

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 30th June, 2005

The House met at 2.30 p.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

PAPERS LAID

The following Papers were laid on the Table:-

Sessional Paper No.9 of 2005 on Forest Policy

*(By the Minister for Environment
and Natural Resources)*

Annual Report and Accounts of Tana and Athi Rivers Development Authority (TARDA) for the year ended 30th June, 2002, and the Certificate thereon by the Controller and Auditor-General.

Annual Report and Accounts of the Coast Development Authority (CDA) for the year ended 30th June, 1999, and the Certificate thereon by the Controller and Auditor-General.

Annual Report and Accounts of the Coast Development Authority (CDA) for the year ended 30th June, 2000, and the Certificate thereon by the Controller and Auditor-General.

Annual Report and Accounts of the Coast Development Authority (CDA) for the year ended 30th June, 2001, and the Certificate thereon by the Controller and Auditor-General

Annual Report and Accounts of the Coast Development Authority (CDA) for the year ended 30th June, 2002, and the Certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for Transport
(Mr. Ligale) on behalf of the Minister
for Regional Development Authorities)*

Annual Report and Accounts of Jomo Kenyatta University of Agriculture and Technology for the year ended 30th June, 2003, and the Certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for Transport
(Mr. Ligale) on behalf of the Minister
for Education, Science and Technology)*

Annual Report and Accounts of Kenya Ports Authority for the year ended 30th June, 2003, and the Certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for
Transport (Mr. Ligale) on behalf)*

of the Minister for Transport)

Annual Report and Accounts of the National Hospital Insurance Fund for the year ended 30th June, 2002, and the Certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for
Transport (Mr. Ligale) on behalf
of the Minister for Health)*

QUESTIONS BY PRIVATE NOTICE

EVICTION OF SQUATTERS FROM LANET RESEARCH CENTRE

Mr. Wamwere: Bw. Naibu Spika, ninaomba kumuuliza Waziri katika Afisi ya Rais Swali Maalum lifuatalo.

(a) Je, Waziri anafanya nini kuwatafutia maskwota 118 waliochomewa vibanda vyao tarehe 21 Mei, 2005 katika shamba la Serikali linalotumiwa na Beef Research Centre, Lanet, msaada wa chakula na pahali pa makao ili vikongwe na watoto wao wasiuawe na njaa, mvua na baridi kali ya msimu huu?

(b) Kwa nini vibanda hivyo vilichomwa?

(c) Waziri anachukua hatua gani ya kisheria dhidi ya wale waliohusika na uhalifu uliotajwa hapo awali akiwemo "District Officer" wa Tarafa ya Bahati, chifu wa Dundori na kundi la askari tawala?

The Assistant Minister, Office of the President (Mr. M. Kariuki): Bw. Naibu Spika, ninaomba kujibu.

(a) Idara ya Ardhi na Makao inashugulikia walioathiriwa kwa kuwapa makao kule Banita Settlement Scheme, na orodha ya majina tayari imewasilishwa kwa Waziri wa Ardhi na Makao. Mipango ya kuwapa chakula itatekelezwa na Mkuu wa Wilaya ya Nakuru kulingana na mahitaji yao.

(b) Kulikuwa na hali ya kutoelewana kati ya Idara ya Beef Research Centre na mjane wa marehemu Gichua kuhusu mpaka halisi kati ya shamba lake na shamba la Serikali.

(c) Uchunguzi unaendelea kutambua ni nani aliyetoa amri ya kuchoma makao hayo, na hatua ifaayo itachukuliwa dhidi ya maofisa watakaopatikana na hatia hiyo.

Mr. Wamwere: Bw. Naibu Spika, pamoja na kumshukuru Waziri Msaidizi kwa jibu lake, ningependa afafanue zaidi ni kwa nini anasema kwamba vibanda hivi vilichomwa kwa sababu ya ugomvi kati ya Idara ya Beef Research na Bi. Gichua. Kwa nini Mkuu wa Tarafa aliongoza shuguli ya kuwachomea maskwota wa Serikali nyumba zao ili Bi. Gichua achukue ekari 230 za shamba la Serikali wakati anamiliki shamba lingine kubwa sana karibu na shamba hilo? Serikali inafanya nini kuchukua shamba lake kutoka kwa Bi Gichua?

Mr. M. Kariuki: Bw. Naibu Spika, pahali ambapo Moi Forces Girls High School imejengwa palikuwa shamba la marehemu Gichua. Serikali ilichukua hilo shamba kulingana na taratibu za sheria na kumpatia shamba lingine katika Idara ya Beef Research. Hata hivyo, sorovea hakufika kwa shamba hilo wakati huo ili kutambua ni sehemu gani ambayo marehemu Gichua angepewa. Wakati Bi. Gichua alitaka kuchukua sehemu aliyopewa na Serikali kama fidia, alidhani kwamba shamba la Serikali ambapo kuna vibanda vya maskwota ni lake lote. Kulitokea ugomvi kati ya Meneja wa Idara ya Beef Research na Bi. Gichua. Lakini, tayari, nyumba za maskwota zilikuwa zimebomolewa. Hiki ndicho kiini cha shida hii.

Mr. M.Y. Haji: Bw. Naibu Spika, ninakubaliana na Waziri Msaidizi.

Mr. Deputy Speaker: Pamoja na kukubaliana naye, muulize swali!

Mr. M.Y. Haji: Bw. Naibu Spika, ninathibitisha kwamba yale Waziri Msaidizi amesema ni

kweli.

(Laughter)

Mr. Serut: Thank you, Mr. Deputy Speaker, Sir. You have heard the Assistant Minister say that the squatters were evicted and their houses razed down. Is it legal whenever eviction takes place for houses belonging to the squatters or any Kenyan to be set on fire?

Mr. M. Kariuki: Bw. Naibu Spika, ninadhani kwamba sheria za Bunge zinasema kwamba tukianza kuzungumza Kiswahili, tunaendelea kwa Kiswahili mpaka mwisho wa Swali. Amri hii haikuwa ya mahakama bali ya mtu fulani katika Idara ya Utawala. Tunachunguza ni kwa nini nyumba hizo zilichomwa. Nimesema kwamba nitaleta ripoti hapa uchunguzi utakapokamilika.

Mr. Ndolo: Ahsante, Bw. Naibu Spika. Matatizo ya maskwota kuchomewa nyumba zao yamekuwa kila pahali, na si katika Subukia pekee. Nyumba za maskwota zilichomwa hapa Nairobi, na Waziri Msaidizi [**Mr. Ndolo**]

akaahidi kuchunguza jambo hilo. Uhalifu umeongezeka sana kwa sababu ya kuwachomea maskwota nyumba zao. Waziri Msaidizi atafanya nini kuhusu jambo hili?

Mr. M. Kariuki: Bw. Naibu Spika, Kenya imetia sahihi Mkataba wa Vienna ambao unashugulikia mambo ya kuwaondoa watu kutoka mahali fulani. Mkataba huo unasisitiza kwamba ni lazima tulinde haki za binadamu wakati tunawaondoa katika makao yao. Ninamhakikishia Bw. Ndolo kwamba tutatekeleza sheria vile ilivyo.

Mr. Wamwere: Bw. Naibu Spika, ingawa Waziri Msaidizi ameahidi kwamba afisa tawala ambaye aliongoza shuguli za kuwachomea maskwota nyumba zao atachunguzwa, na baadaye achukuliwe hatua, anaweza kutuhakikishia kwamba Bi. Gichua ambaye alikuwa na afisa huyo pia atachukuliwa hatua za kisheria kwa kuhusika na uchomaji wa nyumba ambao ni kinyume cha sheria? Pia, Waziri Msaidizi anaweza kutuhakikishia kwamba Serikali itamhimiza Bi. Gichua kuwalipa fidia maskwota hao kwa hasara walioipata wakati nyumba zao zilichomwa?

Mr. M. Kariuki: Bw. Naibu Spika, hakuna mtu yeyote ambaye yuko juu ya sheria. Uchunguzi ukikamilika, iwe ni Bi. Gichua au raia au viongozi wa utawala, watachukuliwa hatua kabambe.

DESTRUCTION OF WATER CATCHMENTS IN TAITA-TAVETA

Dr. Ojiambo: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Environment and Natural Resources the following Question by Private Notice.

(a) Is the Minister aware that there is on going destruction of water catchments in Mbale and Sagala locations of Taita/Taveta District?

(b) Is he further aware that on 11th May, 2005, and also on 9th and 10th June, 2005, Government lorry registration number GK A755D and Toyota Landcruiser GK A432H were used to ferry logs of timber from the destroyed forests to unknown destination in the district?

(c) Could the Minister inform the House who issued the logging permits to the people involved in cutting trees in the catchment areas?

The Assistant Minister for Environment and Natural Resources (Mr. Kamama): Mr. Deputy Speaker, Sir, I beg to reply. I am aware that there is an on-going destruction of water catchment in Mbale and Sagala locations in Taita Taveta District. This is as a result of illegal cutting of trees in Mwandogo Forest and Sagala area within the district.

(b) I am not aware that the Government lorry registration No.GK A755D and Toyota Landcruiser GK A432H were used to transport timber from the said areas. All pieces of timber which have been recovered from illegal loggers have been ferried to the area Forest Office for safe custody.

(c) I wish to categorically state that my Ministry has not issued any permit in the months of May and June to the people involved in the illegal cutting of trees in the catchment areas.

Dr. Ojiambo: Mr. Deputy Speaker, Sir, I want to ask the Assistant Minister to tell this House where those two vehicles were on that material day, and who their drivers and loaders were? I would also like him to tell us whether he has, in fact, instituted disciplinary measures against those who cut down trees. Could he also give us the list of people who were cutting down trees in this area?

Mr. Deputy Speaker: That is a very loaded question. Could I ask him to answer part one of it about who the drivers and loaders of the lorries were?

Mr. Kamama: Mr. Deputy Speaker, Sir, I think her question does not arise, because those lorries were not involved in ferrying timber logs from the destroyed forests.

Mr. Kombe: On a point of order, Mr. Deputy Speaker, Sir. Let the Assistant Minister be serious and answer the question. Where were these lorries, and who were driving them on that particular day?

Mr. Kamama: Mr. Deputy Speaker, Sir, the said lorries were not involved, and forest destruction was not reported in Madogo Forest, which is a gazetted forest in Taita Taveta District, in the month of May, 2005. The Forest Department arrested four illegal timber operators within the forest and booked them at Wudanyi Police Station vide Occurrence Book (OB) No.31 of---

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

Mr. Deputy Speaker: Yes, Dr. Ali.

Dr. Ali: Mr. Deputy Speaker, Sir, is the Assistant Minister in order to avoid answering the question he was asked? Could he tell the House where those lorries were, and who the loaders and drivers were? He is telling us stories!

(Applause)

Mr. Deputy Speaker: Mr. Assistant Minister, I just want to assist you. This Question relates to specific vehicles and you are saying that they were not involved. Could you give details about why they were not involved?

Mr. Kamama: Mr. Deputy Speaker, I want to state categorically that those lorries were not involved---

Mr. Wanjala: Are you sure? Where were they then?

Mr. Kamama: I am sure because I have carried out investigations. I want to report to the House that four illegal timber operators were arrested. I want to give their names.

Mr. Deputy Speaker: But, Mr. Assistant Minister, there is a specific date here, which is 11th May, 2005. All that you need to do here is to say that those vehicles were at a certain location on that particular day. The hon. Member has said that the vehicles were involved in transporting logs.

Mr. Kamama: Mr. Deputy Speaker, Sir, these vehicles were in a Government yard on that day. They were not involved in illegal logging.

Mr. Deputy Speaker: That is better.

Mr. Gitau: Mr. Deputy Speaker, Sir, you have heard what the Assistant has told this House. He says that these vehicles were not involved, and yet he does not want to give specific details as to where they were on that particular day. It is this same Government that is moving people from forests which seems to be condoning logging in forests. Could he confirm or deny that those trucks, indeed, transported logs as stated in the Question?

Mr. Deputy Speaker: But he has denied that many times! He has said that they were in a yard. Mr. Assistant Minister, could you confirm or deny it because I do not want to get involved in Mr. Gitau's question?

Mr. Kamama: Mr. Deputy Speaker, Sir, I deny it for the fourth time.

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

Mr. Deputy Speaker: What is it, Dr. Galgalo?

Dr. Galgalo: Mr. Deputy Speaker, Sir, it seems clear that there is a problem here. The hon. Member is saying one thing and the Assistant Minister is saying another. Would I be in order to ask the Assistant Minister to table the work tickets of those vehicles to prove that they did not travel on the particular day? This will settle this matter.

Mr. Kamama: Mr. Deputy Speaker, Sir, I think the hon. Members should accept what I am saying.

(Several hon. Members stood up in their places)

Mr. Deputy Speaker: Order, hon. Members! Now, could all of you sit down? Mr. Assistant Minister, you are saying one thing and the hon. Members are saying another. I think it is necessary that you lay on the Table of the House the work ticket of those vehicles to confirm what you are saying. Therefore, you will lay them on the Table on Wednesday morning. That is it.

Mr. Kamama: I will do that, Mr. Deputy Speaker, Sir,

Mr. Deputy Speaker: Very well, that Question is deferred until next week on Thursday.

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

Mr. Deputy Speaker: There is no point of order!

(Question deferred)

Next Question!

Dr. Ojiambo: On a point of order, Mr. Deputy Speaker, Sir!

Mr. Deputy Speaker: I have already said that your Question is deferred until Thursday next week!

The next Question is by Mr. Ndolo.

(Mr. Mwandawiro stood up in his place)

Mr. Mwandawiro, you are becoming disorderly. Please sit down. You will raise your point of order when we come back to that Question next time.

NUMBER OF CHOLERA VICTIMS IN EASTLEIGH

Mr. Ndolo: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Health the following Question by Private Notice.

(a) Could the Minister inform the House the number of people who have died since the outbreak of a waterborne disease in Eastleigh area of Nairobi?

(b) How many people have been treated and discharged due to this disease?

(c) What measures has the Ministry taken to make sure that the disease does not spread to other parts of the city?

The Assistant Minister for Health (Mr. Konchella): Mr. Deputy Speaker, Sir, I beg to reply.

(a) Four deaths were reported due to an outbreak of diarrhoea-related cases in Eastleigh section 3, Motherland slums, in the month of June, 2005.

(b) The total cumulative cases of patients seen at various health facilities within the affected region were 159. Out of this, a total of 32 patients were admitted due to dehydration while the rest

were treated as out-patients.

(c) My Ministry has put in place the following measures to ensure that the disease does not spread to other parts of the City: First, the Ministry formed response teams as soon as the outbreak was reported. Secondly, an active case search was done to stop the chain of transmission and contact tracing carried out. Lastly, health education is currently on-going in the affected areas. I am happy to report that the situation is now under control as no new cases have been reported since 13th June, 2005. Currently, my Ministry is monitoring the situation closely through the on-going active disease surveillance.

Mr. Ndolo: Thank you, Mr. Deputy Speaker, Sir. I thank the Assistant Minister for that answer, although it is not satisfactory. Could he tell this House, where the public health department is in this country nowadays? What does it do?

Mr. Deputy Speaker: Where is what?

Mr. Ndolo: Mr. Deputy Speaker, Sir, where is the Public Health Department? Is it dead?

Mr. Konchella: Mr. Deputy Speaker, Sir, while there could be dissatisfaction in the way public health officers operate in the country, we have activated the department because we know that prevention is better than cure. In cases like that of Eastleigh, in order to show the Ministry's response, we set up provisional coordinating committees which are to coordinate public health-related activities and deliver health services such as provision of clean water, unblocking sewers and garbage collection.

Mr. Deputy Speaker: Order, Mr. Assistant Minister! I thought the Question was where the health officers are. You were just supposed to answer that!

Mr. Konchella: Mr. Deputy Speaker, Sir, the officers are in their stations.

Mr. Deputy Speaker: Where?

Mr. Konchella: Mr. Deputy Speaker, Sir, they are at their stations in every health department.

Mr. Abdirahman: Mr. Deputy Speaker, Sir, public health officers in this country are very quick in closing restaurants and other places where people frequent. However, they are not as effective as they appear to be, as we have been told by hon. Ndolo. Public health officers in districts appear to be very detached from the main decision-making organ which is the district health institution. What is the Ministry doing to harmonise this situation?

Mr. Konchella: Mr. Deputy Speaker, Sir, the issue of closing restaurants is a major task. In Bahati alone, we have a population of 1.4 million people. We have 39,000 food outlets in this area. It is difficult for restaurant owners to realise the magnitude of people they are serving so that they can be careful. We do not have enough personnel to survey all the areas. We are trying to utilise the available resources to check the situation because there is a law that allows inspection of food outlets. There is not much that I can say, but we are doing our best.

Mr. Ndolo: Thank you, Mr. Deputy Speaker, Sir. On part "c" of the Question, the Assistant Minister has told this House that the disease is now under control. Is he aware that Eastleigh Estate is in Kamukunji Constituency, and that, the disease is also affecting areas of Makadara Constituency such as Jericho?

Mr. Konchella: Mr. Deputy Speaker, Sir, I talked to the Provincial Medical Officer of Health this morning before I came here and he assured me that everything is under control in Nairobi. There has not been any disease outbreak since the 14th of this month. The response committees are in place and ready to carry out any implementations. There is no cause for alarm. I want to assure people in Nairobi that response teams are in place and we can react to any situation, any time.

ISSUANCE OF TITLE DEEDS
TO MAU INVESTMENT LTD.

Mr. Bett: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Lands and Housing the

following Question by Private Notice.

(a) Is the Minister aware that Mau Investment Ltd. bought land parcels Nos.LR.7596 and LR.9675 in 1976 and fully paid the amount due to the owner, the late Hon. James Onamu?

(b) Why have title deeds not been issued to the company owners to date?

(c) What immediate measures is the Minister taking to defuse the standoff between the members of the company and other people currently being settled by the Government on the said land?

The Assistant Minister for Lands and Housing (Mr. Mungatana): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am not aware that Mau Investments Ltd. bought land parcels Nos.7595, 7596 and LR No.9675 in 1976, but I am aware that the land in Question had been purchased by Mr. V.V. Shah from Ndumberi Farmers Company who had acquired the same from the late hon. James Onamu.

(b) Title deeds have not been issued to the company owners because no records of registered transfer from the late James Onamu, to the company exist.

(c) The standoff between the members of the company and the other people currently being settled by the Government should not arise as the company does not own the land.

Mr. Bett: Mr. Deputy Speaker, Sir, I am shocked that 800 members of Mau Investment Ltd. do not own the land that they are living in, yet I have an agreement between the owner of the company and the late James Onamu. I also have a letter of consent from the Land Control Board, Molo, dated 27th November, 1984. That shows that the land was bought fully by Mau Investment Ltd. and transferred to the company by the late hon. Onamu. I do not know how Ndumberi Farmers Company, which was not able to pay the full amount for the land, became an owner. Could the Assistant Minister tell us how the farmers company acquired the land?

Mr. Mungatana: Mr. Deputy Speaker, Sir, the point I am trying to make here is that if the hon. Member has other documentation, apart from the ones that we have in the Ministry, I would be happy to receive them. But as far as our Ministry is concerned, the land in question was purchased by Mr. V.V. Shah from Ndumberi Farmers Company. If there was any other transaction, or agreements that were entered into, and the same were not registered by the Ministry of Lands and Housing, then, as far as we are concerned, those were private agreements. They should be pursued through the courts.

Mr. Serut: Mr. Deputy Speaker, Sir, you have heard the Assistant Minister say that the Government is in the process of settling people on that land. He has further said that a transfer has not been effected from the family of the late James Onamu. That, in essence, means the land still belongs to the family of the late Onamu. What business does the Government have to settle people on private land which belongs to a deceased person?

Mr. Mungatana: Mr. Deputy Speaker, Sir, I should have pointed out that, in fact, the Government purchased this land through the Settlement Fund Trustee (SFT) from Mr. V.V. Shah in 2001. We then started the process of settling squatters. As far as we are concerned, currently, the number of squatters settled there are 831 families. On average each family is getting two acres.

Mr. Deputy Speaker: Mr. Keter!

Mr. Cheboi: Mr. Deputy Speaker, Sir, I am not Mr. Keter.

Mr. Deputy Speaker: Mr. Keter, I am sorry. I had given your name to Mr. Cheboi!

Proceed, Mr. Cheboi!

Mr. Cheboi: Mr. Deputy Speaker, Sir, this issue concerns my constituency. Therefore, I have facts with regard to it. It seems the Assistant Minister is quite far from the truth. The SFT bought the land in order to diffuse a situation that existed at that time. As a result, my constituents have been forced to pay about Kshs30,000 for a one-and-a-half acre piece of land and interest continues accumulating. Now, could he confirm to this House that the issue of interest will be stopped until the issue of ownership is resolved?

Mr. Mungatana: Mr Deputy Speaker, Sir, we have procedures that we must stick to. If this

is a special request the hon. Member is making, then he should also make it in the appropriate way and then we will consider it favourably. In fact, we, as a Ministry, have a long history with the hon. Member.

Mr. Bett: Mr. Deputy Speaker, Sir, I would be very keen to know whether the Assistant Minister has a letter of consent given to Ndumberi Farmers Company, or Mr. V.V. Shah. I have an affidavit which I wish to table from the late James Onamu which says he did not go to the Land Control Board (LCB) with either Ndumberi Farmers Company or Mr. V.V. Shah.

(Mr. Bett laid the document on the Table)

The Assistant Minister, Office of the President (Dr. Machage): On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: What is it, Dr. Machage?

The Assistant Minister, Office of the President (Dr. Machage): Mr. Deputy Speaker, Sir, is it not in order that the Chair authenticates these documents before the Assistant Minister looks at them?

Mr. Deputy Speaker: The Clerk will do that. He looks at all documents.

Mr. Mungatana, could you now respond to the question by Mr. Bett?

Mr. Mungatana: Mr. Deputy Speaker, Sir, Mr. Bett would like to know whether I have access to the consent that was given by the LCB. I have stated here before, and I would like to repeat, I need not table a public document or authenticate it, if the LCB exists. However, as far as the transaction of the transfer and records are concerned, Mr. V.V. Shah purchased this land for good value.

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

Mr. Deputy Speaker: Mr. Bett, we are not in court! So, we will not decide who bought the land. We leave this issue as it is. The documents have been delayed, but we cannot exhaustively say it is for this or that group. So, let us stop there.

Mr. Bett: Mr. Deputy Speaker, Sir, will you defer this Question in that case?

Mr. Deputy Speaker: No, the Question is not being deferred. In fact, this matter is closed.

Hon. Members, let us move on to Ordinary Questions!

ORAL ANSWERS TO QUESTIONS

Question No.213

TERMINAL DUES FOR MR. WAMBUA

Mr. C. Kilonzo asked the Minister for Labour and Human Resource Development:-

- (a) why Mr. Dominic Wambua was declared redundant by Bidco Oil Refinery after 11 years of employment;
- (b) why the labour office in Thika stopped handling the case; and,
- (c) when Mr. Wambua will be paid his terminal dues.

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Deputy Speaker, Sir, I beg to reply.

(a) Mr. Dominic Wambua was not declared redundant, but was terminated from employment by Bidco Oil Refineries, Nakuru Branch on 15th July, 2003.

(b) Mr. Wambua reported to the District Labour Officer, Nakuru on 7th August, 2003 complaining about his termination. The case could not be handled by the Thika District Labour Officer because he was working at Bidco Oil Refinery, Nakuru Branch. The District Labour Officer, Nakuru

took up the matter and initiated settlement of the case. The District Labour Officer arranged for a meeting on 27th August, 2003, whereby the employer turned up, but Mr. Wambua failed to attend. Another meeting was arranged on 29th September, 2003, in which the management came, but the complainant did not turn up. Since Mr. Dominic Wambua did not attend meetings arranged to settle his case, I have directed the District Labour Officer, Nakuru to re-investigate the case and would like to request Mr. C. Kilonzo to inform Mr. Wambua to report to the District Labour Office in Nakuru during any working day for the conclusion of the case.

Mr. C. Kilonzo: Mr. Deputy Speaker, Sir, we are aware of many employers who want to take advantage of our people. Mr. Wambua worked for Bidco Oil Refinery for 11 years and yet, he was not [Mr. C. Kilonzo] considered as a permanent employee. What is this Ministry doing to ensure that companies do not exploit our people?

Dr. Kulundu: Mr. Deputy Speaker, Sir, according to the records we have, Mr. Wambua was a permanent employee based at Nakuru. In fact, today, I signed a letter to all employers to make permanent all those casuals who perform duties of permanent nature. I would like to reiterate that Mr. Wambua was not a casual employee.

[Mr. Deputy Speaker left the Chair]

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

Mr. Sasura: Mr. Temporary Deputy Speaker, Sir, most of the time in our offices, we handle labour related cases. In most cases, you find that employers of Asian origin mistreat and trample on the rights of African workers. Could the Minister institute sweeping reforms in his Ministry because his labour officers are colluding with these Asians and, at the end of the day, no labour case is solved?

Dr. Kulundu: Mr. Temporary Deputy Speaker, Sir, I am not aware of any collusion between the labour inspectors and labour officers. However, if there is any specific case where the hon. Member knows that our labour inspector colluded with the labour officer, I would be happy for that case to be brought to my notice.

Mr. C. Kilonzo: Thank you, Mr. Temporary Deputy Speaker, Sir, I was given a different answer yesterday and I am glad that the Minister has confirmed that Mr. Wambua Dominic is no longer a casual worker. Nevertheless, my question is: Why does the Ministry take long to fight for the rights of the workers? We cannot sort out cases of this nature through the House. What action is the Ministry taking to ensure that such cases are given urgent attention?

Dr. Kulundu: Mr. Temporary Deputy Speaker, Sir, I had to sent a Labour officer from the Ministry Headquarters to investigate this matter, both in Thika and Nakuru. You will appreciate that in the whole country, especially for the districts, there are no vehicles or motorcycles for labour inspectors to carry out effective audit. We have asked the Ministry of Finance to avail vehicles to us. In due course, I hope the Ministry of Labour and Human Resource Development will have adequate vehicles for its officers.

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

[Mr. Deputy Speaker resumed the Chair]

LIST OF CHEPTERWAI HOSPITAL
BOARD MEMBERS

Mr. Sambu asked the Minister for Health:-

- (a) whether he could give a list of names of the Board Members who have been running Chepterwai Hospital from the year 2000 to date;
- (b) whether he could also give a list of the amounts of cost sharing funds collected by the hospital in the years 2001, 2002, 2003 and 2004, and;
- (c) how the funds collected in (b) above were utilised.

The Assistant Minister for Health (Mr. Konchella): Mr. Deputy Speaker, Sir, I beg to reply.

(a) The list of the committee members who have been running Chepterwai Sub-District Hospital from the year 2000 to date are 13. The Chairman was Mr. Daniel Mosop. The hon. Member has the list unless he wants me to read the names. However, since 2003 when Chepterwai Health Centre was upgraded to a sub-district hospital, a new board has now been appointed. In the meantime, we have received the proposed names from the Medical Officer of Health (MoH), Nandi South for gazettelement. The draft Gazette Notice has been submitted to the Attorney-General for gazettelement.

(b) The list of the amount of cost sharing funds collected by the hospital in the years 2001 to 2004, respectively is as follows:-

Year	Collection - Kshs
2001	382,040.50
2002/2003	330,741.00
2003/2004	226,600.00
Total	1,694,109.00

(c) The expenditure per item on cost-sharing revenue in the Sub-district hospital for the last four years is as follows.

I do not know whether I should read that because the hon. Member knows all the items per the nomenclature showing the item, year and amount totalling to what has been collected so far.

Mr. Sambu: Mr. Deputy Speaker, Sir, listening to the Assistant Minister, in the first part he gave a list of the names of the committee members who have been running Chepterwai Sub-District Hospital from the year 2000 to date. He then says that "However, since 2003, when Chepterwai Health Centre was upgraded to a sub-district hospital, a new board has not been appointed." The same people are still running the hospital. Will the Assistant Minister agree with me that they are doing so illegally? If that is the case, what action is he going to take against them?

Mr. Konchella: Mr. Deputy Speaker, Sir, they are not running the hospital illegally. They are running it legally because the new board is yet to be appointed. We are now gazetting the new board and I have the names here. They are eight of them and the Chairman is Mr. Eliud Keter. There is also Mr. Davis Sigo. Once they are gazetted, they will take over from the current board. However, we cannot leave the hospital to run without a management committee.

Mr. Kimeto: Mr. Deputy Speaker, Sir, you have heard how Chepterwai Sub-District Hospital is being run. Could the Assistant Minister tell the House the regulations which govern the appointment of the management committee? He should tell the House what qualifications the management board should possess in order to run our health facilities. Is it the Assistant Minister who appoints the management committees or it is the local communities?

Mr. Konchella: Mr. Deputy Speaker, Sir, it is the hon. Member who sits with the MoH with recommendations from the community because he has divisional or locational committees that suggest the names to be appointed. The hon. Member is, in fact, the Chairman to ensure that the right people are elected into these positions.

Mr. Sambu: Mr. Deputy Speaker, Sir, it is a sad situation because the Government has been putting its money there but nobody knows how the cost-sharing money collected is used. We do not

even know who the signatories of the bank account are. The officer in charge and the Chairman, took out monies to repair the water pump. Right now there is no water in the hospital yet the officer in charge and the Chairman have taken out imprest. What action is the Assistant Minister going to take against them for taking an imprest yet there is no water in the hospital? They did not repair the water pump? What action is he taking against Mr. Daniel Mosop and the officer in charge? They have been taking public money and not utilising it for the intended purpose.

Mr. Konchella: Mr. Deputy Speaker, Sir, I will advise the hon. Member that if there is any criminal act, he should report it to the police. Let the police deal with it because it is a criminal offence. However, if they are acting because they are legally doing so on behalf of the Hospital, then we must understand that if there is a case of fraud, it is a police case. We are not aware of it and nobody has reported to us. If it is happening, the hon. Member should do something about it before they do more harm.

Mr. Sambu: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to mislead this House? The officer in charge and the Chairman took the imprest from the District Accountant. For three months, there has been no water in the hospital yet Kshs45,000 was withdrawn from the District Treasury. Is he in order to mislead the House? Why is he not taking action against these people who took the money?

Mr. Konchella: Mr. Deputy Speaker, Sir, we will investigate the matter and find out what is going on. If the hon. Member could give us more details, we could do something about it.

Question No.345

DEPLOYMENT OF MEDICAL PERSONNEL
IN DISTRICT HOSPITALS

Mr. Serut asked the Minister for Health:-

(a) whether she is aware that some nurses and other medical personnel recruited to work in district hospitals last year, refused to be deployed to certain health centres within the districts;

(b) whether she is further aware that some of the said nurses and medical personnel have refused to reside within the districts where they were deployed; and,

(c) what the position of the Government is on advertisement, recruitment and deployment of medical personnel at district hospitals.

The Assistant Minister for Health (Mr. Konchella): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am aware that there are some medical personnel who do not reside within the districts due to shortage of houses. For example, in Mt. Elgon District, some personnel reside in Kimilili in Bungoma District, where accommodation is readily available. They commute daily to their places of work.

(b) I have information that all the medical personnel reported to duty except one, who requested for redeployment due to reasons acceptable to the Ministry, and her request was granted. I have a list of 19 nurses who were deployed last year. We have shown where they were deployed, including dispensaries and health centres. They are all working there now.

(c) All posts that fall vacant are normally advertised in the print media for those who are interested and qualified to apply. That is followed by a preliminary selection exercise where, all those who have met the requirements are short-listed for interviews. Interview boards are then put in place to conduct interviews at provincial and district levels. Selection of those to be appointed is based on merit and competence. Deployment after appointment is based on service demand.

Mr. Serut: Mr. Deputy Speaker, Sir, to me, the answer given by the Assistant Minister looks like a letter written to a friend. I want to say that 20 posts were advertised. The Medical Officer of

Health (MOH) came from a certain community. Out of the 20 that were recruited, 11 came from his community. Out of the 50 applicants from Mt. Elgon District, only two were employed. Out of the 20 people who were recruited, one did not report for duty. What is the purpose of recruiting at the district level, if the residents of that district cannot be employed?

Mr. Konchella: Mr. Deputy Speaker, Sir, I have said that recruitment is based on merit and competence. Secondly, communities that live around Mt. Elgon have the right to be employed. So, we do not look at one community for any purpose. We look at all the residents of that area and recruit them if they are competent. I have a list here. If the hon. Member wants to look at it, it contains the names of those who were deployed as nurses and clinical officers.

Dr. Galgalo: Mr. Deputy Speaker, Sir, unfortunately, the Assistant Minister is avoiding to answer a very valid question. The policy of recruiting staff at the district level was mooted, so as to give equal job opportunities to all the communities in this country. But like it happens in the Police Force and other Government departments, when you go to the districts to employ people, the communities that reside in those districts are given the first priority. Could the Assistant Minister ensure that, that principle is adhered to in future?

Mr. Konchella: Mr. Deputy Speaker, Sir, as a policy, we take affirmative action to be the basis of recruitment. But we are handicapped because we must follow the law. Everybody in this country has an equal right to employment. So, if somebody is qualified and has all the documents, we have no reason to deny him or her the job if he or she is the most suitable to take that job.

Mr. Deputy Speaker: Last question, Mr. Serut!

Mr. Serut: Mr. Deputy Speaker, Sir, the Assistant Minister is trying to hide under the excuse that there are no houses in Mt. Elgon District. There are enough houses in Mt. Elgon District, including caves. So, he should ensure that those officers reside within the district because they offer essential services. My question to the Assistant Minister is: Why has he, after allowing one nurse not to report, not replaced her?

Mr. Konchella: Mr. Deputy Speaker, Sir, that nurse was replaced by another nurse. I will bring the name later. If the hon. Member has any reason to doubt the competence of the MOH or any other public officer, he should report to us those particular officers, instead of condemning the whole Civil Service.

Question No.476

MANAGEMENT STATUS OF
RONDININ COMMUNITY MUSEUM

Mr. Boit asked the Minister of State, Office of the Vice-President and Ministry of Home Affairs:-

- (a) if he could confirm whether Rondinin Community Museum is managed by the Ministry or by Baringo County Council;
- (b) how many employees the museum has; and,
- (c) what the benefits of the museum are to the community.

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs (Prof. Kibwana): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I wish to confirm that Rondinin Community Museum is not managed by my Ministry. The Ministry is not even aware of its existence. In that respect, I cannot also confirm whether it is managed by Baringo County Council.

(b) Arising from the answer in part (a) above, I am not aware of the number of employees in the said museum.

(c) Since the Ministry is not aware of the museum, I cannot be able to tell the benefits of the

same to the community.

Mr. Boit: Mr. Deputy Speaker, Sir, I believe there is collective responsibility in the Government. I raised this Question, but the Assistant Minister says that he is not aware of the museum. What is the Office of the Clerk doing? I expected an answer to this Question because it is very important to my constituents. Can I seek your guidance?

Mr. Deputy Speaker: Mr. Assistant Minister, what is the position?

Prof. Kibwana: Mr. Deputy Speaker, Sir, the position is that, that museum does not fall under our Ministry. If it is a private museum or falls under the county council, the Ministry has no responsibility over it. There are many individuals in this country who collect items and put them in private museums. That museum is not under my Ministry. Therefore, this Question should be re-directed to the proper authority; whether it is an individual, county council or another Ministry.

Mr. Deputy Speaker: Very well. This is the position. The Question by Mr. Boit is asking whether the museum is under the Ministry or the local county council. The Question was properly sent to the Ministry that deals with museums. The Assistant Minister says that the museum is not under his Ministry. So, the question of collective responsibility does not arise. It means that, if the hon. Member knows the museum, then he certainly knows who manages it.

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

Mr. Deputy Speaker: Order, Mr. Waithaka! Are you asking the Chair to keep quiet so that you can speak? You are out of order!

Mr. Boit, this Question was directed to the Ministry of National Heritage and the Assistant Minister has properly responded that the museum is not under his Ministry. Therefore, if it is not under his Ministry, it could be under the local authority, or it could be a private museum. So, since you come from there, tell us who manages it?

Mr. Boit: Mr. Deputy Speaker, Sir, this is a public museum. Tourists from all over the world visit it. Entrance fees is collected and people are employed in it, and they are earning salaries. Which Ministry does it belong to because as I speak to you now, its employees have not been paid? The Assistant Minister knows the managers of this museum, but he just does not want to tell us.

Prof. Kibwana: Mr. Deputy Speaker, Sir, I have said very clearly that we have a list of all museums which fall under our Ministry and certainly this is not one of them. It could be managed by the county council or private individuals. If that is the case, those two bodies can employ and pay people and tourists can visit. However, I would be happy to know from the hon. Member who is responsible for the management of this museum, and to let me know what help he needs from my Ministry if there is a problem.

Mr. Deputy Speaker: Mr. Assistant Minister, it is still possible for your Ministry to find out who manages this museum, given the fact that you now know there is a museum there, something which you did not previously know. It is also appropriate for you to find out about the museum because even if it is managed by the county council or private individuals, certainly, the Ministry has a hint of it. So, could you find out who manages the museum? The Question is deferred for a week.

(Question deferred)

Next Question by Mr. Sasura!

Question No.278

NUMBER OF IMMIGRATION
OFFICERS EMPLOYED SINCE 2003

Mr. Sasura asked the Minister for Immigration and Registration of Persons:-

- (a) how many immigration officers have been employed since 2003; and,
- (b) why the Government has failed to decentralise the issuance of passports to the districts.

The Assistant Minister for Immigration and Registration of Persons (Mr. Mwaboza): Mr. Deputy Speaker, Sir, I beg to reply.

(a) The Ministry has recruited, 316 immigration officers since 2003 as follows: In 2003, 116 officers were recruited and in 2005, we recruited 200. In total, we recruited 316 officers.

(b) The Ministry has not decentralised issuance of passports to the districts due to the following reasons: One, demand for passports is very low in some districts in relation to production costs. Two, shortage of trained personnel. Three, lack of passport issuing equipment; and, lastly, the security nature of passports.

Mr. Sasura: Mr. Deputy Speaker, Sir, there is an establishment of almost 400 immigration officers in this Ministry. We passed a Motion in this House in support of the decentralisation of issuance of passports and it was supported fully by the Assistant Minister and I appreciate that. However, my concern is that the demand for passports in the districts is low because the applicants are required to come to Nairobi and this issue can only be vetted at the district level. Could the Assistant Minister consider processing the forms at the district level by establishing a vetting committee there, and the passports printed in Nairobi or Mombasa for that matter?

Mr. Mwaboza: Mr. Deputy Speaker, Sir, in fact, we have a strategic plan, which is in the process of being finalised, and we propose a recruitment of 7,158 officers who will be deployed to the various issuing centres.

Mr. Waithaka: Mr. Deputy Speaker, Sir, if one of the reasons given for not processing passports at the district level is that there are very few applicants in the districts, why can the Ministry then not start issuing passports at the provincial level?

Mr. Mwaboza: Mr. Deputy Speaker, Sir, we have four regions in which passports are being issued. However, due to inadequate budgetary provisions to spend the Authority to Incur Expenditures (AIEs), shortage of personnel and lack of passport issuance equipment, that is the reason why the same has not been effected.

Mr. Sasura: Mr. Deputy Speaker, Sir, the Assistant Minister has said that one of the reasons why decentralisation cannot be done is because of lack of a feasibility study to justify opening of offices in the districts. If this has not been done, why did the Ministry in the first place support the Motion on decentralisation?

Mr. Mwaboza: Mr. Deputy Speaker, Sir, as I have said earlier, the Ministry is organising in its strategic plan a reform agenda where the issue of decentralisation of services will be adequately addressed.

Mr. Deputy Speaker: Next Question by Mr. Bahari!

Question No.315

INCREASE IN TICK POPULATION IN
WASO NGIRO NORTH GRAZING BELT

Mr. Bahari asked the Minister for Livestock and Fisheries Development:-

- (a) whether he is aware that tick population within the Waso Ngiro North grazing belt is increasing at an alarming rate;
- (b) if he is further aware that the increase has adversely affected the health of livestock in areas that hitherto were disease free; and,
- (c) what measures the Ministry will put in place to contain the situation.

The Assistant Minister for Livestock and Fisheries Development (Dr. Wekesa): Mr.

Deputy Speaker, Sir, I beg to reply.

(a) Yes, I am aware that the tick population within Waso Ngiro North grazing belt is increasing at an alarming rate.

(b) Yes, I am also aware that the increase in tick population has led to an increase of tick-borne diseases, which has adversely affected the health of livestock in this region.

(c) The responsibility of controlling ticks and tick-borne diseases was passed over to farmers in the early 1990s when the Government decided to hand over tick control facilities to the farmers. However, the Government has undertaken to give support through continuous training of dip management committees and the provision of extension services to farmers, as well as making sure that only the effective acaricides are sold to them.

Mr. Bahari: Mr. Deputy Speaker, Sir, this is a very disappointing answer because this Government was elected on the platform of change and we are being told of a policy of the last century, which is 1990, and it is very unfair. It is that policy of the last century which is responsible for the increase in tick population. Could the Assistant Minister tell us what changes he is going to undertake so that this situation is contained? Does the Assistant Minister want Kenyans to serve the policy or *vice versa*?

Dr. Wekesa: Mr. Deputy Speaker, Sir, I fully agree in some respect with the hon. Member that this situation was created when the Structural Adjustment Programmes (SAPs) were initiated in the early 1990s. We, as a Government, have realised that some of those conditionalities have affected many things, among them the growth of the livestock sector. However, my Ministry is looking at this issue of enhancing communities that depend on livestock production. Very soon, we will bring a Sessional Paper in this House to discuss issues such as this one, Artificial Insemination (AI), and related matters.

Mr. Bahari: Mr. Deputy Speaker, Sir, while I appreciate the fact that the Assistant Minister intends to bring a Bill to this House to rectify this situation, I would like to ask him to consider containing this disease through the African Development Bank funding for the livestock sector.

Dr. Wekesa: Mr. Deputy Speaker, Sir, I agree. In fact, there are programmes, like the ASAL Programme, which are being used to improve the livestock sector. Many hon. Members of Parliament have realised these problems in their constituencies and they are using the Local Authority Transfer Fund (LATF) and the Constituency Development Fund (CDF) to ensure that some of the cattle dips within their areas are functional.

Mr. Deputy Speaker: Hon. Members, that brings us to the end of Question Time. I seek the indulgence of Prof. Olweny, Mr. Mwangi, the Minister for Agriculture and the Minister for Trade and Industry, to defer the remaining two Questions to Tuesday, next week.

Question No.050

TERMS OF CONTRACT FOR
MUHORONI SUGAR FACTORY
RECEIVER MANAGER

(Question deferred)

Question No.453

MEASURES TO SAVE MR. KARIUKI'S
PROPERTY FROM AUCTIONEERS

(Question deferred)

Mr. Deputy Speaker: Hon. Members, there is a Ministerial Statement from the Ministry of Foreign Affairs, in response to a request by Mr. Keter.

MINISTERIAL STATEMENT

EXPULSION OF KENYAN JOURNALISTS FROM TANZANIA

The Assistant Minister for Foreign Affairs (Mr. Wetangula): Mr. Deputy Speaker, Sir, on Tuesday, Mr. Keter

[**The Assistant Minister for Foreign Affairs**] demanded a Ministerial Statement on the issue of six Kenyans expelled from Tanzania. I wish to state as follows.

The Tanzanian authorities, on Tuesday, 28th June, 2005, deported six Kenyan nationals working for *Mwananchi* Communications Limited, a subsidiary of the *Nation* Media Group, ostensibly for engaging in employment without valid documents. The practice is that all journalists are required to be cleared by the Prime Minister's Office prior to commencement of work. In this case, they had applied and received requisite clearance and began work on business visas, which is a common practice in Tanzania. The six journalists are Group Managing Editor, Mr. Mutuma Mathiu; Production Editor, Mbogo Murage; Content Editor, Mr. Chacha Mwita; Sub-editor, Mr. Kizito Namulanda; Advertising Manager, Miss Waithera Munyoro and Project Accountant, Mr. Wanjohi Kamau.

Prior to the expulsion, the Kenyan High Commissioner in Tanzania had earlier intervened with the Permanent Secretary (PS), Ministry of Home Affairs, Tanzania, who had intimated that the journalists were required to make a temporary exit from Tanzania, pending the processing of their work permits. On 27th June, 2005, when the six journalists went to the airport, their passports were stamped "Prohibited Immigrants". The Kenyan High Commissioner, upon inquiring, was assured that this was usual procedure in Tanzania and could be overturned on appeal.

Mr. Deputy Speaker, Sir, on 29th June, 2005, my Ministry's PS summoned the Tanzanian High Commissioner to Kenya, His Excellency Hamis Musumi, to the Ministry to protest the decision taken by the Government of Tanzania, terming this extreme measure as unjustified, unwarranted and uncalled for, considering that they had prior clearance from the Prime Minister's Office and their work permits were under process. The PS further informed the High Commissioner of Tanzania that the decision would send wrong signals to the Kenyan and Tanzanian public at this time when the two countries are moving towards closer integration, and it can also send wrong signals to investors. The Tanzanian High Commissioner informed us that he had no official communication from his Government on the matter. He, however, undertook to communicate our concerns and give us a response in due course.

Mr. Deputy Speaker, Sir, the information we are now getting is that the journalists may have been expelled due to business rivalry. We are confident that the Tanzanian authorities will be able to resolve the problem expeditiously. As a Government, we shall continue engaging the Tanzanian Government to see that the problem is solved and that it does not escalate into affecting and/or undermining the process of integration that we are all looking forward to.

Thank you, Mr. Deputy Speaker, Sir.

Mr. Keter: Mr. Deputy Speaker, Sir, I would like to thank the Assistant Minister for that comprehensive Ministerial Statement. However, he has mentioned that the six Kenyan journalists may have been expelled from Tanzania due to business rivalry. It is true that Tanzanians do not like Kenyans. In their business dealings, they would prefer South Africans to Kenyans. Now, what steps are we going to take in terms of the East African Co-operation? The Common Tariff system that has been put in place among the three member states has affected Kenyans so much, having given a leeway

to the Tanzanians who seem not interested in dealing with Kenyans. How are we going to safeguard our interests?

Mr. Deputy Speaker: I will allow two more hon. Members to seek clarifications and the Assistant Minister will respond to all of them.

Mr. Kagwe: Mr. Deputy Speaker, Sir, I would like the Assistant Minister to clarify the issue of movement of natural persons within the three member states. We have already allowed the movement of legal persons within the East African Co-operation, but there is a problem with the movement of natural persons. As night follows day, the movement of legal persons follows the movement of natural persons. Therefore, in the spirit of the East African Co-operation, and acting in reciprocity of this arrangement, could the Assistant Minister clarify whether Kenya also intends to allow Tanzanians to work here as we are requesting the Tanzanians to allow Kenyans to work there? How fast can we have the requirement of work permits removed in the spirit of the East African Co-operation and the movement towards the federation?

Mr. Deputy Speaker: Let us have Mr. Ndambuki seek the last clarification on this matter.

Mr. Ndambuki: Mr. Deputy Speaker, Sir, you will recall that in the 1970s, many Kenyans were expelled from Tanzania. Currently, there are so many investors from Kenya who have relocated to Tanzania. If the six Kenyan journalists have been expelled from Tanzania because of business rivalry, what guarantee can we give the Kenyan investors in Tanzania that they will not be expelled? They are also doing the same business with Tanzanians. There are already many Kenyans who have invested a lot of money in that country.

Mr. Deputy Speaker: Mr. Wetangula, you can now respond to the three concerns.

The Assistant Minister for Foreign Affairs (Mr. Wetangula): Mr. Deputy Speaker, Sir, it is regrettable that this event has taken place. With regard to the request by Mr. Keter, I would like to respond that there is no indication that the Tanzanians are either backtracking or dragging their feet, or that they are dis-interested in the formation of the East African Federation. Indeed, we all know that the Customs Union has been executed and is in force, and this could be part of the little teething problems that we will have to go over in due course. There is also no evidence that the Tanzanians either fear or are jealous of Kenyans. This is not something that we would want to encourage either.

Mr. Deputy Speaker, Sir, I agree with Mr. Kagwe that the movement of business organisations, or what we call unnatural persons, should go hand in hand with the movement of natural persons. I have no doubt that with the process of integration, much sooner than later, the East African boundaries will collapse and people will move freely within the three East African states.

Mr. Deputy Speaker, Sir, Kenya remains one of the major investors in the economy of Tanzania, and this is common knowledge. I believe Tanzanians value Kenyan investors and, as I said earlier, the expulsion of these journalists is something the Government regrets. We have fully engaged the Tanzanian Government to see that if the employer still wants these journalists to go and work in Tanzania, their status is normalized and they go back to do their work. We wish that this will be the only incident of this nature that will happen after fast-tracking of the East African Integration process. We all know that all the three East African countries have a lot to benefit from the integration than from lack of it.

Mr. Deputy Speaker: Very well, Mr. Moroto!

POINTS OF ORDER

THEFT OF LIVESTOCK IN KATIKOMOR

Mr. Moroto: Mr. Deputy Speaker, Sir, you will recall that there was a Question which I had asked last week, and the Assistant Minister, Office of the President promised to lay on the Table a list

of the names of the people who were given animals which were recovered from Uganda. Yesterday, Mr. Speaker ordered that the Assistant Minister should lay that list on the Table today. I want to remind the Assistant Minister to do that now.

Mr. Deputy Speaker: Yes, what is the position, Assistant Minister, Office of the President? Is Mr. M. Kariuki around? There was a definite order that the list be produced now. I thought I saw Mr. M. Kariuki here. Could someone tell him or the Minister of State, Office of the President, that we will be requiring this list on Tuesday afternoon?

What is it, Mr. Ndambuki? We have to make progress now.

EVICTION OF PEOPLE FROM MAU FOREST

Mr. Ndambuki: Mr. Deputy Speaker, Sir, yesterday, you also ordered the same office to bring a Ministerial Statement about the eviction of people from Mau Forest this afternoon.

Mr. Deputy Speaker: Yes, indeed! Can I get some response, because this is now, obviously, serious? Two orders were made from the Chair yesterday to the Office of the President. One of them was requesting for a list on the recovered livestock from Uganda, while the second one was requesting for a Ministerial Statement about the eviction of people from Mau Forest. Can I hear something from the Office of the President or from the Leader of Government Business?

An hon. Member: Dr. Murungaru's office! Uncle!

Mr. Deputy Speaker: Order!

The Vice-President and Minister for Home Affairs (Mr. Awori): Mr. Deputy Speaker, Sir, I obviously expected the Assistant Minister to be here, but I will communicate with him and ensure that the two Ministerial Statements are given next Tuesday.

Mr. Deputy Speaker: Very well! The Minister for Finance was to respond to Mr. Billow's statement in the morning yesterday about the Printed Estimates.

Proceed, Minister!

STATEMENT ON THE PRINTED ESTIMATES TO AWAIT ATTORNEY-GENERAL'S WRITTEN LEGAL OPINION

The Minister for Finance (Mr. Mwiraria): Mr. Deputy Speaker, Sir, I have prepared a Statement but I needed a written legal opinion from the Attorney-General. I have already been told what the legal opinion is, but unless I have it in writing, I do not want to come here and tell hon. Members what the Attorney-General has said, because he is not there in person to sign it.

Dr. Godana: On a point of order, Mr. Deputy Speaker, Sir. This is very serious! The Speaker directed in very clear terms that time is not on our side, and the Minister was to give his response today. The Speaker himself felt that he had to give his ruling before the debate on the Votes starts on Tuesday.

May I seek your guidance, Mr. Deputy Speaker, Sir, that there will be no debate on the Votes until this matter has been responded to satisfactorily and until the Deputy Speaker has given his authoritative ruling on it, so that on Tuesday, we do not start debate on the Votes?

(Applause)

COMMUNICATION FROM THE CHAIR

NON-COMPLIANCE WITH

FINANCIAL REGULATIONS
IN BUDGET MAKING

Mr. Deputy Speaker: Hon. Members, I do agree that that is a very important matter and, indeed, when Mr. Billow made the Statement, I underlined the importance of what he was saying. The Minister promised that he was going to bring a response. In view of the fact that he is unable to do so now and that he will do so, as he has said, next week, I think it is very clear that no Printed Estimates will, therefore, be debated until the Minister has presented his response and the Chair has made a ruling---

(Applause)

Unless, of course, the Minister wishes to reprint the Printed Estimates in a manner that we all know, so that we will be debating on what we have been debating in the past. Now, if they are to be in the manner in which they are now, then the Minister will have to explain, so that hon. Members will understand. Therefore, that is the position and we will now not move into debating the Printed Estimates until that matter is resolved.

(Applause)

The Minister for Finance (Mr. Mwiraria): Mr. Deputy Speaker, Sir, may I appeal that I be allowed to make the Statement and even say what the Attorney-General's office told me, and be allowed to lay the letter from the Attorney-General on the Table next week?

(Loud consultations)

Mr. Deputy Speaker: Order, hon. Members! There should not be any problem, Mr. Mwiraria. I think it is better that you take your time on it and bring the written Statement, so that we can look at Mr. Billow's Statement and yours and then we make a decision. There should be no hurry about it. We certainly cannot move on to debating the Printed Estimates until that matter is settled. Even if you do it now, Mr. Mwiraria, we will still need time to study those details and make a ruling.
Next Order!

BILLS*First Readings*

THE FINANCE BILL

THE RETIREMENT BENEFITS (AMENDMENT) BILL

THE STATUTE LAW
(MISCELLANEOUS AMENDMENTS) BILL

*(Orders for First Readings read - Read the
First Time and referred to the relevant
Departmental Committees)*

Mr. Deputy Speaker: Next Order!

POINT OF ORDER

THE HOUSE CAN ONLY DELIBERATE
ON A MOTION THAT IS BEFORE IT

Mr. Muturi: Mr. Deputy Speaker, Sir, I rise on a point of order to seek your guidance on this Motion. On 5th April, 2005, the Select Committee on the Review of the Constitution laid a report on the Table of the House. The report was on the work that the Committee had done regarding the Bomas Draft and the report from the Constitution of Kenya Review Commission (CKRC). That report has not, to date, been debated. This report which is about to be debated now was laid on the Table yesterday. It is on the same subject, or substantially, the same issues as are covered in the report that was laid here on 5th April, 2005. My reason for seeking your guidance is primarily based on the practice and traditions of this House. If a Committee lays a report before the House, it is ordinarily debated before that same Committee, or a subsequent Committee on the same subject can bring another report and we proceed to debate it.

Secondly, I want to seek your guidance on the second point. The Constitution of Kenya Review Amendment Act 2004 is a subject of an on-going civil suit in the High Court. The suit was mentioned on Tuesday this week before Justice Nyamu. That suit is challenging the constitutionality and legality of this very Act under which this report purports to be made. Is it in order for this House to also take cue from the Government and begin to disregard what is happening in the Judiciary on matters which are clearly *sub judice* like this one? I urge the Chair to order that we should await the decision of the court on the legality or constitutionality of this Act before we can proceed to debate anything that is brought or done on its authority.

The Minister for Education, Science and Technology (Prof. Saitoti): On a point of order, Mr. Deputy Speaker, Sir. We do not have a Motion as yet. A Motion will have to be seconded. We are now discussing a Motion which is non-existent. Could the Chair give direction on this?

Mr. Deputy Speaker: Prof. Saitoti is right, really, because I had just called out the order and even the Chairman of the Committee has not moved his Motion so that you can respond to it. I have taken the point raised by Mr. Muturi. If you wish, I will still give you more time. But let us, first of all, come to Order No.10. Let the Chairman come forward to move the Motion, and then I will allow hon. Members to raise points of order.

Dr. Godana: On a point of order, Mr. Deputy Speaker, Sir. The reason why the hon. Member chose to rise on a point of order is precisely to ensure the House does not violate its own orders by commencing debate on a matter in a manner which is not proper. I think it is right that, before Mr. Nyachae moves the Motion, we should actually say that this matter is not properly before the House. We are trying to protect order!

Mr. Deputy Speaker: Very well! Yes, Mr. Wetangula!

The Assistant Minister for Foreign Affairs (Mr. Wetangula): On a point of order, Mr. Deputy Speaker, Sir. First of all, Mr. Nyachae has not moved the Motion. So, there is no issue on it. On the first point raised by Mr. Muturi, we have to wait for the Mover of the Motion to move it and we hear whether he is moving it the way it is framed on the Order Paper or he wishes to amend it, or the manner in which he wishes to move it before we raise objection.

The second and more important issue is: The fact that there is litigation on a statute in court cannot injunct Parliament from transacting business relating to that matter. What is in court is a challenge on the constitutionality of the Act. The court has not declared that the Act is either unconstitutional or not. I can see my learned friend and teacher agitated. Again, if this Parliament will

ever allow itself to be directed or injuncted by any other body, that will be the end of parliamentary democracy in this country. I would want to urge the Chair to give the Mover an opportunity to move the Motion and let it be seconded. If there are any issues that arise out of the Motion, then the hon. Members can raise their objections. The Motion is not just what is printed on the Order Paper; it is what will be moved on the Floor.

Mr. M. Kilonzo: Mr. Deputy Speaker, Sir, I rise to seek your clarification on the following points. Apart from the fact that a similar report to what was tabled yesterday was tabled on 5th April, there is, in fact, a Motion which has been circulating in the business of this House. The notice was given by Mr. Samoei on the same Committee. That Motion has, in fact, appeared several times as published by the House Business Committee, and we have been waiting for it. On account of the dignity of this House and the seriousness with which a Constitution must be looked at, I feel that the Chair should, at least, make a ruling as to whether we can have two Motions on the Floor of the House at the same time, on the same subject, Act and by the same Committee. This country needs guidance of the nature that must come out of the ruling of the Chair, so that we know what has become of Mr. Samoei's Motion, and what is going to become of this one.

Mr. Deputy Speaker, on the issue of *sub judice*, the Chair has made a ruling countless times on it. As long as the dispute touches on this particular Act, particularly Section 27, the matter is *sub judice*. Could the Chair give us its guidance?

Mr. Deputy Speaker: Let us hear the last one from Dr. Godana!

Dr. Godana: Mr. Deputy Speaker, Sir, for the benefit of the House, my honourable learned friend and colleague, Mr. Wetangula, got it completely wrong. The origin and purpose of the principle of *sub judice* stems from separation of powers. In a system of separation of powers, the principal is each arm of Government respects the authority and jurisdiction of the other. Therefore, Parliament will not discuss a matter which the courts are seized of and the courts will not injunct Parliament from conducting its business. It is a question of who started it first. Once a matter is before the courts, if we really believe in the rule of law and separation of powers, the best we can do is to express our wish that the courts will speed up that process. It will be terrible, really, if we were to proceed with this debate. I therefore plead that this matter be adjourned.

(Applause)

Mr. Deputy Speaker: Let us have the last contribution by Mr. Muite!

Mr. Muite: On the point raised by Mr. M. Kilonzo that there are two Motions before this House, you remember that I had laid on the Table of this House the Report on Dr. Rotich. I did that at a particular Session. But because the House was beginning a new Session, I had to re-table the same Motion. That is because the previous one had "died" with the previous Session. So, it is not correct to say that there are two Motions before the House. Each Motion has to be tabled here.

(Applause)

That is why Mr. Nyachae is seeking to table this Motion. The other one disappeared with the previous Session.

Mr. Deputy Speaker, Sir, it is for you to rule. I am sure you are going to rule on this matter. At the moment, we appear to be arguing. However, permit me to say this---

Mr. Deputy Speaker: Could you give me the opportunity to rule?

Mr. Muite: Mr. Deputy Speaker, Sir, I am just winding up. On the second point of *sub judice*, the rationale is to stop a body other than the court from discussing and passing judgment on the merit of the issues which arise in that particular case. Therefore, as far as I understand, this House will

not be debating whether that Act is constitutional or not. We are not violating any *sub judice*. We are leaving that matter to be adjudicated by the courts, after they hear arguments. We have got to guard against this danger. Anybody who wishes to stop Parliament from proceeding with its business will just fabricate some cases without any merit, file them in court and then somebody comes to the House and says: "The matter is in court!" We are not violating any *sub judice*.

Mr. Deputy Speaker, Sir, I invite you to reject that argument offered!

(Applause)

Mr. Deputy Speaker: Thank you, Mr. Muite, for that emphasis.

Hon. Members, the first point is whether we can go on with a Motion on this Report because there is another Motion on the same. In my mind, I agree that there was a Report that was laid before the House. But it was laid by the Select Committee on the Review of the Constitution of Kenya. This is a perpetual Committee. It is not a Committee that ended! So, in my view, for this Committee, it is another Report. We cannot say we will not debate this Report because it is a different one. Therefore, that, in my view, cannot stop us debating a report, because there is another one! There could even be other reports. But what is before the House is this Report.

(Applause)

Even if there are other reports, they can wait. This is what is before us today.

Hon. Members, on the issue of *sub judice*, I do not think I need to belabour on the matter. Mr. Speaker has said this many times before. This House cannot be subjected to: "Do not do this! Do not do that!" In any case, we have nothing from any court to bar us from debating this Motion. The suit that you are referring to, with due respect, does not concern a Motion. This is a Motion on a Report of a Committee of this House. We cannot stop debating a report of a Committee of this House, because there are some suits somewhere. Therefore, I rule that we proceed with the Motion!

(Applause)

*(Several hon. Members withdrew
from the Chamber)*

Mr. Nyachae, please, proceed!

The Minister for Energy (Mr. Nyachae): Mr. Deputy Speaker, Sir, thank you for giving me this opportunity to move this Motion, which was laid on the Table of this House yesterday, 29th, June, 2005.

With your permission, Sir, and considering the earlier communication I conveyed, seeking your indulgence to introduce an amendment to the Motion, I would like to start by indicating that I will introduce an amendment to the Motion by deleting---

Mr. Sungu: On a point of order, Mr. Deputy Speaker, Sir. As a matter of procedure, we need your guidance as to whether the Mover can amend a Motion before it is moved, seconded and Question proposed so that it can be properly before the House.

Mr. Ethuro: This House has rules!

Mr. Sungu: Yes! We must follow the rules!

Mr. Deputy Speaker: I think Mr. Sungu has a point. Let me clarify. Look at Standing Order No.41---

(Loud consultations)

Order, hon. Members! A very important point has been raised by Mr. Sungu. It is only fair that we all listen.

Standing Order No.41 states as follows:-

"Mr. Speaker may permit a Member to move in amended form a Motion of which notice has been given if, in the opinion of Mr. Speaker, the amendment does not materially alter any principle embodied in the Motion of which notice has been given."

Mr. Sungu, that answers your question. I was consulted earlier. I looked at the proposed amendment and, in my view, it does not - I repeat - not materially alter any principle embodied in the Motion. That is what Mr. Nyachae is proceeding to do.

Mr. Nyachae, please, proceed!

MOTION

ADOPTION OF PSC REPORT ON CONTENTIOUS ISSUES AND THE NAIVASHA ACCORD

The Minister for Energy (Mr. Nyachae): Mr. Deputy Speaker, Sir, thank you for clarifying that position.

I beg to move the following Motion:-

THAT, this House adopts the Report of the Select Committee on Review of the Constitution of Kenya on contentious issues identified in accordance ---

(Loud consultations)

Mr. Deputy Speaker: Order, hon. Members! I want you to be very clear. Please, look at your Order Paper. Note the words that are being amended very carefully!

Mr. Nyachae, please, proceed!

The Minister for Energy (Mr. Nyachae): Mr. Deputy Speaker, Sir, I will start again for the benefit of hon. Members.

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

THAT, this House adopts the Report of the Select Committee on Review of the Constitution of Kenya on contentious issues identified in accordance with Sections 27(1)(b); and 27(2) of the Constitution of Kenya Review (Amendment) Act, 2004 and as contained in Chapter 4 - Citizenship; Chapter 6 - Bill of Rights; Chapter 11 - The Legislature; Chapter 12 - The Executive; Chapter 13 - Judicial and Legal Systems; Chapter 14 - Devolved Government; and Chapter 18 - Constitutional Commissions; together with the Report of the Select Committee popularly referred to as the "the Naivasha Accord" as detailed in Appendix IV, laid on the Table of the House, on Wednesday, 29th, June, 2005.

Mr. Deputy Speaker, Sir, the amendment that I am proposing is to delete the sentence that reads:-

"together with the Report of the Select Committee popularly referred to as the "the Naivasha Accord" as detailed in Appendix IV."

Those are the words to be deleted.

I tabled the Motion in the House on the 29th June, 2005. So, the amendment is noted and, with your permission, let me proceed.

Mr. Deputy Speaker: Now, you should read the Motion as amended.

The Minister for Energy (Mr. Nyachae): Thank you for that guidance, Mr. Deputy Speaker, Sir.

It reads as follows:-

THAT, this House adopts the Report of the Select Committee on Review of the Constitution of Kenya on contentious issues identified in accordance with Sections 27(1)(b); and 27(2) of the Constitution of Kenya Review (Amendment) Act, 2004 and as contained in Chapter 4 - Citizenship; Chapter 6 - Bill of Rights; Chapter 11 - The Legislature; Chapter 12 - The Executive; Chapter 13 - Judicial and Legal Systems; Chapter 14 - Devolved Government; and Chapter 18 - Constitutional Commissions as laid on the Table of the House on Wednesday, 29th June, 2005.

Mr. Deputy Speaker, Sir, this Motion is by the Select Committee on Review of the Constitution of Kenya, aimed at enabling the Committee to execute its mandate within the time frame stipulated by law. The Select Committee on Review of the Constitution of Kenya was established pursuant to provisions of Standing Order No.153 and in furtherance to Section 10 of the Constitution of Kenya Review Act, Cap.3(A). The mandate of the Committee has been elaborated further by the provisions of the Constitution Review (Amendment) Act, 2005, in which the Committee is mandated to identify and recommend to the National Assembly, contentious issues in the Bomas Draft Bill.

Mr. Deputy Speaker, Sir, the current Committee, which I chair, was constituted on 5th May, 2005. It has the task of concluding the process in accordance with the law and the wishes of the people of Kenya. The contentious issues, which this House is requested to debate, are contained in the following Chapters.

1. Chapter 4 - Citizenship. The issue in contention is Article 20 - Dual Citizenship.
2. Chapter 6 - Bill of Rights. The issues in contention include Article 34 - Right to Life; Article 50 - Freedom of the Media; Article 51 - Access to Information.
3. Chapter 11 - The Legislature. The issues in contention include Articles 120 to 122 - The Senate.
4. Chapter 12 - The Executive. The issues in contention include Article 152 - The President and the Deputy President; Article 172 - The Prime Minister and the Cabinet.
5. Chapter 14 - Judicial and Legal Systems. The issues to be debated are Articles 198 and 199 - The Kadhis Courts.
6. Chapter 14 - Devolved Government. The entire Chapter is contentious.
7. Chapter 18 - Constitutional Commissions. Article 297 - Additional Constitutional Commissions.

Mr. Deputy Speaker, Sir, this Committee has the task of undertaking consultations with all stakeholders in an effort to promote national consensus on contentious issues. In view of the short period available, and as stipulated in the Constitution of Kenya Review (Amendment) Act, 2004, the Committee has set out a time-table within which to operate. While carrying out this mandate, the Committee has rolled out the programme as follows.

(a) It expects to meet with stakeholders from the 5th to 7th July, 2005 to iron out contentious issues. We intend to harmonise the Draft Bill with the contentious issues.

(b) Between the 8th and 10th of July, 2005, the Committee plans to hold a retreat to consider the stakeholders' views and develop national consensus on contentious issues.

(c) From 11th to 14th July, 2005, the Committee will prepare the final draft report on the new Constitution for debate by this House.

(d) The Committee proposes that a retreat for all Members of this House be held between 16th and 17th July, 2005 to study the final Draft Bill and report on the new Constitution. Between 19th and 21st July, 2005, the Committee proposes that the House debates and adopts the final Draft Bill and report on the new Constitution, after which the Bill will be forwarded to the Attorney-General for

publishing between 22nd July and 21st August, 2005.

Mr. Deputy Speaker, Sir, this House, being one of the organs of the Constitution review, has a duty to facilitate the review process by adhering to the law. Therefore, we must complete the work within the period allowed by the law. According to the Constitution of Kenya Review (Amendment) Act, 2004, time started running at the commencement of the Act on the 22nd April, 2005.

Mr. Deputy Speaker, Sir, I urge Members to bear in mind that the short time available, as this House asked, is up to 22nd July, 2005 to debate the Draft Bill, harmonise the Bill and prepare a Report to the Attorney-General. The truth of the matter is that we do not have time, and yet, at the same time, Kenyans are waiting for this Constitution. It is time hon. Members who have been entrusted to lead this country jointly, if they do not want a new Constitution, rather than create circles in the House, went ahead and announced to Kenyans that they do not want a new Constitution.

With those remarks, I beg to move and ask hon. Wetangula to second.

The Assistant Minister for Foreign Affairs (Mr. Wetangula): Mr. Deputy Speaker, Sir, I rise to second the Motion as moved and amended by hon. Nyachae. I have the privilege of chairing the Technical Sub-Committee of the current Parliamentary Select Committee (PSC) that was tasked, among other things, to identify contentious issues in the Draft Constitution and present them to the main Committee.

The Chairman has presented those issues and, in reaching the identity of these issues, we did bear in mind that the constitution being a document that attracts a lot of arguments, debates and heat, one can easily classify literally every single content therein as contentious. But we do not want to open up the Draft from Bomas to the extent where we have new avenues of disagreements, endless debate and new avenues that will cause delays in the Draft Constitution being eventually implemented to become the Constitution of this country.

Mr. Deputy Speaker, Sir, in identifying the contentious issues, we did bear in mind what you ably said in your ruling, that the PSC has been a committee with perpetual succession. It is a process and issues undertaken by the PSC either in the Raila, Muite and Samoei regimes or now in the Nyachae regime, are all part of the process of achieving the Constitutional review process. Everything that was done remains relevant. We looked at the records and we found that the political leadership of this country as represented in this House and, as represented in the last PSC, sat in Naivasha and painstakingly went through the Draft Constitution and identified issues that they felt were of contentious nature and needed to be addressed. Indeed, the Committee then, sitting with the Constitution of Kenya Review Commission (CKRC) commissioners, went ahead and made suggestions on how to resolve those issues.

What is before us now is for this House to adopt the contentious issues as identified by the Committee and placed before this House, so that the next stage of seeking agreement by other stakeholders can take place. Of course, there will be many more issues that will come up and we will deal with them as they come. For now, I want to urge the House to approve that these issues as identified by the Committee are, indeed, contentious and are in need of attention, so that we can speed up the programme as set out by the Chairman.

Mr. Deputy Speaker, Sir, I want to say one or two things before I sit down. Today, in the *Standard*, there was an item on the back page that was totally misleading. It purported to quote the sub-committee that I chaired and it alleged that we recommended that the Kadhis courts be deleted altogether from the Draft Constitution. Nothing can be further from the truth. My sub-committee was never mandated to decide what is to be deleted or what is to be left in the Draft Constitution. Indeed, as a person, I fully support the retention of the Kadhis courts as they stand today, in the current Constitution, in the next Constitution. Whoever coined that story may have wished to declare *fatwah* on me. I want to disclaim it and say that no such thing was done.

I would also want to point out that the issue of the constitutionality of the Act that is guiding

us in this process may be an issue that has been challenged in court. But we also know that this Act remains the law until there is a legal pronouncement to the contrary. We do not know of any such pronouncement. It is the only law that we have. It is the law that will guide us to deliver a Constitution in this country.

May I finish by urging hon. Members to realise that this House is bigger than ourselves. It is bigger than our political parties. This country is bigger than all of us here. We must rise to the occasion, be patriotic and nationalistic. Let us not engage in trivial issues and deny this country the delivery of a Constitution. Now, more than ever, is the time for us get together as a Parliament and play our role as defined in Section 5(10) of the Act, that identifies Parliament as one of the organs of review. We have gone through the collection of views, the collation of views and the Bomas Conference. We are now at the stage where this House must play its original role in the jurisdiction conferred upon it by the Act; in fostering the delivery of a new Constitution.

In so doing, I want to urge hon. Members not to shy away from anything simply because people out there are saying this or that. We must be guided by nothing, but the interests of the people of this country in delivering this Constitution. Once this Motion is passed, this will put the process on its rail, where we are going to go through all the stages tabulated in arriving at the final referendum. You will recall that His Excellency the President announced, only two to three days ago, that we are on the final lap of delivering the Constitution. I want to urge this House to give meaning and effect to the words that the President uttered the other day, by working together and delivering the Constitution.

With those few remarks, I beg to second the Motion.

(Question proposed)

Mr. Sungu: Thank you, Mr. Deputy Speaker, Sir. I stand to support this Motion. May I be allowed to say that, for the first time, we are a Government working together and that is a very good sign. The Opposition has been reduced to a very few hon. Members.

The Report is very clear and very short. It clearly points the way forward in terms of getting a new Constitution in this Republic. I note that the Report, at Position 12, refers to the report and recommendations on contentious issues as adopted by the Select Committee established on 30th June, 2004, during the Third Session of this Parliament at Naivasha, which is attached as Appendix No.4. The only issue that I want to touch on is that the amendment that was being admitted before the Motion was proposed, does actually exclude Appendix IV which might make it difficult for all of us to understand what the issues are, because not all of us were at Naivasha.

With those few remarks, I beg to support.

Mr. M.A. Mohammed: Mr. Deputy Speaker, Sir, I stand here to support the Motion. I would like to make one or two observations. We can now play our rightful role as hon. Members of the Opposition, because hon. Members from the Government side have now gone back to their rightful place. Some of my colleagues have just walked out before listening to what has to be said. I think it is wrong to storm out of the House before giving your opinion. This country needs a constitution. This Constitution was pushed very much by the then hon. Members in the Opposition. When we were in the Government we were opposed to the new Constitution because we could foresee what the present Government is seeing now.

The issues which have been listed here are:

- (1) Chapter Four - Citizenship
- (2) Chapter Six - Bill of Rights
- (3) Chapter 11 - Legislature
- (4) Chapter 12 - The Executive

(5) Chapter 13 - Judicial and Legal Systems

Mr. Deputy Speaker, Sir, most of these are new issues which cannot be accepted as they are in the Bomas of Kenya Draft. The issue of the Judicial and Legal Systems is not contentious. I know that people are making noise about the Kadhi's courts. The Kadhi's courts is something very close to our hearts. It cannot be discussed and just be thrown away like that. We will not allow this to happen. If some MPs or Judges out there want the Kadhi's courts to be removed from this Draft, they will all go to hell.

(Laughter)

I am sure that none of you wants to go to hell. You all go to Church on Sunday and pray. Please make sure you do not remove this issue which has been in the Constitution for the last 40 years and it has never harmed even one person.

With those few remarks, I support.

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs (Prof. Kibwana): Thank you, Mr. Deputy Speaker, Sir, for this opportunity to contribute to this amended Motion. I wish to support this Motion. I have personally been a virulent critic of the Parliamentary Select Committee in terms of its role in constitution-making. Therefore, when I got this Report on the contentious issues and the way forward in the constitutional review process, I made it my business to examine it very carefully and critically.

Mr. Deputy Speaker, Sir, the reason why I changed my mind in terms of supporting the work of this Report relates to two things. First, the contentious issues that have been identified including some of the suggestions in terms of how they would be resolved, which were in Appendix IV, which has now somewhat been put aside, but which will be looked at later. When you look at those contentious issues and what would be their impact on the Bomas Draft, it is negligible. I was satisfied that when those contentious issues are resolved, especially in the manner in which it is suggested here and after further debate, the Bomas Draft will not suffer because of the changes that have been suggested. I noted that there was care in terms of making sure that the integrity of the Bomas Draft is maintained.

Mr. Deputy Speaker, Sir, the other matter which endeared me to this Report was the recognition that it is not only Parliament which will determine and resolve the contentious issues, but that this debate will subsequently be taken to both secular and civil society, in a multi-sectoral forum situation between June and July and also August and October during the retreat. Therefore, I do urge the PSC that, that multi-sectoral debate be actually a real debate. It should be the place where all of Kenyans, in terms of elite representation or stakeholder representation, very candidly and honestly, discuss the issues at hand and reach a resolution. This will ensure the charge that it is only Parliament which is determining and resolving the contentious issues is shown not to be a true reflection of everything.

Mr. Deputy Speaker, Sir, I have also looked at those contentious issues, in terms of not only the Naivasha Accord, which I did not attend, but also via the Bishop Sulumeti Consensus Building Committee which was done at Bomas. I have also looked at these contentious issues through the earlier Coalition of National Unity (CNU) debate where KANU was included. I remember that Dr. Godana, the Leader of the Official Opposition, FORD(P), NAK and the LDP were involved, including civil society representation. I have noticed that the contentious issues which are in this Report are very much what was discussed by the Bishop Sulumeti Committee, the CNU and all the players, some of whom are contesting today. They were all part and parcel of that process.

Mr. Deputy Speaker, Sir, since I had an interest to really satisfy myself that the Parliamentary Select Committee is not introducing a matter which is from it alone, I even compared the issues that

they have raised with the work of Ufungamano, the demands by Muslims, the Law Society of Kenya Draft, the women lobby work, as well as some groups within the civil society. I can see from the way these contentious issues are framed, there is sensitivity to those positions as well.

Mr. Deputy Speaker, Sir, I know that when we come to discuss the content or resolution of some of these issues, we will have occasion to differ, add or enrich what has been suggested here. What is essential at this time is to acknowledge that the PSC has actually identified contentious issues which do not go beyond the province of what other actors within and outside Parliament have suggested. I think they have been very cautious so that they do not go beyond what has been previously discussed and then open themselves to the charge of mutilating the Bomas Draft.

I think what has made me change my mind in terms of the work of this Committee is because there is an invitation that other stakeholders will be part of the dialogue. As a result, what will emerge eventually will be a significant consensus before the Draft Constitution is taken to "Wanjiku" for final resolution.

Mr. Deputy Speaker, Sir, I want to very briefly touch on the question of whether we have to amend Section 47, so that these contentious issues and the entire Bomas Draft are considered within that framework.

[Mr. Deputy Speaker left the Chair]

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

The Ringera ruling, very clearly, indicated that Kenyans have an inherent right to make a new constitution for themselves; whether that is admitted by Section 47 or any other part of the Constitution. Most of the independence constitutions in Africa did not contain a provision for altering them fundamentally or replacing them with new constitutions. They only had amendment provisions. Part of the reason why that was so, was because constitutions do not contemplate their own deaths. They contemplate that they would be enduring, although they would be subject to amendments. That is why, within our constitutional jurisprudence, we normally recognise that people at all times have the right to make a new constitution. That is an inherent right which we cannot take away, even by constitutional provisions. Of course, if we were to write it in a constitution and make it clear, that would be proper.

If we go through the processes that have been laid before us by hon. Nyachae and eventually Kenyans contribute to the new constitution, they will have validated all the work that will have been done, as long as there is consensus and dialogue by all players who have been involved in this process. I want to plead with my colleagues and tell them that, from a legal point of view, a new constitution can be made by the people of Kenya because that is an inherent right which they have. Even the independence constitutions of Africa were made in Africa, although we did not have prior constitutions which gave us the right to make those original constitutions.

The Bomas Draft, Section 28, Sub-section 3, says that there will be rights within the Bill of Rights. They will be rights which are not necessarily within the Bill of Rights or rights which are not provided by any other law. The doctrine of inherent rights, rights which do not necessarily have to be in the existing constitution, and even the Bomas Draft, is something which has been secured. It would be good if the present constitution, for avoidance of doubt, would allow the making of a new constitution. In the Bomas Draft, what is being proposed via the contentious issues, and will be discussed by the civil society, the secular and the religious society, will be democratic and one of the most people-sensitive constitutions in the African Continent. I can say this because, as a lawyer and not as a politician, I am able to see what a constitution would look like and what it would, in real life,

provide for our people. I make this point very consciously, believing, understanding and appreciating that a very democratic constitution is on the way, if all of us join hands and are able to value national interests. I was a member of the Parliamentary Select Committee (PSC) on the Constitutional Review, and somehow my name subsequently disappeared. But, I must be true to myself as a constitutional lawyer and to my love of Kenya and say that despite my absence in the Committee, if the work being done will benefit Kenyans and particularly after there is a multi-sectoral forum and more dialogue for the sake of the views of those who are not in this Parliament, I should be able to rise above myself and support that position.

(Applause)

Some of us have spent more than two decades trying to agitate for a new constitution. Some or our colleagues died and others suffered in the process. That is why to me, it is not a light matter when things are done to show or make points which are not necessary and prolong the time that "Wanjiku" has to wait to get a new constitution. I appeal to all of us to focus on the content, the real issues and stop putting roadblocks on the way of a new constitution. If we are really faithful to "Wanjiku", and are people who can look at her straight in the eye, and really want good for her, we have to commit ourselves to the content of a constitution, which is essentially the Bomas Draft. We should also commit ourselves to resolving the contentious issues which were laid here so as to remain true and faithful to "Wanjiku". This should not be a question of procrastination.

(Loud consultations)

The Temporary Deputy Speaker (Mr. Khamasi): Order, Order hon. Members! Please let us consult in low tones so that we can follow debate!

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs (Prof. Kibwana): Mr. Deputy Speaker, Sir, I conclude my presentation by acknowledging that I am very happy that the Liberal Democratic Party (LDP), which may not be a Parliamentary party but a political party which people know about, has made a decision to work with the NARC Government in terms of a new constitution which is an indication of political maturity. This also indicates that work is being done to resolve national issues. That is why I was very happy to hear hon. Sungu contribute to this debate the way he did. It is unfortunate that Mr. Kenyatta, the Leader of Official Opposition, misled a few hon. Members of KANU. He said that if dialogue was used in this matter, then he would be part of this process. This process is really critical as the Chairman of the PSC has said. Between 5th and 7th and 8th and 10th, there will be an event of seeking more dialogue among the elites and stakeholders before the draft constitution is taken to "Wanjiku". If that draft is accepted then I think, that in all fairness, hon. Kenyatta will know that he should not have led part of his troops out of this House because he is contradicting what he said, unlike LDP which wants this matter to be resolved.

Finally, I want to plead with the PSC, which is chaired by hon. Nyachae and where Mr. Wetangula is the Chairperson of the Technical Committee, together with the Consensus Group of Parliament, to consider the friends of the PSC who are outside this Parliament. The friends of PSC do not want to be slighted but to be part of resolving this impasse so that we can put behind us the question of the new constitution. These are people we should consult respectfully, listen to and dialogue with them. Most of them want to have serious dialogue with the PSC so that they can finish what they started, in terms of giving our country a new constitution; outside parliament. Therefore, I urge that there be respectful, genuine and frank consultations. If the friends of the new constitution are embraced, and I believe the Committee wants to embrace them, they will be part of this process. I believe also they will not obstruct this process, including their participation in civic education, before a

referendum.

I am happy to witness that we are about to engage in the final lap of "Wanjiku's" marathon. I believe that if these contentious issues as presented here, are presented to secular and civil societies, including, of course, the religious civil society, the consensus that we have been yearning for will emerge. It was not fair for the hon. Member who said Christians who do not do a certain thing will go to hell. Really, the question is that of consensus-building. I am sure that when these issues are discussed candidly, people will have a change of heart and we will get what this country deserves.

Mr. Temporary Deputy Speaker, Sir, finally, the genesis of the Christian religious sector is really beginning to have a hard attitude was because at Bomas, some of those leaders were abused and heckled. They did not feel good. However, that is something that can be discussed.

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

Maj. Madoka: Thank you, Mr. Temporary Deputy Speaker, Sir. I am glad to see that, at least, the voice of the minority will also be listened to. I stood behind to ensure that what was agreed on at the Naivasha Accord is in this document. I am glad to say that all that has been identified as contentious is exactly what we agreed on at the Naivasha Accord. Equally, I was a member of the Sulumeti Committee. Again, what has been mentioned here is what we agreed on at Bishop Sulumeti's committee. Therefore, it will be dishonest of me to disown what we sat and agreed on.

(Applause)

Mr. Temporary Deputy Speaker, Sir, what really remains is the actual content of the amendment of the various articles. It will be important to ensure that what was recommended is properly captured in the actual articles.

Finally, what I would also want to appeal is to get the Judiciary, or the Chief Justice to ensure that any matter which is in court touching on this process is expeditiously disposed of so that we do not continue discussing this issue with doubt in mind.

Mr. Temporary Deputy Speaker, Sir, I do support this Motion.

The Assistant Minister, Office of the President (Dr. Machage): On a point of order, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Khamasi): Dr. Machage, what is your point of order?

The Assistant Minister, Office of the President (Dr. Machage): Mr. Temporary Deputy Speaker, Sir, it is apparent that we are all agreeing on this Motion. Would I, therefore, be in order to suggest to the Chair that we vote and approve the tabling of this Motion?

Hon. Members: No! No!

The Temporary Deputy Speaker (Mr. Khamasi): Dr. Machage, in the first place, you have put it wrongly. Secondly, the Chair must be satisfied. There is a lot of interest and we must give hon. Members time to express themselves. So, there is no need to rush. Let us give some hon. Members time to express themselves. I know there may be different views on the Opposition side, let us hear them.

Mr. Angwenyi: Mr. Temporary Deputy Speaker, Sir, I rise to support this Motion on the following grounds. First of all, the Motion wants to fast-track the constitutional review process, on which this country has spent colossal amounts of time and resources. We also have various stakeholders who have an interest in the final product that will come out of this Parliament for the referendum. By bringing this Motion on the Floor of the House, the Select Committee on Review of the Constitution has realised that Parliament is the right place, as the President said, to discuss this matter. However, as we discuss this matter, we should not exclude other people who want to have an input in the final product. The chapters which have been identified as contentious are, in fact, within public domain and, especially the Select Committee on the Review of the Constitution.

Mr. Temporary Deputy Speaker, Sir, Kenyans have been yearning for a new constitution. A lot of things have not been done because we are waiting for a new constitution. For example, we do not know how big we should expand this Chamber to accommodate the number of new hon. Members of Parliament who will be voted in through a new constitution. We also do not know whether we will have one or two Chambers. If I could echo the message expressed by my colleague, Mr. M.A. Mohammed, although rather violently, on whether we want to deny a section of a population of this country, a right that they have enjoyed for the last 40 years---

As we approach these contentious issues, I would urge hon. Members of this House to rise up and bend backwards, to give and take. Dialogue is what can give us a new constitution. There are those of us, and they have demonstrated this afternoon, who do not want to listen to others. They want to have their way all the time. However, we, as hon. Members of Parliament, must subscribe to the principle that the minority will have their say, and the majority will have their way. However, a more important thing is for us to develop a national consensus to get a new constitution. I am sure if we all go out there as hon. Members of Parliament, or even as councillors, and tell our people that this is the right path to follow, we will deliver a new constitution to Kenyans before the end of this year.

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

Prof. Oniang'o: Mr. Temporary Deputy Speaker, Sir, I am here to support this Motion, not because I want to support the Government, but because I have to make a conscious and personal view.

I participated fully in the Bomas process. I think what many Kenyans are afraid of, is that the Bomas Draft will be mutilated. So, I decided to stay here to see what amendments are being made and what contentious issues are being presented. We need to assure Kenyans that the Bomas Draft will not be mutilated, and that what we have here will actually enable us to move forward. Also, we are aware that we made a lot of gains on women issues at Bomas. Many of our Kenyan women out there are worried that when this is discussed in Parliament, that most of those issues will be lost. We want to be assured that what was gained at Bomas is part of the main draft and, therefore, it will not be mutilated.

Mr. Temporary Deputy Speaker, Sir, as far as the Constitution is concerned, it is not a question of numbers, cliques or parties. As leaders, we have a responsibility to make sure that Kenyans get a Constitution which all of us are comfortable with. I want to believe that the Parliamentary Select Committee chaired by Mr. Nyachae will make sure that all views are included. This will enable us to have a new Constitution before 2007.

With those few remarks, I beg to support.

The Minister of State, Office of the President (Mr. Karume): Ahsante sana, Bw. Naibu Spika wa Muda. Nimesimama kuunga mkono Hoja hii iliyowasilishwa na Mwenyekiti wa Kamati ya Bunge inayohusika na marekebisho ya Katiba. Tumezungumza juu ya marekebisho ya Katiba kwa muda mrefu na sisi kama viongozi tuna jukumu la kuwapatia Wakenya Katiba mpya. Ninawasihi Waheshimiwa Wabunge wenzangu na viongozi wengine tuhakikishe kwamba tumepata Katiba mpya kabla ya mwisho wa mwaka huu. Katiba tunayozungumzia si ya Waheshimiwa Wabunge au ya mtu mmoja bali ni Katiba ya Wakenya wote. Kwa hivyo ni vizuri tuangalie suala la Katiba tukiwa pamoja ikiwa tunataka kuwapa Wakenya Katiba mpya kabla ya mwisho wa mwaka huu.

Bw. Naibu Spika wa Muda, sisi kama viongozi ni lazima tusahau tofauti zetu za kisiasa kwa sababu tuna kazi nyingi ambayo tunatakiwa kuwafanyia wananchi. Tunataka kuimarisha uchumi wetu ili vijana wetu ambao wanahitimu kutoka vyuo vikuu wapate kuajiriwa. Kwa hivyo, ninawahimiza Waheshimiwa Wabunge wenzangu tusahau tofauti zetu za kisiasa ikiwa tunataka kuwapa Wakenya Katiba mpya.

Bw. Naibu Spika wa Muda, Tume ya kushughulikia Marekebisho ya Katiba imetumia pesa nyingi hasa ilipokuwa chini ya uongozi wa Prof. Ghai na wengine, lakini hatujaona matokeo yake. Sijui ni kwa nini tulimleta Prof. Ghai. Bunge hili lina mawakili wengi ambao wamesomea masuala ya katiba

hata kuliko Prof. Ghai. Kwa hivyo, ningependa tusiendelee kutumia pesa zaidi lakini tuwape Wakenya Katiba mpya.

Ningependa kumshukuru Maj. Madoka kwa sababu ni mmoja wa wale waliopendekezwa kuwa Mwenyekiti wa Kamati ya Marekebisho ya Katiba. Lakini wakati wadhifa huo ulichukuliwa na Bw. Nyachae, Wabunge wengine walipinga hatua hiyo na kususia mjadala kuhusu Katiba. Maj. Madoka ni kiongozi wa haki na anajali maslahi ya nchi yake, aliunga mkono hatua hiyo. Nina furaha kuwa na kiongozi kama Maj. Madoka. Ningewauliza hata hao wengine wanaosusia mjadala huu, wafikirie msimamo wao na warudi ili tutengeze Katiba. Hii ni Katiba yetu na itatusaidia sisi kama Wakenya. Tunatengeza Katiba ambayo itadumu zaidi ya miaka 100 na itawasaidia wananchi hata wale hawajazaliwa. Hii ndio sababu ninawasihi viongozi wasahau tofauti zao ili tuwafanyie wananchi kazi. Inafaa basi tujishughulishie zaidi na mambo ya Katiba kwa sababu tumepoteza muda mwingi tukizozana juu ya Katiba. Tungekuwa tumefanya kazi zingine. Kwa hivyo, mimi, kama Waheshimiwa Wabunge walionitangulia kuzungumza, niko tayari kufanya kazi pamoja nao ili tuwe na Katiba mpya. Kama vile Bw. Sungu alivyosema, umoja ni nguvu na utengano ni udhaifu. Watu wakifanya kazi bila kuzozana watafaulu. Kwa hivyo, ningewauliza waheshimiwa Wabunge waliosusia mjadala huu warudi ili tufanye kazi pamoja kwa sababu tumechaguliwa na wananchi tuwafanyie kazi.

Kila wakati tunapotembelea sehemu zetu za uwakilishi Bungeni, wananchi wanatuuliza kama tumemaliza mambo ya Katiba. Napenda tuwe na Katiba mpya na najua itasaidia lakini tunaulizwa tutamaliza lini. Sote tunajua kuwa tutakuwa na Katiba mpya lakini haitabadilisha maisha ya watoto wetu. Ni vizuri tumalize mambo ya Katiba ili tupate nafasi ya kufanya kazi zingine za kuendeleza nchi yetu kwa sababu kuna mambo tunatakiwa kutatua. Viongozi hata wale wa zamani hawangekaa kuzungumzia juu ya jambo fulani kila siku. Walimaliza mambo hayo na kuendelea na shughuli zingine. Kwa hivyo, ninawauliza waheshimiwa Wabunge wenzangu tukubaliane na kuwapa Wakenya Katiba mpya. Inafaa tuweke maslahi ya nchi yetu mbele na tuache ubinafsi. Kuna watu wengine wakikosa kitu fulani, wanasema kuwa hicho kitu si kizuri ilhali roho yake inamwambia vingine. Kama wale waliopigania Uhuru wa nchi hii wanalikuwa na tamaa kama viongozi wa leo pengine hatungepata Uhuru wetu. Wao walijima ili tupate Uhuru wetu. Inafaa tutambue kuwa sisi ni viongozi waliochaguliwa na wananchi kuwapa mwongozo. Pia tunatakiwa kuelewa kwamba imesalia miaka miwili na nusu kabla ya kuwa na uchaguzi mkuu. Wananchi wanatungojea kule nyumbani.

Kwa hayo machache, naunga mkono.

Mr. Kombe: Ahsante sana, Bw Naibu Spika wa Muda. Hoja iliyo mbele yetu ni ya maana. Kabla hatujaendelea mbele kuunga mkono au kupinga, inapasa Waheshimiwa Wabunge wajiulize ni nani aliyeweka vifungu hivi vya utata katika Katiba Kielelezo iliyowakilishwa na kujadiliwa kule Bomas.

Lengo na shabaha ilikuwa ni kuipatia nchi hii Katiba ya Wanjiku. Leo hii tukianza kujadiliana, tunajadiliana ikiwa Wanjiku mwenyewe hayuko. Yule aliyetoa maoni yake na yakaletwa Bomas ili kujadiliwa na kufafanuliwa na kutolewa kwa kitabu kile ambacho tulikibatiza *Bomas Draft* siku ya mwisho.

Bw. Naibu Spika wa Muda, wakati ule tukijadiliana, vifungu hivi vilipasishwa na vikawa vinafaa. Lakini tulipochunguza na kwa sababu ya wengine wanaotaka masilahi yao yatiliwe maanani, ndio iligunduliwa kwamba vifungu hivi saba ni vya utata. Lingekuwa jambo la busara iwapo tungempata Wanjiku, Suleiman na Katana na kuwauliza: "Je ulisema unataka Waziri Mkuu na mwenye mamlaka ya kiasi gani?" Tungefanya hivi, Wanjiku angetueleza yule Waziri Mkuu aliyekuwa anamhitaji ni wa mamlaka gani badala ya sisi kusimama moja kwa moja hapa na kusema kuwa tunataka Waziri Mkuu ambaye atakuwa hana mamlaka yoyote. Atakuwa ni picha.

Siamini ya kwamba maswala haya ya utata yalitoka kwa Wanjiku, Bomas au kwa Tume inayosimamia Marekebisho ya Katiba au hapa ndani. Yanatoka kwa watu binafsi waliokaa na wakasau kwamba Katiba hii ni ya Wakenya wote na kwa vizazi vijavyo vya Kenya.

Bw. Naibu Spika wa Muda, kwa wakati huu, nimepitia yale mapendekezo ya Naivasha na nikaona ya kwamba sehemu nyingine za muhimu ambazo zitampatia mamlaka hata yule mwananchi wa chini hazimo. Hivyo, basi, mimi siungi mkono Hoja hii ya kwamba tukubali yale yaliyojadiliwa Naivasha.

Kwa hayo machache, naomba kupinga Hoja huu.

Mr. Munya: Mr. Temporary Deputy Speaker, Sir, I would like to associate myself with the views expressed by most of my colleagues. We have spent too much time on the review process and it is high time we delivered a Constitution for the people of this country.

Mr. Temporary Deputy Speaker, Sir, once the Constitution is there, we will still be bringing the enabling legislations to implement the Constitution fully. So, we urge the Parliamentary Select Committee on the Constitution to move very fast after we pass this Report, and bring the amended draft so that we can be through with it.

There are many people outside this Parliament who are arguing that Parliament is hijacking the process. I would venture to say that we are not hijacking the process. From the very beginning, Parliament had a role to play. The second stage after the conference was Parliament. The only thing that has been done is to amend the legislation to provide a consensus holding atmosphere because the original provisions did not allow that. The original provisions said that once the draft is brought here, we either pass it in whole or reject it. In such circumstances, it would have been very difficult to pass the Bomas Draft the way it is. So, what has been changed is the provision to allow this Parliament to do some refinement in the draft, so that we could have a document which is acceptable to all.

Mr. Temporary Deputy Speaker, Sir, I would like to explain that, what we are doing is not mutilation. As we speak, what we have is only a draft. The final product will be produced when the people of Kenya participate in a referendum. So, if a child has not been born, you cannot mutilate it. It is still in the mother's womb. So, Parliament is doing its rightful role by trying to fine-tune the draft, so that we can have a final product that we can sell to the people in a referendum.

Finally, my assumption is that, even though we have identified particular consensus matters, the PSC still has a leeway to look into other matters, so that our hands are not tied. There are some provisions, especially under the chapter on transition, which requires a lot of editing. Our assumption, which I hope is not wrong, is that the PSC has the mandate to go and look into some of the provision that may not be good. That would enable us to build a consensus so that, when the final product comes out, it is the best Constitution that this country can have.

With those few remarks, I beg to support.

The Minister for Education, Science and Technology (Prof. Saitoti): Mr. Temporary Deputy Speaker, Sir, I will be very brief. I commend the Select Committee under the Chairmanship of Mr. Nyachae for having expeditiously identified the contentious issues in the Bomas Draft, and brought them here. There is no doubt that, if we adopt it, it is going to fast-track the constitution review process. Members of Parliament have discussed the Constitution in various fora for more than 10 years. There is no doubt that the pre-occupation with the constitution review process all the time has raised a lot of tempers. It has made us to mis-focus our attention on development. So, we should fast-track this process and heed the advice of His Excellency the President that we shall have a new Constitution by the end of this year. He assured the international community about that. We need to move very quickly.

Mr. Temporary Deputy Speaker, Sir, we all knew the contentious issues. There was a great deal of discussions at the conference held at the Bomas of Kenya. So, the issues have been identified and the Committee has made recommendations. I would like to say that the recommendations that are contained in the Report are fairly sound and are going to assist us to fast-track the process.

With those few remarks, I beg to support. I also urge hon. Members to support the Motion.

Mr. A.C. Mohamed: Bw. Naibu Spika wa Muda, ahsante kwa kunipa nafasi hii, ili niungane

pamoja na wenzangu walioko hapa Bungeni. Mimi kama Mwislamu, naamini kwamba taifa hili ni la watu wote. Si la watu wachache. Katiba lazima iangalie haki za walio wachache na wengi. Sisi kama Waislamu tuna historia ya kupigania na kuleta Uhuru katika taifa hili. Waislamu wote wamesimama imara ili kubadilisha hali ya uchumi wa taifa hili. Lakini, baada ya miaka 40 ya Uhuru, hakuna tofauti yoyote ya maisha iliyotokea kwa Waislamu na Wakristu.

The Temporary Deputy Speaker (Mr. Khamasi): Order! There is a point of order!

Mr. Mwenje: Jambo la nidhamu, Bw. Naibu Spika wa Muda. Ni haki kwa Bw. A.C. Mohamed kusema kwamba ni Waislamu peke yao walipigania Uhuru, ilhali tunajua Wakenya wote waliopigania Uhuru?

Mr. A.C. Mohamed: Bw. Naibu Spika wa Muda, hata mimi naamini hivyo. Nasisitiza kwamba hata Waislamu hawakuachwa nyuma katika harakati za kupigania Uhuru wa taifa hili. Walikuwa pamoja na wakristu na watu wengine. Kwa hivyo, Kenya ni yetu sisi zote. Hatuwezi kubaki nyuma wakati huu wa kuunda Katiba. Waislamu hawapingi Katiba mpya. Wanapinga kitu kidogo ambacho hakina maawiyano. Kwa miaka 40, makorti ya kadhi yalikuwa katika Katiba. Hakuna hata siku moja kulitokea tofauti ya kidini. Lakini kwa sababu kuna mawazo mapya yanayotoka katika sehemu zisizojulikana, tutagawanyika. Sisi tunaunga mkono Katiba mpya. Kwa miaka kumi, Serikali iliyopita ilituahidi Katiba mpya, lakini haikuweza kuileta. Tunaipongeza Serikali hii. Wakenya wamelia sana kuhusu Katiba mpya. Lakini sasa, tunaweza kuwa na Katiba mpya kufikia mwisho wa mwaka huu. Furaha yetu ni kuona hali ilivyo ikidumishwa.

Kwa hayo machache, naunga mkono Hoja hii kikamilifu. Mungu atubariki.

Mr. Arungah: Mr. Temporary Deputy Speaker, Sir, thank you for giving me this chance to support the Motion. I shall be brief and state only two things. The talk about the Constitution has been going on for a long time. Time has come for Kenyans to see for themselves those who want a new Constitution and those who do not. We have seen a section of this House walk out. They believe that, by walking out, they will sort out their personal issues. With due respect, I disagree with that and state that, we can cast aspersions or say what we want but, at the end of the day, for us to give Kenyans a new Constitution, we will have to sit down and dialogue. There are those who do not want us to give Kenyans a new Constitution, so that they can use that as a campaign tool and say: "This Government failed to give us a new Constitution!" I think it is time for Kenyans to ask themselves whether the people who have walked out need a Constitution or not.

Mr. Temporary Deputy Speaker, Sir, there is a section of Kenyans who have questioned our role in the Constitution-making process. We have two roles here. We are the representatives of our people and legislators. There is no way that a new Constitution can come into effect without passing through this House. So, for those who are questioning our role, I would like to assure them that it is the institution of Parliament that has been given the responsibility of making laws.

Mr. Temporary Deputy Speaker, Sir, secondly, there is the issue of mutilation. We are here as representatives of our people and if we can be described so, it is in our interest that the wishes of our people are carried forward. I, therefore, do not understand how we can then come here and start doing things that are contrary to the wishes of the people. I take this opportunity to assure all Kenyans that Members of Parliament as their representatives, will ensure that whatever their wishes were will be provided for in the new Constitution. Therefore, the fear that we are going to mutilate the Constitution beyond what they required will not arise.

With those few remarks, I beg to support.

The Minister for Gender, Sports, Culture and Social Services (Mr. Ochilo-Ayacko): Mr. Temporary Deputy Speaker, Sir, thank you for giving me an opportunity to contribute to this very important Motion.

I am happy that the Report does not single out anything relating to gender as contentious. I am very pleased because you know that the issues of gender are contentious in their very nature but this is

an issue that the whole country has agreed to and it would like it to move forward.

Mr. Temporary Deputy Speaker, Sir, I just want to say that every Member of Parliament agrees that the issue of the new Constitution is urgent and yet you see some of them trying to argue that we should stop debating this very urgent issue because the court is considering something else. From my knowledge of law, I know that on matters of legislation and debate, this House is not in competition with the court and it also does not compete with it on matters of judicial decisions. So, our roles are clearly separate and what we are doing today is because we are public officers. I am very happy that the Chair made that ruling and I encourage it to continue doing so without fear or favour.

Mr. Temporary Deputy Speaker, Sir, I want to say that I have been very quiet on constitutional issues, particularly Constitution-making process in this country but when I looked at this Report, I want to confirm to Kenyans who care about the Constitution-making process of this country, that this is a honest and truthful Report and all of us need to support it without any doubt.

Mr. Temporary Deputy Speaker, Sir, I know that the spirit of honesty and transparency that is now guiding the Constitution-making process in this country will follow when contentious issues will be debated in this House. I, therefore, just want to inform my colleagues who have walked out of the House that they do not know what they are running from. They are running from the truth and honesty and they should return to this House as quickly as possible so that they become part and parcel of this process.

Mr. Temporary Deputy Speaker, Sir, I want to say in conclusion that by the end of this year, we should have a new constitutional dispensation which will return this country to a properly guided legal system and institution so that all of us who have been craving for justice can look at the document.

With those very few remarks, I beg to support.

Mr. Chepkitony: Thank you very much, Mr. Temporary Deputy Speaker, Sir. I stand to support this Motion and it is my hope that we shall play our role as parliamentarians and come up with a good Constitution which will satisfy everybody and which will be good for the development of this country. We want a Constitution which is not going to cause any disharmony and stifle the development of this country. If we are not going to come up with a better Constitution then we should continue with the current one. However, it is my hope that as parliamentarians, we are going to play a crucial role at this stage of Constitution-making.

Mr. Temporary Deputy Speaker, Sir, the time allowed to make this Constitution is very short and I hope we can extend it a little bit so that we shall provide enough time for people to participate fully in it, particularly the civil society who would like to be involved. It is also my hope that the civil society will be invited and not only those who are in Nairobi but also those in the countryside so that the process will be seen to be involving everybody or those who are very active. We, being parliamentarians, I hope we are going to air our views on the contentious issues having in mind what *wananchi* wanted because the Constitution should be all-inclusive. What we shall agree on should not cause any fear to anybody as far as the contentious issues are concerned. If any section of the people of the country are not going to feel that the Constitution is good for them, it is going to cause discontent and it is my hope that we are going to have a balanced Constitution.

Mr. Temporary Deputy Speaker, Sir, many people believe in the Bomas Draft and when they hear of it being debated again or saying that we are going to mutilate it, it causes a lot of fear. I hope we shall come up with a Constitution which is not going to be rejected in the referendum because it is going to be the last determinant. However, I hope we are going to come up with a Constitution that will not be seen to be imposed on one section, group or part of the country.

With those few remarks, I support the Motion.

Ms. Mbarire: Mr. Temporary Deputy Speaker, Sir, thank you for giving me this opportunity to contribute to this very important Motion and I will begin by first commending the Parliamentary

Select Committee on Review of the Constitution of Kenya for the excellent work that they have done and most importantly for bringing this Motion so that we can expedite the process of Constitution making.

Mr. Temporary Deputy Speaker, Sir, we have walked a long and tedious road for many years. Many people have sacrificed their lives, time and energies to make sure that we reach where we are. Therefore, I think that time has come for us as a national Parliament to do what is moral and right by ensuring that Kenyans and Wanjiku do eventually get what they wanted.

This is a time for Kenya to unite. It is a time for us as Members of Parliament to correct past imbalances that have occurred. It is a time for us to recognise the rights of everyone, big and small, young and old, rich and poor, weak and strong, men and women. It is time for us to realise that a Constitution and the final product, as we get out of here to take to Kenyans for the referendum, will be one that makes everybody to be a winner. It will be a win-win situation for everybody and nobody needs to feel left out at all. It is my hope that as we do all these, the spirit of negotiation, compromise, give and take will continue to be with us and we shall be nationalistic in the way we look at things and we shall consider everybody as being an equal citizen of this country. I am happy that there is nothing contentious touching on women and the youth, as far as the issues we raised at the Bomas of Kenya are concerned. I hope that our interests will continue to be taken care of, and that we will be given what we wanted as the women, the youth or the marginalised Kenyans.

Something I know, for sure, is that the Chapter on the Bill of Rights, for which I was the convenor, has tried to bring every single Kenyan on board. I believe that, that is the best thing we did at the Bomas of Kenya, despite the political machination that was taking place.

With those few remarks, I beg to support.

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me the opportunity to support this important Motion. I would like to congratulate the Chairman of the Parliamentary Select Committee on Review of the Constitution of Kenya, Mr. Nyachae, for moving with speed to conclude this parliamentary phase of the constitutional review process.

Mr. Temporary Deputy Speaker, Sir, the Constitution of Kenya Review Act, as amended by this House, requires Parliament, in this final phase, to develop a national consensus on contentious issues as identified by the PSC and approved by this House. So, we are here, today, to simply approve those issues which the PSC has identified as contentious. Under the Act, Parliament has been given 90 days, from 22nd April, 2005, to study the Bomas Draft, develop the national consensus and contentious issues and forward to the Attorney-General, a Draft Bill, with its report on those contentious issues, so that the Attorney-General can publish the final Constitutional Bill to be taken to the referendum.

As we are talking today, only 22 days are remaining. So, you can see that Parliament has to work round the clock. We have to strictly follow the time table set out by Mr. Nyachae, if we are to be within the 90-day period. So, the list before this House is not very new. This is the same list that the PSC, which was chaired by Mr. Samoei, identified during its Naivasha retreat, the now famous Naivasha Accord. These are the same issues which were identified in Naivasha.

Mr. Temporary Deputy Speaker, Sir, some sections of the media have said that I am a chameleon, and that I backtracked on what we agreed on at the Naivasha retreat. I want to confirm to hon. Members that I have never backtracked on the Naivasha Accord. I also want to confirm to this House that I will always support the Naivasha Accord. Those who want to call me a chameleon may do so. They have the freedom to call me whatever names they want. But, no matter what they call me - even if they call me a chameleon again - I will not change my stand on what we agreed at the Naivasha retreat.

Mr. Temporary Deputy Speaker, Sir, a chameleon is not a very bad animal, because it moves

slowly and surely, and it always gets where it wants to go. So, I do not mind being a chameleon in the sense that I am careful, and that we are moving cautiously to ensure that we have a new Constitution for this country by the end of this year. I support the list of the contentious issues, which has been tabled before this House today, because it is the same list of the contentious issues on which we agreed last year. Mr. Temporary Deputy Speaker, Sir, I am also aware that Kenyans are developing a bad or negative attitude about politics and politicians in this country, because of our confrontational politics in Constitution-making. That is why I said three months ago, that I was no longer interested in noise making politics, and that I was not going to be the media; answering anybody. I want to change from the confrontational politics that I have been engaged in, in the past.

The confrontational politics in which we engaged in, made many Kenyans believe that even good politicians in this House were essentially self-seekers who are pretending to work for the interests of *wananchi* when they are working for themselves. The people believed that politics is just a game of deception, tricks and manipulation. I would like to assure Kenyans that hon. Members of this House are honourable. They are not hypocrites or unprincipled self-seekers. We actually work for the interests of this country.

Mr. Temporary Deputy Speaker, Sir, we need to change the nature of our politics. We need to embrace politics of humility. I am appealing to my colleagues to put pride and prejudice aside as we get into this phase of the Constitution Review Process, because it requires us to be very humble, listen to each other and, as Ms. Mbarire has said, adopt a spirit of compromise.

Prof. Olweny: On a point of order, Mr. Temporary Deputy Speaker, Sir. It seems that the House is in agreement with the Motion. Most of the hon. Members who have spoken have repeated the same arguments.

Therefore, I beg to move that the Mover be now called upon to reply.

The Temporary Deputy Speaker (Mr. Khamasi): Hon. Members, this is the second request from the Floor to the Chair to dispose of the Motion. So, I am bound to put the Question.

(Question, that the Mover be called upon to reply, put and agreed to)

The Minister for Energy (Mr. Nyachae): Mr. Temporary Deputy Speaker, Sir, let me take this opportunity to, first, thank you for your guidance. May I also take the opportunity to thank the hon. Members for their very useful and encouraging contributions. I would like to assure this House that hon. Members of the PSC recognise the responsibility this House has given them. We want to fulfil and perform our work as expected by this House. In doing so, the first point we need to recognise is the limited time.

Therefore, I would like to appeal to hon. Members to recognise the limited time we have, and support the time table that the PSC has laid down. I want to assure this House, that consultations with the stakeholders will take place. There should be no fear that there is no time to consult with the stakeholders, because the PSC has decided that we are going to take most of our time next week in consultation. It is not just going to be during the day, but if consultations have to continue even into the night, in order to cope with the time, we are going to work round the clock to fulfil the requirement of the limitation of time.

(Mr. Mwenje stood up in his place)

Mr. Temporary Deputy Speaker, Sir, this is not a House in which Kikuyu traditional dances should be performed. I can see Mr. Mwenje dancing.

The Temporary Deputy Speaker (Mr. Khamasi): Order! Order, Mr. Mwenje! Could you

behave with dignity in the House?

Proceed, Mr. Nyachae!

The Minister for Energy (Mr. Nyachae): Mr. Temporary Deputy Speaker, Sir, I would like to assure hon. Members who mentioned something about gender that, you have given this Committee a responsibility and it recognizes the decision taken by the Bomas Conference regarding gender requirements. In this connection, I also want to assure this House that there is no intention, and I insist, that there is no intention of our Committee doing anything that will be perceived as an attempt to mutilate the Bomas Draft. We want to work and right now, we are working very closely with the Constitution of Kenya Review Commission (CKRC). Therefore, there should be no fear about the Bomas Draft being mutilated because it is not going to be mutilated. We know that the mandate that this House has given us is to do a job which will then enable it to facilitate the process until it reaches Kenyans themselves, who are then going to decide on their Constitution.

Therefore, Mr. Temporary Deputy Speaker, Sir, my appeal is this: If our brothers and sisters on the Opposition side genuinely want to give Kenyans a new Constitution, because Kenyans are demanding it, then let them follow the Bible which says: "Come and let us reason together". Let them come and reason with us. They are Members of the Parliamentary Select Committee on the Review of the Constitution of Kenya; in fact, for the information of this House, they are even included in the technical committee which we formed recently, including KANU. Therefore, let us accept our responsibility.

Mr. Temporary Deputy Speaker, Sir, I was very gratified to hear Maj. Madoka appreciating that he has seen that we have no questionable intentions. I want to assure this House that we have no intention of doing anything they will complain about. In fact, our brothers on the Opposition side assured Kenyans that we will stick to the Naivasha Accord and to a journey confined to the contentious issues, which the Coalition for National Unity (CNU) started when we took over from Bishop Sulumeti, and I was the Chairman of CNU while Dr. Godana was the convenor. We started identifying these contentious issues together, we went to Naivasha together and also identified those issues. Sometimes I do not understand how we can have two faces in one human being; it becomes very difficult, because Kenyans are listening to what you are saying today, and they will hear what you will say tomorrow. You cannot take Kenyans for granted when you are contradicting yourself! I think we need to come together. I want to confirm that we have not just laid down a timetable for the Government side alone, but for all of us. I hope our brothers and sisters on the Opposition side can now see our good intentions, come forward and join hands with us.

Mr. Temporary Deputy Speaker, Sir, I want to thank you and all hon. Members and I request that you allow us to move forward with our timetable, because the House seems to be supporting what we have put forward.

Thank you, Mr. Temporary Deputy Speaker, Sir.

An hon. Member: I beg to move.

The Minister for Energy (Mr. Nyachae): I have always avoided repeating myself, but because of the tradition, I beg to move that this Motion be adopted.

(Question put and agreed to)

(Applause)

The Temporary Deputy Speaker (Mr. Khamasi): Next Order!

BILL

*Second Reading*THE PUBLIC PROCUREMENT
AND DISPOSAL BILL

The Minister for Finance (Mr. Mwiraria): Mr. Temporary Deputy Speaker, Sir, I beg to move that the Public Procurement and Disposal Bill be now read a Second Time.

Mr. Temporary Deputy Speaker, Sir, procurement is, perhaps, the biggest problem we have today, because it is through procurement that this country loses a lot of money. In moving this Bill, I want to give a little history of procurement in Kenya. For many years, procurement was carried out under the general commercial laws of the nation and there was no procurement law in the country to govern Government procurement. In fact, apart from commercial law, Kenya was using a regulatory framework which was extended through Ministerial circulars, and these operated for many years up to 2001, when the Minister for Finance issued Legal Notice No.51 under the Exchequer and Audit, Public Procurement Regulations, which are still in force.

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

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

I think it is important to say that, that Legal Notice was the first attempt by the Government to create a unified, clear and consistent system of procurement under the public sector. It was, in fact, the beginning of the public procurement reforms in Kenya. I am happy that we are continuing with that refinement of procurement rules. I think it is important for me to state here that many countries around the world were for many years operating like Kenya. In fact, it is since 2001 that countries like Tanzania, Uganda, Botswana, Gambia and South Africa, introduced procurement laws.

Mr. Temporary Deputy Speaker, Sir, one may ask: Why do we need a procurement law? It goes without saying that there has been mismanagement and abuse of the Government contracts, mainly through variations which were really intended to open up contracts to enable people to make money unfairly out of the contracts. The system which we have been operating has also lacked effective checks and balances in respect of authorising the different procurement and expenditure steps. Thirdly, there has been lack of fair and transparent competition in the system which existed. In addition, inappropriate application of the required procurement methods have been applied and the situation has not been very pleasing.

One other aspect which has been very unsatisfactory under the existing regulations is that, on many occasions, the Government would order goods and sometimes receive nothing, but pay for them. Alternatively, the Government would order and get very poor quality goods or get very little in return for the money it had paid. In fact, the regulations have been so open to abuse that even though there was a threshold below which Ministries could buy goods without going to tender, a lot of split tenders have characterised the operations of the Ministry. In fact, many of the Public Accounts Committee (PAC) reports clearly indicate that this provision was abused.

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

[The Temporary Deputy Speaker

(Mr. Khamasi) resumed the Chair]

Therefore, it really requires no serious examination to see that the rules and regulations which existed were open to fragrant abuse. Such rules as having to call for three quotations and then you pick the lowest, needed ingenious people to organise three companies of the same person to quote and give different prices; all of them very high, and then the lowest tender is accepted. But that tender would normally be two or three times the normal cost of the goods in the market. So, really, in order to get rid of all these abuses, we have decided to have the law on public procurement and disposal of assets. That is why we have the Public Procurement and Disposal Bill which we are discussing today.

Mr. Temporary Deputy Speaker, Sir, this law will help us deal with the challenges I have just given above. I want to state from the outset that the purpose of having this new law is to basically establish a legal and regulatory framework for efficient public procurement and disposal, and all other related matters. On many occasions, I have stood in this House and said that one of our major aims in the Treasury today is to give the Kenyan taxpayer, and the taxpayers of the world, value for their money. We can only do it if we eliminate wastage through procurement.

Mr. Temporary Deputy Speaker, Sir, the objectives of the Bill are clearly set out. In brief terms, we want to foster the economy and efficiency in public procurement. We also want to promote competition and ensure that all the people who compete for Government jobs are treated fairly and equitably. In fact, one of the main requirement of this law is to ensure that every Kenyan has a right to serve the Government by providing these services. It also requires that the rules and regulations are fair to all of them. Furthermore, we would like to ensure that public procurement goes in harmony with the budgetary objectives. This is because on many occasions, we provide for the purchase of an item for the construction of a building or road, for example, and then, through the unfair variations I mentioned earlier, the cost ends up being several times what we had estimated in the first place. In addition, the law, in fact, will promote accountability and transparency. It will help the Government to reduce malpractices in public procurement. It will also give the Kenyan people confidence. Today, if you go to the districts and talk about wanting to tender for Government jobs, you will be surprised by what dismay exists there. People do not believe that they will get equity, fairness and good treatment from our tendering procedures.

Mr. Temporary Deputy Speaker, Sir, this law will also help us to promote Kenyan businesses. This is because, as it is today, it does not provide for preferences to Kenyan businesses and bidders. I think there is general agreement that, that was an omission which should be rectified in order to make sure that any Kenyan who is interested in providing services to his Government, gets preference. I believe that is the only way we can have contractors who can construct buildings to international standards, build roads and provide goods and services at proper rates of interest.

Mr. Temporary Deputy Speaker, Sir, turning to the Bill itself, it has 11 parts. Part I deals with the definition, terms and purpose of the Bill. It also deals with a rather peculiar aspect of conflict with international agreements and conflict and conditions of donated funds.

Mr. Temporary Deputy Speaker, Sir, I should have made the point that, last Sunday, at Whitesands Hotel Mombasa, hon. Members who were present went through this Bill, literally clause by clause and agreed on certain amendments. I am sure the Chairman of the Finance, Planning and Trade Committee will be tabling it before the House on Tuesday.

I want to go through the Bill quickly and mention that Part II deals with bodies involved in regulation of public procurement. It establishes the Public Procurement Oversight Authority, the Public Procurement Oversight Advisory Board and the Public Procurement Administrative Review Board. All those boards are to be found in Part II of the Bill. The same part also gives the functions of the three bodies that I have just mentioned. If we take the functions of the Public Procurement Oversight Authority, they include:-

(i) To ensure that procurement procedures are complied with,
(ii) Monitor the performance of the public procurement system and report to the Minister, and
(iii) Assist the implementation of an efficient and effective public procurement system through preparation of appropriate manuals, training of professionals, development of staff, issues of direction to procuring entities *et cetera*.

The same part provides for the position of Director-General of the Authority, who is expected to be the Chief Executive appointed by the Advisory Board for a term of five years, and it is renewable. It also provides for the termination, by the Advisory Board, of the appointment of the Chief Executive on grounds of incompetence, infirmity, conviction for criminal offences, corruption, bankruptcy *et cetera*. Those are the usual things.

The same part also provides that the Authority will use monies appropriated by this august House. It can also use loans, grants, revenue, fees for services rendered and any other methods of raising funds normally used by Government institutions. There is provision for the composition of this board, which is expected to comprise nine members appointed by the Minister from persons nominated by prescribed private and public organizations. Here, we thought that this could be very restrictive.

I have one of the accountancy councils which, as Minister, I am expected to appoint, following nominations by various bodies. A few days ago, I got a list of people I was expected to appoint, but I declined, because the list comprised of two Kenyan ethnic groups. But when I went to the law, I found that my hands were tied, and I had to appoint the people whose names were recommended to me by the body. So, I believe, in fairness and in want of the possibility to ensure that positions are distributed as widely as possible within Kenya, we should leave a few positions which the Minister can fill from qualified and experienced personnel in the area of procurement.

Mr. Temporary Deputy Speaker, Sir, the Advisory Board is expected to advise the Authority, approve estimates of revenue for the Authority, recommend appointment and termination of the most important position; that is the Director-General and, perform other functions and duties as provided for under the law. The Public Procurement Administrative Review Board, in fact, will be actually executing the procurement regulations. The composition of this Board will be very similar to the existing Public Procurement Board. The Authority will, in fact, provide administrative services to the Review Board. It is the one that will do the execution.

Mr. Temporary Deputy Speaker, Sir, with regard to the Part III which deals with internal organizations of public entities relating to procurement, the purpose of this section is to ensure that decisions are made in a structured way and that procurement will be within the approved budget through an annual procurement plan. It is also intended to establish tender committees and procurement units in Government. It is intended to ensure that Accounting Officers comply with the provisions of this Act. It will also have the powers to pre-qualify procuring agents and to assist in the establishment of an examinations body; a professional body, for training and disciplining procurement professionals.

Mr. Temporary Deputy Speaker, Sir, this section sets out the general procurement rules, and it is to be found on page 62. It introduces the methods to be used in procuring. It deals with the approval of the tender committees. It stops the splitting of tenders, as I said earlier on, when people want to avoid control. It specifies that anybody who wins and qualifies for the award of tender actually gets a contract. It sets out qualifications, pre-qualification procedures, limitations on contracts with employees and participation by all. In other words, it clearly states that there should be no discrimination except where we go out of our way to give preference as I said earlier on.

In addition, this section deals with the Public Procurement Directorate, which is intended to give small and medium enterprises all the available opportunities. It clearly outlaws corruption, involvement in fraudulent practices and conflict of interests. Section V deals with the system of open

tendering and invitation to tender; how the tender documents will be prepared, the opening of tenders, responsiveness, evaluation and the notification of award.

When we talk about procurement generally, the law here has gone into details of how to shorten the period of tendering. One of our problems at the moment is that tendering takes far too long and holds up Government activities. In fact, we want to shorten the time, so that we can tender and get results within a very short time. It is for this reason that already in some of our Ministries like the Ministry of Roads and Public Works, we have suggested that instead of inviting pre-qualifying engineers for designs and engineers for bridge-making and specifications, and then inviting contractors, pre-qualifying them, awarding the tenders and taking three years before we complete the tendering system, time has come for the Government to consider inviting a team comprising of design engineers, structural engineers and contractors, so that they take the job, do it together and then give one tender, which can then be implemented.

Mr. Temporary Deputy Speaker, Sir, we spent quite a bit of time discussing these provisions in Mombasa. I would like to say that we would really like to reduce the period substantially so that we give only 21 days for an open national tender. For international tenders we will give twice as long a period which is 42 days. We will then give the evaluation committee only one month to finalise evaluation and decide on award. Once they have done that, we would want them to take only 14 days to notify the winner of the award so that they can begin working.

We would also like to ensure that the period for completing a review by the Review Board is limited to 30 days. This is because we need to allow people an opportunity to review their tenders. Before that time, we should provide that once somebody is aggrieved by the award, they have got to appeal within 14 days. If they do that, then the appeal must be heard and completed within 30 days. We want companies which appeal against decisions of the authorities in the procurement area, to show seriousness by putting down sums of money equivalent to a percentage of the entire contract, so that people do not continue fooling around; holding the Government at ransom.

Mr. Temporary Deputy Speaker, Sir, I believe that what we have before this House is a very good basic document which I am sure will be supported by hon. Members and which I am confident will give this country an opportunity for the first time, to really take care of procurement and to save a very large proportion of the amount of money we are wasting today, through poor procurement procedures.

I would have wanted to highlight a few other points, but maybe I need to repeat once again that the area where we lose a lot of time, is during the appeal. We have found out that a company which has been providing a service and which loses the tender wants to continue providing the service. The only way they can do it is by stopping the new person from taking the tender. If you look at the insurance---

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Khamasi): Order! Mr. Mwiraria, you will continue when the debate resumes.

Hon. Members, it is now time to interrupt our business. The House is now adjourned until Tuesday, 4th July, 2005 at 2.30 p.m.

The House rose at 6.30 p.m.