powers or the performance of the functions conferred by this Act, the organs specified in sub-section (4) – and “c” is the National Assembly - shall ensure that the national interest prevails over regional or sectorial interests.

(b)Be accountable to the people of Kenya.

(c)Ensure that the review process accommodates the diversity of the people of Kenya including socio-economic status, race and the others”

Hence, the issue of amendments--- The mere fact that a hon. Member raises an amendment does not---

Mr. Speaker: Mr. Minister, can you move to conclude? Finish debate!

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Yes, I would like to conclude Mr. Speaker, Sir.

The point of order raised by my good friend, Mr. Isaac Ruto, has no basis and you should rule that we move forward.

Mr. Nyamweya: Thank you, Mr. Speaker, Sir. I really think that the basic problem we are facing here is that nobody anticipated that we were going to have a document we would disapprove. So, it was just expected that Parliament as an organ would also approve with or without amendments.

Mr. Speaker, Sir, do you know what has taken place? Amendments have been brought but to make sure that the disapproval is registered, the amendments have also been defeated. So, you get a document which really nobody is happy with but because we have boxed ourselves in by the law, we are now getting to a point where we are asking: What is it that we are approving? This is because the Members, probably, want to disapprove of it. That is where the problem is.

Therefore, we have to ask ourselves: What is it that we want to do? We have put ourselves in a fix.

(Laughter)

To borrow from Mr. Wetangula, do we not need perhaps to find a way to get out of this problem? Because if we say approve, and that is simple majority, and the majority do not have 145 Members because it presupposes---

Mrs. Noor: On a point of information, Mr. Speaker, Sir.

Mr. Speaker: Order! Mr. George Nyamweya, do you wish to be informed by Mrs. Noor?

Mr. Nyamweya: Mr. Speaker, Sir, I think I am just concluding. However, I will give way for the information.

Mr. Speaker: Order! Mr. George Nyamweya, do you agree or decline?

Hon. Members: He has agreed!

Mrs. Noor: Mr. Speaker, Sir, Section 6 of the Act says:-

“If the National Assembly fails to approve the Draft Constitution in accordance with sub-sections (4) and (5), a joint meeting between the Parliamentary Select

Committee and the Committee of Experts shall be convened by the chairperson of the Committee of Experts to consider the issue or issues and make recommendations to the National Assembly”

(Applause)

Mr. Nyamweya: Mr. Speaker, Sir, thank you for that information. That, in fact, begs the question which was asked: That if we approve, we know it is a simple majority and if we disapprove, what is the majority that is required? That is where the problem is! We may have to perhaps even adjourn, if need be, to solve that problem. Otherwise, we are just going to exacerbate this problem when we go to the referendum.

The Assistant Minister for East African Community (Mr. Munya): Mr. Speaker, Sir, many of those who have spoken have not been addressing the issue raised by Mr. Ruto because the real issue that he is asking is: For you to amend this draft, you need two-thirds majority. Then we assume also that for you to pass it, because it is an assumption we have – if you look at the law you do not see any provision specifically saying that--- We assume that because disapproving it is bigger than amending, then you need two-thirds. That is the assumption because if you are amending and you need two-thirds, then the assumption is that if you have to disapprove, you will need two-thirds. To approve it, you need a simple majority. So the real issue is: If you are not able to raise a simple majority to approve and then you are not able to raise two-thirds to disapprove, what do you do? That is the issue!

(Applause)

And that is where we require a ruling! So all these other stories are irrelevant! We want to know: If those who want to approve are not able to raise the simple majority required to approve and yet we do not have the two-thirds also to say no, is it a limbo? We are lost there now! That is where the real issue is and the law does not provide for that. So what happens to the document?

(Several hon. Members stood up in their places)

CONSIDERED RULING

APPROVAL OF DRAFT CONSTITUTION REQUIRES SIMPLE MAJORITY

Mr. Speaker: Order, hon. Members! It is necessary that we make progress and I indicated earlier on when I was giving directions that I will close by taking two more from either side of the House which I have done. I am in a position to make a finding and give directions to the House.

First, this is a matter that has been very ably raised by Mr. Ruto who stood on a point of order and he has been supplemented by the contributions of another 11 hon. Members. At the very outset, I must say that I have found those contributions and the articulation of the various issues most useful. It is also important to say, as the second thing, that hon. Members are responsible for the law that we operate under including the Constitution and the Constitution of Kenya Review Act, 2008. Hon. Members passed

those pieces of legislation and if there be any loopholes in those pieces of legislation, without prejudice, to what I am going to finally find, then hon. Members must take responsibility for those loopholes.

Thirdly, it is true and the contribution by Mr. Samoei that this, indeed, is an important and critical moment in the history of this country and as a matter of fact, from the beginning of this process, history has been beckoning at Members of the Tenth Parliament to make an entry in that history. I want to assure you, as we move to conclude, that you have made an entry in the history books of this country. As to whether or not, the entry that you have made is positive, the jury is still out.

Hon. Members, the question which has been raised in a nutshell seems to be ably captured by hon. Munya. It simply asks; whether and if so, why, the Motion for the approval of the draft Constitution which is currently before this House, should require 65 per cent majority of all the Members of the Assembly in order to be disapproved and only require a simple majority in order to be approved. That is, in a nutshell, what the matter is. The argument has been raised that the question to be put shall be on a Motion to approve the draft Constitution and not on the draft Constitution itself. Therefore, in terms of Section 54 of the Constitution, which hon. Ruto cited in support of his arguments, that question should be determined by a simple majority of the votes of the Members present and voting. Section 54 of the Constitution provides as follows:-

“Except as otherwise provided in this Constitution, any question proposed for decision in the National Assembly shall be determined by a majority of the votes of Members present and voting.”

It is very important to note the opening words of Section 54 of the Constitution. They very clearly provide that Section 54 applies only where the Constitution does not otherwise provide.

Section 54 of the Constitution is clearly, therefore, qualified and made subject to other provisions of the Constitution. Section 47 of the Constitution is an example of the provisions of the Constitution which override the application of Section 54.

Section 47A(2)(b) provides as follows:-

“Notwithstanding anything to the contrary in this Constitution (b) when a draft Constitution proposing the replacement of this Constitution has been introduced into the National Assembly, no alteration shall be made in it unless such alteration is supported by the votes of not less than 65 per cent of all the Members of the National Assembly excluding the ex-officio Members”.

The foregoing sub-section makes Section 54 of the Constitution inapplicable to alterations to a draft Constitution. As I have previously ruled, and, in fact, communicated, the House is currently debating a Motion on a draft Constitution within the meaning of Section 33(4) of the Constitution of Kenya Review Act, 2008 and Section 47A(2)(b) of the Constitution.

The Motion before the House is a question on the approval of the Draft Constitution. To make any alteration to that Draft Constitution, the votes of 65 per cent of all Members of the House is required. Indeed, the House has dutifully gone through all the Motions in respect of each amendment that have been proposed to the Draft Constitution. The question now before me is whether the Constitution can require a painstaking 65 per cent vote to pass any amendment to the Draft Constitution even to delete a single word, as it transpired yesterday and today, you will recollect the proposed

amendments by the hon. Member for Kipipiri relating to a spelling, and yet that require only a simple majority of Members present and voting to disapprove the Motion, the effect of which would be reversal or disagreement if not deletion of, each and every article of the Draft Constitution? Can we interpret the Constitution in such a way as to create an absurdity by creating a situation where it is easier to disapprove, reverse or disagree with the entire draft and, therefore, to disapprove each and every article than it is to disapprove a single article? To my mind, the answer is clear and it is “no”.

The Motion before us is not a mere or hollow Motion. It cannot be understood in isolation from the letter and spirit of the Constitution and the constitutional review process as a whole. It is a Motion for the approval of the Draft Constitution. As set out in Section 33(4) of the Constitution of Kenya Review Act, 2008, and Section 47A(2) of the Constitution, its approval requires a simple majority of the votes of the Members present and voting, while alteration of any provision in it or the whole Draft Constitution or any decision of the House on the Motion which achieves the same effect requires the votes of 65 per cent of all the Members of the National Assembly, excluding the *ex-officio* Members.

Hon. Members, I so find and rule.

We will proceed from where we left.

(Resumption of Debate on Motion)

The Assistant Minister for East African Community (Mr. Munya): On a point of order, Mr. Speaker, Sir. Your ruling is very correct; that for you to disapprove you need two-thirds because, obviously, disapproving is more drastic than amendment and, therefore, if an amendment requires two-thirds, obviously, disapproving the entire document will require two-thirds.

Mr. Speaker, Sir, the issue which you have not touched on is approval. If you are approving, you require a simple majority. If you do not raise the simple majority to approve and the 65 per cent to disapprove, what happens? That part is the lacuna we were waiting to be addressed on.

Mr. Speaker: Order, hon. Munya! We will cross that bridge when we get to it. I think you are very clear in your mind. You have, in fact, agreed with my ruling and finding; that to approve – and this is a provision of the Constitution – you require a simple majority. To disapprove, you require two-thirds majority.

The Minister for Agriculture (Mr. Samoei): Mr. Speaker, Sir, while I agree with your ruling, I think your reasoning is correct. Apart from what Mr. Munya has said, the same logic, which you have used, if you require the super majority to amend even a comma on the document, how possible is it that to approve the whole document with all the provisions, would require a simple majority. How would that be? If you require a super majority to amend a simple provision, you would therefore, require the same super majority to approve the whole document.

Mr. Ruto: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order! The hon. Member for Eldoret North stood on a point of order which I wish to respond to. Please, allow me to respond to it.

Mr. Ruto: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order, hon. Member for Chepalungu. We need to keep some decorum here. Please, do not push me to the limit to invoke the Standing Order.

Hon. Members, I just wish to be given an updated version of the Constitution. Unfortunately, the one I have does not have Section 47A

Mr. K. Kilonzo: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order! As I have found in my ruling, I have given an answer to the point raised by the hon. Member for Eldoret North that the threshold in terms of the requisite numbers of percentages to approve are set out in the Constitution of Kenya Review Act. The threshold on what it takes to disapprove is found in the Constitution, Section 47A, Sub-section (2), paragraph (b). So, if you read those two pieces of legislation together then my finding is as I have made it because the law says so. That is, the law which this House passed as I said in the opening part of my communication. So, the law says so and so it must be.

Hon. Members, I wish that we relax because we must really make progress.

Mr. Ruto: On a point of order, Mr. Speaker, Sir. It is important that we clear our minds. I had asked what happens when we fail to approve. I am not talking about disapproval.

Mr. Speaker, Sir, I am not talking about disapproval; I am not talking about this House negating the entire document. I am talking about failure to approve as anticipated by Section 6 of the same Article; it was also read out by Mrs. Noor.

Mr. Speaker, Sir, if we fail to approve it---; I am not talking about negating the document. We have got no powers as the National Assembly to negative this document and say it cannot move on. This document is on its way! I am just asking, what if we fail to approve it? I know we may approve it, but what if we fail to approve it? That is the bone of contention! Failing to approve is not a---

Mr. Speaker: Order! Order! Order, hon. Members! Before I respond to that, hon. Member for Chepalungu, I will take the intervention of two more hon. Members. I will first take the hon. Member for Sirisia.

The Minister for Foreign Affairs (Mr. Wetangula): Mr. Speaker, Sir, I appreciate your very learned ruling. But what is being raised by the hon. Member for Chepalungu, and what is available in the Constitution and the Act--- What I want to suggest that your ruling takes into account is that there is a conflict between the provisions of the Act and Section 47A of the Constitution. Reading Sections 47A(2)(a)(b) and (c) clearly shows that this House is not obligated to vote on the Draft Constitution that has come here.

(Applause)

I can read those sections. SectionS 47(2)(b) reads as follows:-

“When a draft Constitution proposing the replacement of this Constitution has been introduced into the National Assembly, no alternations shall be made in it unless such alteration is supported by the votes of not less than 65 per cent of all Members of the Assembly, excluding *ex-officio* Members.”

We have already gone over that, Mr. Speaker, Sir. Section 47(2)(c) reads as follows:-

“The National Assembly shall, within 30 days of the introduction in the Assembly of the draft Constitution proposing the replacement of this Constitution---”

Mr. Speaker, Sir, “proposing the replacement of this Constitution” is repeated three times.

“---debate all proposed amendments to the draft Constitution and submit to the Attorney-General the draft Constitution and any proposed amendments thereto as may be approved by the Assembly in accordance with paragraph (c).”

Mr. Speaker, Sir, you can see that both (b) and (c) do not envisage any vote. But when you go to the Act, Section 33(4) presupposes what Ms. Karua proposed on the Floor, namely that:-

“The National Assembly shall, within 30 days of the tabling of the draft Constitution under Subsection (3) debate it and approve the draft Constitution without amendments and submit it to the Attorney-General.”

Approval by Parliament presupposes a vote. Now, there is a conflict between the Act and the Constitution.

Then, Mr. Speaker, Sir, you have to go back to Article 3 of the Constitution. When there is a conflict between an Act of Parliament and the Constitution, the Constitution prevails!

(Applause)

This means, therefore, that what we have gone through is consistent with the provisions of Section 47(2) (a) and (b), and if you invoke (c), then we finalize the debate, the Mover responds, there is no requirement for a vote under the Constitution, and you pass on the document to the Attorney-General.

Thank you, Mr. Speaker, Sir.

The Minister for Medical Services (Prof. Anyang’-Nyong’o, Mr. Speaker, Sir, I think you have already made a ruling. This is what was said by hon. Wetangula and hon. Orenge. Hon. Farah Maalim said quite clearly that 47(A)(2) says that notwithstanding anything to the contrary in this Constitution. So, there is no need of hon. Wetangula going into the Constitution when it has been said in clear English, notwithstanding what he is saying, 47A(2)(a), (b) and (c) holds. So, you have made a ruling that has moved forward.

Mr. Speaker: Order, hon. Members! Indeed, I have made a ruling which in my considered opinion, I am entitled to as your Speaker and that, is correct and sound in law. As I understand it and as I understand the law, which these hon. Members of the 10th Parliament are responsible for the passage of both the Constitution of Kenya (amendments) Act and the Constitution of the Kenya Review Act. As a matter of fact, these two pieces of legislation were enacted by these House almost contemporaneously. So, Members, in fact, had the benefit of trying to know if there was any contradiction whatsoever between the Act and the Constitution. At any rate, if there were any conflict, the Constitution will prevail. However, it is my finding that there is no conflict. In so far as this matter is concerned, let us refer, for example, to the section that has been cited by the hon. Member for Sirisia. It reads as follows: I want to read it in *extenso*.

Paragraph (c) of Section 47A(2) reads:

“The National Assembly shall within 30 days after the introduction in the Assembly of a draft Constitution proposing the replacement of this Constitution, debate all the proposed amendments to the draft Constitution and submit to the Attorney-General the draft Constitution and any proposed amendments thereto, as may be approved by the Assembly in accordance with paragraph (b).”

That is clear!

The Minister for Foreign Affairs (Mr. Wetangula): Are you sure?

Mr. Speaker: Yes! That is clear! My learned friend, Minister for Foreign Affairs, this is not a court of law. In this National Assembly, when the Speaker is on his feet and making his findings, all Members freeze. They do not talk at or to the Speaker.

(Applause)

Hon. Members, paragraph (b), if I must refer to it as well. It provides that:

“When a draft Constitution proposing the replacement of this Constitution has been introduced into the National Assembly, no alterations shall be made in it unless such alteration is supported by the votes of not less than 65 per cent of all the Members of the Assembly, excluding the *ex-officio* Members.”

I have found as much that you cannot make an alternation to the draft Constitution or disapprove the draft Constitution unless you garner 65 per cent of the vote. That is what the Constitution says. However, the Constitution in Section 47(A)(2)(c) says that the National Assembly shall submit to the Attorney General the draft Constitution and any proposed amendment thereto as may be approved by the National Assembly.

Stop there for a moment. The Constitution is express, categorical and clear that if you are disapproving, then you must garner 65 per cent. It is quiet on what you do, if you are approving.

(Loud consultations)

Order, hon. Members! I have made my interpretation of the law as I understand it. I am entitled to make such findings and I stand by that opinion. Hon. Members, I will not entertain any further points of order on this matter. We must now proceed from there and I had indicated that I would take two further contributions before we go to the Mover. The Right hon. Prime Minister is exempted from our Standing Orders by virtue of his position, particularly as in the prevailing circumstances because of the Grand Coalition Government and we will want to hear his comment.

The Prime Minister (Mr. Raila): Thank you, Mr. Speaker, Sir. We have sat here with His Excellency the President, quietly listening to contributions by hon. Members.

Mr. Speaker, Sir, I want to begin by congratulating hon. Members for making history by making very passionate debate on this subject. The fact that this debate is taking place today, on April 1st, “fools day”, does not mean that we are fooling anybody. This event is historic for a number of reasons. One, it is taking place in this Chamber here because this is the Chamber where the Lancaster House Constitution was domesticated.

Mr. Speaker, Sir, I am very nostalgic standing here, because in 1968, I sat up there in the gallery as a young boy to see eight Members of Parliament who were Africans sitting on the other side and this other side occupied by the colonial masters. So

this country has come a long way. The Lancaster House Constitution was amended so many times once it was brought here, because it was negotiated. The understanding was that “we take this and when we get home, we will change it to suit our conditions and circumstances.” Over the last few days, millions of Kenyans have been riveted on their TV screens, watching the debate in this House. Kenyans have also participated in this debate during these last few days.

Mr. Speaker, Sir, I want to remind the hon. Members once again that I have been through this exercise for a long time. Last time when we were discussing the amendment to the Constitution and the Act, we were conscious of the fact that last time round, this process was more or less sabotaged in the House. That is the reason why the Act and even the constitutional amendment was drafted the way it was drafted. But, ultimately, the people of Kenya will have a chance to democratically decide what kind of constitution they want. We had agreed that this kind of review will only deal with the contentious issues which had arisen at the Bomas of Kenya and which made it impossible for us to continue with this process.

At that time, it was identified that this would be the Executive, the Legislature or the people’s representation and the devolution chapters. Some of the chapters in this Draft Constitution were lifted the way they were agreed upon at the Bomas of Kenya. Of course, hon. Members were free to propose any other amendment they wanted. However, I want us to understand that we are part and parcel of a greater Kenyan nation of 40 million people. We may not always agree, but it is important for this country to end the journey of finding a new Constitution.

Over the last 20 years, many African countries have revised the Constitutions that they inherited at Independence. So many new Constitutions have been drafted in this continent. For some countries, it has been after very painful experience. One such country is Rwanda which had a very bloody conflict resulting in the death of nearly one million people. Rwanda decided to write a new Constitution, but very drastically. By the time they were through, they not only ended up with a new Constitution, but also a new national anthem and national flag.

Mr. Speaker, Sir, Kenya’s Constitution-making process is evolutionary and not revolutionary like the Rwanda one. That is why we have been going through it slowly. Rwanda started after we had started and finished more than ten years ahead of Kenya. The Constitution is important because it is like a contract between the people and their leaders. We are mortals. As human beings we fear the unknown. It is said that the human being is a conservative animal - it fears the unknown. It is like a cow which knows the route from home to the water place. As long as it remains on the beaten path it has no problem. However, if you want it to deviate from the beaten path then you will experience some resistance.

Mr. Speaker, Sir, what we have been through here is natural and understandable. We have tried to introduce amendments here and we are only 222 Members of Parliament. However, we have not been able to muster the numbers. The highest we got at one time was 152 Members. Even those ones did not fully vote for that particular amendment. It, therefore, means that we have not been able to get 50 per cent on any of the proposed amendments. Even if we referred this document to the Committee of Experts, then bring the reference group and the Parliamentary Select Committee, we will

still just be delaying the process of taking the matter to the people of Kenya to make a decision.

I would like to conclude by quoting a very respected African elder Statesman, Nelson Mandela Madiba of South Africa. In his famous book, *Long Road to Freedom*, he says:-

“After climbing a great hill, one only finds that there are many more hills to climb.”

With the adoption of this Constitution, this House will have climbed one great hill.

Mr. Speaker, Sir, I would like to urge this House to pass this Motion in order to give a clear signal to the people of Kenya that we are ready to climb many more other hills which are coming. We have the hill of construction of infrastructure in this country; the hill of provision of employment to our people; the hill of uniting our people and addressing ethnicity; the hill of fighting corruption; the hill of ensuring prosperity; the hill to give very clear guidance to the people of our country – that the Kenya that our founding fathers wanted is about to be born.

Let us speak with one voice. This may not be the best constitution. None is perfect in the world. We may not have gotten all the amendments that we wanted into it. Some people wanted devolution in three tiers. They did not get it. Others wanted to see a definite structure of financial devolution, but it did not come. There are so many other changes we wanted effected, but what is the test of the pudding? The taste of the pudding is in the eating. Let us not deny the people of this country the opportunity to eat this pudding. Let the people of Kenya taste it. If they find that it is bitter, we will have an opportunity. There is provision to change it.

Mr. Speaker, Sir, let us wear these shoes and see whether they are going to pinch us, so that we can deal with those areas where the shoes will be pinching us. Does it meet all the requirements? Not all! But is it a better document than the one we have today? The majority of the provisions in this Draft Constitution are much better than the Constitution that we have today.

So, I conclude by urging hon. Members to unite. Let us see that Kenya is greater than all of us.

With those few remarks, I beg to support.

Mr. Speaker: Your Excellency the President and Member of Parliament for Othaya!

His Excellency the President (Mr. Kibaki): Mr. Speaker, Sir, I thank you very much, indeed. We have been listening to the discussion and I want to say something by word of congratulations to Members of this Parliament in that, truly, they are very knowledgeable on matters of law.

(Laughter)

They are very, very knowledgeable compared with any others that I have seen and listened to many times in this particular Chamber and in the other Chamber. I have listened so many times. I am sure that in this particular regard, they have, in fact, interpreted the law correctly.

Mr. Speaker, Sir, I also want to thank you very much because, in your own wisdom, you have brought out what is required to come out, and which is important. What you have said is correct. It is right. I am sure that it is what we should follow.

I want to appeal to this House that we do not go back on this matter. Let us pass it and make that big step forward. I am sure that, later on, when we have another occasion to amend the constitution and change all these things, you will still be able to improve on it. As of now, I am grateful, thankful and very happy that I did come up here. I am very grateful to you and to other people.

Mr. Speaker, Sir, I would like to say, thank you to all those people who have taken part in the preparation of this draft Constitution. They are all here. When you look at them, they are very young people and they have actually studied quite a lot. It is a great thing, the more you think of it. I am quite sure that all of us who are here should be able to say: "You young people have taken us a long distance, along this way. Let us go on as far as you have taken us".

We know there are other changes which must come in law, but they will come in their own time and, above all, they will come.

Let me remind you that over the years, which we have gone through, we have gone through a very difficult time in all these changes. I am quite sure that this is the greatest step we have taken so far. I am sure that we should take this step and wait until next time so that we can take another further step, and we shall move on. But do not let us hold back there because there is some small amendment to one little change, which we want to remember. No, we do not need to. We do not need it to hold us back. Let us go ahead. Please, let us go ahead. That is all I want to plead.

I do not want to go over so many points, which I have listened to, but I know that you are properly geared to making a new constitution for Kenya. This new constitution is for us. It is for all the people who are in Kenya. We shall later on look at it in our own time and amend it. But right now, let us go forward.

I want to thank you, Mr. Speaker, for the reason that you looked at these issues and made the judgment right here. You explained them to us in a very bright manner.

Thank you, very much. *Asante sana*

(Applause)

Mr. Speaker: Order, hon. Members. I now call upon the Mover to reply.

Mr. Abdikadir: Thank you, Mr. Speaker, Sir. May I thank you and the House for the honuor you have bestowed on me, my vice-chairman and the PSC to co-ordinate the process of constitution review so far. I thank the President, the Prime Minister, the Vice-President and members of this House for the support they have given to this process, this far. Nobody said it would be easy, or boring, and I think this evening has shown that very clearly.

Mr. Speaker, Sir, it is important to note that we are at the end of the process, and that the whole philosophy of the Act we tried to argue about today was to conclude the process. The philosophy was the conclusion of that process. The most critical organ of the review process is yet to come. All of us, before now, were the hand maidens so to speak, who were required to safely deliver the product to that end product stage.

Mr. Speaker, Sir, the popular sovereign is the people of Kenya. They are wise, they are hardworking in their villages, they have suffered and this is a decision they are very able to make. This is really their decision to make. Ours was to give input.

Ours was to give input. This House, indeed, passed a law that stated how this was to be done and then move forward to the document. By virtue of the fact that this Motion that I moved, and Members did, indeed, debate the Motion, I will seek your permission to go and touch on a number of things.

Mr. Speaker, Sir, this proposed document has 18 Chapters and six Schedules. About 70 per cent of the proposed amendments were on only two chapters; the Chapter on the Bill of Rights and the Chapter on Devolution. Indeed, many amendments were on one Article or one sub-article of an Article on the Bill of Rights. Most of the time, these amendments were around a few critical issues.

Mr. Speaker, Sir, as far as the Bill of Rights is concerned, the issue about Article 26 and whether abortion is allowed or not; the issue on national security in Article 24 and the exemptions thereto; the freedom of religion. Majority of the proposals for amendment were around that area.

Mr. Speaker, Sir, for the avoidance of doubt, I think it is important that we read as far national security is concerned, Article 24 for the avoidance of doubt. Article 24(5) states as follows:-

“(5) Despite clause (1) and (2), a provision in legislation may limit the application of the rights or fundamental freedoms in the following provisions to persons serving in the Kenya Defence Forces or the National Police Service— Those Articles that are exempted or the rights that people in those forces do not have include the following:-

- (a) The right to Privacy;
- (b) the right to Freedom of association;
- (c) the right to Assembly, demonstration, picketing and petition; and,
- (d) the Labour relations; and,
- (e) Economic and social rights;
- (f) Rights of arrested persons.

So anybody who says that the armed forces can go ahead and riot; that the armed forces can go ahead and picket; that the armed forces have the right to join COTU is not telling the truth. So, it is very clear that the armed forces are, indeed, exempted from enjoying those rights.

Mr. Speaker, Sir, let me now turn to Article 26. Article 26 is on the right to life. If I could go ahead and read the Article itself, it says:

“Right to life:-

26. (1) Every person has the right to life.
- (2) The life of a person begins at conception.
- (3) A person shall not be deprived of life intentionally, except to the extent authorized by this Constitution or other written law. This should cater for capital punishment which is still part of our law.
- (4) Abortion is not permitted unless, in the opinion of a trained health professional, there is need for emergency treatment, or the life or health of the mother is in danger, or if permitted by any other written law.

For anybody then to say we have legalized abortion, I think is stretching the truth a little bit too far. Majority of the other issues were on devolution. Indeed, there has been a political issue about devolution. Indeed, there has been fear created about devolution. Fear resulting from our history. Fear resulting from majimbo. Fear resulting from exclusion. These are historical fears. They are genuine. The way the Constitution has dealt with is to try and create some balance so that, indeed, we have devolution. But this country is unitary and we do not want “Bantustans”, so to speak. That is what the Constitution provides.

Now, there is a debate whether to provide for two or three-tier devolution. That is a genuine need to have; whether to have two or three. It is a political decision. This House had the ability to look into it and come to agreement. The House has not come to agreement on whether to have three or two levels. It is important to note that at the beginning the Committee of Experts proposed three levels of devolution. Then after public debate they went ahead and brought us two levels of devolution. We, as the Parliamentary Select Committee on the Constitution Review and after a lot of debate going forth back, proposing 18 regions, proposing 14 regions, finally settled for what the Committee of Experts had earlier proposed.

The majority of the proposals for amendments were on those two chapters. Indeed, 70 per cent were on those two chapters. What will be the functions of devolution? Resource allocation in devolution and the levels themselves---

Mr. Speaker, Sir, a number of other issues which generated heat and emotions include representation of the people. The Constitution looks at it and tries to balance the interest of those who are in sparsely populated areas and those who are in densely populated areas; trying to look at the interests of both sides. Both sides are important. It is important to cater for those who are over-populated and feel that the votes do not count for as much as those in other areas. It is also important to cater for those in very large tracks of this country. Some constituencies are as large as countries and others as large as provinces. It was important to try and get a middle ground.

As usual, when you are dealing with critical things, there will be people who would not think you have gone too far on one side or the other. However, the Constitution has been very clear. It is important because this was a proposal that was discussed by the Parliamentary Select Committee (PSC), and the Committee of Experts (CoE) took exactly what the former agreed on.

Mr. Speaker, Sir, it is important to note that, first, we have 210 constituencies; those remain in the next review. Secondly, there are proposed 80 extra constituencies and all those will be given in the next review. Thirdly, the formula is to be applied in the next review. Fourthly, every time we have looked at these numbers, we have done so respecting the administrative boundaries. We were looking at district boundaries and provincial boundaries. All this was being looked at through that prism.

Finally, there has been a lot of fear as to whether this House might be disbanded by virtue of a proposal to the High Court or whether the Constitution can be amended at all. That is in Articles 260, 261 and 255.

Mr. Speaker, Sir, if this process can show anything, it is that this House takes the laws very seriously. Even when it is very difficult to move forward, this House has taken every step possible to live within the rules that it has set. So, if there is a Schedule that says that the laws that are required to be passed as a result of the new Constitution will be

passed in a period of five years; that is from one year to five years. What are the chances of this House defying the Constitution? I would say very near to nil.

The Constitution says that even if you do not live within that time line, you have an option to expand the time line by another one year. It is only after that that there is a procedure to apply to the High Court for steps to be taken. That is not a proposal we in the PSC were comfortable with. Indeed, we removed it but the CoE in their wisdom brought it back. I do not see that as a major issue because we have looked at how this House has taken every step necessary, so far, to abide by a road map Bill that this House passed. When we are looking at the Constitution, I do not think that, that is an issue at all.

The people of Kenya have waited for this process to conclude for a very long time. The people of Kenya are absolutely capable of taking that decision themselves. This House, the PSC and the CoE will be very grateful for any decision the people of Kenya take whether they accept the product or they reject it because they are the popular sovereign. This document has to end there.

Mr. Speaker, Sir, there were only two ways. First, as the third organ of review input into the process and make it better for, indeed, it could have been made better. That was with the House.

Secondly, in the event that we do not do that, let the document go to the people of Kenya for them to make the final judgment. This document will go to the Attorney-General for the issues some of the Members have raised. He will look into the typos and ensure that there are no errors on the face so to speak. Thereafter, it will go to the people of Kenya.

There are many who have sought for reforms in this country; institutional, legal and constitutional reforms, and by one fell swoop, we will have made hundreds of reforms by passing this document. If you ever wanted to reform the Judiciary, this is a wonderful opportunity to reform it. If you wanted to reform the police, this is a wonderful opportunity to do it. If you wanted to reform public finance; how the Budget is passed, this is a wonderful opportunity to do so. Indeed, if you wanted a clear Executive so that it is free, once given the mandate by the people to rule, this is a clear reform you can get through this process so that the Executive and the Legislature are not fused; so that Parliament can play its role as set out, which is oversight, legislation and representation and the Executive can do the Executive functions. As we have now, we have the Executive residing in Parliament, so that 80 hon. Members are also Members of the Executive which creates fusion as opposed to separation of powers. This has been one of the key problems we have.

So, this document makes the key decisions that a Constitution ought to make and for those who say we are looking for a perfect document, do not wait for it. It is not going to come because these are the endeavours of an individual. They are human products! That is why we have a court that interprets. That is why we have an amendment procedure and the amendments are there. Out of the 18 Chapters, probably two or three is where it is required to go back to the people and for good reasons. If you want to challenge the supremacy of the Constitution, it is required of you to go back to the people and seek that. So if you wish to change Parliament, those key issues or the independence of the Judiciary, you go back to the people but for the majority of the rest of the Constitution, all this House needs to do, even next year if this was passed, is to bring an

amendment to the Constitution; an amendment Bill, normal procedure and you pass those amendments.

Mr. Speaker, Sir, therefore, for those who say that the door is closed, indeed, the door is not closed as His Excellency, the President, said. These documents are to be amended: That is why they are there. But it is an absolutely good start. It is a wonderful point to start from. It is not the best for everybody. It will never be the best for everybody but it is a wonderful point to start from.

We need to clear this document so that it goes to the people of Kenya and then we need to move forward because we have to have closure on this process. This country cannot be at every new year or new House talking about a new Constitution.

(Applause)

The time has come to end this and this House has the historic opportunity to so do; to be able to close this process, so that we can go forward as a country.

With those few remarks, I beg to move.

(Question put and agreed to)

ADJOURNMENT

Mr. Speaker: Hon. Members, that brings us to the end of business for today. The House is, therefore, adjourned until Tuesday, 6th April, 2010, at 2.30 p.m.

The House rose at 9.05 p.m.