

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 3rd July, 2008

The House met at 2.30 p.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

COMMUNICATIONS FROM THE CHAIR

DISTINGUISHED MEMBERS OF UNITED STATES CONGRESS IN SPEAKER'S ROW

Mr. Deputy Speaker: Hon. Members, I wish to introduce to yourselves and welcome this afternoon a delegation from the United States Congress who are seated in the Speaker's Row. The Members are:-

Rep. David Price - Head of Delegation

Rep. Lois Capps

Rep. Keith Ellison

Rep. Jim Cooper

Rep. Mel Watt

Rep. Brad Miller

The Representatives are accompanied by:-

John Lis - Staff Director

Brad Smith - Professional Staff Member

Barbara Chow - Policy Director

Tommy Ross - Legislative Assistant

Rachel Leman - Policy Director

Janice McKinney - Assistant Director

Nicolas Cook - Specialist in African Affairs

Lauren Ploch - Analyst in African Affairs

They have been in the country since yesterday under the programme of the House Democracy Assistance Commission, which programme includes Kenya.

Under this programme, both Members and staff of the United States Congress have regularly come to Kenya to exchange views with Members and staff of the Kenya National Assembly. We have also sent similar delegations to Washington in return.

The delegation leaves the country on Saturday 5th July, 2008.

On behalf of the House, and on my own behalf, I wish the delegation a happy stay in Kenya.

Thank you.

(Applause)

CONSIDERED RULING

THE VICE-PRESIDENT TO REMAIN
LEADER OF GOVERNMENT BUSINESS
UNTIL LAW IS CHANGED

Mr. Deputy Speaker: Hon. Members, I have another Communication to make.

Hon. Members, you recall that on June 26th, 2008, Mr. Imanyara rose on a point of order and sought the guidance of the Chair on the functions and duties of the Prime Minister in the House.

Mr. Imanyara stated that he sought the guidance because, in the Presidential Circular distributed to all Members of Parliament, the Office of the Prime Minister and the functions of the Office are defined. He stated that after the definition of the functions of the Prime Minister, which are the co-ordination and supervision of the execution of the functions and affairs of the Government, including those of Ministries, it ends with the words "accountable to Parliament" on the overall performance of the functions of the Prime Minister's office. Mr. Imanyara asked whether by being accountable to Parliament the Prime Minister was not, therefore, the Leader of Government Business in accordance with the Presidential Circular.

Hon. Members, as we all know, the Office of the Prime Minister was introduced into the Constitution recently under our Statutes. Section 15(A) of the Constitution provides for the functions of the Prime Minister to be provided for by an Act of Parliament. Section 4 of the National Accord and Reconciliation Act sets out the functions of the Prime Minister. None of the functions listed thereunder directly makes any reference to the Prime Minister's functions in the House. The section also provides that the Prime Minister shall perform such other duties and responsibilities of his office as may be assigned to him by the President or under any written law. The Standing Orders, as might be expected, make no mention of the Prime Minister as they were made when the office did not exist. The Standing Orders did not anticipate the establishment of the Grand Coalition Government.

Hon. Members, as the honourable Speaker ruled on 25th June, 2008, it is expected, with the appropriate provisions in the Constitution or laws, that the Standing Orders shall be overhauled and will set out the role of the Prime Minister in the House. At the present, however, on the matter of the position of the Leader of Government Business, neither the Constitution, nor Standing Orders defines who the holder of this Office shall be, even though both documents use the term.

Hon. Members, it would appear that parallels are being drawn between the role of the Prime Minister in this House and the duties and the functions of the Prime Minister in other jurisdictions. The Prime Minister, in our context, is an extraordinary Office that came into being in circumstances which we all are familiar with. It is an Office which may have no exact equivalent in any other jurisdiction. It is an Office for which we will have to evolve our own practice and traditions. If we take the Westminster model as an example, we find that in the United Kingdom, the Prime Minister is the political leader of the United Kingdom. He acts as the head of Her Majesty's Government and is the *de facto* wielder of executive powers in the British Government, exercising most of the executive powers normally invested in the sovereign. At Westminster, the Prime Minister and the Cabinet, which he heads, are accountable for their actions to Parliament, of which they are Members. There is, therefore, no doubt about who the Leader of Government Business is in the United Kingdom. A similar situation obtains in many jurisdictions with parliamentary systems.

The position in Kenya, of course, is that in terms of our Constitution, the President is both the Head of State and the Head of Government. He is in strict terms the Leader of Government Business, but delegates this function to a Member of the Cabinet. In these circumstances, it is not

the place of this House or the Chair for that matter, to organise the Government side of the House, neither is it for that matter, the place of this House or the Chair to organise the business of the Opposition. The Leader of Government Business in this House is such person as the Government itself determines. Indeed, in the not so distant past, hon. Members will recall that the holder of the Office of Leader of Government Business alternated, in the Seventh Parliament, between several Ministers over a fairly short period of time. The organisation of Government, as set out in the documents issued by the Executive is not a matter for debate or interpretation in this House.

Hon. Members, in response to hon. Manyara's request, it is the guidance of the Chair that in the current state of our laws and our Standing Orders, the Leader of Government Business is the person, whether it be the Vice-President, the Prime Minister or any other Minister, for the time being, designated by the Executive arm of the Government; none other than the President, because the President exercises executive powers in our country.

For purposes of the business of this House, this remains the position until such time as changes in the law designate a particular office holder as the Leader of Government Business.

PAPERS LAID

The following Papers were laid on the Table:-

Annual Report and Accounts of Safaricom Limited for the year ended 30th March, 2008, and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister, Ministry of State
for Provincial Administration and Internal
Security (Mr. Ojode) on behalf of the
Deputy Prime Minister and
Minister for Trade)*

Annual Report and Accounts of the Kenya Railways Corporation for the year ended 30th June, 2007, and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister, Ministry of State
for Provincial Administration and Internal
Security (Mr. Ojode) on behalf of the
Minister for Transport)*

Annual Report and the Abstract of Accounts of Kilifi Town Council for the year ended 30th June, 2004, and the certificate thereon by the Controller and Auditor-General.

Annual Report and the Abstract of Accounts of Kilifi Town Council for the year ended 30th June, 2005, and the certificate thereon by the Controller and Auditor-General.

Annual Report and the Abstract of Accounts of Chuka Municipal Council for the year ended 30th June, 2004, and the certificate thereon by the Controller and Auditor-General.

Annual Report and the Abstract of Accounts of the Town Council of Matuu for the year ended 30th June, 2005, and the certificate thereon by the Controller and Auditor-General.

Annual Report and the Abstract of Accounts of the Town Council of Thika for the year ended 30th June, 2004, and the certificate thereon by the Controller and Auditor-General.

Annual Report and the Abstract of Accounts of the Municipal Council of Mavoko for the year ended 30th June, 2001, and the certificate thereon by the Controller and Auditor-General.

Annual Report and the Abstract of Accounts of the Municipal Council of Kisumu for the year ended 30th June, 2006, and the certificate thereon by the Controller and Auditor-General.

Annual Report and the Abstract of Accounts of the County Council of Nakuru for the year ended 30th June, 2006, and the certificate thereon by the Controller and Auditor-General.

Annual Report and the Abstract of Accounts of the Town Council of Ijara for the year ended 30th June, 2006, and the certificate thereon by the Controller and Auditor-General.

Annual Report and the Abstract of Accounts of the Town Council of Nyamira for the year ended 30th June, 2006, and the certificate thereon by the Controller and Auditor-General.

Annual Report and the Abstract of Accounts of the County Council of Laikipia for the year ended 30th June, 2006, and the certificate thereon by the Controller and Auditor-General.

Annual Report and the Abstract of Accounts of the Town Council of Gusii for the year ended 30th June, 2006, and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister, Ministry of State
for Provincial Administration and Internal
Security (Mr. Ojode) on behalf of the
Deputy Prime Minister and Minister
for Local Government)*

QUESTIONS BY PRIVATE NOTICE

BANK CHARGES FOR EFT OF SAFARICOM IPO

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

(a) Is the Minister aware that the shares applicants in the just concluded Safaricom IPO who applied through the Electronic Fund Transfer (EFT) have to date, neither been informed their share allocations nor received their refunds?

(b) Why do such applicants, as well as those without bank accounts, have to pay Kshs500 to the banks in order to get their cheques cleared?

(c) What urgent action will the Minister take to ensure that all applicants are informed of the shares allocated and that banks do not charge the Kshs500 to clear the cheques?

Mr. Imanyara: On a point of order, Mr. Deputy Speaker, Sir. You are well aware, because you were on the Chair, that this House passed a Motion of censure against the Minister for Finance, with unanimous support of the House. Under those circumstances, is it in order that a Question be directed to the Ministry of Finance? Should this Question not be deferred until such a time when we have a Minister for Finance, whom this House has confidence in?

Mr. Deputy Speaker: Hon. Members, the Question is the property of the House and we have a Ministry of Finance. The Motion of Censure was passed by this House. The House passed a Motion of no confidence against the Minister for Finance. I do not see the Minister for Finance here today. It is my presumption that somebody from the Ministry of Finance is here.

Proceed, hon. Assistant Minister! Go ahead and answer the Question! Are you equipped with the answer, Dr. Oburu? Are you ready to answer the Question?

Mr. Linturi: On a point of order, Mr. Deputy Speaker, Sir. Honestly, is it in order to have an answer coming from the Ministry of Finance when, indeed, the Assistant Minister who is supposed to answer this Question acts on behalf of the Minister when he is not available in the House?

Mr. Deputy Speaker: Order! Dr. Oburu, do you have an answer for this Question?

The Assistant Minister for Finance (Dr. Oburu): Mr. Deputy Speaker, Sir, I wish to ask for the indulgence of the House to answer this Question next week. I am an Assistant Minister, in terms of parliamentary procedure. I do not know whether there is any other interpretation of a Minister other than the one in our Standing Orders.

Mr. Deputy Speaker: A Minister in terms of the Standing Orders of this House is the Minister and the Assistant Minister also.

*(Several hon. Members stood
up in their places)*

Order, hon. Members! Hon. Assistant Minister, are you ready to answer the Question?

The Assistant Minister for Finance (Dr. Oburu): Mr. Deputy Speaker, Sir, I am not ready to answer the Question.

Mr. Deputy Speaker: Why?

The Assistant Minister for Finance (Dr. Oburu): Mr. Deputy Speaker, Sir, I am asking for the indulgence of the Chair. I was away. I have just arrived and I do not have the answer with me. I will answer the Question next week on Tuesday.

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. Is it really in order for this House to consider transacting business pertinent to the Ministry of Finance? For Questions to be legitimate to the House, they have to be signed by the Minister himself and not the Assistant Minister. After censuring the Minister for Finance, is it in order for this House to entertain any business from the Ministry of Finance?

Mr. K. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. You are very much aware that there are two executive Ministries, namely, the Ministry of Finance and the Ministry of Local Government. In view of the fact that Ministers in these two Ministries exercise an executive role, would it be in order for this House to transact any business which comes from the Minister who was censured by this House yesterday?

Mr. C. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. Yesterday, the Minister for Finance was censured by this House. One of the reasons why he was censured touches on the issue of the Safaricom IPO. This is the Question which is being asked by Mr. Ngugi. Yesterday, the House said that it does not have any faith in that particular Minister. This House will not accept an answer from that particular Minister.

Mr. Imanyara: On a point of order, Mr. Deputy Speaker, Sir. Through you, may I know from the Leader of Government Business whether, indeed, he communicated the contents of the Motion that was passed by this House yesterday to His Excellency the President? If he did so, has His Excellency the President acted on it and replaced this Minister? This will enable us to know whether the Question can, indeed, be answered. Did the Vice-President and Minister for Home Affairs communicate the contents of the Motion that was passed yesterday to His Excellency the President? If he did, what was the President's reaction?

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Deputy Speaker, Sir, His Excellency the President is fully briefed of the outcome of the deliberations of this House yesterday afternoon. Indeed, I suspect he was even listening himself.

Mr. Deputy Speaker: Hon. Members, to begin with, the Assistant Minister is not ready with the answer. As to whether the House will accept to transact any business with the Ministry of Finance or not, is a matter that cannot be dealt with at this stage. That Question is deferred. But for the purpose of the understanding of every hon. Member who is here, a Minister is explained in our Standing Orders. Part 1, the introductory part of our Standing Orders, says:-

"Minister" includes the President, the Vice-President, other Ministers, the Attorney-General, Assistant Ministers, and any person who holds temporarily any such

office".

So, the Motion of no confidence was passed against one hon. Amos Kimunya, who is currently the Minister for Finance. Dr. Oburu is the Assistant Minister for Finance. He fits in the definition also as a Minister who can transact business on the Floor on matters regarding that Ministry.

When are you going to have an answer to this Question, Dr. Oburu?

The Assistant Minister for Finance (Dr. Oburu): Mr. Deputy Speaker, Sir, I will have it on Tuesday, next week.

Mr. Imanyara: On a point of order, Mr. Deputy Speaker, Sir. Could the Assistant Minister confirm to this House that, that answer will not be signed by hon. Amos Kimunya?

Mr. Deputy Speaker: Dr. Oburu, I presume that you are feeling the mood of the House! The mood of the House was very clearly and unanimously indicated yesterday. So, you will take the right precautions if you want to answer that Question on Tuesday, next week.

Mr. Ngugi: On a point of order, Mr. Deputy Speaker, Sir. I brought this Question about a week ago. It is by Private Notice. I expected to have had an answer by Tuesday, this week. Today is Thursday. Poor Kenyans are being deducted Kshs500. Could the Assistant Minister assure this House that he will take corrective actions if the poor Kenyans will have suffered as a result of the Ministry not having been able to answer the Question or taking the necessary measures?

Mr. Deputy Speaker: The Question has been deferred to Tuesday, next week. Hon. Ministers will realise that when a Question is put by Private Notice, it means strictly private notice, which demands that an answer should be on the Floor of the House within 48 hours in terms of parliamentary business days. I hope Ministers will take that seriously.

(Question deferred)

ORAL ANSWERS TO QUESTIONS

Question No.029

MEASURES TO IMPROVE FOOD SECURITY IN KENYA

Mr. Ethuro asked the Minister of State for Special Programmes:-

- (a) what criteria the Ministry employ in the distribution of GOK Emergency Relief Food;
- (b) whether she could table statistics showing the allocation and distribution of the relief food to each location of Turkana South, Turkana Central and Turkana North districts since the year 2005; and,
- (c) what measures the Government is putting in place to improve food security in the country.

The Assistant Minister, Ministry of State for Special Programmes (Mr. M.M. Ali): Mr. Deputy Speaker, Sir, I beg to reply.

(a) Relief food is distributed on a need basis only. People are given relief food only if they require and deserve it. They may require relief assistance if and when their normal livelihood is disrupted by natural or man-made disasters, thus making them unable to fend for themselves. For examples, natural disasters like drought and floods can destroy the ability of people to fend for themselves. Likewise, man-made disasters like violence or conflicts can render people destitute and unable to cater for themselves.

As to the criteria used to distribute food in cases of natural disasters, the Government assesses such disasters in a multi-agency team composed of the relevant Government Ministries and the United Nations (UN) agencies to establish how the disaster has impacted on the food security situation of the people. In case of drought, an assessment exercise is normally carried out twice a year, namely, after the short rains in February and after the long rains in July. A programme is arranged for people to be fed appropriately.

(b) Turkana District has been one of the districts that have been benefiting from relief food since this programme was started. As such, I want to bring to the attention of the House the fact that until last year, the three districts have been the larger Turkana District. The statistics, which are attached herewith, until last year, are, therefore, for the larger Turkana region. The relief food given to Turkana District by the Ministry from 2005 to 2008 is tabulated in the table attached. It can be seen from the table, in 2005, they got 42,350 bags and so on. The hon. Member can read the table because it is well written. The other kind of intervention is from Emergency Operation Programme (EMO) which is done by the Government of Kenya in conjunction with the World Food Programme (WFP). The table is also hereby attached. It is quite detailed because it shows the food that has been given to the larger Turkana region.

As far as part (c) of the Question is concerned, the Government attaches a lot of importance to matters of food security in the country. This is because unless people have got food security, no meaningful economic activity can be carried out. To this end, it should be noted that various Ministries are tasked to carry out food security matters since they touch on issues of water availability, livestock, agricultural production and even availability and prices of food commodities in the market.

With regard to what the Government is doing to ensure that people are not affected adversely by such kind of disasters, it has put in place a Strategic Grain Reserve. The current four million bags have been enhanced so that six million bags will be imported this financial year alone. The same has been enhanced so that in 2009/2010, eight million bags will be imported. The Government also provides inputs through the Ministry of Agriculture using programmes like National Agriculture Acceleration Inputs and Offered Seed Programme. The Government will also import three million bags of maize to meet any shortfall of maize by August, 2008. The Government also facilitates the National Cereals and Produce Board (NCPB) to import fertiliser for top-dressing now and planting next year.

Mr. Ethuro: Mr. Deputy Speaker, Sir, when the Deputy Leader of Government Business was asking for an opportunity for hon. Members to get some entertainment, she must have been referring to this particular Minister!

(Laughter)

The Question is very specific. With regard to part (a) of the Question which is asking what criteria the Ministry has employed, the Assistant Minister has just given us a story. On the part of the Question asking him to table statistics, I asked him to do so because I know statistics are many. So, he did not have to do much about it. With regard to part (c) of the Question asking about the measures the Government is putting in place, he has only given us more stories.

If you look at the number of this Question, it is No.029. It is one of those earliest Questions which we filed at that time when drought started biting and it continues to bite even more. Turkana District is food insecure. The poverty level index in that district is over 95 per cent. Malnutrition rate is almost 28 per cent. Let me spare a lot of issues because I do not want this Question to be deferred again.

Mr. Deputy Speaker: What is your question?

Mr. Ethuro: Mr. Deputy Speaker, Sir, I would like the Assistant Minister to confirm the portion of the Government of Kenya (GoK) emergency relief food knowing that over 450,000 people in Turkana are affected by famine. The general ration given by the WFP is 300 bags of maize. The good Government has done something to make food available, but the way that food is distributed is what is in question. How much food is the GoK component? How much food is going to Turkana District and to whom?

Mr. M.M. Ali: Mr. Deputy Speaker, Sir, I was very clear right from the outset. The table is very clear, but if the hon. Member wants me to read the table, then I can exactly do that for him. I have said, and it is clearly shown here, that in 2007 and 2008 alone, Turkana District got 24,600 bags of maize. Each bag weighed 90 kilogrammes. The same year, Turkana District got 3,100 bags of beans each weighing 50 kilogrammes.

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. I thought I was very clear. I do not need those statistics. They needed to be tabled. In fact, I have them. He has given us cumulative statistics of food given from various sources. I am asking for the particular component of the GoK emergency food, how it is allocated and in which locations the food has been taken in addition to food provided by the WFP.

Mr. M.M. Ali: Mr. Deputy Speaker, Sir, what I was reading to the hon. Member is specifically the GoK component. I have told him that I have two tables; one is for GoK and WFP combined and the other one specifically from the Ministry of State for Special Programmes. That is what I was answering the hon. Member.

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister cannot go unchallenged. There are two tables here. One is showing the quantity of food given. The other one is showing the food distribution per division and the mode of distribution. In column that contains the mode of distribution it states: GFD, General Food Distribution; FFW, Food For Work; and FFA, Food For Assets. Where is the other column showing the GoK component, Mr. Assistant Minister?

Mr. M.M. Ali: Mr. Deputy Speaker, Sir, if you look at page 3, it is indicated that the relief food given to Turkana District by the Ministry of State for Special Programmes--- If you go through that, it will assist you. However, when you go to the second column, it shows the food given jointly by both the Ministry and WFP. You better read the table clearly.

Mr. K. Kilonzo: Mr. Deputy Speaker, Sir, I notice the effort by the Assistant Minister to answer this Question. However, he seems to be lacking facts on the ground. Could the Assistant Minister, please, give a date when he will visit Turkana together with the hon. Member so that he can assess the allocation and the impact of the quantities of food he has given to Turkana District?

Mr. M.M. Ali: Mr. Deputy Speaker, Sir, indeed, it will be a good opportunity to go round the district in order to know what Kenyans are going through. I will appreciate that. We will arrange to go there at a convenient date and I will gladly visit Turkana District. The information is all provided here.

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. We are not going to allow this House to be the place for Ministers to do what we call "management by wandering around - *mbwa kali*". Why we have a Parliament is so that some of these things can be sorted out in the most cost-effective manner.

Mr. M.M. Ali: On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member in order to refer to another hon. Member one exercising *mbwa kali* orders?

(Laughter)

Mr. Deputy Speaker: Order, Mr. Ethuro! That is not in conformity with the language that

is stipulated in the Standing Orders of this House. You cannot use such unparliamentary language! Could you stand up, apologise to the House and withdraw?

Mr. Ethuro: Mr. Deputy Speaker, Sir, you know how much respect I have for the Chair. However, everybody in this House has heard me. I never referred to the Assistant Minister as a *mbwa kali*. I referred to his management style, which is management by walking all over the country; that is how you derive the term "*MBWA*": Management by Walking Around!

(Laughter)

Mr. Deputy Speaker: Order, Mr. Ethuro! Whether it is management or not, the ruling of the Chair is that you withdraw that "*mbwa kali*" and apologise to the House!

(Mr. Ethuro stood up in his place)

Order, Mr. Ethuro! Please---

Mr. Ethuro: Mr. Deputy Speaker, Sir, how can I withdraw what is in a standard book of management? It is an abbreviation! Are you satisfied that it is easier for me to apologise than for the Assistant Minister to apologise for taking Kenyans for a ride, when people are starving to death? Yesterday, again, he said the same for the Question on Internally Displaced Persons (IDPs). Today for the general population, he is not giving statistics. Why does he not apologise and withdraw?

(Mr. Bahari stood up in his place)

Mr. Deputy Speaker: Order, Mr. Bahari! Before anybody rises on a point of order, the ruling of the Chair, Mr. Ethuro, is that you withdraw the term and apologise to the House.

An hon. Member: On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: No! Your point of order is overruled! The ruling of the Chair is that Mr. Ethuro should withdraw the term "*mbwa kali*", which he referred to.

Mr. Bahari: On a point of order, Mr. Deputy Speaker, Sir. Many hon. Members here are professionals and there are certain basic things that are very common.

(Applause)

Among other things, what Mr. Ethuro raised, I can confirm. It is a practice in management, management by walking around, which is termed "*mbwa*".

(Laughter)

Mr. Deputy Speaker: Order, Mr. Bahari!

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Lesrima): Mr. Deputy Speaker, Sir, indeed, *mbwa* is a management terminology, only that when Mr. Ethuro added the word "*kali*", which then added a tail and it referred to a dog. So, I think he ought to withdraw.

(Laughter)

Mr. Deputy Speaker: Order, hon. Members!

Mr. Mbadi: On a point of order, Mr. Deputy Speaker, Sir. Now that we are in agreement,

is it in order for Mr. Ethuro to withdraw the word "kali" and leave the word "mbwa"?

Mr. Deputy Speaker: Order!

Mr. Keynan: On a point of order, Mr. Deputy Speaker, Sir. You can see that we need a specialist. What Mr. Ethuro has raised and the interpretations given by different professionals, could we defer the Question, so that we know the exact meaning of "mbwa kali management"?

(Laughter)

Mr. Deputy Speaker: Order, Mr. Keynan! Mr. Ethuro, the ruling of the Chair is that you withdraw the unparliamentary language and apologise to the House.

(Mr. Ethuro resumed his seat)

Mr. Ethuro, for the final time, the Chair is---

Mr. Ethuro: Mr. Deputy Speaker, Sir, I am willing to remove the tail, but, as in Shakespeare, call a rose by any other name, and it still smells as sweet!

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

Mr. Deputy Speaker: What is it Mr. Thuo?

Mr. M.M. Ali: On a point of order, Mr. Deputy Speaker, Sir. Has the hon. Member withdrawn or has he maintained the statement? I have not heard it clearly?

Mr. Deputy Speaker: Mr. Minister, you have not been given the Floor? The Floor is with Mr. Thuo!

Mr. Thuo: Mr. Deputy Speaker, Sir, I am concerned that due to defiance of your ruling you run the risk of allowing this disorder to prevail in this House. I think you must insist that Mr. Ethuro withdraws and apologises for what he said.

Mr. Deputy Speaker: Mr. Ethuro, for the final time, the Chair is asking you to unconditionally withdraw the terms you used and apologise to the House! This is the final time!

Mr. Ethuro: Mr. Deputy Speaker, Sir, Mr. Ethuro, Member for Turkana Central is a man of integrity! I cannot withdraw what I had not let out in the first place.

Hon. Member: *Toka!*

Mr. Deputy Speaker: In view of that, Mr. Ethuro, the ruling of the Chair is that you will be out of this House for the remainder of the day.

(Mr. Ethuro withdrew from the Chamber)

Next Question!

Question No.041

PLANTING OF EUCALYPTUS TREES BY NYAYO
TEA ZONES CORPORATION IN KONOIN

Dr. Kones asked the Minister for Agriculture:-

- (a) whether he was aware that, contrary to initial plans of growing tea, the Nyayo Tea Zones Corporation planted eucalyptus trees at Bosto, Meswondo and Kipseonoi villages, thus causing negative environmental impact and huge economic losses to the farmers in the neighbouring farms; and,
- (b) what steps he has taken to compensate the farmers for the continued loss of soil

fertility and diminishing economic value of their land.

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

(a) I am aware that the Nyayo Tea Zones Development Corporation, in conjunction with the Kenya Forest Service, has established seven hectares of eucalyptus trees in gazetted forest areas adjacent to Bosto and Kipseonoi blocks, which are unsuitable for indigenous trees and tea.

(b) My Ministry has continued soil conservation activities in the area and, indeed, the Corporation's activities have seen the resurgence streams and springs, benefiting the Bosto Community with two water projects. There are no plans to compensate the farmers for any losses.

Dr. Kones: Mr. Deputy Speaker, Sir, I totally disagree with the answer given by the Assistant Minister. I believe this is a case, again, where Assistant Ministers just sit and do not verify their information. The area we are talking about is cleared, and initially it had indigenous trees. For him to claim now that, that place is not even suitable for indigenous trees, is a lie. In that constituency, I do not know of any place which is it not suitable for tea growing. So, the Assistant Minister is misleading the House with this answer. I would also like him to come out clearly and say which are these two projects he is talking about. Which are the two water projects?

Mr. Ndambuki: Mr. Deputy Speaker, Sir, first, I would like to correct the hon. Member. I am not lying! That is also not really a parliamentary word.

The two projects which are being done there are Kapterer Water Project Phase I and II, and they are fed by Kipseonoi and Meswondo springs.

Mr. Ruto: On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister is running away from the real Question. Is he aware that the eucalyptus trees are degrading the area? He is telling us that the place where they planted the eucalyptus trees is not even fit for any other indigenous trees. Are the eucalyptus trees, therefore, improving the soil there? He is telling us that they are doing some water springs. They are destroying the water catchment on the upper side. So, can he be serious about this Question? The implications of planting eucalyptus trees very close to a settlement area which is highly productive are grave. Why are they degrading the environment?

Mr. Ndambuki: Mr. Deputy Speaker, Sir, we are not really destroying the environment. The Chief Conservator of Forests is the one who have guiding this corporation to plant the trees. They are purely being planted as a buffer for the tea and other crops as well as for firewood. Even before the eucalyptus trees were planted, the area was not really productive. I mean the trees which were there were not of any use.

Mr. Magerer: On a point of order, Mr. Deputy, Sir. Is it in order for the Assistant Minister to confirm to this House that the Nyayo Tea Zones has now become "Nyayo Eucalyptus Zone"? I would like to volunteer information again to him that eucalyptus trees release some toxins called exudets, which destroy the soil components. What they have succeeded in doing, is to degrade the soil further.

Mr. Ndambuki: Mr. Deputy Speaker, Sir, all that we are doing is being done in consultation with the Chief Conservator of Forests. He is the one who is advising the farmers. The fuelwood is being used by the tea factories around there. It is not that the Nyayo Tea Zone Corporation has become a eucalyptus corporation. It is only planting trees in the areas where they border with the forest. They are doing this to also prevent encroachment of the forest.

Mr. Bett: Mr. Deputy Speaker, Sir, there is an Act of Parliament which protects rivers which is not being followed by the Ministry. That aside, I want to ask the Assistant Minister whether an environmental impact assessment was carried out before the plantation of eucalyptus trees was undertaken? It is causing a lot of havoc on ecological balance in that area. I also wish to inform him that the areas he has referred to are not in that place. He would rather look at the Question very well. The particular locations, like Esonoi, is not in that place. It is in another place.

He does not know where it is.

(Laughter)

Mr. Ndambuki: Mr. Deputy Speaker, Sir, the information I have from the officers is that an environmental impact assessment was done before the eucalyptus trees were planted. They have found out that there is no any damage being caused by the eucalyptus trees.

Mr. Ganya: On a point of order, Mr. Deputy Speaker, Sir. When the Ministry decided to grow eucalyptus trees, instead of tea, did the Ministry do a cost benefit analysis to determine that production of eucalyptus trees is more gainful than tea?

Mr. Ndambuki: Mr. Deputy Speaker, Sir, the planting of the eucalyptus trees is being done as a buffer to protect the tea. It is not that the corporation has abandoned its mandate and started planting eucalyptus trees. Eucalyptus trees are only planted in areas where the farmers border with the forest, so as to avoid encroachment of the forest and also to enable the farmers to have some firewood.

Mr. Ruto: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Assistant Minister to continue to mislead the House that eucalyptus trees are a hedge or some kind of a buffer? Does he know what a eucalyptus tree look like? Further, he is misleading the House that eucalyptus trees will actually improve the environment. He says the Chief Conservator of Forests did an environmental impact assessment before planting these trees. I believe that is what he meant when he said that they sought advice from him. Could he table the environmental impact assessment report, so that we can be convinced that he actually carried out an impact assessment? We all know eucalyptus trees destroy the environment. They do not improve anything. In fact, I sympathise with him, because he comes from an area which does not grow anything similar to tea. Therefore, he does not even what tea plants look like. He thinks that they are the same size as eucalyptus trees.

Mr. Deputy Speaker: Mr. Assistant Minister, the contention here by the hon. Members is that, as opposed to your assertion here, that the streams are coming back, which is an indication that the environment is getting better. However, the eucalyptus trees degrade the environment. That is the position of hon. Members. Your assertion has either got to be "no, eucalyptus trees do not degrade the environment. They actually make it better", or you indicate exactly what you have to do to try and protect the environment. The issue here is the environment of that area. So, could you, please, give a substantive answer? If you do not have it, then you can seek more time.

Mr. Ndambuki: Mr. Deputy Speaker, Sir, before we go to that, did you hear what Mr. Ruto said? He said that I come from an area which does not grow tea and, therefore I do not know what it looks like? Do I need to---

Mr. Deputy Speaker: Order! Order! Mr. Assistant Minister, please, proceed! Answer the question!

Mr. Ndambuki: Mr. Deputy Speaker, Sir, I have seen tea. You do not need to---

Mr. Deputy Speaker: Order, Mr. Assistant Minister! Address the hon. Member through the Chair.

Mr. Ndambuki: Mr. Deputy Speaker, Sir, an environmental impact study was done in that area, covering seven hectares, where the corporation has planted the eucalyptus trees. The Forestry Department is comfortable with what the corporation did. The corporation is growing the trees for firewood and for the factories around there. So, it is not something which was done out of the blues. There was a study which was done, and it was agreed that they plant the trees.

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

Mr. Deputy Speaker: What is it?

Mr. Bett: Mr. Deputy Speaker, Sir, the question that was asked by Mr. Ruto is: If an environmental impact assessment was done, can the Assistant Minister table a copy of that report, so that we are convinced that, indeed, there was an impact assessment on the environment done by the Chief Conservator of Forests?

Mr. Deputy Speaker: Mr. Assistant Minister, do you undertake to bring the environmental impact assessment report?

Mr. Ndambuki: Mr. Deputy Speaker, Sir, we can dispose of the Question, then I will go and inquire whether the report is there. I will bring it.

Mr. Deputy Speaker: Order! Mr. Assistant Minister, you indicated to the House that actually, an environmental impact assessment was done. The House is not comfortable with the answer. Nonetheless, it will be willing to look at that report. Are you prepared to table the environmental impact assessment report at some other date?

Mr. Ndambuki: I will bring it, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: When?

Mr. Ndambuki: Next week, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Next Question!

Dr. Kones: On a point of order, Mr. Deputy Speaker, Sir. I have not asked my last question.

Mr. Deputy Speaker: The Assistant Minister says he will bring the environmental impact assessment report next week.

Next Question, Dr. Khalwale!

Question No.046

NUMBER OF PRIVATELY-OWNED PARCELS
OF LAND IN CENTRAL PROVINCE

Dr. Khalwale asked the Minister for Lands:-

(a) how many parcels of privately owned land in Central Province measure 1,000 hectares and above; and,

(b) whether he could table a list showing, by name and size, the owners of those parcels.

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

(a) The number of privately owned parcels of land in Central Province measuring 1,000 hectares and above are eight.

(b) I hereby lay the list of the names of the people on the Table.

*(Mr. Bifwoli laid the document
on the Table)*

Hon. Members: Read the list!

Mr. Bifwoli: Mr. Deputy Speaker, Sir, the Question is asking me to lay the list on the Table, and I have done it!

(Laughter)

Mr. K. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. First of all, I want to thank the Minister for bringing the list to the House. Given that the names are only eight, would I be in order to ask the Assistant Minister to read the names to the House?

Mr. Bifwoli: Mr. Deputy Speaker, Sir, that is a different Question. The Question required me to lay the list of the names on the Table and I have done that. I have answered it!

(Applause)

Mr. Magerer: On a point of order, Mr. Deputy Speaker, Sir. The Question is: Could the Minister table a list? It is not "lay" the list? He has tabled the list!

(Laughter)

Mr. Deputy Speaker: Order, Mr. Magerer!

Mr. Sirma: On a point of order, Mr. Deputy Speaker, Sir. The request by hon. K. Kilonzo needs your intervention. Could you, using your good Chair, order that the list be read?

(Applause)

The Assistant Minister for Roads (Mr. Kinyanjui): On a point of order, Mr. Deputy Speaker, Sir. I am wondering whether it is in the interest of the investors in Central Kenya, like in any other parts of the country, to have their names laid on the Table of the House and yet, we know that land is like any other factor of production. For example, it is like money and shares. Tomorrow, we might also demand to know how much money some people have in their accounts! So, the hon. Member should declare his interest in that particular Question.

Mr. Deputy Speaker: Hon. Members, the Question is specific. It reads:-

"(b) Could the Minister table a list showing, by name and size, the owners of those parcels?"

The Assistant Minister has brought the list. He has indicated the names of the owners. He has also shown the sizes of the parcels of land. I think the Assistant Minister has conformed to the Question that was asked.

(Applause)

It is the Assistant Minister's absolute discretion! Should he wish to read the names, the Chair will not deny him that opportunity. But the Chair cannot order him to read the names because the Question did not ask him to do so.

Mr. Ogindo: On a point of order, Mr. Deputy Speaker, Sir. It is in the interest of the House that we know the contents of the list that has been laid on the Table of the House.

Mr. Deputy Speaker: Order, hon. Ogindo! Order! The list has been laid on the Table. It is your own prerogative to pick it, read it, acquaint yourselves with the contents and then ask supplementary questions! Why is it a must that the Assistant Minister himself has to read it out?

Mr. K. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. You clearly ruled the other day that, in view of the fact that this House is now covered live, we would be reading the Questions. I believe the reason you made that decision is informed by the fact that, you wanted the Kenyan people to know what was on the Order Paper. So, in the same vein, could I ask you to rescind your decision for the interest of the people we represent in this august House?

Mr. Deputy Speaker: Order! Order! The reading of the Question is a discretion that hon.

Members are exercising now. The Chair, as opposed to the past when the Question just used to be mentioned by its number, ruled that hon. Members can now read the Questions on the Floor of the House. On the issue at hand now, it is very specific. The hon. Member asked:-

"(b) Could the Minister table a list showing, by name and size, the owners of those parcels?"

The Minister has conformed to that. It is up to you, hon. Members! You have the list. Read it yourselves and use the contents of that list to ask supplementary questions, if you wish to! Ask him supplementary questions based on the information on that list. That is because the list is available to you!

Dr. Khalwale: Mr. Deputy Speaker, Sir, the history of land in Central Province is one of the most contested in this country to the extent that, we remember the Mau Mau. The same history contributed to an exodus of millions of people from Central Province to Rift Valley and Coast provinces. Could the Assistant Minister tell us the history of that land that has remained immune to the inhabitants of Central Province, who were shielded away from settling in this land and, instead, were forced to go outside the province. What is the history?

Mr. Bifwoli: Mr. Deputy Speaker, Sir, if you get the question right, it is about the history of that land. That is definitely a different Question. I need to go and do research about the history.

(Applause)

Mr. C. Kilonzo: Mr. Deputy Speaker, Sir, going by the list, there is one company here called Del Monte Corporation. The Assistant Minister has said that what they have is 3,940 hectares. That is equivalent to about 10,000 acres only. I am very sure that my brother, the Assistant Minister, has not been to that direction. But Del Monte encircles Thika Town and extends another 50 kilometres! Then, on the Thika-Nyeri Road, it goes another 30 kilometres! It is actually 20 kilometres and not 30 kilometres. So, are you sure the figures we have here for Del Monte Corporation are right?

Mr. Bifwoli: Mr. Deputy Speaker, Sir, the area is over 3,940 hectares. That is what is on the records.

Mr. C. Kilonzo: Mr. Deputy Speaker, Sir, I am holding the answer. It does not say "over 3,940 hectares"! It says the total area is 3,940 hectares! Unless he is reading something else.

Mr. Deputy Speaker, Sir, he is being misled by one good friend of mine, hon. Munyes! Those are your words!

Mr. Deputy Speaker: Proceed, Mr. Assistant Minister. Answer the question! Are you confirming categorically on the Floor of this House that all that Del Monte holds is only 3,940 hectares?

Mr. Bifwoli: Mr. Deputy Speaker, Sir, by our records, it is 3,940 hectares.

Mr. Deputy Speaker: Mr. Nuh, are you rising to ask a supplementary question or on a point of order?

Dr. Nuh: It is a supplementary question, Mr. Deputy Speaker, Sir. Could the Assistant Minister confirm to this House whether it would be in order for us, hon. Members, to, if Del Monte, in the records, only owns 3,940 hectares, go and subdivide the rest of the land to landless Kenyans?

(Laughter)

Mr. Thuo: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Member to incite the people who live around Del Monte, particularly the people of Juja---?

*(Several hon. Members stood
up in their places)*

Mr. Deputy Speaker: Order! The hon. Member is on a point of order!

Mr. Thuo: Is it in order for the hon. Member to incite the people who live around Del Monte, particularly the people of Juja where the bulk of this land is, to invade land and sub-divide it, merely because he thinks that the size of the land is bigger than what has been given? Those are who asking the Questions, including hon. C. Kilonzo, know that Del Monte has leased land from people, including in areas outside Central Province in Ukambani. I, therefore, do not think that it is in order to incite people. Is it in order for the Member to incite people merely because he is disappointed by the answer he got? The whole purpose of this thing was to be cheeky.

Mr. Bifwoli: Mr. Deputy Speaker, Sir, I want to answer my brother, Mr. C. Kilonzo, that the land we are talking about Del Monte is in Thika in Central Province. You might have another Del Monte elsewhere outside Central Province.

Dr. Nuh: On a point of order, Mr. Deputy Speaker, Sir. I think you ruled before that the law applies to all of us regardless of whether you hold a position in Government or not. Is hon. Thuo in order to refer to an hon. Member as being cheeky? The hon. Member was requesting to have his question answered on behalf of Kenyans so that they benefit from the information given---

Mr. Deputy Speaker: Order! Order! Hon. Thuo, you are totally out of order to refer to another hon. Member as being cheeky. Could you withdraw and apologise? You are the cheeky one!

(Laughter)

Mr. Thuo: Mr. Deputy Speaker, Sir, first, I withdraw and subsequently apologise for using the word cheeky and substitute it with---

Hon. Members: No! No!

Mr. Deputy Speaker: Order, hon. Thuo! Order!

Mr. Thuo: Mr. Deputy Speaker, Sir, I withdraw and apologise.

Dr. Khalwale: Thank you, Mr. Deputy Speaker, Sir. We might run away from this issue of owning large tracks of land in Central Province, but we cannot hide. We have been hearing that the Government would like to resettle the landless in certain parts of this country. The purpose of this Question, much as my friend thinks I am being cheeky, is to be told whether the Government is alive to the fact that the so-called *Mungiki* youth are crying for ancestral land that was taken away from their forefathers. Does the Government have an answer to this? Those of us who do not come from the same community are caught up in a cross-fire. Does the Government have an answer of making sure that these youth are contained by addressing the real issue that they are raising, with all due respect?

Mr. Bifwoli: Mr. Deputy Speaker, Sir, my brother wanted to know the number of privately owned parcels of land in Central Province. I categorically gave the list. He has now come up with the question whether I have a formula to settle the landless. You see that this a different story. The truth of the matter, if I may continue, on the land I have given is that these are private parcels of land and the Government can never compulsorily repossess them.

Mr. Ruto: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for Ministers to run away from their responsibilities and pretend that they are simply messengers who come and read pieces of paper that were written by their juniors? In fact, I think those civil servants are their bosses because they tell them to go and read or lay this list on the Table---

Mr. Deputy Speaker: Order, hon. Ruto! What is your point of order?

Mr. Ruto: Mr. Deputy Speaker, Sir, we are asking the Government relevant Questions on how they manage resources. We did not just the names. We wanted to be told about the management of resources so that youths like *Mungiki* all over when they have enough land. Since all these parcels of land have been with foreigners for the last 20 years, could we subdivide it now? Is it not in order for Del monte to surrender the land that does not belong to them because they only own 3,000 acres? Their children are all over Kenya. Could Minister be more serious and stop acting like messengers, especially Mr. Bifwoli? He is a bit cartoonist!

Mr. Bifwoli: Mr. Deputy Speaker, Sir, this is a private land and the Government has no authority over private land. Two, we answer Questions the way they come basing on English, the way we learnt it and they way some of us taught it!

(Laughter)

Mr. Deputy Speaker: Next Question, hon. Mbau!

Question No.050

SUPPLY OF WATER TO RESIDENTS
OF MARAGUA BY TARDA

Mr. Mbau asked the Minister for Regional Development Authorities:-

- (a) whether he could inform the House of the specific activities undertaken by Tana and Athi River Development Authority (TARDA) in Maragua Constituency since it was formed about four years ago;
- (b) whether he could table the list of all projects undertaken by the Authority and amounts of money spent on them to date; and,
- (c) plans currently in place to ensure immediate supply of piped water by the Authority to the major towns of Maragua, Saba Saba, Makuyu, Kenol and their environs which rely on water from shallow boreholes.

The Minister for Regional Development Authorities (Mr. Gumo): Mr. Deputy Speaker, Sir, I beg to reply

(a) Tana and Athi River Development Authority has undertaken the following activities in Maragua Constituency since it was formed four years ago:-

- (i) The establishment of nurseries, tree planting programmes and woodlots
- (ii) Promotion of catchment conservation activities among the youth.
- (b) The total amount spent on the activities "a" above is Kshs100,000

(c) The Authority has no immediate plans to supply water to the towns of Maragua, Saba Saba, Makuyu and Kenol because supply of water is not within her mandate.

Mr. Mbau: Mr. Deputy Speaker, Sir, despite the fact that TARDA has been operating in the area for a period of four years, it has only expended a sum of Kshs100,000 within an area that it considers its catchment area. In reciprocity, is it fair for an organisation to only put in Kshs100,000 for a period of four years when the towns of Maragua, Saba Saba, Makuyu and Kenol go without water and yet, this a multi billion organisation that is generating a lot of water? I have information to the effect that other towns like Mwingi Town are supplied with water by this organisation courtesy of them being catchment areas. Could the Minister consider doing the same for these towns so that people of Maragua and its environs can continue to be supportive of this organisation?

Mr. Gumo: Mr. Deputy Speaker, Sir, when these other towns were supplied with water,

particularly Mwingi, those earlier days, the hydro power stations which were built by TARDA were being run by TARDA. They were able to generate more funds. At that time, TARDA was developing more areas, and particularly catchment areas. But since these hydro power stations were taken over by KenGen for free, TARDA has not been able to generate its own funds. As a result, it has been very difficult to do the developments that it used to do before. But negotiations are now going on. If KenGen can pay off some of these projects to TARDA, we will definitely have money and we will start doing the same projects it used to do.

Mr. K. Kilonzo: Thank you, Mr. Deputy Speaker, Sir. Tana and Athi River Development Authority (TARDA) covers about 20 constituencies, where the Tana River passes. Among those constituencies is Mutito Constituency. What projects does the Ministry have to ensure that each constituency gets, at least, a project under its social corporate responsibility programme?

Mr. Gumo: Mr. Deputy Speaker, Sir, as I had said, for some time now, if you look at the previous Budget, the Treasury gave TARDA very little money, forgetting that some of those authorities are the grassroots of development. If we are supported--- We are now preparing next year's budget. Last time, it had not been given any money. If we are given money by the Treasury, definitely, that Authority will develop those areas and almost all the constituencies in that area. Today, for Vision 2030 Development Plan to succeed, we have to use those authorities. So, unless some money is channelled through that Authority, it will be very difficult for it to do any development projects.

Mr. Mbau: Mr. Deputy Speaker, Sir, I appreciate the Minister's response. However, as you heard, regarding part (c) of the Question, the Minister said that his Ministry and the Authority have no immediate plans to supply water to those towns, since they fall under the mandate of other departments. Here comes the relevance and importance of having the Prime Minister coming to this House and answering questions regarding some of these cross-cutting issues. When I asked this Question, I believed truly that the Minister would give me a relevant answer. If you knew that you have no obligation to supply water to those towns, you could have easily passed that Question over to the relevant department. But now, we have a Prime Minister. What I need is water. You are now telling me that you have no answer to this Question. I will file another Question which will take one more month. By the time the month is over, I might be told that the Question has been passed over to another Ministry because of the duplication in the Ministries.

Mr. Minister, would I be in order to ask you to talk to the Prime Minister, so that I do not have to ask another Question. I need an answer regarding those areas.

Mr. Gumo: Mr. Deputy Speaker, Sir, I made it very clear that the supply of water falls under the Ministry of Water and Irrigation. The hon. Member for Maragwa knows that. We only do some of these projects when we have enough money. That is when we do them under our development authorities. Otherwise, it is the Ministry of Water and Irrigation and its respective boards that are supposed to handle this. I am sure that there is a board under the Ministry of Water and Irrigation that is supposed to cover that area. It is supposed to supply water to that area. So, in this case, the hon. Member should forward his Question to the Ministry of Water and Irrigation and I am sure that he will get an appropriate answer.

Mr. Imanyara: On a point of order, Mr. Deputy Speaker, Sir. Under Sub-section 3 of Section 17 of the Constitution of Kenya, the Cabinet shall be collectively responsible to the National Assembly. Is it in order for a Minister to pass the buck when the Constitution requires them to be collectively responsible to this House?

Mr. Gumo: Mr. Deputy Speaker, Sir, as much as I accept to take responsibly, there are portfolios for respective Ministries. In this case, I said that I do not have an answer to this Question because it falls under the Ministry of Water and Irrigation. However, I can give you an answer next week, if you want, from the Ministry of Water and Irrigation.

Mr. Deputy Speaker: Order! There is collective responsibility. However, you cannot expect to forward a Question to the Ministry of Education when it is on health matters. This Question is on water matters and it is only fair that it is sent to the Ministry of Water and Irrigation. The honourable Minister has made himself very clear and said that before TARDA was passed over to them, it was performing the roles which were performed by KenGen. They would go out and carry out some activities like provision of water. However, right now, you should address your Question to the Ministry of Water and Irrigation.

Mr. Mbau: Mr. Deputy Speaker, Sir, the Minister said that he will answer the relevant part next week.

Mr. Deputy Speaker: Hon. Minister, be very categorical in what you want to undertake.

Mr. Gumo: Mr. Deputy Speaker Sir, this Question falls under the Ministry of Water and Irrigation. However, I said that, if the hon. Member insists, I will ask the Minister for Water and Irrigation to get you the answer. You can go to the Ministry, yourself, and get an answer.

(Laughter)

Mr. Deputy Speaker: Order! Next Question!

Question No.077

DISAPPEARANCE OF CHIEF INSPECTOR
A.H. ABIKAR

Mr. Affey asked the Minister of State for Provincial Administration and Internal Security:-

(a) whether he is aware that Chief Inspector Adan Hassan Abikar (P/No.1979171982) of the Kenya Police went missing while on official duties in Liberia in August 2006;

(b) whether he could explain the circumstances under which the officer disappeared as well as the efforts being made to establish his whereabouts; and,

(c) whether the Government could undertake to ensure that his salary, which was stopped in 2006, is reinstated and that the family, who are still living in a Government house, is not evicted until his whereabouts is established.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Deputy Speaker, Sir, I beg to reply.

(a) Yes, I am aware that the said officer went missing while on a peace-keeping duty in Liberia in August, 2006.

(b) Immediately the report on the disappearance of Chief Inspector A.H. Abikar was received, the United Nations Mission in Liberia set up a task force comprising of United Nations Mission in Liberia and Liberia National Police to trace the officer. The Kenya Government also sent a team of three officers to trace him. In spite of all the efforts made to unveil the mysterious disappearance, the officer has not been traced to date. Investigations regarding the disappearance are still ongoing.

(c) The officer's salary was stopped in the month of September, 2006, 30 days after the date of his disappearance. This is in accordance with the Police Force Standing Orders Cap. 20, Paragraph 37(i) and (ii), which states:

" When an officer absents himself from duty for a period of 21 days, he is declared a deserter. At the expiry of 30 days from the day the officer absents himself from

duty, he is struck off the strength. Once an officer is struck off the strength, his name is removed from the payroll and his salary stopped."

Regarding the other request by the hon. Member concerning his family's accommodation, I will consider that on humanitarian grounds. Therefore, they will be allowed to stay in the house at the CID Headquarters.

Mr. Affey: Mr. Deputy Speaker, Sir, you can clearly see that this Assistant Minister is not very sensitive to the welfare of the family of these very patriotic Kenyans, who went to do a duty for this country in Liberia. If you look at his answer, it is full of contradictions. On one hand he says that the officer is missing and on the other hand he says that he deserted duty. Could he tell this House whether the Chief Inspector is missing in action or whether he deserted duty. Secondly, I would like him to tell us the circumstances behind the disappearance of the Chief Inspector, Mr. Adan Hassan Abikar. The Assistant Minister is not telling us that. Could he please answer those two vital questions?

Mr. Ojode: Mr. Deputy Speaker, Sir, I have not given any contradiction. The officer is missing from his work or the duties that he was performing. As for the officer's name in the payroll, he is a deserter. That means that he cannot be paid any money because he has deserted duty. So, I am not contradicting any of the replies that I gave. Would I also be in order---

Mr. Affey: On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister has to be very categorical and he has to tell the House--- According to the records with police, the officer is missing in action. He went on a specific duty on behalf of the country, and he is missing in action according to the records. He is telling us that he has deserted duty. Those are two clear differences. Has he deserted or is he missing?

Mr. Ojode: Mr. Deputy Speaker, Sir, I want to give a background to these sad issue. It is very sad that a Kenyan policeman is missing in Liberia. Allow me to give some chronology of events in this matter.

Mr. Adan Hassan Abikar was in the month of May, 2006 sent by the Kenya Government as United Nations mission peace-keeper in Sipold Division of Liberia. In Liberia the officer was in a station with a fellow Kenyan police officer by the name Constable Elijah Mong'are, with whom he resided in the same house. In the evening of 12th August, 2006 the said Adan Abikar was driving home in a United Nations vehicle when he was involved in a slight road accident. The said officer was not injured, though the victim, the pedestrian, a Liberian child, was slightly injured. The accident was reported to the UN security team, who investigated the accident as is normal. On 13th August, 2006 Adan Abikar was left in the house by his Kenyan colleague, Mr. Mong'are, who went to pick other civilian police colleagues for duty. By around 10.00 a.m. Adan Abikar had not reported on duty and his colleague went to check on him in the house.

They were informed by a civilian neighbour, a neighbour of Mr. Mong'are, who acted as a gate-keeper, that he had left a few minutes earlier in a hired taxi to town. He did not carry any of his belongings, his documents, or even his UN identification documents. That was the last time the officer was seen alive. An official report of disappearance was made by the Kenya civilian police contingent, Commander to the Liberian Police, the UN Department of peace-keeping in New York and to the Kenya Government. Efforts to trace the officer commenced and a task force was formed comprising of the UN Mission in Liberia and Liberian national police. The Kenya Government also sent a team of three officers to Liberia between 27th August and 10th September, 2006 to team with the UN task force and assist in the investigations into the disappearance. In spite of all the efforts made to unveil the mysterious disappearance the officer has not been traced to date. Given these circumstances, I was considering, on humanitarian ground, for the family to stay in the house. Regarding the issue of the salary, we will check within the legal framework if it is possible. Otherwise, this thing should not be politicised, because it is a sad issue that we have lost one of our

police officers.

Mr. Keynan: Mr. Deputy Speaker, Sir, I want to find out from the Assistant Minister whether Chief Inspect Adan Abikar was paid his benefits by the UN and why he should be described as a deserter, even if the Police Act, Cap.20, Laws of Kenya, does not differentiate between a deserter and somebody who has disappeared. Also, I know it is within the powers of the Ministry Provincial Administration and Internal Security to ensure that Chief Inspector Adan still draws his salary until his whereabouts is ascertained, because the family is saying that they are not sure whether their loved one is dead. I can confirm that for the last one-and-half years, the Police Department has not done anything under the law - I know this because he comes from my constituency. I have even contacted the Liberian Embassy and the UN mission. The Kenyan Government has washed its hands of finding out the whereabouts of Chief Inspector Adan Abikar. This is unfair. Could he allow the family to get the salary until he declares him alive or dead, because he sent him to Liberia?

Mr. Ojode: Mr. Speaker, as I said earlier, this is a sad case. I want my colleagues to note what it means if you desert duty or go missing from duty. Section 41(i) of the Police Act provide that:-

"A member of inspectorate or a subordinate officer who is absent without leave, or who overstays any period of leave for more than 21 days shall, unless the contrary is proved, be deemed to have deserted from the force."

Paragraph (ii) says:-

"When an officer becomes a deserter, the Force Headquarters must be notified immediately. A case file will be opened and a warrant of arrest obtained. Full particulars, including the case file number, will be forwarded to the Criminal Investigations Department (CID) Headquarters for publication in the police gazette."

That is exactly what has happened.

Mr. Deputy Speaker: Order, Mr. Assistant Minister! The sentiments of hon. Members is that this is a case not under normal circumstances. The Chief Inspector was in on official duty, in a of peace-keeping mission. He could have been kidnapped and taken as hostage or he could have been killed. In fact, your statement shows that something unusual must have happened. If he left behind his money, identification and everything else and just disappeared like that, clearly in such a situation, the worst is expected. So, to term such a person as a deserter is, to say the least, very bad and sad on the part of the Government. What is your supplementary question, Mr. Imanyara?

Mr. Imanyara: Mr. Deputy Speaker, Sir, the Sections of the Police Act that the Assistant Minister is referring to envisage a desertion within Kenya. Let us give a credit even to our disciplined forces. They work under very difficult circumstances even within this country. But, all disciplined officers who serve outside this country do so under an agreement signed between the Republic of Kenya and the United Nations. That agreement has provisions for compensation, payment of salaries, housing and situations such as that which befell this officer. Could he tell us what the agreement between Kenya and the United Nations state regarding disappearance of Kenyan officers who were serving in the United Nations Peace Keeping Missions says?

Mr. Ojode: Mr. Deputy Speaker, Sir, that is a very good question. Under ordinary circumstances, I did not access the agreement. Parts "a" and "b" of this Question should actually have been directed to the Ministry of Foreign Affairs. However, I decided to answer it, because of part "c" which touches on our docket. I will check, within the legal framework of the law, if it is possible for us to continue paying the family, because it is a sad case.

Mr. Namwamba: On a point of order, Mr. Deputy Speaker, Sir. In view of the fact that the Assistant Minister is admitting that he may have dealt with this matter by misapplication of the

law, and that the regulations under which the house allowance and other benefits of this particular officer are being withheld improperly - because he is applying the law as if this officer went missing while within the Kenyan jurisdiction, while, in fact, he should be under the guidelines of the agreement between Kenya and the United Nations - should he not, therefore, withdraw that particular arrangement until he confirms the guidelines in that agreement and then deal with this matter under those particular guidelines in the agreement between Kenya and the United Nations?

Mr. Ojode: Mr. Deputy Speaker, Sir, I think I have given an undertaking on that.

Mr. Deputy Speaker: The Assistant Minister has given an undertaking on that!

Mr. Mbadi: On a point of order, Mr. Deputy Speaker, Sir. The Ministry should have a clear policy. Is it in order for an Assistant Minister to stand and tell us that on humanitarian grounds, he will consider, yet before our forces are sent out of this country, we expect a clear policy to deal with this issues? The Assistant Minister should have to the House and told us exactly what he will do under these circumstances.

Mr. Ojode: Mr. Deputy Speaker, Sir, you will agree with me that I have undertaken to go and check what the agreement says and then---

Mr. Deputy Speaker: The Assistant Minister has said that he undertakes to go back and check what the agreement says.

Mr. Namwamba: On a point of order, Mr. Deputy Speaker, Sir. I think it will be in order for the Assistant Minister, while giving the undertaking to check on this matter further, to nonetheless confirm that the house allowance and benefits due to the family of this officer currently in Kenya will continue.

Mr. Deputy Speaker: The family of the family is staying in a Government house.

Mr. Namwamba: Mr. Deputy Speaker, Sir, he should then given an undertaking that, that status together with any payments due to that family will continue nonetheless as the Assistant Minister investigates this further. Could he give that undertaking?

Mr. Ojode: Mr. Deputy Speaker, Sir, I think I have said that based on humanitarian grounds I have decided to leave the family of this officer to stay in a Government house. The only thing which I will check is what the agreement between the United Nations and the Kenyan Government says in terms of allowances. If at all, within the legal framework of the Act, it is possible for us to extend the payment of salary, I will do so. I do not have any problem with that.

Mr. Keynan: On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister has avoided answering one of the legitimate questions that I raised. I asked: "Did the United Nations (UN) pay the benefits that were due to this particular officer?" I am aware that the UN compensated, but that money has not reached the family.

Finally, I want also him to confirm or deny that there was a connection between this accident that took place on some day in Monrovia and some few days later when the officer disappeared. Was there any connection? Could he table the report of the findings by the police of Liberia?

Mr. Ojode: Mr. Deputy Speaker, Sir, let me assure the House that anything on the agreement will be honoured. In any case, if the hon. Member wanted me to come up with the agreement, that is totally a different Question. But when we peruse the agreement and see that there are some monies or allowances which are supposed to be paid, whether the guy is alive or not, or he disappeared, we, as a Government, will honour the agreement.

Mr. Affey: Mr. Deputy Speaker, Sir, while I think that Assistant Minister and, indeed, the House for coming to the aid of this family, I would like him to know that Chief Inspector Hassan joined the police force in 1979 and rose to the rank of a Chief Inspector. It is such a distinguished service and career in the country. In view of the fact that the Assistant Minister now cannot confirm whether, indeed, the family will continue to enjoy the benefits--- While I appreciate the fact that the

Government will allow the children to continue to stay in a Government house, we need to understand that these children go to school and, therefore, require school fees. They also need to be fed because they do not have a father. The Government has also denied them salary. In view of all the issues surrounding this matter, will be in order, therefore, to request that the Chair defer the Question and ask him to come back to this House with a more appropriate answer?

Mr. Ojode: Mr. Deputy Speaker, Sir, I thought that I covered the rest of the issues, except the agreement.

Mr. Deputy Speaker: Order, hon. Assistant Minister! The issue at hand is a Kenyan officer whose family is suffering because his salary has been stopped. The concern of the Members of Parliament is that it is not known under what circumstances the officer is missing. In the first place, it was wrong to classify him as a deserter. He could be missing in action. He could also have been taken hostage by hostile people. He could also be dead. There are a lot of things that could have happened. In view of that, are you prepared to go back to your Ministry and restore the salary of the officer so that the children do not suffer? That is the issue that the hon. Members are talking about.

Mr. Ojode: Mr. Deputy Speaker, Sir, I said that I do not have any problem with that, as long as we are not contravening any law. I have already allowed the family to stay in a Government house, without the officer. But the issue which is here is whether the agreement included allowances or not. I will make sure that I get the agreement, so that we can go through it with the Questioner and then report to the House.

Mr. Affey: On a point of order, Mr. Deputy Speaker, Sir. You have already ruled, after understanding the mood in the House, that the Government reinstates the salary and allowances of this particular officer. The Assistant Minister says he will go back to do what the law allows. He is expected to understand what the law allows in these circumstances. Will he reinstate these salary and allowances to the children of this officer? As we are debating this, the children and mother of this officer are watching and listening to the proceedings of this House. What do we tell them? What do you want them to know from the Government? Will the Government give them the salary arrears of that officer for the last two years end of this month?

Mr. Ojode: Mr. Deputy Speaker, Sir, I do agree with your ruling, except when it does not contravene any law.

Mr. Deputy Speaker: Order! Hon. Assistant Minister, I cannot rule on the restoration of the salary because the Chair does not have the powers to do so. The Chair is seeking your clarifications on this!

Mr. Ojode: Mr. Deputy Speaker, Sir, that is why I said we will go and check. If it does not contravene any law, I will be happy to pay all the salaries.

Mr. Deputy Speaker: When will you come back to the Floor of the House to give us the answer?

Mr. Ojode: Mr. Deputy Speaker, Sir, by next week on Thursday.

(Loud consultations)

Mr. Deputy Speaker: Thursday next week the Assistant Minister will---

Mr. Ojode: On a point of order, Mr. Deputy Speaker, Sir. I thought the Question belongs to the House and not to an individual.

Mr. Deputy Speaker: Order, hon. Ojode! You address Members of Parliament through the Chair. Nonetheless, the hon. Assistant Minister wants to come back with answers to all the questions and sentiments that have been expressed. Are you willing, as the Questioner, to have this brought on Thursday, next week? Which date is appropriate for you?

Mr. Affey: Mr. Deputy Speaker, Sir, the week after Thursday.

Mr. Deputy Speaker: It is fair. According to our Standing Orders, the Member has to be here.

Mr. Ojode: Much obliged, Mr. Deputy Speaker.

Mr. Deputy Speaker: The week after next Thursday!

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

Mr. Deputy Speaker: Is it on the same issue? What is it?

Mr. K. Kilonzo: Mr. Deputy Speaker, Sir, while we are here as Members of Parliament, we are also parents. I know that hon. Ojode is a parent. Surely, on humanitarian grounds, would I be on order to ask the Assistant Minister to consider those children and, at least, release a token to this family to enable them buy food? We know the circumstances facing the family.

Mr. Deputy Speaker: Order, Mr. Kiema Kilonzo! That matter has been put to rest. The hon. Assistant Minister is going to come up with a comprehensive position to the House on the Thursday of the week after next Thursday.

(Question deferred)

Hon. Members, we seem to have taken a lot of time on Questions. The next Questions will appear on the Order Paper on Tuesday afternoon, next week.

Question No.075

REHABILITATION OF KATHITA
BRIDGE

(Question deferred)

Question No.086

AUDITING OF CDF PROJECTS IN NAIVASHA

(Question deferred)

Question No.124

EXPLORATION OF OIL DEPOSITS IN NYATIKE

(Question deferred)

Mr. Deputy Speaker: Order, hon. Members! In view of the fact that the House took an unusually long time during Question Time, we will also defer Ministerial Statements to Tuesday, next week.

Mr. K. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. Yesterday, I rose on a point of order to seek a Ministerial Statement and today, the Minister said that he was ready. However, in view of your ruling, I will be travelling out of the country next week for official duty. So, I want to ask the Minister to bring that Ministerial Statement when I will be around the week after the next one.

Mr. Deputy Speaker: Order! It is so ruled.

Next Order!

BILL

Second Reading

THE NATIONAL ETHNIC AND RACE
RELATIONS COMMISSION BILL

*(The Minister for Justice, National
Cohesion and Constitutional
Affairs on 1.7.2008)*

*(Resumption of Debate interrupted
on 2.7.2008)*

Mr. Deputy Speaker: Hon. Mutava Musyimi was on the Floor!

Mr. Musyimi: Mr. Deputy Speaker, Sir, I wish to, perhaps, just recap some of the points that I made yesterday. We were discussing the issue of the way this Kenya that we call our home came about. We argued that Kenya did not develop organically, but rather through imperial conquest. It was not by social convergence and like other colonies, it was ruled, sometimes, in ways that were not exactly facilitative of the citizens.

Whereas history tells us how we came about, it does not tell us who we are. I was seeking to support this Bill because it gives us an instrument or vehicle that allows this discussion to come into the public domain or realm. This question about who we are has been with us really since Independence. As I sought to argue yesterday, we say that there are areas in which we can legitimately differ and still remain Kenyan. Those areas are, for example, our cultures, religions, political parties, professions, ethnic groups, communities to which we belong, our gender for that matter and so on. However, there are areas in which if we differ, we impair our very existence and nationhood. It is not possible that this should be allowed by a State that wants to exist or to have a future as, indeed, we saw at the beginning of this year.

Mr. Deputy Speaker, Sir, the burden of this Bill, as, indeed, will be the burden of other Bills such as the Truth, Justice and Reconciliation Commission Bill, but supremely, the Constitution Review Bill, is to bring this discussion to the public domain. It would seem to me that there are values that we must negotiate as a people. There are values that we need to define and agree upon together and say that these are the values that are non-negotiable and by which we must learn to exist. Such are the values that need to guide us as a country. For example, in our commitment to the value of democracy, we decide the persons who govern us as a Kenyan people. There is also the value of freedom of speech, freedom of association, freedom of worship and freedom from violence. This is the value we call liberty; that is, the freedom to pursue our advantages without restraint.

However, as R.H. Towaey said, and I quote:

"Equality as a value is the social restraint that comes upon us as individuals for the public good."

So, although we have the freedom, it must be exercised with restraint. So, we need the value of equality and we need to be equal before the law so that all of us are treated by the law without any favour. There is also the value of tolerance.

The long and short of all these is that we need to agree on core values as a people; values without which we cannot and will not survive as a nation. We need to remind ourselves of the need

to say something like this:-

"I have a right to be a Luo, but the duty to be a Kenyan. You have the right to belong to a political party, but the duty to be a Kenyan. You have the right to be a Muslim, but the duty to be a Kenyan. You have the right to be an atheist, but the duty to be a Kenyan. You have the right to make money, but the duty to make that money with the warfare of Kenyan in mind."

Mr. Deputy Speaker, Sir, although there are rights, there are duties that we must embrace and accept as duties that make us a people. We need to affirm each others' right to belong to their religions, parties and ethnic communities. However, the expression of that right should never infringe on the rights of other people. This is what I think Mr. Tony Blair, the former British Prime Minister called "the right to be different, but the duty to integrate". So, this is really what this Bill seeks to do, that is, to give us the vehicle, platform and instrument around which to discuss these core values. Unless we accept these values, it is going to be very difficult to negotiate our way around the difficult situations such as we saw early this year.

May I, as I come to a conclusion, perhaps, just indicate the five instruments that we know in society affect us in terms of the world views that determine who we are. Families are very key. Family values, that is, what we say to our children and relatives, the religions we belong to, what we teach in our temples, mosques and churches, the education system we adopt, the curricula in our schools, the media with all its freedoms and responsibilities, politics and so on. We know politics is power and it can be exercised in the right manner or wrong manner.

Mr. Deputy Speaker, Sir, I support this Bill. I think it is a good Bill. I think it is right to remind ourselves of the right to be different, but the duty to integrate. We will be looking at Clause 13(1) which says that the objects and purpose for which the Commission is established is to facilitate and promote equality of opportunity, good relations, harmony, peaceful co-existence between persons of different ethnic communities of Kenya, and to advise the Government on all aspects thereof *et cetera*. I would have wished to see this particular subsection panned out a little more, so that in Clause 13(1) we spend more time discussing the values, although, perhaps, we have not negotiated them. Maybe we should put them in the Bill as a suggestion to the people. These are core values that will guide the functions of this particular Bill once it becomes law.

[Mr. Deputy Speaker left the Chair]

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

Mr. Temporary Deputy Speaker, Sir, so, I would like to beg that you allow me to support this Bill subject to more time being spent on the core values, the values that we need to embrace and accept, without which we cannot survive and we will not survive.

With those few remarks, I beg to support.

Mr. Abdikadir: Mr. Temporary Deputy Speaker, Sir, I also support this Bill. I wish to let the House know that the Departmental Committee on Administration of Justice and Legal Affairs is considering this Bill, and will, in due course, suggest a few amendments prior to the Committee stage.

Ethnicity is a *de facto* reality in our country, and in most places in the world. As my colleague said, this country was as a result of European conquest and Independence thereafter, and as such is made up of different ethnic groups that did not necessarily come together to agree at that point in time. So, historically ethnicity was not considered when our nation was coming into being purely because of the historical factor at that point. At the point of Independence, most of the

nationalists, as commentators have said, shunned ethnicity because of the tag of tribalism, and the fact that it was used by the colonialists to divide our people. Those of us who were intellectuals at that time also looked at ethnicity as a practice that was premedial, and that was, in due course, going to be solved by modernity. The reality is completely different! The reality is that ethnicity is the elephant in the room and time has come for this country to address ethnicity. When the Minister was moving this Bill, she stated that this Bill was one of those pieces of legislation that were proposed in the Serena settlement, and that His Excellency the President proposed in his Speech to this House.

Ethnicity is the basic mode of political mobilisation in this country right now. Literally, every political party is essentially an amalgamation of ethnic groups, or one ethnic group masquerading as a political entity. It is then time for us to look at how to look at this from a legislative point of view. By virtue of the fact that ethnicity is the basis of political mobilisation, access to the State and its resources is basically on ethnicity, by virtue of the fact that political parties are based on ethnicity. This is not only true in this country or Africa, for that matter. In Europe literally every nation is as a result of ethno-nationalism, and the last bits were seen in the break up of the former Yugoslavia, when most of those nations that resulted really were ethnic entities, calling themselves nations. That is not only true in Europe but in America too the problem exists but in a different form, in the sense that because of the creation of the United States, for example, ethnicity, this time called a race, is a major issue. As a result of immigration, slavery and colonialism, the Americas also have an ethnic problem in the form of a race problem. In the Middle East, the ethnicity question is in the form of religious issues, and sectarianism. In Israel, Palestine and Lebanon, issues of ethnicity and race are really sectarian issues.

So, most countries and nations in the world have grappled with this problem of ethnicity. Some have attempted to constitutionalize ethnicity, and look at it right in the face in their constitutions. Lebanon, for example, is one such country. In the settlement of Bosnia, the constitution clearly looked at ethnicity and constitutional provisions for it were made. In Lebanon, it is by the constitution provided that a particular sectarian and religious group will be the holders of the Prime Minister's post, and another particular group will be the holders of the President's office, while another holds the office of the Speaker. Other nations are coming up with race relations laws. For example, the United Kingdom has the Race Relations Act of 1976, while yet others have looked at this question through their human rights laws.

Mr. Temporary Deputy Speaker, Sir, coming to the specific Bill before us, it basically sets up a commission to deal with the race issues. Therein lies one of the problems with this law. The fact that the Bill merely sets up a commission! The problem of ethnicity is wider than setting up a commission. Most laws that deal with ethnicity or race, have a commission that deals with that. However, they also have other parts. They have substantive laws creating specific statutory duties, and they have elaborate enforcement mechanisms. All these are absent! I am aware that the Minister said that this was just but the beginning, and that she will be bringing legislation to support and anchor the other areas required. For example, the UK Race relations Act of 1976 is made up of ten parts, and the part setting up the commission called "the Commission for Race Equality" is 7. I have looked at parts 7 and 8, which is the enforcement bit. If you look at this enforcement bit, it is three times as large as the part that sets up the Commission. This goes to the point that this commission needs more. It is like a motor vehicle that has an engine, the commission being the engine, but has no body, wheels and upholstery. Therefore, we need the rest of the parts for this law to be useful.

Let me go to the specific parts of the Bill that we will need to look at in terms of suggesting amendments. I would like to look at Clause 7 on the term of office. I hope we will have a staggered term as opposed to a term where all the members have a starting point that ends four years, so that

you lose institutional memory. We will look at it and see whether it is possible to have a staggered term, so that at any time, we have members of the commission who have served in years past.

Secondly, we will be looking at Clause 11 in terms of removal from office and the procedures for doing that. It is my opinion that the current suggested procedure is convoluted and complex for no reason. Thirdly, we will be looking at Clause 13 and the objectives in terms of whether we can get time lines for purposes of bringing into force the rest of the law that is required, and that the Minister promised will be coming along. Finally, we will be looking at Clause 25 on the funding of the Commission to see whether there are any mechanisms for making it a little more independent in terms of accessing funding. So, all in all, I support the Bill. I believe, it is a very good start. I believe there is a long way to go. We will be working, hopefully, together with the Minister for Justice,

National Cohesion and Constitutional Affairs to reach Canaan, hopefully, soon.

With those remarks, I beg to support.

The Assistant Minister for Medical Services (Mr. Mungatana): Mr. Temporary Deputy Speaker, Sir, I thank you for giving me the opportunity to also make my views known on this Bill. First, may I congratulate the Minister for Justice, National Cohesion and Justice Affairs for bringing this Bill to the House. It is a good job she has done. As I have always said, for every good job, there is always space to improve it. I also want to pay tribute to Mr. Abdikadir for his appropriate submissions that he has made, which will help us to understand further what we need to do to make this proposed law better.

Mr. Temporary Deputy Speaker, Sir, when dealing with the question of ethnic and race relations, there seem to be two approaches that have been adopted over the years. I will be arguing that the second approach is more efficacious than the first approach. The first approach is the one we are using here, where we are setting up an ethnic and race relations commission straightaway without legislation that creates sanctions for offences that are created under the race relations Act. The second model is where you create real offences, where someone who feels that he has been discriminated against on the basis of his ethnicity, or his race, is able to go to a competent tribunal, make representations and get proper compensation or an award, where necessary.

With regard to the first approach of setting up a commission, like we are doing today, this finds an example in the Republic of Guyana. In Guyana, just like Kenya, on 17th January, 1998, the Ethnic Relations Commission was formed. It was formed out of an agreement known as the Hardmanstone Accord, which was signed on 17th January, 1998 between Mrs. Janet Jagart of the People's Progressive Party, and Mr. Hew Desmond Hoit of the People's National Congress Party. This arose out of a problem that gripped the nation of Guyana, which had general and regional elections in 1997. In the December of that year, the country was plunged into chaos, after the elections. The two main political parties then decided, in order to solve the problem that was there, they needed to sign a peace accord.

Mr. Temporary Deputy Speaker, Sir, just to make people understand better, the Republic of Guyana is made up of Africans, ethnic Asian community and Europeans, who were the colonisers. When the European colonisers left, we then had the two major groups; namely, the Africans and the Asians. The question then was how to fill in the power vacuum. It had been a struggle. So, for them, as I was saying, the first method was not effective. They set up a commission, which was established through the president. First, there was a constitutional amendment and then the president assented to the commission on 11th August, 2000. That commission is almost word for word what is being sought under the National Ethnic and Race Relations Commission Bill.

The objectives that have been set out reflect very much the proposed Clause 13 of this Bill, where they talk of promotion of elimination of all forms of discrimination on the basis of ethnicity, promoting understanding, tolerance and acceptance of diversity, and all these beautiful ideals in the

Bill. I would want to invite this House, even as hon. Members will study it and make recommendations on it, to look at the experience of the Republic of Guyana. Was the commission really effective? Since the year 2000 - we are now talking about 2008 - that commission was, in fact, grounded in the Constitution of the Republic of Guyana. Was it effective? What were the results? Has it achieved the racial harmonisation objective for the people of the Republic of Guyana?

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

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

Mr. Temporary Deputy Speaker, Sir, do we need to have yet another commission that will take a lot of money from the Republic of Kenya? How efficacious will it be? How has it been in other republics where such commissions have been set up? I would invite the Minister to look at these questions and tell us whether this first way of going - the way it is proposed in this Bill - is, indeed, the way we should go. The second method, which, in my opinion, seems to have worked very well, is what Mr. Abdikadir had referred to, namely, the British Race Relations Act of 1976.

When the people of Britain decided to tackle the question of race relations and ethnic minorities in their country, they enacted an Act of Parliament known as the British Race Relations Act of 1976. This was the mark and the beginning of setting up a clear legal regime under which equal opportunity was created for all the minorities and the majorities who live the country of Britain. It provided clear foundations of law, where if you are discriminated against in employment, or in education opportunity, or in opportunity to get a good house, or opportunity to get nice training, or an opportunity to acquire government services, you had very clear ability to go to the law and claim your legal rights. In my opinion, and I argue here that, when the people who sat down and agreed that we need to have Clause 4 in the National Accord that was signed to bring peace into this country, what they really wanted was to target a situation where harmony among different races is created in this country. They wanted to target a situation where any person who tries to discriminate any individual in opportunities of employment, education, training, housing and other social amenities and services within the Republic of Kenya on the basis of ethnicity or race, would face sanctions. The people who practise that discrimination should be punished! That is what Kenyans wanted! That is what I understood the mood of the country to read.

Certainly, Mr. Temporary Deputy Speaker, Sir, from the complaints that Kenyans had at the time, what was required was a creation of a legal regime that would assure every *mwananchi* out there that, in the event that he is discriminated upon - his area is not given enough facilities - then he is able to go into the law and claim that he has been victimized.

Mr. Temporary Deputy Speaker, Sir, what we are saying in this National Ethnic and Race Relations Commission Act that we want to bring up is that it does not create any form of sanctions at all! Today, if we have this Act and one individual who is working in Industrial Area is denied the opportunity to have a promotion because he comes from a certain tribe; or he is paid differently because there is an Asian who was brought in from India and they are doing the same job, or he is given a lower salary because the company is owned by an Asian. If the company is owned by somebody from another African community and that man who is entitled to be the manager is denied that opportunity because he comes from a different community--- If an individual suffers that discrimination, the Act will not offer him any form of protection. That is my complaint. That is what I want this House to look at! When this Bill is referred to the Committee on Administration

of Justice and Legal Affairs in this House, I want them to look at what can be done to actually address the issue. The issue is: We have lacked a legal regime! Now, there is an attempt, which is very good, because the Minister of Justice, National Cohesion and Constitutional Affairs is trying to give us what we think we should have. But, has it really achieved what we want?

Mr. Temporary Deputy Speaker, Sir, that is why I am thinking that, it would have been better for us, as a country, to go the way of a second approach in dealing with ethnicity and race relation issues. I would invite the Committee on Administration of Justice and Legal Affairs to really look at the Race Relations Act of 1976 in Britain and see what we can import from it into our law so that, at the end of it all, we do not have just a Commission that is going to sit, hear complaints, go round the country and then come and report to the Minister for Justice, National Cohesion and Constitutional Affairs! Surely, we can spend our money in a better way!

Mr. Temporary Deputy Speaker, Sir, we are going to appoint, at least, eight commissioners. Each one of them is going to be paid not less than Kshs500,000 at the end of every month. Even at the minimum, without counting the Chief Executive Officer, we are going to spend Kshs4.5 million on salaries alone. We are not talking about the allowances and things like that! If you just take the headquarters, there are some people who are going to sit there and rent will be paid. We are going to spend about Kshs13 million in a month on that Commission, once we set it up. For what? For reporting to the Minister for Justice, National Cohesion and Constitutional Affairs? No sanctions will be applied? Just to file reports!

Mr. Temporary Deputy Speaker, Sir, I think we need to re-think this law. I understand absolutely the reasoning behind the creation of this Commission. That is because at the time, there was a lot of pressure. Something needed to be done and it needed to be done very quickly. Kenyans wanted a way forward. But, while I agree with all that reasoning, we need to re-look at it. Now, we are calm. Now, temperatures are down. We need to look at the legislation that we are passing. Can we give the Commission some more teeth? Can we make it stronger, so that the Kenyan population is protected?

Mr. Temporary Deputy Speaker, Sir, if you look at the British situation, I admire it because it has worked. They have created almost 98 tribunals under that law, which just deal with ethnic matters. Those are like specialized courts. Let us say, for example, we have a court down there in Garsen Constituency. If anyone feels that he is being subjected to any form of discrimination because of his ethnic community, religion or because of the minority communities that exist there, then he is free to quickly file a complaint before that tribunal, which has sanctions! For example, if they are applying to be considered for employment opportunities in the Constituencies Development Fund (CDF) office and - I am talking practically - because, maybe, the hon. Member comes from a different community, you will be dealing with a tribunal that will say: "That interview should be reviewed because these people qualify and it appears that they were left out just because they come from a different community". This is what Kenyans are crying for; some form of power! But if the only thing the Commission is going to do is to write a report, it is not enough. I suggest, very, very strongly, that we should re-look at this Bill and see what powers we can give to it.

Mr. Temporary Deputy Speaker, Sir, I have been having some discussion with my colleagues here. I think there is a very key provision that has been made under the proposed Clause 13(m), where it says:-

"They will monitor and review all legislation and all administrative Acts relating to or having implications for ethnic relations and equal opportunities and, from time to time, prepare and submit to the Government, proposals for the revision of such legislation and administrative Acts."

Probably, this is the most important Clause that this Commission needs to execute.

Mr. Temporary Deputy Speaker, Sir, while you were on this other side, you said that the review is like an engine, but there is no body! So, the body that is going to be created here would be the legislation that will create sanctions. I was thinking: Why should we start with a Commission?

Mr. Temporary Deputy Speaker, Sir, why should we start with a commission? Why do we not start with that legislation? I think the Departmental Committee on Justice and Legal affairs under which you also served could properly look at these issues and see what could be done. I believe that if this is done, then we would have achieved the reason for having this Bill in the first place. There are also issues that I needed to raise which are directly related to Bill that need to be looked at. The powers of this Commission under Clause 14 are so limited. They are just the normal things, for example, it is not to work under any direction from any authority and not to receive any grants. What can it do for the common *mwananchi* who is having a problem? Before the legislation is passed, I would like to remind the House that there are still some criminal provisions under the Criminal Procedure Code and the Criminal law in Kenya where if someone is suffering from any form of discrimination. These are very unknown criminal provisions of hate speech and things like. I propose they should have authority to hire an advocate for people who file complaints with this Commission. That way, they can pursue necessary prosecutions to secure the rights of any person who comes to them for assistance. So, they should be able to hire advocates at low cost to defend members of the public who complain to them that they have been discriminated against or denied opportunities.

Mr. Temporary Deputy Speaker, Sir, they should not only have powers to carry out formal investigations, but also to declare certain parastatals as being compliant with the code of conduct of ethnic and race relations within the country. We should set up beacons. What do I have in mind? They should be able to say: "We have investigated and seen that, for example, the Coast Development Authority or the Ewaso Nyiro Development Authority, has been subjected to the test of ethnic and race relations within this country and it has been found to be correct". That way, they will imbue State parastatals with the sense of mixing and matching all parastatals and Government bodies. We should have beacons that show that in this company there should be clear representation from all the regions and management positions should also be shared fairly. It will also show that the races and tribes of this country are represented and those of mixed heritages like some us should be represented.

The Commission should be able to enforce, at least, on the minimum, they should point out to Government bodies because this will be a Government body and enforce that kind of code. In addition to the powers that have been given under Clause 14, I propose that they should be given power to issue what I call non-discriminatory notices, which is to say, If someone comes and complains that: "This company only hires Wazungus or the presenters of this media House are only Indians and we have been discriminated". Then, this Commission must have powers to issue a non-discriminatory notice in which they will say: "Company X, your practice in this section or department is against the code of conduct of the National Ethnic and Race relations Commission. We think that in your department X, you should hire more people of diversity. If you fail to comply with this, we are going to impose sanctions on your company, for example, a fine of certain amounts of money". They do not need to be large amounts of monies. If the media is working with the Commission, they will be able to see that they do not want to be cited as a company that is practising discrimination within its ranks. I propose that it should take the lead in propagating ideals at the national level. It should be given powers to advertise and run public campaigns. These powers are not envisaged within this Bill.

Mr. Temporary Deputy Speaker, Sir, this Commission should be given powers, for example, to expose discriminatory practices, from salaries to allocation of resources. Members of

Parliament here have raised issues with the Budget. They have complained that certain areas are receiving preferential treatment in allocation of resources. For example, why should fishing be given so much? These ideals should be imbued even in Government functions. The Commission should be given powers to reprimand Government departments that are not working within the ambit of cordial ethnic and racial relations within this country. We have had a lot of complaints and it was open during the campaigns from the other side. They said that they wanted to remove certain officers from Government departments because they come from certain communities. We should not ignore that concern. They are raising legitimate issues. If this Commission is just going to report and does not have powers to correct some of those imbalances, then we will not have achieved much in terms of correcting the problems that brought this country almost to the brink of collapse. In order for us to do justice to the intentions of the Kenyan people, this Bill needs to be looked at afresh. I hope the Departmental Committee on Justice and Legal Affairs will have an opportunity to look at the issues I have raised very seriously.

Mr. Temporary Deputy Speaker, Sir, I am comfortable that you sit there. Obviously in your submission, you had done your work and I am impressed. I have confidence that when this matter goes down there, you will have to look into what happens.

Having said all this, I want to say that I am supporting this Bill on the basis that it is the beginning. Why do I say so? From Independence, we had the late President Jomo Kenyatta who led this country and we all know and the history of the country is there for us to see. During that period, key Ministries and departments were headed by people from one area.

Mr. Temporary Deputy Speaker, Sir, when the second President came into power, he tried to achieve a balance, but it was only at the political level. Even when you look at important Government bodies across the country, you will see that there was a trend towards doing injustice to certain communities. What needs to be said is that there has never been an open attempt to tackle this problem all over, so that we can see the problem for what it is. Stakeholders are called upon to deal with this matter. So, I argue that Parliament should support this as a first step, but it needs a lot of work to be done. It is my prayer that, that work will be done.

Mr. Baiya: Mr. Temporary Deputy Speaker, Sir, I rise to support the National Ethnic and Race Relations Commission Bill. The purpose of the Bill is to control ethnic relations in this country. This is the first attempt that this country is making to control, through legislation, the problem of ethnic relations. My submission is that this problem was introduced by the colonial Government through its method of administration when it captured the country and subjected it to colonialism. We know the Lord Lugard policy of divide and rule. This problem was particularly spread by the British colonialists in 1954, when the country was faced with the Mau Mau rebellion. The colonial Government undertook to contain the rebellion by Kenyans by dividing Kenyans along tribal lines, so that they stopped supporting those who had risen against the British, and were agitating for the country's Independence.

This policy became a political tool to the extent that in 1959, during the political agitation for Independence, the colonial settlers participated in the politics of dividing Kenyans into small communities and big communities. The unfortunate thing is that those colonial policies of dividing people along tribal lines, so that you can control them was unfortunately inherited after Independence. The Independence Government did not take action to reverse that colonial policy.

Mr. Temporary Deputy Speaker, Sir, we are in a situation where we just went through an election where politicians sought to divide the country, and to seek support along the same tribal basis. The result is that ordinary Kenyans rose up against one another and threatened to throw the whole country into chaos. It is interesting that when we listen to contributions to this Bill, there are certain hon. Members who do not want the State, or this Parliament, to attempt to control tribalism or ethnicity. That is because some of them are in the House because they fanned ethnic hatred and

animosity; they know that in the absence of that tool in future, they are not sure how they will be able to mobilise Kenyans. It is regrettable if we were to allow that situation to arise again.

The Grand Coalition Government has committed itself to issue-based politics in this country by the year 2030. The issue-based politics is actually the very antithesis of ethnicity. We would wish that candidates, be they Parliamentary or Presidential, seek to woo the support of Kenyans on the basis of policy and issues rather than on parochial issues or tribalism. We have seen that this can actually work, because we have the case of our neighbours, Tanzania, where everybody acknowledges that the politics of tribalism and ethnic stereotyping of other communities has not been practised. They are able to conduct their politics without diving the population along the tribal lines.

Mr. Temporary Deputy Speaker, Sir, looking at what the country went through in December, we have been reminded again and again, particularly by the events that occurred in Rwanda in 1994, that they can occur again anywhere and not only in Rwanda or Zimbabwe. Therefore, there is a strong argument that Parliament should take action to ensure that this country does not get into a worse situation than the one we were in, in December last year.

The considerations that have been proffered as a basis for the rejection of this Bill are that there has been inequality, marginalisation and also the issue of distribution of resources in this country. These are pertinent issues of justice, but to use them as a basis for withholding legislation to control activities that can be undertaken to hurt tribal relations will be a recipe for chaos in this country. At least it behooves everyone of us to seek to safeguard our peace, stability, tranquillity and the right of ordinary Kenyans to live together as brothers and sisters. I believe that, that is what the Bill is seeking to achieve.

I appreciate that the Bill is not exhaustive. It can be improved upon. The approach proposed, that of establishing a commission, is in itself good. It is an initial step; among the functions of that commission will be conducting research, reviewing the law and recommending measures to be undertaken. In terms of enforcement, it will have the capacity to reach this House and address itself to the Government in terms of giving advice and opinion on policy. My submission is that it is a strong starting point that will enable the country view itself as a State, regulating ethnic and racial relations through the commission's reports and other work.

I also note that the process by which the Commissioners will be appointed will give this country an opportunity, through Parliament, to ensure that the people appointed to do the work in this Commission will inspire confidence in the entire Republic. We want to see their work and output inspiring confidence between Kenyans of different backgrounds. It will also drive the healing process of ethnic and race relations.

Mr. Temporary Deputy Speaker, Sir, I also want to note that even when the NEPAD Peer Mechanism System came to review the Kenyan performance, it is on record, that it was pointed out that the Kenyan state of ethnic and racial relationship was an issue of grave concern. It is actually true that, that almost amounted to a prediction of what would ultimately come to happen in December. So, at least, if others can also see, it actually means that it will be very irresponsible for ourselves, we, as a country, if we ignored the problem which others have seen and told us to address.

When we come to think about the main victims of the bad ethnic relations in this country, the people who have been affected were the ordinary peaceful Kenyans whose only offence was that they had settled where they had settled. They had settled there as farmers or workers earning their decent living. They had nothing to do with what brought about the deteriorated racial relations. So, while members of the political class who incited this ethnic hatred among our people were rewarded with positions in Parliament and in Government, the ordinary Kenyans suffered deaths, destruction of property, loss of jobs and even loss of means of their own livelihoods. So,

this is, therefore, a very important piece of legislation which forms the basis on which the country will address the issue of ethnic and race relations. We should make the first effort through this Bill and then we can be looking at supplementary measures subsequent to this Bill.

I beg to support the Bill.

Mrs. Odhiambo-Mabona: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity. I want to speak on the spirit and body of the Bill.

Speaking on the spirit of the Bill, I want to join the views of the hon. Members that have spoken before; that this country has actually gone through a period of crisis. The violence that we saw took on ethnic dimensions. We saw neighbour rising against neighbour, friends rising against friends and also people who fellowship together in the same church rising against one another. Therefore, in terms of the spirit of this Bill, it is positive. It acknowledges tribalism as a negative factor in this country. It seeks to promote positive ethnic and racial relations.

Many countries are replete with histories of racial discrimination that has almost brought down countries. We have the case of Apartheid in South Africa that almost brought the country on its knees. Many developed countries have also grappled with the issue of discrimination, especially racial discrimination. We have seen in countries within Africa such as Rwanda, the massacre that happened, especially when people disagree along ethnic lines. I wish to say that the spirit of this Bill is very positive. This Bill is timely. It is what we need in this country now and not tomorrow or in future.

However, my concern is this: Does the body of this bill address itself to the spirit that I am talking about? My concern is that the body does not in any way relate to the concerns that even the Members that are talking in support of this Bill are saying. I have heard people very elaborately giving their views on ethnic issues. The two hon. Members that have spoken before me have been extremely elaborate. Almost every Member who has spoken without exception, is actually saying the same thing. Why are we saying the same thing and some are coming to ultimately say that they are either supporting or not? Whereas we are saying one thing or the other, there are those of us who feel that what we are saying is actually not contained in the Bill.

I would want to encourage the hon. Minister because we have actually consulted with her and she has actually explained to me that this is a first step. I do understand that it is a first step. But I would want to encourage her that it should be a first substantive step. I know that a lot of work has gone into this. As I said, I can see that the spirit is good. But there is a lot of substantive work that needs to be done in relation to this Bill in order for it to meet the expectations of the Members who have been speaking here.

Mr. Temporary Deputy Speaker, Sir, this Bill is basically about setting up a Commission. Therefore, the bulk of it has to do with very procedural issues which are standard in every other Bill that sets up a Commission. So, the substantive section for me is Clause 13 that talks of the objectives of the Bill. It says:

"The objects and purpose for which the Commission is established is to facilitate and promote equality of opportunity, good relations, harmony and peaceful co-existence between persons of the different ethnic communities of Kenya and to advise the Government on all aspects thereof."

Mr. Temporary Deputy Speaker, Sir, even though this Bill states that very clearly, there is nothing else in this Bill, in my view, that actually gives credence to the aspects of facilitating. If you look at it, especially, sub-clause 2, you will see words such as "promote", "discourage" and "lobby". If I go on and on, this is really wording that would be very appropriate for, especially civil society organizations that would be coming to lobby a body that is already in existence to include certain things. It would be a very good wording for, especially for religious organizations. That is why, for instance, one Member was suggesting that this work would be done very adequately by

the Anglican community and other religious bodies. I would not want to go that far. I know that even a Commission can do that. However, the question is: Must a Commission do this? Should a Commission do this? Do we need a Commission to do this? The answer is no. We do not need a Commission to do this. The reason we do not need a Commission to do this is that if you actually look at the mandate that we are giving this Commission, in essence, it is work that should be specific, measurable, achievable, realistic and time-bound, that is, SMART. That, by the very nature of it, should be the work of a task force that has very specific time lines. I would, therefore, suggest to the Minister that we set up a task force with a time line to do what we are actually asking this Commission to do. If we specifically look at a clause that was read by an hon. Member, that is, Clause (m), it reads as follows:-

"monitor and review all legislation and all administrative acts relating to or having implications for ethnic relations and equal opportunities and from time to time prepare and submit to the Government proposals for revision of such legislation and administrative acts".

For me, that is a mandate that is very appropriate for a task force of the Law Reform Commission. They should review the laws and all policies and thereafter tell us that this is the piece of legislation we need. We already know and, people have already spoken to us about issues of concern, we do not even need to do--- This is not work that should take more than six months.

Mr. Temporary Deputy Speaker, Sir, with regard to the issue of the Commission itself, even as constituted within the Bill, it is actually toothless. It has powers over procedural issues, but not over substantive ones. Why does it have no powers over substantive issues? Because the Bill has no substantive issues. Therefore, my suggestion to the Minister is that we need to relook at the Bill very critically. I support the spirit of the Bill, but we need to relook at it and give it some flesh.

Mr. Deputy Speaker, Sir, my other concern about this Commission is that it duplicates the work of the Kenya National Commission on Human Rights (KNCHR). If you look at the mandate of the KNCHR, it can very adequately deal with the work that this Commission will do. If it is bogged down with a lot of work, we can actually strengthen it and give it powers to deal with what we are giving this Commission to do.

If you look at the Truth, Justice and Reconciliation Commission Bill, you will realise that this Commission is going to duplicate the work of the Commission that is proposed there. I would like to refer to Clause 5(j) of the Truth, Justice and Reconciliation Commission Bill. It provides that one of the objects of the Commission will be inquiring into the causes of ethnic tension and making recommendations on promotion of healing, reconciliation and co-existence among the ethnic communities. There is no reason why we should set up a Commission to look into ethnic issues and yet the Truth, Justice and Reconciliation Commission will do exactly the same thing. The KNCHR will be doing the same thing. Over and above that, our religious institutions are also doing the same thing.

Mr. Deputy Speaker, Sir, if you look at the objects of this Commission, you will realise that it is going to do a lot of work that is very much analysis orientated. Like many commissions that have been set up in this country, we are going to get paralysed by analysis. In this country, we like analyzing. We set up commissions to analyze why I am short and why another person is tall. We set up commissions to understand all manner of strange and unimportant things. As much as it may be necessary, it is not important to set up a commission for every single thing. It is important for us to deal with issues of ethnic relations in this country. Is the Commission an answer? I do not think so.

If you actually look at the Kriegler Commission that is going on, we have been actually looking at the way people have been reacting and the theatrics that have been going on there. My fear is that if we are not careful, this Commission is going to replicate exactly what we are seeing

in the Kriegler Commission where every community is competing to outdo each other by saying which one is smarter than the other or who is better than the other.

The other reason I am not very persuaded about the setting up of this Commission is that, as a country, we are now trying to tighten our economic belts and yet this Commission, as an hon. Member has indicated, will be dealing with a budget of, at least, in terms of salaries, not less than Kshs4 million. It is important for us to create jobs. Is this the best way to create jobs? No, it is not. In any event the jobs we are seeking to create are those ones amongst the poorer cadres. The lower cadres are the ones that seek jobs and they are not likely to sit in this Commission.

Mr. Temporary Deputy Speaker, Sir, I want to go back to the issue of substance. What we need is a substantive law that deals with issues that divide us as a nation. When hon. Mungatana was speaking, he referred to the Race Relations Act of the UK. I also want us to look at the Equality Act of the same country. That is the line along which we should be looking. If you look at that Act, it has sections--- I know that currently under the Constitution of Kenya, especially under Section 82, we actually outlaw discrimination on different grounds. If you look at the Equality Act of the UK, it gives you very clear standards, for example, under what circumstances do you consider that a person has been discriminatory. That is what we are actually looking at in a substantive law. We want a law that is going to tell us that if you behave in this and that manner, then it is considered discriminatory. We do not want a law that is merely setting up a Commission without giving us flesh.

What I would want us to look at is not just the laws, but also policies that divide us as a country. Many speakers before me have alluded to the issue of the quota system. When I went to school, the quota system did not apply. Therefore, we all had opportunity to go to any school in any part of this country. I have actually been learning within the last one year or so, what tribes or ethnic communities some of my friends come from. I did not know that before. However, my younger siblings know exactly where everybody else comes from because we have actually divided this country into ethnic cocoons. If you were born in Rusinga Island, you go to school in Rusinga Island and we will soon be asking for a university in Rusinga Island and you well dwell there. For you as a person who comes from Rusinga Island, you will probably think that the Kikuyus are persons from Mars. If you meet them, you will probably think that they are unidentified flying objects. We need to deal with this quota system.

Still under our education system, there is the issue of the medium of instruction. You will realise that in rural areas, from Class One to Class Three, the medium of instruction is mother tongue. Those kids speak to their parents in mother tongue. When they go to school, the medium of instruction is still mother tongue yet in schools in town, kids speak in English and Kiswahili. Not only is this discriminatory, but it furthers the ethnic divide that is a problem in this country. We must deal with this problem now and not tomorrow.

Finally, I would like to speak about the title of this Bill. We need to rethink the title of this Bill. When we have it as the National Ethnic and Race Relations Commission Bill, because of the most immediate past we have gone through, this title sort of has a negative connotation. So, we would like to use more positive words like the ones used in the Ministry of Justice, National Cohesion and Constitutional Affairs. Perhaps, we could use positive words like cohesion instead of talking about ethnicity.

Mr. Temporary Deputy Speaker, Sir, very finally, I would like to speak on certain sections of the Bill, very specific sections that I will propose for amendment. If you look at the establishment, powers and functions of the Commission, in essence the power will still lie with the President in terms of appointment and dismissals. I think this should reside totally with Parliament. I also have a problem with Clause 6(2)(c), where we are talking of a person who shall not be qualified to be appointed as a commissioner if the person is actively involved in the affairs of a

political party. If we want to exclude such persons, we have to define what "actively involved" means. I might have been heard in the streets saying that I support PNU. Does that mean that I am actively involved in a party?

I want to say, again, especially in terms of the tenure of the commissioner, that if you look at this Bill carefully, it is much easier to remove the Commission's Chair than to remove other members. So I would like us to be looking at that when we are looking at this proposed law.

Since I sit in the Departmental Committee on Administration of Justice and Legal Affairs, I will be putting my recommendations to that Committee. However, my concern is that the suggestions, or recommendations, we have are substantive and may actually require that we withdraw the Bill and re-draft it, not that it is poorly crafted, but it actually leaves out very substantive issues of concern.

With those few remarks, I beg to support.

The Assistant Minister for Information and Communications (Maj. Godhana): Mr. Temporary Deputy Speaker, Sir, I wish to support the Bill but with a lot of amendments. Before we think about bringing up this Bill, we must realise, first of all, the genesis of the problem of ethnicity. I want to concur with the hon. Member who said that the beginning of the whole of this problem is way back at the time of colonisation. The system of administration that fitted the colonialists and enabled them to control issues and resources in this country was the divide-and-rule policy. Through this, they managed to penetrate between communities, and were able to achieve whatever they wanted to achieve.

However, after they left, succeeding Governments adopted the same system. The system encouraged an old practice of conquests and expansionism. It allowed and encouraged communities to scramble for resources. So, it depended on who was smarter than the other. The situation brought us to a situation similar to that in *Animal Farm*, where the fittest would survive and the weakest would eventually die.

The struggle today is from the bottom, the smallest unit. It is from the family to the tribe; it is no wonder that the Bill is about ethnic and race relations. It is because as much as we are looking at ethnic and the race, we still have problems down at the family. Families are still struggling for survival. What we went through early this year was a build-up of events that were carried over and allowed to accumulate. That is why we saw what happened. People were scrambling to get to power, because they knew that being in power, you could use the same system to advance your interests. That is why today the competition for the political posts of Members of Parliament and councillors is very high. No wonder in the last elections, we had up to, in some areas, 40 people vying for the post of MP. Those who proposed this Bill realised that we required to emerge sharper and brighter than we used to be. It is the right time that something like this has come up in this Parliament.

Mr. Temporary Deputy Speaker, Sir, we need to realise that if it has come, then it is by adopting the best way of doing it that we may be able to overcome. It will not be by just bringing a Bill; the best way of handling the problem that we have always been carrying over will determine how we can come out of this.

I do not want to explain the effects of ethnicity. Hon. Members here agree with me that politically the deployment of civil servants in some areas was meant to advance ethnic interests. That encouraged corruption! That is the key thing that brought about corruption in some areas, and, to some extent encouraged under-development. Those areas that were properly represented in power had a chance of reaping from others to enrich themselves. Socially, it has threatened the family bond. We know that the family is a heavenly concept to advance the concept of God. However, today we have become so ungodly because of ethnic group. Today, a man and a wife in the same house cannot agree on some issues, because one is from a different ethnic group. I

happened to serve in my previous profession and I went to some peace-keeping missions. It reached a point where it was adopted as a Government policy, that if you are a husband and you have married from elsewhere, and you live with your wife at your home, then you kill her. If it was the reverse, then the wife killed the husband. It was a policy by some small administrative governments and that was happening.

Mr. Temporary Deputy Speaker, Sir, today people fear to marry from certain communities. They feel that members of those communities will eventually turn against them. One feels that things will not go right. We have so many ladies and gentlemen in this country who really want to get married from different communities, but they are worried about what will happen in future. To some extent, children have been neglected because of divorces and other factors. Others have been thrown into the streets. Some pregnancies have been aborted or terminated because of ethnicity. So, ethnicity has encouraged bad morals to an extent that, today, for members of different communities killing one another, or destroying other people's property, is not a problem!

When it comes to economic development, even in our own Budget, we seem to give more funding to some regions than others. As I was looking at this Bill, I was reminded by a certain university student that even the education sector has been affected. Even in universities, students from certain communities are admitted to faculties which do not offer employment opportunities. I was shocked. Upon completion of studies, such graduands are meant to stay jobless, waiting for openings. In the process, they get old without getting any formal employment.

Mr. Temporary Deputy Speaker, Sir, I looked at the mandate given to the proposed commission and found that there is a lot of duplication. We have institutions within the Government, which can actually do the job of this commission. Those institutions were established to perform the job of this commission. For instance, the Ministry of State for Internal Security is established to handle issues of insecurity within the borders of this nation. The skirmishes that we have been seeing among communities, honestly, are unwarranted. They should not, in the first place, have been allowed to happen.

When things were boiling, the Ministry of Provincial Administration and Internal Security with all the police and other security forces, were watching. Why do we wait until things happen for us to act? It means we are not proactive. We wait for things to happen and then we run to go and consult people. The whole country was affected. In Central Province, there were skirmishes. They do not happen once. They have always been happening. They were happening even before we gained Independence. There are always skirmishes over resources in the Central Province, the Rift Valley, the Coast Province and the North Eastern Province.

Mr. Temporary Deputy Speaker, Sir, I happen to come from a community which has never experienced peace, I believe, from the time of creation to date. We move from one clash to another. If you look at the reasons, they are so petty. They are matters which can easily be handled, but they are left until situations get out of hand. We have lost a lot of lives. When I looked at this Bill, I realised that the job of the commission being created is basically to carry out investigation. Clause 13(m) and (n) say that they should initiate, lobby for and advocate for policy, legal or administrative reforms. We want to research for us to be able to review or come up with legislations which can encourage ethnic and racial harmony?

Clause 13(m) says:-

"To monitor and review all legislations and all administrative Acts."

Mr. Temporary Deputy Speaker, Sir, I did not want to go into examining the whole of this Bill, but my argument is that the title is basically talking about establishing a commission which will be able to address the issues of ethnic and race disharmony, and thus promoting good relations between races and ethnic groups. In my view, we do not require a commission. I wish to propose that the work "Commission" in the title be removed, so that the title can read "The National, Ethnic

and Race Relations Bill", because the proposed commission will just act like the rest of the commissions we have seen in this country. It will just be doing some research and taking their reports to some places to gather dust.

However, if we make this Bill an Act of Parliament, with amendments to give it the teeth to bite, so that it can address issues before they get out of hand, then we will have given this Bill more value. Thereafter, we can review the policies within the Ministry of Provincial Administration and Internal Security to be able to enforce the law. That is my thinking. If not that, the best alternative would be to come up with a Ministry which will be in charge of communities. Again, when I was looking at this Bill, I asked myself one question: What will be the duties of the Ministry of Provincial Administration and Internal Security?

Mr. Temporary Deputy Speaker, Sir, that means we need to create a department either within the Provincial Administration, or within the Ministry of State for Internal Security, to be able to enforce this Act. I would not mind us coming up with a task force. If we really want these issues to come out clearly, we need a task force to go round and get views from the people of this country, to be able to add value to this Bill. From that point, we can then come up with whatever document we would wish to come up with. For me, I would like to propose that the title of the Bill be amended to read "The National Ethnic and Race Relations Bill."

With those few remarks, I beg to support.

The Assistant Minister for Education (Prof. Olweny): Thank you, Mr. Temporary Deputy Speaker, Sir. I want to make a few comments in support of the Bill. In the first paragraph of the Memorandum of Objects and Reasons of this Bill, the last two sentences read:-

"The Bill is borne of the realization that lasting peace and co-existence cannot prevail in Kenya unless the various Kenyan communities cultivate goodwill among each other and have equal access to various opportunities that may arise without discrimination grounded on ethnicity. It recognizes the need to deal effectively with the negative aspects of tribalism and ethnicity which has pervaded various levels of the Kenyan society".

That is discrimination. That is what this Bill is all about. That is what has failed us in this country over the years and decades through history. If we have to go back into history and look at the way discrimination in this country started, it takes us back to the colonial days. I think that is where it all started. Various communities were living in this country before the colonialists came. We also had our small discrimination here and there within communities and among communities. But the bad one came with the colonialists. That is when a government of the British was established in this country. Then, the other Governments after Independence followed suit. That is the Government of Jomo Kenyatta, Moi and even the one that is there today! You have seen what it led us into. I do not think what we had in this country was the first time we had a crisis! There has been fighting among Kenyans that is ethnic-based. If you go back to the early 1960s, just before we got our Independence, this country had a similar experience. If you read the history books of this country relating to leadership and politics, you will find it in those books. Sometimes, during Jomo Kenyatta's time, we had those problems. Worse ones were yet to be experienced during the Moi regime and, of course, the worst came early this year. That is because of one tribe discriminating against the others. I think we learnt that from the British because when they were ruling this country---

Mr. Baiya: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. Member to say that one tribe can discriminate against another? Is it a tribe or some leaders? I want that clarification. There is no way a tribe can be able to---

The Temporary Deputy Speaker (Mr. Imanyara): What is your point of order? If you have a point of order, just raise it!

Mr. Baiya: Yes, Mr. Temporary Deputy Speaker, Sir! I am just trying to clarify my point of order. My understanding of how a tribe could conspire to discriminate another tribe is, perhaps, that whole tribe meeting somewhere and resolving to oppress or discriminate another tribe. It is only individuals who can do that!

The Temporary Deputy Speaker (Mr. Imanyara): Order! Order!

The Assistant Minister for Education (Prof. Olweny): Mr. Temporary Deputy Speaker, Sir, those are semantics! Let us face the reality of what is happening in this country. That is what we are here for. That is what this Bill is all about! Let us read the history books of this country. What did the Tanzanian leaders do in their country that we did not do? Where did we fail? Tanzanians also had colonial rulers. The same British Government that was in Tanzania was in this country. Where did we fail as a country that we have discrimination taking root in this country? Any way, discrimination seems to be human. Let us go to the western countries. I think Germany had the worst discrimination during the last century; during the First and Second World Wars. They were terrible! But they got over it. They have recovered from that. What did they do that countries like Kenya have failed to do?

Mr. Temporary Deputy Speaker, Sir, a few minutes ago, hon. Mungatana dwelled on the example of Britain, which also had its fair share of discrimination amongst the various communities living there. Maybe, they still have a small aspect of it here and there; one or two people here or there discriminating against others. But the worst one is gone! In the United States of America (USA), where the Afro-Americans and Red Indians were really trampled on throughout the years, what did they do to sort out their problems? You know, I was in the USA in the early 1980s. There were certain positions of responsibility which women could not hold. But they have overcome that discrimination. There was a gentleman in the USA who was vying for the presidency and had a woman as a running mate. The women, themselves, came out and said: "The time has not yet come for USA to be ruled by a woman". That was discrimination against a woman! That is gender-based discrimination. Around that time is when Rev. Jesse Jackson also tried his luck. He could not move an inch just because of discrimination. But it seems that, over time, a bit has changed.

Mr. Temporary Deputy Speaker, Sir, we have come up with this Bill. I have heard a few of us criticizing it and some of us supporting it. I support it because there must be a starting point! Let this be our starting point. We can panel-beat it and, with time, we can improve it. After all, how many of our Acts have been amended? We can pass it today and, the following day, it is amended. Let this be our starting point so that we can control the extent to which we discriminate against one another. One community discriminating against another one or an individual discriminating against another one.

In this country, there are certain communities which consider themselves "super communities". Within a tribe, you may find a small clan there and another one there, and one of them considers itself a "super clan". That is still discrimination among clans. It is still ethnicity!

Mr. Temporary Deputy Speaker, Sir, certain tribes consider themselves to be super tribes of this country. I am one of those who are not circumcised. Someone thinks that if he is circumcised, then he has got some better blood, super blood flowing in his veins. After all, you are disadvantaged because you have removed a piece of your skin!

(Laughter)

Actually you have removed your skin, what makes you superior? Is it just because a small piece of your skin has been chopped off? Someone thinks that you are inferior because you did not remove your six teeth. If anything, you have disadvantaged yourself because what someone with all his or

her teeth can do with those teeth, you who is missing six teeth cannot do. You discriminate based on the removal of teeth. You discriminate on the basis of making a huge hole on your ears, then you think you are superior by just removing a piece of your body. You cannot force someone to adopt your culture just because you think your culture is better than hers or his. It is wrong!

Mr. Temporary Deputy Speaker, Sir, based on discrimination, many citizens of this country have been denied employment opportunities. They have been denied promotion opportunities. They have been denied opportunities to do business in certain parts of this country. While members of your country can do business within some communities, if others come to your region, they cannot do the same. They will be robbed and all kinds of things will be done to them. This is very unfortunate. It is also unfortunate to consider that a certain group of people do not have the capability to do certain things. Those are some of the things that have really pushed some people to the wall, and then they respond negatively. The Government itself in the allocation of resources, you find that certain parts of the country have got so little. Some other parts of the country, because their people are well placed in positions within the Government, they got nearly everything. Others are disadvantaged. A time has come when Kenya must change. A time has come when Kenyans must consider every other Kenyan a Kenyan. Even in Non-Governmental Organisations (NGOs), you will find that some regions which have problems which need to be addressed are left out. They shun those regions simply because of discrimination. They do not belong to the right groups. They do not belong to the right community so they are shunned. When this Bill is passed, we should move a few steps forward. Of course, the Bill still lies with Minister for Justice, National Cohesion and Constitutional Affairs. Let us come up with a code of ethics. If any organisation employs or does any activity, then it must be a signatory to that code of ethics. There must be rules controlling organisations, Ministries and Departments or NGOs. We must tell this country that in this organisation, there will be no discrimination based on gender, colour, tribe or whatever. If you are registering a company or an NGO, you must sign that code of ethics. I think if we do that, some of these things that relate to discrimination will reduce substantially. We must come up with those rules and they must be part of the law.

Mr. Temporary Deputy Speaker, Sir, the media is one sector which has promoted discrimination in this country way back in the colonial days, be they, vernacular, be they Swahili, be they English. We may blame some of them today. But I remember some of the print media in the late 1960s, every now and then the headline would reflect on tribal discrimination. Even the radio was the same. The media must also be brought under control in this regard. I heard the other day one of them had a problem with the Media Council of Kenya. It was accused of promoting hatred. I do not know what it said, but it was a vernacular station. We must put them under control. It was the media that brought Rwanda down. The same thing happened in Germany. If you read history books or watch some of those movies, you will know what happened in Germany during World Wars I and II. The media played a very big role in tearing those countries apart. So, our media must also be told to behave. They have their freedom, but let them help us to keep this country intact. We all need it and they also need it. If the country is in pieces, I do not think they will have a place from where they will write those newspapers, or a place where they will station their equipment for broadcasting.

There is also discrimination based on names. This are very simple things. Why can we not just share names? I have some people in my province who have names borrowed from Eastern and Coast provinces. In Nyanza Province, we have different tribes and across Western Province we have a different tribe from my tribe. But we actually exchange names. Their is an Odhiambo and Omollo in Western Province. But sometimes back people thought that the late Dr. Onyonka was a Luo. So, we have discrimination based on just names. There are Japanese with names that start with "O".

I support this Bill and say that let this be the starting point.

Mr. C. Onyancha: Mr. Temporary Deputy Speaker, Sir, I wish to support this Bill. It is time that we had a commission like this. It is more urgent now than ever before, because of what we experienced recently. I have a few general comments to make on the Bill.

Generally speaking, tribal clashes and the violence that we had was as a result of misunderstandings between communities, disparities in incomes and general failure by religion to promote harmony between communities. This is an issue which is of utmost importance and which we must face head on. Since Kenya belongs to all of us, whatever resources are available within the country should also belong to all citizens of the country, and should be shared out equitably, fairly and in a manner that reflects some of the aspects of this Bill such as gender and regional balance. Their distribution should address wrongs which have already been committed. In some aspects the Bill falls short of addressing those issues in a corrective manner; it should introduce some affirmative action to correct past wrongs and also existing imbalances.

Mr. Temporary Deputy Speaker, Sir, language is one of the tools that could have been included in the Bill to promote racial harmony. It can be a mandatory measure in certain instances like in schools, public transport and any other area where it is known that various communities interact, so that we can get to a point that the Tanzanians got to a long while back.

Let me now go to the specifics of the Bill, I wish to bring out one or two issues. First is with regard to Clause 28(1) concerning investment of the funds that may belong to the proposed commission. We are talking about public funds, because this commission will be a public body, and I would have been more comfortable if investing in securities was stated more definitively to actually refer to Government securities. This is in view of the fact that many private institutions have gone under with public money in the past. Also the business of this commission will not be investment. For holding savings, I believe that Government securities are more secure within any country.

With regard to deposits in financial institutions or banks, I would have been more comfortable if it was specified that banks meant Kenyan banks. The way it is now gives some leeway for banks outside the country to benefit. Indeed, it could have specified that only local banks will be used; it should be the Government's intention that we promote our local institutions, which are owned by us Kenyans.

Mr. Temporary Deputy Speaker, Sir, I note that in the First Schedule, Paragraph 5, where the National Assembly shall nominate 15 persons, from whom the President will pick eight. I agree with the previous contributors that this should be a function of Parliament. But be that as it may, eight commissioners appointed by the President should reflect gender, equity and regional balance as specified in Paragraph 7. I would have wished that these plus the three, who will be automatic appointees from the other relevant institutions, should be considered together to determine gender and equity. We should be specific and say that at least a half of them will be women. Unfortunately a half of 11 is five and a half. So, the number may not be perfect, but should be within acceptable reasoning.

I also want to comment on the issue of promoting various issues, so as to make this commission effective. I hope that it will include revision of syllabi of all institutions at all levels to reflect the reality of introducing harmony and equity in our society as a whole. I am further interested in the Third Schedule about meetings. I am concerned about Section 3, which talks about the quorum. A quorum of seven members out of 11 may be rather big. I would have been more comfortable if it was five. Lastly, quarterly meetings by the commission should be able to consider quarterly reports by the commission itself, and the quarterly reports should be brought to this House, so that we can periodically know the performance, the actions and the activities of the commission, rather than wait for the whole year to get a report.

In conclusion, I would like to congratulate the Minister for Justice, National Cohesion and

Constitutional Affairs for this Bill, and wish to support it fully.

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Imanyara): Hon. Members, that will mark the conclusion of our business today. The House is, therefore, adjourned until Tuesday, 8th July, 2008 at 2.30 p.m.

The House rose at 6.30 p.m.