

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

**Tuesday, 1st July, 2008**

The House met at 2.30 p.m.

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

### PRAYERS

### PAPERS LAID

The following Papers were laid on the Table:-

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

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

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

*(By the Assistant Minister, Office of the  
Deputy Prime Minister and Ministry of  
Trade (Mr. Omingo) on behalf  
of the Minister for Transport)*

Annual Report and Accounts of the Gilgil Telecoms Industries Limited for the year ended 30th June, 2007, and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister, Office of the  
Deputy Prime Minister and Ministry of  
Trade (Mr. Omingo) on behalf of the  
Minister for Information  
and Communications)*

Annual Report and Accounts of the Kenya Re-Insurance Corporation Limited for the year ended 31st December, 2007, and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister, Office of the  
Deputy Prime Minister and Ministry  
of Trade (Mr. Omingo) on behalf  
of the Minister for Finance)*

Annual Report and Accounts of the Industrial Training Levy Fund for the year ended 30th June, 2007, and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister, Office of the Deputy Prime Minister and Ministry of Trade (Mr. Omingo) on behalf of the Minister for Tourism)*

Annual Report and Accounts of the Tea Research Foundation of Kenya for the year ended 30th June, 2006, and the certificate thereon by the Controller and Auditor-General.

Annual Report and Accounts of the Nzoia Sugar Company Limited for the year ended 30th June, 2007, and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister, Office of the Deputy Prime Minister and Ministry of Trade (Mr. Omingo) on behalf of the Minister for Agriculture)*

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

*(By the Assistant Minister, Office of the Deputy Prime Minister and Ministry of Trade (Mr. Omingo) on behalf of the Deputy Prime Minister and Minister for Local Government)*

## **QUESTIONS BY PRIVATE NOTICE**

### **ALTERATION OF BANK SIGNATORIES OF LODWAR MUNICIPAL COUNCIL**

**Mr. Ethuro:** Mr. Temporary Deputy Speaker, Sir, I beg to ask the Deputy Prime Minister and Minister for Local Government the following Question by Private Notice.

(a) Is the Deputy Prime Minister aware that the Clerk to Lodwar Municipal Council forged Minutes purporting that a meeting of the Council on 27th May, 2008, authorized the alteration of bank signatories?

(b) Could he table the minutes of 27th May, 2008, as well as other relevant Council Minutes and show the withdrawals made from the three Council accounts in the month of May, 2008?

(c) What action is the Deputy Prime Minister taking against the Clerk to the Council?

**The Assistant Minister, Office of Deputy Prime Minister and Ministry of Local Government** (Mr. Githae): Mr. Temporary Deputy Speaker, Sir, I beg to reply.

(a) I am not aware that the Clerk to the Municipal Council of Lodwar forged minutes purporting that a meeting of the council held on 27th May, 2008, authorized the alteration of bank signatories.

However, the council held a meeting on 26th May, 2008, and resolved to remove the name and signature of Mr. Festus Lothoi from the council's bank account since he was not the council's permanent employee.

(b) I hereby table minutes of the special full council meeting held on 26th May, 2008; minutes of the special full council meeting of 5th June, 2008 and statements for the following three bank accounts on the month of May, 2008, namely, the Kenya Commercial Bank - GRF Account, Kenya Commercial Bank Local Authority Transfer Fund (LATF) and another Kenya Commercial Bank - RMF Account.

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

(c) I have directed the Local Government Officer, Rift Valley Province, to carry out an urgent audit inspection of the general administration and financial management in the council and to forward his recommendations to me for necessary action.

In the meantime, the Town Clerk has been directed to proceed on leave in order to facilitate a full audit and investigations. I have also deployed a qualified officer to take up the duties of the Municipal Treasurer.

**Mr. Ethuro:** Mr. Temporary Deputy Speaker, Sir, while appreciating the answer by the Assistant Minister, I wish to state that he did not furnish me with a copy of the written answer in order to interrogate it. Part (b) of the Question was asking the Assistant Minister to table some documents. I wish to seek your direction as to how I should proceed.

Nevertheless, I think the action that he has finally taken, by sending the Town Clerk on leave is in order. This contradicts his answer to part (a). Having done that, when will the Town Clerk proceed on leave? Part of the problem in the council is from the provincial local Government headquarters. When will the Assistant Minister send inspectors from the Ministry's headquarters to look into the affairs of the council?

**Mr. Githae:** Mr. Temporary Deputy Speaker, Sir, the letter sending the Town Clerk on leave has already been issued. It should be with him within the next two days. So, immediately he receives it, he will proceed on leave, but I can even do better. Once I go back to the office, I can actually inform the Town Clerk to proceed on leave while awaiting the letter, if that will expedite the issue.

I appreciate what my friend, hon. Ethuro, is saying but it is not possible for the Ministry's officials to audit and inspect all the 175 local authorities in the country. We normally use inspectors from the provincial headquarters. Unless there are reasons why the Provincial Local Government officers cannot do the investigations, we normally use the provincial heads.

**Mr. Ethuro:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I did not ask the Assistant Minister to order the Provincial Local Government Officer to audit all the 175 councils. I asked him to send officers to audit this particular council that seems to have problems. I know the problems that are there and the Provincial Local Government Officer is implicated.

**The Temporary Deputy Speaker** (Mr. Imanyara): What is your point of order?

**Mr. Ethuro:** Mr. Temporary Deputy Speaker, Sir, is the Assistant Minister in order to mislead the House that I am asking him to send officers to inspect all the 175 councils? I am asking

him to send inspectors to the Municipal Council of Lodwar only.

**Mr. Githae:** Mr. Temporary Deputy Speaker, Sir, as a Ministry, we have made a decision that we will, as much as possible, co-operate with the Members of Parliament. If it is the wish of my humble friend, then we will send an actual team from the Ministry through the Provincial Local Government Officer.

**Mr. Bahari:** Mr. Temporary Deputy Speaker, Sir, while thanking the Assistant Minister for his answer, I would like to say that a lot of times, special inspection reports by inspectors from the Ministry take a lot of time. They are just left to gather dust on the shelves. Could the Assistant Minister undertake to give a special directive, so that the report by the inspectors is submitted to the Ministry within reasonable and specific time, so that appropriate action can be taken to further the course that he intends to take in terms of the suspension?

**Mr. Githae:** Mr. Temporary Deputy Speaker, Sir, we have also, as a Ministry, agreed that we shall not act in vain. All the reports that will be presented to us will be implemented. Also, we have told our officers that they must expedite things. The days of taking one year to prepare an inspection report are over. Therefore, as soon as I go back to the office, I will give instructions that, within a month, this report must be submitted to the Ministry.

**Mr. C. Onyancha:** Mr. Temporary Deputy Speaker, Sir, could the Assistant Minister tell us the time it will take for the auditors to be sent to Lodwar Municipal Council? He has stated that he will send auditors and inspectors, but he has not given us a timeframe within which the exercise will be conducted. Will it be before 2012 or 2015?

**Mr. Githae:** Mr. Temporary Deputy Speaker, Sir, I do not know whether 2012 is the 24-hours time; whether he is using the 24-hour clock or he is referring to a date. I am not very sure. If he is referring to the 24 hours clock, 20.15 will be this evening. So, we shall not send somebody in the evening. We will send somebody in the morning.

Mr. Temporary Deputy Speaker, Sir, originally, we had intended to send the Provincial Local Government Officer, but in view of what we have agreed with my friend, Mr. Ethuro, we are going to send a team from the Ministry. I can promise that the team will be on its way to Lodwar on Monday next week.

**Mr. Ethuro:** Mr. Temporary Deputy Speaker, Sir, I am very satisfied with the answer from the Assistant Minister. If all Ministers could be that truthful, honest and willing to work with Parliament, then this country would make a lot of progress.

However, Mr. Temporary Deputy Speaker, Sir, councils have problems emanating from the Ministry. I want to table a letter which was written by the councillors who were present in the meeting of 26th May, 2008, but did not approve the change of signatories. They later wrote a letter to the bank to demonstrate that, that meeting did not reach that conclusion.

*(Mr. Ethuro laid the letter  
on the Table)*

**The Temporary Deputy Speaker** (Mr. Imanyara): I am sure the Assistant Minister will look at the letter. You can table it for him to look at.

IRREGULAR DEPORTATION ORDER AGAINST  
NIGERIAN NATIONAL: MR. A.O. AFEDIGBO

**The Temporary Deputy Speaker** (Mr. Imanyara): Mr. Namwamba is not present. His Question is dropped!

*(Question dropped)*

## ORAL ANSWERS TO QUESTIONS

*Question No.043*

### CONSTRUCTION OF MOITA TECHNICAL TRAINING INSTITUTE

**The Temporary Deputy Speaker** (Mr. Imanyara): Hon. Bett! He is also not present! The Question is dropped!

*(Question dropped)*

*Question No.038*

### SCHEME OF SERVICE FOR ADULT EDUCATION TEACHERS

**Dr. Eseli** asked the Minister for Education:-

(a) whether he is aware that since the creation of the Department of Adult Education in 1979, no scheme of service has been effected for the employees of this Department;

(b) whether he is further aware that the adult education teachers under this Department have stagnated at one job group for over 20 years; and,

(c) what steps he is taking to implement a suitable scheme of service for the teachers to improve their productivity.

**The Assistant Minister for Education** (Prof. Olweny): Mr. Temporary Deputy Speaker, Sir, I beg to reply.

(a) At the inception of the Department of Adult Education in 1979, Adult Education Officers were recruited from serving officers and teachers working with the Teachers Service Commission (TSC) and, therefore, used the same scheme of service with the Ministry of Education until 1994. Adult education teachers were recruited in the same year, on temporary terms of service, and placed on equivalent salary scales with the untrained teachers of the TSC. Two schemes of service for both Adult Education Officers and teachers were for the first time developed in 1983 and approved by the Directorate of Personnel Management (DPM) to be effected on 1st January, 1995.

However, the officers' scheme of service was implemented while that of the teachers was not implemented until the year 2000. That means that there is a scheme of service which is in place for both the officers and the teachers.

(b) It is true that Adult Education teachers stagnated in one job group for many years. The teachers of varying education levels recruited in 1997 were placed on temporary terms of service awaiting professional training and development of the relevant scheme of service. The delay was attributed to frequent movements of the Department to different Ministries. It has been in different Ministries for some time.

Eventually, in 2000, the Ministry of Labour and Human Resource Development, which was housing the Department at the time, initiated the first set of promotions. Adult Education teachers were subsequently upgraded every three years through the Ministerial Advisory Committee to a

maximum level of Job Group "G". The promotions were effected in 2000, 2003 and 2006. According to the present scheme of service, the next promotions will be in June, 2009.

(c) So far, two schemes of service for both Adult Education Officers and the teachers have been developed and implemented. A revised scheme of service for adult education personnel has since been submitted to the Ministry of State for Public Service for approval. The scheme, once approved, will ensure upward mobility for teachers. They will rise from Assistant Adult Education Teacher III, Job Group "E" to Senior Adult Education Teacher, Job Group "N". Now that the Department is under my Ministry, we shall study its personnel problems which have, of course, been present over the years, with a view to addressing apparent anomalies. We will look into possible ways of harmonizing adult education teachers' scheme of service with that of Teachers Service Commission (TSC). We will recruit more adult education teachers and also upgrade the Department to a full-fledged directorate, among other things.

**Mr. Konchella:** On a point of order, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Mr. Imanyara): Order! Order! Order! What is your point of order, Mr. Konchella?

**Mr. Konchella:** Mr. Temporary Deputy Speaker, Sir, the Assistant Minister seems to be reading a Ministerial Statement instead of answering the Question. Could he answer the Question?

**The Assistant Minister for Education** (Prof. Olweny): I beg your pardon! Could you repeat what you said?

**The Temporary Deputy Speaker** (Mr. Imanyara): Continue with your answer!

**The Assistant Minister for Education** (Prof. Olweny): Mr. Temporary Deputy Speaker, Sir, I am through with the answer.

**Mr. Konchella:** Mr. Temporary Deputy Speaker, Sir, I said that the Assistant Minister seems to be reading a Ministerial Statement instead of answering the Question. Could he answer the Question?

**The Temporary Deputy Speaker** (Mr. Imanyara): You have been overtaken by events, Mr. Konchella!

Proceed, Dr. Eseli!

**Dr. Eseli:** Thank you, Mr. Temporary Deputy Speaker, Sir. While I concur with the hon. Member who has raised a point of order, I want to state that this Question came up last time and, again, I received a very long answer. However, trying to pinpoint the facts from this long answer has been very difficult. However, I want to point out that in part (b), where the Assistant Minister has accepted that adult education teachers have stagnated at one Job Group, he has gone on to say that adult education teachers were, subsequently, upgraded every three years, that is 2000, 2003, 2006. They are expected to be upgraded again in 2009. That, actually, contradicts what he has said in the first paragraph.

However, Mr. Temporary Deputy Speaker, Sir, now that they have stagnated at one Job Group, and considering that adult education teachers are very few and have to cover a whole division with their meagre salaries - they are unable to traverse the divisions and give adult education lessons - what is the Assistant Minister doing in the short-term to improve their welfare and mobility, so that they can organize adult education lessons?

**Prof. Olweny:** Mr. Temporary Deputy Speaker, Sir, I have said that, at the moment, there is a scheme of service for those teachers. They are being promoted. There is a new scheme of service which is being developed. We are waiting for approval from the Ministry of State for Public Service and, once that is done, there will be better conditions for those teachers.

Otherwise, we have accepted and admitted that those teachers have had problems through the years because they were going through various Ministries and nobody addressed their problems that well.

Thank you, Mr. Temporary Deputy Speaker, Sir.

**Mr. Ruteere:** Thank you, Mr. Temporary Deputy Speaker, Sir. In view of the fact that those teachers are now under the Ministry of Education, and knowing that teachers under the Ministry of Education are employees of TSC, including technical teachers and those in post-primary schools, could they be considered to be under one employer; TSC?

**Prof. Olweny:** Thank you, Mr. Temporary Deputy Speaker, Sir. That is one of the things that we are considering seriously. We are not going to have teachers under our Ministry who are not under the terms of the TSC. We are looking at those logistics and, once the new scheme of service is approved, we are going to look into the possibilities of integrating them into the TSC.

Thank you, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Mr. Imanyara): Is that Mr. Ojaamong?

**Mr. Chepkitony:** Thank you, Mr. Temporary Deputy Speaker, Sir. I am Mr. Chepkitony. I want to ask the Assistant Minister to confirm whether there is a category of adult education teachers called "part-time teachers", who have also been teaching for the last 20 years. There has been no improvement on their payments. What are you going to do about that? That is because it looks as if they are not covered under your scheme of service which you are revising.

**Prof. Olweny:** Yes, we have part-time teachers in our Department. But those are people who are not willing to be employed as permanent teachers for adult education because they do other things. We

know people who are employed in the Civil Service during normal hours but, in the evening, they go to teach part-time in the Adult Education Department.

**Mr. J.M. Kamau:** Thank you, Mr. Temporary Deputy Speaker, Sir. Is the Assistant Minister aware that the teachers he is talking about are not covered by the Education Act, Cap.211? How are they preparing to get them into the teaching profession? Could he explain whether they are civil servants, employees of the Ministry of Education or volunteers? That is because Cap.211 of the Education Act, does not cover adult education and, currently, the Adult Education Department has a Director!

*(Applause)*

**Prof. Olweny:** Mr. Temporary Deputy Speaker, Sir, that department has been in my Ministry for only one month! They have earned their salaries from my Ministry for only one month. So, we are looking into how we are going to integrate them into the mainstream Ministry of Education, so that they are covered by the Education Act. Otherwise, they came with their scheme of service from the other Ministries. So, we need time to look into the personnel problems and everything will be sorted out.

**The Temporary Deputy Speaker** (Mr. Imanyara): Last question, Dr. Eseli!

**Dr. Eseli:** Thank you, Mr. Temporary Deputy Speaker, Sir. Given that illiteracy is a major drawback in the development of this country and that adult education is one of the ways of reducing that illiteracy, could the Assistant Minister tell us whether he is going to make sure that, that Department stays within the Ministry of Education and not to be migratory again as it has been before, leading to the stagnation of the development of adult education?

Thank you, Mr. Temporary Deputy Speaker, Sir.

**Prof. Olweny:** Mr. Temporary Deputy Speaker, Sir, it is our wish, as a Ministry, that it stays with us. But the Ministry of Education does not distribute departments to the various Government Ministries in this country.

**The Temporary Deputy Speaker** (Mr. Imanyara): Next Question, Mr. Ruteere!

*Question No.074*REHABILITATION OF GITIMBINE  
-NKABUNE ROAD

**Mr. Ruteere** asked the Minister for Roads:-

- (a) whether he is aware that the section of the road between Gitimbine and Nkabune Technical Institute in North Imenti, which is a classified road, is damaged and becomes completely impassable during the rainy season; and,  
(b) what urgent steps he is taking to repair the road.

**The Assistant Minister for Roads** (Mr. Kinyanjui): Mr. Temporary Deputy Speaker, Sir, I beg to answer

(a) Yes, I am aware that the road's section between Gitimbine and Nkabune Technical Institute is impassable during the rainy season.

(b) My Ministry has included the unpaved sections of Road C92, between Gitimbine and Nkabune Technical Institute, for routine maintenance and spot-improvement in the work plan for the Financial Year 2008/2009 under the Road Maintenance Levy Fund Budget for trunk roads. Further, a section of approximately 55 kilometres of Road C92 is located in Embu, Mbeere and Tharaka districts, which is being improved to bitumen standards under the ongoing contract for the construction of Ena-Ishiara-Ciakariga Road, that is Road C92, E789, at a cost of Kshs2.8 billion. The contract commenced on 2nd April, 2007, and is scheduled for completion on 2nd October, 2009. The degree of completion is 36 per cent against a time lapse of 48 per cent. The remaining section of road C92 in Tharaka, Meru South, North Imenti and Central Imenti District, measuring approximately 60 kilometres, has an earth surface and receives annual routine maintenance under the Road Levy Maintenance Fund. A total of Kshs11,690,625 had been allocated for the maintenance of that particular road in the previous year.

**Mr. Ruteere:** Mr. Temporary Deputy Speaker, Sir, I am surprised that the Assistant Minister is saying that in the previous year, we had Kshs11 million for the repair of that road and he has conceded to the fact that the road is impassable.

Nkabune Technical Institute is a national technical training institute. It is the only girls technical institution in the area. Whenever it rains, and the rainy season normally covers three months, nobody can go into or move out of that institution because of the poor roads. Even four-wheel drive vehicles cannot ply the road because they are blocked by other vehicles which get stuck on the road. Mr. Temporary Deputy Speaker, Sir, the Assistant Minister talked about the section that covers the whole of Road C92 but I was very specific about C92, Gitimbine-Nkabune Technical Institute section. I wonder what he will do to help that particular institute because it cannot receive any deliveries and people are very worried. Could the Assistant Minister tell us what will happen come the next rains?

**Mr. Kinyanjui:** Mr. Temporary Deputy Speaker, Sir, I would like to state one or two facts regarding the section of the road in question. The section of the road in question is within the municipality, as the hon. Member mentioned. It has, actually, volcanic soil. So when it rains, it becomes very difficult for the vehicles to pass.

However, it is part of the road that I mentioned, C92, and funds have been committed for its improvement to bitumen standards up to the section that is just before that. As soon as funds are available, we will be able to consider that section for improvement to bitumen standards.

Mr. Temporary Deputy Speaker, Sir, however, like I said, we have allocated money for maintenance of that section of the road which is within the municipality and has a very high traffic. But, in the long-term, I think it will be important, as a Ministry, and we are committed to ensuring



that, that road is indeed improved to reflect its importance within the district.

**Mr. Ruteere:** Mr. Temporary Deputy Speaker, Sir, with that commitment I am very satisfied.

**The Temporary Deputy Speaker** (Mr. Imanyara): Next Question, Mr. Mututho!

*Question No.081*

MEASURES TO SAVE LAKE NAIVASHA  
FROM EXTINCTION

**Mr. Mututho** asked the Minister for Environment and Mineral Resources:-

(a) whether he is aware that Lake Naivasha is on the verge of extinction as a result of soil erosion and excessive illegal farming around the lake, causing soil erosion at an alarming rate; and,

(b) what action the Government is taking to urgently rehabilitate the lake and protect it from extinction.

**The Assistant Minister for Environment and Mineral Resources** (Mr. Kiptanui): Mr. Temporary Deputy Speaker, Sir, I beg to reply.

(a) I am aware that Lake Naivasha is on the verge of extinction as a result of soil erosion and excessive illegal farming around the lake causing soil erosion at an alarming rate. The Government, indeed, recognises the vital importance of Lake Naivasha to the local community and other stakeholders who derive their livelihood from the lake. The Government also facilitated the listing of Lake Naivasha a second wetland of international importance after Lake Nakuru under the RAMSAR Convention.

(b) My Ministry has undertaken measures to ensure that conservation of the lake and its catchment and wise use of its resources. This includes gazettelement of water quality regulations, Legal Notice No.120 of 2006, with strict water quality standards. The National Environment Management Authority (NEMA) is ensuring compliance through enforcement of this Act in consultation with the relevant lead agencies. In this regard, NEMA inspectors have been conducting inspections to ensure that farmers who are in breach are made to comply or face the prescribed penalties.

My Ministry is spearheading the development of Kenya's National Wetlands Policy. This policy was approved by the National Environment Council and now awaits approval by the Cabinet and the National Assembly. The policy gives direction on the management of the lake and other wetlands in order to minimise soil erosion and siltation caused by poor land use activities.

In addition, it seeks to facilitate development and gazettelement of Lake Naivasha Management Plan through an intensive stakeholder consultation process. Measures to protect the lake from pollution and degradation are specified in this plan. Unfortunately, implementation of the plan is currently halted by a court injunction. My Ministry is also spearheading the development of Lake Bolosat Management Plan. Measures are being undertaken by various Government institutions, CBOs and NGOs to conserve this lake and its catchment, which is the source of Malewa River that feeds into Lake Naivasha.

In conclusion, my Ministry is in control of development activities around the lake, by ensuring that any new development around the lake obtains an environmental impact assessment licence from NEMA in order to mitigate against negative environmental impact. The National Environment Management Authority, which falls under my Ministry, also ensures that new developments adhere to the requirement to designate a 30-metre riparian reserve around the lake to minimise pollution and siltation due to soil erosion. Any illegal development should be reported to the District Environment Officers with copies to the Director-General of NEMA for enforcement

of necessary compliance action.

**Mr. Mututho:** Thank you, Mr. Temporary Deputy Speaker, Sir. I thank the Assistant Minister for taking this Question a bit more seriously this time. Having said that, I heard him say that NEMA is doing regular inspections. They have also said people who have done constructions below the 30-metre mark will be dealt with. Could we know from the Assistant Minister when he will issue a notice particularly to one gentleman who constructed a house right inside the lake? When does he intend to start the rehabilitation of the areas where they have removed the people?

Mr. Temporary Deputy Speaker, Sir, while we appreciate the work being done at Lake Victoria, there is no work being done at Lake Naivasha. My Question was specific to Lake Naivasha. We will be happy if the Assistant Minister could tell us what he is doing to save Lake Naivasha rather than referring to Lake Victoria.

**Mr. Kiptanui:** Mr. Temporary Deputy Speaker, Sir, I would like to say that my Ministry will deal with anybody who has developed or constructed a building within a radius of 30 metres of the lake. I want to assure the hon. Member that, in due course, he will see what we are doing as a Ministry.

**Dr. Nuh:** Mr. Temporary Deputy Speaker, Sir, I appreciate the Assistant Minister's answer. I would like you to direct all Ministers that, whenever Questions are asked, they answer them in a satisfactory manner. The Question by the hon. Member for Naivasha is clear.

The Assistant Minister has not come out to either confirm or deny that construction of the illegal structures and farming is taking place within the range of distance that is being talked about. All he is saying is that NEMA will do this and that. The degradation of environment is happening on a daily basis all over this country. This Government has to be sensitive about the environment we are living in. It holds our livelihoods and the expectations for the future.

Could the Assistant Minister confirm whether this illegal construction and farming is, indeed, taking place and what he has done about it? It is not about what he intends to do!

**Mr. Kiptanui:** Mr. Temporary Deputy Speaker, Sir, when I began answering the Question, I confirmed that. I have already said what we are doing as a Ministry. We will take your comments into consideration.

*Question No.094*

REVIVAL OF UPLANDS BACON FACTORY

**Mr. Mwaura** asked the Minister for Industrialization:

- (a) whether he could explain the circumstances surrounding the closure of Uplands Bacon Factory Limited about 25 years ago; and,
- (b) what immediate measures he is taking to revive the factory which was a source of livelihood to many local people.

I would like to apologise because I did not ask this Question last week. I was attending a funeral of some two principals who were murdered in my constituency.

**The Minister for Industrialization** (Mr. Kosgey): Mr. Temporary Deputy Speaker, Sir, I beg to reply.

Uplands Bacon Factory (UBF), which had been in existence since 1906, closed down in 1987 after experiencing major financial and managerial problems which started in the 1970s and became worse in the mid-1980s when other bacon factories started operating, namely, Farmers Choice and Nairobi Airport Services. The above problems, coupled with stiff competition from other factories, led to the company's loss of more than 50 per cent of the market share.

The Government, in consideration of the importance of the factory to the locals, injected additional equity severally in an attempt to resuscitate it but the efforts were thwarted by the

company's poor performance leading to its being placed under receivership in September, 1987. The Government made further efforts to revive the company even after its closure by approaching the African Development Bank for financial support. However, a report of the feasibility study undertaken to ascertain the company's viability confirmed that it would be very expensive to rehabilitate it as the equipment was too old and it was necessary to procure new one. The Cabinet then, directed that the company be closed after displaying dismal performance and heavy indebtedness over a period of time. The closure cost the Government - since the Government had injected in some money - Kshs42 million, out of which Kshs8.6 million went into paying workers and Kshs33 million was written off. As you may be aware, the Government policy with regard to doing business is to create an enabling environment for conducting business. The Government does not currently engage in business.

The revival of Uplands Bacon Factory (UBF), therefore, falls under similar companies which are owned by private people. The UBF is currently owned the Farmers Choice Company. It bought the company from Lonrho Agri-Business in January, 2000. Lonrho Agri-Business, on their part, bought the company from its receiver.

**Mr. Mwaura:** Mr. Temporary Deputy Speaker, Sir, I thank the Minister for very ably trying to answer my Question. However, he has left out a grey area in his reply. As you may have noted, this factory started to operate in 1906. It started to experience problems in the 1970s, meaning that it operated without any problems and very successfully for about 64 years. When the Government directed some attention to the operations of this factory, it took a short time to close down the factory. We know that the factory started experiencing problems from 1980 and closed down in 1987. That was within a period of seven years. Why was there haste in closing down such an important factory that was supporting the livelihoods of over 1,000 farmers in Lari, Kiambu and Central Province as a whole?

**Mr. Kosgey:** Mr. Temporary Deputy Speaker, Sir, there was no haste in closing down this factory. As you may be aware, UBF was not owned by the Government. It was owned by certain farmers, mainly white farmers, who were involved in rearing pigs. When it started experiencing problems in the 1970s, certain individuals had taken over its management. Of course, they mismanaged it. By 1987, it became necessary to close it. At that time, as I said, other companies like the Farmers Choice Company and the Nairobi Airport Services, were in the same business. The company that had experienced financial problems and poor management could not stand the competition.

**Mr. Baiya:** Mr. Temporary Deputy Speaker, Sir, is it right for the Minister to say that the Government policy with regard to industrialization is only to provide an enabling environment? We are aware that the Government has been involved in the revival of the New Kenya Co-operative Creameries (NKCC) on behalf of farmers in various parts of the country.

We are also aware that the Government has also been involved in the revival of the Kenya Meat Commission (KMC) on behalf of the pastoralist farmers in this country. We are also aware that it is the Government's policy to ensure that it addresses the issue of food security; it helps local farmers to process and add value to their produce. Why is the Government adopting double standards with regard to assisting farmers in Kiambu, Lari and the whole of the Central region?

If the problem was mismanagement what other plans does the Ministry have to revive and restore the factory?

**Mr. Kosgey:** Mr. Temporary Deputy Speaker, Sir, we are not discriminating against any region. The Government policy is generally to provide an enabling environment for business and industry to thrive. In other words, we want an economy which is private sector-driven. Having said that, there are certain areas that we classify as strategic. They could be strategic for the time being. However, finally, they are left to be run by the private sector. The revival of Kenya Meat

Commission (KMC) and the Kenya Co-operative Creameries (KCC) fall under that category.

For the time being we want to have Government intervention in an attempt to create, once again, a viable sector, which can be handed over to private business people. In fact, pigs are not just reared in Kiambu or Lari but countrywide. Therefore, all the farmers at the moment have an outlet, that is the Farmers Choice or the Nairobi Airport Services (NAS).

**Mr. Mututho:** Mr. Temporary Deputy Speaker, Sir, Farmers Choice sprang up because the Uplands Bacon Factory failed. Farmers Choice is a monopoly. What this means, if it is true that the Farmers Choice has taken over the Uplands Bacon Factory, is that we have sanctioned a monopoly in this country. These farmers are suffering, and we should hear a more affirmative answer. Even if it is going to be sold, even to the local co-operatives, that is okay, but we should not strengthen a monopoly.

**Mr. Kosgey:** Mr. Temporary Deputy Speaker, Sir, the Uplands Bacon Factory was bought by Farmers Choice from Lonrho Agri-Business. I think there is a relationship between Farmers Choice and Lonrho Agri-Business.

At the moment, there are two companies, which are in competition in the big industry. These are the Farmers Choice and NAS. So, there is no monopoly. We could do with more companies, so that the competition is more healthy; but for the time being, there are two companies.

**Mr. Mwaura:** Mr. Temporary Deputy Speaker, Sir, once again, I want the Minister to give a more convincing answer in this issue, because we note that the money that was injected by the Government, in the two instalments deducted, amounted to Kshs75.8 million. We are aware that our Government has ejected more money to revive the National Bank of Kenya (NBK) and the Kenya Commercial Bank (KCB). Why has it not been possible to make sure that, that industry is revived for the benefit of our people in that area?

**Mr. Kosgey:** Mr. Temporary Deputy Speaker, Sir, as I said, the Government lost money in an attempt to revive this industry. If the people of Lari would like to start a big industry, we will assist them the way we assist other investors by providing the necessary environment, and even advising them on how to find capital.

**The Temporary Deputy Speaker** (Mr. Imanyara): Order, hon. Members! The next Question by the Member for Mandera East is deferred to Tuesday afternoon, because both the Minister and the Assistant Minister are out of the country and have requested that this Question be deferred. So, Question 122 is deferred to next Tuesday.

*Question No.122*

ELECTRIFICATION OF LAFEY  
AND KHALALIYO TOWNS

*(Question deferred)*

*Question No.123*

MEASURES TO PROTECT KENYANS  
FROM COUNTERFEIT GOODS

**Mr. Linturi** asked the Deputy Prime Minister and Minister for Trade:-

- (a) whether he is aware that currently there are very many counterfeit goods from other countries flooding the Kenyan market;
- (b) whether he is satisfied that the Kenya Bureau of Standards (KEBS) is

performing its duty of inspection to ensure that goods and services meet the set standards; and,

(c) what other steps he has taken to ensure that KEBS undertakes its duties of checking the situation and safeguarding the interests of the consumers in the country.

**The Minister for Industrialization** (Mr. Kosgey): Mr. Temporary Deputy Speaker, Sir, although this Question was directed to the Deputy Prime Minister's office, it should have been directed to me, because KEBS is in my docket.

**Mr. Linturi:** On a point of order, Mr. Temporary Deputy Speaker, Sir. This Question was directed to the Office of the Deputy Prime Minister and the Ministry of Trade. I understand the sentiments of the Minister for Industrialization---

**The Temporary Deputy Speaker** (Mr. Imanyara): What is the point of order?

**Mr. Linturi:** The point of order is that I have two answers: One from the Ministry of Industrialization and another one from the Office of the Deputy Prime Minister and Ministry of Trade. Which answer should this House go by?

**The Temporary Deputy Speaker** (Mr. Imanyara): Mr. Leader of Government Business, could you clarify that? There are two sets of answers to the same question!

**The Vice-President and Minister for Home Affairs** (Mr. Musyoka): Mr. Temporary Deputy Speaker, Sir, in fact this Question seems to be cross-cutting. Since emphasis is on the KEBS, which falls under the Ministry of Industrialization, in accordance with the Presidential Circular No. 1 of 2008, I think it is proper that the Minister for Industrialization tackles the same.

**The Temporary Deputy Speaker** (Mr. Imanyara): The question raised is that there are two sets of answers that have been provided. That is an issue that you need to address, so that the hon. Member knows what answer to take.

*(Loud consultations)*

Order! The Chair is making a ruling!

Mr. Vice-President!

**The Vice-President and Minister for Home Affairs** (Mr. Musyoka): Mr. Temporary Deputy Speaker, Sir, I have not had the benefit of looking at both answers, but if they deal with the same subject matter, then it is the prerogative of this House to deal with it, particularly if Mr. Linturi is able to deal with both answers. He should be able to deal with both answers; I am sure that if the subject matter that is being addressed is the same, it matters not whether he has two sets of answers.

**The Temporary Deputy Speaker** (Mr. Imanyara): Mr. Linturi, are you happy with that?

*(Mr. Omingo stood up in his place)*

**The Temporary Deputy Speaker** (Mr. Imanyara): What is your point of order, Mr. Omingo?

**The Assistant Minister, Office of the Deputy Prime Minister and Ministry for Trade** (Mr. Omingo): On a point of order, Mr. Temporary Deputy Speaker, Sir. Part of the answer is from my Ministry. Since the Question was addressed to us, and in order that we look neat, I had earlier requested the Questioner to defer the Question, so that we could redirect it formally. I had not known that it had been taken over. I was doing that in the interests of the House. I wanted us to look neater than we do now.

**The Temporary Deputy Speaker** (Mr. Imanyara): Mr. Linturi, I think there will be no

harm in us deferring this Question to next Tuesday to enable the two Ministries to sort out the problem and then give an answer.

**Mr. Linturi:** Mr. Temporary Deputy Speaker, Sir, I will be out on official duties. So, I beg for the indulgence of the House for the Question to be deferred to the other week.

**The Temporary Deputy Speaker** (Mr. Imanyara): Mr. Leader of Government Business, two weeks from today will be all right? The Ministries will have agreed on who is to answer the Question.

**The Vice-President and Minister for Home Affairs** (Mr. Musyoka): Yes.

### POINT OF ORDER

#### FINANCE MINISTER'S DELAY IN RESPONDING TO ISSUE OF PRINTING NEW CURRENCY NOTES

**Dr. Khalwale:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Last week the Chair was kind enough as to defer matters that I had raised earlier in this House in respect of the printing of new generation Kenya currency notes. I stand to request that the Minister now gives us an opportunity to respond to this most important issue.

Secondly, I had raised the issue of the breakdown of the chain of command at the Administration Police Training College. I also request that I be given an answer to that question.

Finally, I had filed a Motion touching on a matter of great national importance, and expected that I would be given permission by your Committee to be able to give notice of this Motion. I am in the dark. Therefore, I would like the Chair to guide us on how we should handle these three issues, given that the matter of great national importance touches on the Minister of Finance. It is a Motion in which I was demanding that the House censures him, and resolves that the same Minister resigns immediately.

**The Temporary Deputy Speaker** (Mr. Imanyara): With regard to the first issue that you raised, the Chair's ruling last week was that you be supplied with the answer that the Minister read in the House to enable you and other hon. Members to raise any supplementary questions that you may wish to raise. But I have not seen the Minister in the House. So, I will seek clarification from the Leader of Government as to what is the situation.

With regard to the issue of the Administration Police Training College, I do not know to whom the question was directed, because I do not remember being in the House.

**An hon. Member:** The Minister of State for Provincial Administration and Internal Security!

### COMMUNICATION FROM THE CHAIR

#### PRIORITIZATION OF DR. KHALWALE AND MR. KOMBO'S MOTIONS BY HBC

**The Temporary Deputy Speaker** (Mr. Imanyara): The Leader of Government Business will also take note of that.

With regard to the last issue, yes, I can confirm, indeed, that the Speaker's office did receive the two Motions that were submitted by Dr. Khalwale and hon. Kombo. The two were approved. The first was by you, Dr. Khalwale, being a Notice of Motion couched in the following language:-

"THAT, being deeply concerned with the conduct of the Minister for Finance in the manner that he has handled the sale of the Grand Regency Hotel and the Initial

Public Offer for Safaricom in total disregard of the provisions of the Public Procurement and Disposal Act and related regulations governing the sale and disposal of public property, and non-adherence of the provisions of the privatization of Safaricom shares; this House censures the Minister and resolves that it has no confidence and demands his immediate resignation.

*(Applause)*

The second one directed the Attorney-General as follows:-

"THAT, in view of the great public interest in the sale of the Grand Regency Hotel and other related public property; taking into account the mysterious circumstances that the sale of the hotel was undertaken in particular before a conclusive investigation of the Goldenberg Scandal and implementation of the Report of the Bosire Commission of Inquiry; this House do grant leave to introduce a Bill for an Act of Parliament to nullify the sale of the Grand Regency Hotel and other related property owned by Uhuru Highway Development Company Limited to provide for recovery of any property or properties associated with the Goldenberg saga and prosecution of any person or persons that may have facilitated any commission or omission of corruption or economic crimes in the transaction of this sale and for related and connected matters therewith.

Hon. Members, you know that once a Motion is submitted and approved - and I can confirm that I did approve this Motion - it goes to the House Business Committee. Indeed, the two Motions will be submitted to the House Business Committee this evening.

One trusts that the House will be sensitive to the great public interest that the matter has elicited, and it will prioritise the processing of the time that this Motion, probably, can be debated, if possible tomorrow. But the Vice-President and Minister for Home Affairs, will be clarifying these issues that I have raised this afternoon.

**Mr. Midiwo:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I see on the Order Paper that Order No.7 is a Motion is by the same Minister. This Minister is behaving like a Mugabe. He is abusing fellow Ministers and has disrespected orders from the Committee on Finance, Planning and Trade, which I sit in, not to sale the Grand Regency Hotel.

There are a lot of issues that have come up as to the value of the sale of the Grand Regency Hotel. Is it Kshs1.8 billion or Kshs2.9 billion? I want to request the Chair that it puts on hold any debate under the Ministry of Finance, as long as Mr. Kimunya is still the Minister for Finance, and we ask him to resign!

*(Applause)*

**Mr. C. Kilonzo:** Mr. Temporary Deputy Speaker, Sir, I seek your ruling. The way the House conducts Business is in such a way that all the Business of the House has to go through the House Business Committee. In the House Business Committee, there is one Mr. Amos Kimunya. Since the issue we are discussing is of national importance, I am pleading with the Chair---

**The Temporary Deputy Speaker** (Mr. Imanyara): What is your point of order? Please, let us not anticipate any debate. The issue will go to the House Business Committee this evening.

Mr. Vice-President and Minister for Home Affairs, and Leader of Government Business, what do you have to say?

**The Vice-President and Minister for Home Affairs** (Mr. Musyoka): Mr. Temporary Deputy Speaker, Sir, you raised three points. Indeed, the hon. Member for Ikolomani had three

matters.

On the first matter, I do recall the Chair ruling that he will be given the opportunity to interrogate the Ministerial Statement. I think that is the position. But in view of the fact the Minister is not here, I want to tell the House that as I speak, the Prime Minister is chairing a Cabinet Sub-committee which is dealing with the totality of these issues. That is why I want to really seek the understanding of the House that the Minister cannot be here.

On the second issue, which I think is the most important really, the hon. Lesrima, who is the Assistant Minister, Ministry of State for Provincial Administration and Internal Security, has just informed me that he has come back this afternoon from Maralal. I think that either him or the Minister himself will be able to come and issue a clarification on what his taking place at the Administration Police Training College.

The third point regards the issue that the country is really waiting to hear what is the truth about the sale of the Grand Regency Hotel. I just want to restate what I have said; that the Prime Minister is currently chairing a Cabinet Sub-Committee. I believe the Government will be able to issue a Statement immediately after that Cabinet meeting this afternoon. Therefore, I think that it may be good for the House to, first of all, await that Statement.

More importantly, since the Business of the House cannot be held hostage by what the Government side is doing, the House Business Committee will meet this afternoon. The only difficulty I have is that you seem, yourself, to have given notice on behalf of hon. Kombo and Dr. Khalwale, which I consider, if you allow me, a little unorthodox; that the Chair actually gives notice---

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

**The Temporary Deputy Speaker** (Mr. Imanyara): Order! Order! The Leader of Government Business is perfectly aware that what the Chair ruled was that the Motions were approved and submitted to the House Business Committee. No notice has been given because the House Business Committee has not yet started deliberating on the Motions. The Chair was not giving notice and it does not give Notices of Motions!

**The Vice-President and Minister for Home Affairs** (Mr. Musyoka): Mr. Temporary Deputy Speaker, Sir, I take notice of what you have said. It is a very serious matter. We will be meeting, as the House Business Committee, as soon as the House rises this evening to be able to deal with the Motions as approved by Mr. Speaker. I want to assure this House that we are going to do justice to these Motions.

**Mr. K. Kilonzo:** On a point of order, Mr. Temporary Deputy Speaker, Sir. In view of the public interest in these two Motions which the hon. Members have filed, and the fact that it is only Cabinet Ministers who sit in the House Business Committee, could the Leader of Government Business give this House an assurance that, indeed, tomorrow morning those two Motions will be brought to the House for debate?

**The Temporary Deputy Speaker** (Mr. Imanyara): Order, Mr. K. Kilonzo! Let us not pre-empt the proceedings of the House Business Committee (HBC). The Leader of Government Business has confirmed that they will handle that issue in the meeting this evening. Let us not pre-empt this matter because there is tomorrow. There are a number of Ministerial Statements that have to be given this afternoon.

*(Mr. Orenge stood up in his place)*



**The Temporary Deputy Speaker** (Mr. Imanyara): Yes, Mr. Orengo!

**The Minister for Lands** (Mr. Orengo): On a point of order, Mr. Temporary Deputy Speaker, Sir.

**Ms. Odhiambo**: On a point of order, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Mr. Imanyara): Yes, what is your point of order?

**Ms. Odhiambo**: Mr. Temporary Deputy Speaker, Sir, I have not heard you make a ruling on the question that has been raised by Mr. Midiwo. Could you, please, guide the House on that matter?

**The Temporary Deputy Speaker** (Mr. Imanyara): Which question was raised by Mr. Midiwo?

**Ms. Odhiambo**: Mr. Temporary Deputy Speaker, Sir, the question was about putting off debate on any financial issue until the Minister resigns.

*(Applause)*

**The Temporary Deputy Speaker** (Mr. Imanyara): This House debates Government Business and the HBC will determine that issue this evening. Please, let us give them time to meet. The Leader of Government Business will live to his words.

Yes, Mr. Orengo!

**The Minister for Lands** (Mr. Orengo): Mr. Temporary Deputy Speaker, Sir, I rise to seek your permission to give a Ministerial Statement tomorrow in view of what is coming from the Floor. As I have personally said, I felt very embarrassed and ashamed.

*(Applause)*

In fact, in other circumstances and in other countries, just like other hon. Members in front here and behind me have done; they have called for a resignation. If that was, indeed, in the UK or some other place, I may have been forced to resign.

Now, I am concerned that while we are talking about these matters that the integrity and the security of the property may stand in jeopardy. So, I want to explain to the House tomorrow what decisions we have taken to preserve that property until we are either guided by Cabinet or the House, so that nobody can transact any business on that property until there is a resolution one way or another. So, tomorrow, please, if I am allowed.

*(Applause)*

**Dr. Khalwale**: On a point of order, Mr. Temporary Deputy Speaker, Sir. The weight of this matter is such that it is not just limited to this House. This is because late this morning, the Republic of Libya recalled Libya's Ambassador to Kenya. He has gone back home. He was recalled to Tripoli, late this morning. That signifies the innocence of the Republic of Libya in the so-called "involvement" in this particular deal.

Mr. Temporary Deputy Speaker, Sir, in view of that, could you, with due respect, rule that this matter actually finds its way on the Order Paper tomorrow morning?

**The Temporary Deputy Speaker** (Mr. Imanyara): Order, Members! Since Members of the HBC are also Members of this House and they are Ministers and you have heard what they have said, let us give them the opportunity to deliberate on the matters this evening in the full knowledge that the will of the House is expressed by the Members of this House and not by any Committee of the House. Let us leave that matter for tomorrow as the Leader of Government

Business has indicated.

Mr. Orengo has indicated and sought the Chair's permission to issue a Ministerial Statement tomorrow. It is granted that the Statement be issued tomorrow morning. Is tomorrow morning okay, Mr. Orengo?

**The Minister for Lands** (Mr. Orengo): Mr. Temporary Deputy Speaker, Sir, tomorrow afternoon.

**The Temporary Deputy Speaker** (Mr. Imanyara): Very well, tomorrow afternoon!

**Mr. Namwamba:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I want to go back and beg your indulgence. For purposes of the record and for posterity, because this Motion by the Minister for Finance already appears on the Order Paper for today, I want to plead with you that let it go on record that at least this matter that is already on the Order Paper will not be debated pending the action expected from the HBC and all other issues that Ministers may raise and also until the Motions that have been placed before this House are debated and exhausted. This is because as we attempt to prevaricate, this State is being cannibalised and we cannot allow that state of affairs to proceed.

Mr. Temporary Deputy Speaker, Sir, I think there is also concern over the conduct of the HBC and that is why it is important for this House to be assured that these two Motions are not going to be held hostage by the kind of action we have seen in the past by the HBC. Perhaps, that is why the Grand Opposition is now more necessary now than ever before!

*(Applause)*

**The Temporary Deputy Speaker** (Mr. Imanyara): Order, hon. Members! Indeed, this is an unprecedented situation where the House seeks to censure a Minister during the Budget season which is, of course, supervised by the same Minister. Your expressions of concern must have surely been understood by the Leader of Government Business. I would like him to give this House the assurance that, when they meet this evening, he will impress upon the HBC to prioritize this Motion so that all other Business can be suspended and debated tomorrow.

**The Vice-President and Minister for Home Affairs** (Mr. Musyoka): Mr. Temporary Deputy Speaker, Sir, I thought the Chair made a very good ruling. We cannot, as a House, anticipate debate with regard to the HBC. I want to assure this House that the HBC comprises men and women of high integrity. This matter will, therefore, be given---

*(Loud consultations)*

**The Temporary Deputy Speaker** (Mr. Imanyara): Order, Members! Allow the Leader of Government Business to make his statement.

**The Vice-President and Minister for Home Affairs** (Mr. Musyoka): Mr. Temporary Deputy Speaker, Sir, we will be discussing what you have already approved at this evening's sitting of the HBC.

**The Temporary Deputy Speaker** (Mr. Imanyara): Leader of Government Business, you heard the sentiments of hon. Members, that is, their concern about the next Order on the Order Paper. This is Government Business. What is your point on that issue?

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

**The Temporary Deputy Speaker** (Mr. Imanyara): Order! Will you, please, sit down?

**The Vice-President and Minister for Home Affairs** (Mr. Musyoka): Mr. Temporary Deputy Speaker, Sir, I think what is appearing on the Order Paper as Order No.7, dealing with the need to prioritise what is going on at the Port of Mombasa is a matter of great importance. *Muundo*

*msingi*, that is, infrastructure is a very serious matter. Since this matter has already been brought before this House and debate on it commenced, I want to urge that we continue. What is appearing here is that we have to continue with debate on a matter that we had started debating.

However, Mr. Temporary Deputy Speaker, Sir, this is a matter which is clearly the property of this House and the Leader of Government Business might want to be guided by the mood of the House. However, in view of the fact that we need to give priority to the development of the Port of Mombasa, I would urge that we actually continue with the debate that was interrupted last time. I see absolutely no harm in continuing with debate on this matter.

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

**The Temporary Deputy Speaker** (Mr. Imanyara): Order, hon. Members! I am on my feet! You have heard the Leader of Government Business ask what the mood of the House is. I will allow a few comments from either side of the House so that the mood of the House can be understood by the Minister and so that we know how to deal with that Order No.7 on the Order Paper.

Mr. Githae!

**The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government** (Mr. Githae): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to determine the mood of the House with regard to Order No.7 on the Order Paper. The Port of Mombasa requires this money. It requires this loan so that it can modernize. It requires this loan so that it can---

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

**Mr. Ruteere:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I would like to be guided! Which Standing Order is he using to make you rule on the mood of the House?

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

**Mr. C. Kilonzo:** On a point of Order, Mr. Temporary Deputy Speaker, Sir. We, the House, feel that since the Motion, that is Order No.7 on the Order Paper, is being brought by the Minister for Finance, whom this House has a lot of reservations about because he has misled this House on several occasions--- That is why, until this House is comfortable about the conduct of the Minister, it should not transact his business!

*(Applause)*

The House still believes that the same Minister will mislead this House! Therefore, we have to scrutinize everything that he has done! That is why the business of the House cannot continue.

*(Loud consultations)*

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

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

**The Temporary Deputy Speaker** (Mr. Imanyara): Order, hon. Members! When the Chair stands, you sit!

Mr. Ojode!

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): On a point of order, Mr. Temporary Deputy Speaker, Sir. You have the powers to take us to the next Motion. If you look at Standing Order No.31(2), it is you who has the powers to take us to the Next Order. I am requesting the Chair to use his powers according to Standing Order No.31(2).

*(Applause)*

**Dr. Khalwale:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Like my colleagues who have spoken before me, we are requesting that this matter should not be debated at this moment because the purpose of debate in this House is for the express need of the Minister moving that particular Motion to be informed by the contributions made by hon. Members. But since Mr. Kimunya is on record as having said that when hon. Members touch on issues of national importance - like the one in question - they normally do so, in his view, from a point of ignorance, then, it is a waste of time if we contribute now because, as far as he is concerned, we are ignorant! He is not going to be informed by our ideas! I, therefore, beg that we defer this matter and go on to Order No.8.

**The Assistant Minister for Livestock Development** (Mr. Duale): Mr. Temporary Deputy Speaker, Sir, we do not need to look at the mood in this House. We need to look at the mood in the country, which is more important than this House.

*(Applause)*

The mood in this country concerns the Grand Regency Hotel, the Treasury and, more so, the Minister for Finance. I think it is more important for the Chair to make a ruling on the greatest issue of the Financial Statement, that this House should go on to the next Motion.

**Mr. Ethuro:** On a point of order, Mr. Temporary Deputy Speaker, Sir. First, I want to agree that the mood of this House, which represents this country, is very clear. We would like any matter touching on the Ministry of Finance - since there are issues around the Minister - not to be discussed before this House until we have cleared those matters. However, that was not my issue. There is a serious breach of orders. You are yet to call the Next Order, which is Order No.7, so that we can raise these issues. That is why I was persisting in my points of order. We are under Ministerial Statements and I have one that I needed to be responded to before we come to this matter.

Mr. Temporary Deputy Speaker, Sir, enforce the rules of the House!

*(Laughter)*

**The Temporary Deputy Speaker** (Mr. Imanyara): Order, hon. Members! You have heard the Leader of Government Business say that it is his wish that the wishes of the House be---

**An hon. Member:** Granted!

**The Temporary Deputy Speaker** (Mr. Imanyara): He said that the wishes of the House be appreciated and that the House conducts its Business bearing in mind the concerns of hon. Members. Indeed, as Mr. Ojode has said, Standing Order No.31 states as follows:-

"31(1) Each day after Prayers have been read, the House shall proceed with the Orders of the Day as follows:-

(a) Matters other than business -

(i) Administration of Oath;

(ii) Communication from the Chair;

- (iii) Petitions;
  - (iv) Papers;
  - (v) Notices of Motion;
  - (vi) Questions of which notice has been given.
- (b) Business set down on the Order Paper.
- 32(2) Business shall be disposed of in the sequence in which it stands upon the Order Paper or in such other sequence as Mr. Speaker may, for the convenience of the House, direct.

*(Applause)*

### CONSIDERED RULING

#### DEFERMENT OF ORDER NO.7: APPROVAL OF SESSIONAL PAPER NO.1

Now, having listened to the hon. Member and having, myself, gauged the mood of the House, and in exercise of those powers, I order that we defer Order No.7 and go to Order No.8. Could you read Order No.8?

*(Applause)*

**An hon. Member:** Not yet!

**The Temporary Deputy Speaker** (Mr. Imanyara): Order, hon. Members! I indicated that there are quite a number of Ministerial Statements that were to be issued.

So, this is the opportunity for Ministers to give those that were due today. I also have one Communication from the Chair. Any Ministerial Statements that were to be given today?

Minister for Foreign Affairs!

**The Assistant Minister for East African Community** (Mr. Munya): On a point of order, Mr. Temporary Deputy Speaker, Sir. Those very important Motions and we are asking the House Business Committee to give us time. We would like the hon. Members to give notice so that, when time is allocated, we can be able debate. Could you, kindly, allow them to give notice of those two Motions?

*(Applause)*

**The Temporary Deputy Speaker** (Mr. Imanyara): Mr. Munya, had you raised that issue before I had called the next Order, probably, I would have considered it. But the Leader of Government Business has assured us. The Chair has ruled and all indications are that we trust the House Business Committee will allow this Motion to be debated tomorrow.

Minister for Foreign Affairs!

### MINISTERIAL STATEMENT

#### PRESENCE OF US MARINES IN GARISSA

**The Assistant Minister for Foreign Affairs** (Dr. Onyonka): Mr. Temporary Deputy Speaker, Sir, judging by the mood of the House, this is a Ministerial Statement regarding the presence of United States of America (USA) Marines in Lagdera, Dujis and Fafi constituencies, which was requested by the Member for Lagdera, Mr. Farah Maalim, who is also the Deputy Speaker.

On 17th June, 2008---

**The Temporary Deputy Speaker** (Mr. Imanyara): Order, Mr. Assistant Minister! It has just been pointed out to me by the Clerk's Office that, that Ministerial Statement was requested by the Member for Lagdera, who is away on official business. In these circumstances, it can only be fair that, that Ministerial Statement be read in his presence. Therefore, I am directing that it be issued next Thursday.

*(Ministerial Statement deferred)*

Next Ministerial Statement! Mr. Ethuro, what had you requested?

### POINT OF ORDER

#### DELAY IN DISBURSEMENT OF CDF MONEY BY TREASURY

**Mr. Ethuro:** On a point of order, Mr. Temporary Deputy Speaker, Sir. On Tuesday last week, that is on 24th June, 2008, the Minister of State for Planning, National Development and Vision 2030 made a Statement to this House on the disbursement of Constituencies Development Fund (CDF) money. I quote:-

"The Treasury has not released the balance of Kshs7.6 billion. The Ministry of Finance has promised to release the entire balance by Friday, 27th June, 2008."

Today, it is Tuesday, 1st July, 2008. He went further to say:-

"I want to report that this morning, I was called by the Minister for Finance. He said that they have now released Kshs8 billion and the balance of Kshs4.6 billion will be released on Friday, 27th June, 2008."

You remember that, that same day, I sought clarification from the Minister to provide evidence on the money that he had released to CDF. I want to submit to the House that the Minister has only released Kshs3 billion! I can confirm he did that by today at 3.00 p.m. Again, this is a matter which touches on the integrity of Ministers and their commitment to this House. The law is very clear that the Constituencies Development Fund (CDF) money should be allocated on a quarterly basis. The whole of last year---

**The Temporary Deputy Speaker** (Mr. Imanyara): Order! Your point is well grounded. Yes, indeed, there was a solemn pronouncement by the Minister for Finance that the funds would have been disbursed by particular date and time. In those circumstances, it is only fair that I direct the Leader of Government Business to issue a Ministerial Statement on that issue first thing tomorrow morning.

*(Applause)*

### COMMUNICATIONS FROM THE CHAIR

#### STANDING ORDERS COMMITTEE TO HOLD WORKSHOP ON DRAFT SEVEN OF STANDING ORDERS

**The Temporary Deputy Speaker** (Mr. Imanyara): Hon. Members, I have the following Communication from the Chair to make.

As hon. Members may be aware, it has been the practice of the National Assembly to review its Standing Orders at the tail end of every Parliament. This Parliament, therefore, is

expected to examine its Standing Orders with a view to reviewing areas that it may deem fit for the benefit of successive Parliaments. However, hon. Members are also aware that the Eighth Parliament did not review the Standing Orders as the country was expecting a comprehensive review of the Constitution which, invariably, would have had direct implications on the Standing Orders.

The review of the said rules of procedure was undertaken by the Ninth Parliament, but the House was dissolved before the review could be actualised. Indeed, hon. Members would be aware that the last comprehensive review of our Standing Orders was undertaken in 1997. The foregoing notwithstanding, hon. Members in the Eighth Parliament, the Ninth Parliament and, indeed, this Tenth Parliament, have relentlessly raised legitimate concerns on shortfalls in our rules of procedures.

Hon. Members will also be aware that during the Ninth Parliament, the Standing Orders Committee made significant progress in review of the rules of procedure. This culminated in compilation of a Report now famously referred to as "Draft Seven", by a seven-Member sub-Committee chaired by the then Deputy Speaker, Mr. David Musila. The sub-Committee considered memoranda from other Committees of the House, individual hon. Members, the civil society, organised groups and other interested parties, on areas that needed to be addressed in our Standing Orders. The Draft also incorporates applications and practices obtaining in other parliaments, particularly those in the Commonwealth.

#### KTN AND NTV TO JOIN KBC IN LIVE TRANSMISSION OF HOUSE PROCEEDINGS

Hon. Members, you will recall that following his election as the Speaker of this House, the Hon. Kenneth Marende undertook to, among other things, spearhead necessary parliamentary reforms, including review of our rules of procedure. Indeed, it is in this regard that live broadcast of the House proceedings is now in place on trial basis under an agreement with the Kenya Broadcasting Corporation (KBC). I am happy to report that both Nation Television and Kenya Television Network (KTN) have sought to also feed on the KBC broadcast, so that all the television stations in the country should be doing it in due course.

Moving further forward, on 30th May, 2008, the Standing Orders Committee constituted a six-Member sub-Committee chaired by myself and comprising Messrs. Jeremiah Kioni, David Were, Mohamed Abdulkadir, Prof. Philip Kaloki and Ms. Amina Abdalla, who was co-opted in the membership of the sub-Committee. The sub-Committee, which has already embarked on its work, was expressly tasked to re-consider "Draft Seven" and invite submissions from other Committees of this House, individual hon. Members, officers of the House, organised groups, the civil society and other interested parties, with a view to compiling a report for consideration by the Committee.

Considering the importance and the exigency of the review, the sub-Committee has proposed the following timetable:-

(1) From 4th to 5th July, 2008, the Standing Orders sub-Committee will hold a workshop to consider Draft Seven.

(2) On 17th July, 2008, the sub-Committee will table its Report before the main Standing Orders Committee.

(3) From 18th to 19th July, 2008, the main Committee will retreat to consider the Report of the sub-Committee.

(4) From 24th to 25th July, 2008, there will be a workshop to appraise all hon. Members of the House on the content of the Report.

(5) The Committee will, thereafter, table its Report in the form of a Sessional Paper for consideration by this House by the end of this Session.

Hon. Members, the Standing Orders, being the basic rules of procedure, are of

vital significance to every House as they govern the way Parliament executes its legislative, representative, oversight and deliberative roles. It is, therefore, imperative that every hon. Member participates in their formulation and review. In this regard, all House Committees, individual hon. Members, as, indeed, any other interested parties, are invited to submit their written proposals to the sub-Committee, through the Office of the Clerk, by 11th July, 2008.

Thank you.  
Next Order!

## BILL

### *Second Reading*

#### THE NATIONAL ETHNIC AND RACE RELATIONS COMMISSION BILL

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua):  
Mr. Temporary Deputy Speaker, Sir, I beg to move that the National Ethnic and Race Relations Commission Bill, 2008, be read a Second Time.

The objects of this Bill is to provide for the establishment, powers and functions of the National Ethnic and Race Relations Commission, and for connected purposes. At the outset, I would want to say that this Bill was negotiated by the Serena Team, in line with the National Accord and Reconciliation Act, where we, as Members of this House, committed ourselves, through our negotiating teams, to take certain actions to promote national reconciliation and healing.

Mr. Temporary Deputy Speaker, Sir, this Bill seeks to establish a National Ethnic and Race Relations Commission as a body corporate that will be charged with the responsibility of promoting equality of opportunity, good and harmonious relations and peaceful co-existence between the various Kenyan ethnic communities. The need for such a Commission cannot be overemphasized. We all remember the tragic events of the beginning of this year, whose effects we are living with. The proposed National Ethnic and Race Relations Commission will have the duty to spearhead the much needed reconciliation work to also engage with the various stakeholders to enable us to develop a policy on ethnic and race relations, and also the necessary legal framework. We are starting from scratch.

One might say that, perhaps, the Law Reform Commission can tackle this. But if you remember that we are a nation that is trying to reform much of our laws, we need a specific body that will do nothing else, but handle issues of ethnic and race relations, so as to accelerate both policy, legislation and action, that will help us to promote good race and ethnic relations, and promote national reconciliation and healing.

This Bill is born out of the realisation that we cannot have lasting peace and co-existence in our country unless we cultivate good will among each other, and among our communities. Such good will cannot be predicated on treading on the rights of anyone of us. It must be predicated on balancing the rights of even the smallest of us, so that we can move together, as a nation. So, what does this Bill provide for?

Mr. Temporary Deputy Speaker, Sir, under Clause 3, the Bill proposes to establish the Commission to be known as the National Ethnic and Race Relations Commission. The Commission will be a body corporate with perpetual succession, capable of being sued and also suing on its own behalf. It will be able to do all the things a corporate body can do under the law. The Bill provides for the seat of the Commission to be here in Nairobi, but it may establish branches all over the country.

Mr. Temporary Deputy Speaker, Sir, what will be the composition of that Commission? It will have a Chairperson who will be appointed by the President - that is shown in Clause 5 - from amongst Commissioners appointed under Paragraph (b). Under that paragraph, eight



Commissioners will be nominated by the National Assembly in accordance with the First Schedule and appointed by the President. We realize that national reconciliation is a very delicate issue. That is why we leave the Commissioners to be appointed through the people's representatives, so that there is some consensus. That is because, unless that body has credibility, it will not be able to spearhead the work of national reconciliation.

Mr. Temporary Deputy Speaker, Sir, at a later stage, it may be good to introduce, during the Committee Stage, that when Parliament is doing this work, it should have the advice of a reputable human resources firm so as to do it a little bit better than the previous interviews that have been done by the House.

Apart from those eight Commissioners, that National Ethnic and Race Relations Commission shall also have in it the Chairperson of the Kenya National Commission on Human Rights. That is institutional representation. It will also have the Chairperson of the National Commission on Gender and Development and also, the Chairperson of the Public Complaints Standing Committee; our Ombudsman. Those are the members by institutions. It is the Commission itself that will elect a Chairperson.

So, what are the qualifications proposed for those Commissioners? That, again, is to be found in Clause 6. A person must, obviously, be a Kenyan citizen of high moral character and proven integrity - not supposed but proven integrity. The person must have knowledge and experience in matters relating to race, ethnic and human relations, public affairs and human rights. We exclude certain persons from being proposed as members of that Commission. That proposal is in Clause 6(2) which says:-

"No person shall be qualified for appointment as a Commissioner if such person-

- (a) is a Member of the National Assembly;
- (b) is a member of a local authority;
- (c) is a member of the executive body of, or is actively involved in the affairs of a political party;
- (d) has promoted sectoral, ethnic, racial or religious animosity or openly advocated for partisan ethnic positions or interests".

That way, we can have people who can largely be seen to be non-partisan.

Mr. Temporary Deputy Speaker, Sir, the term of office for the Chairperson and Commissioners shall be three years, but shall be eligible for reappointment.

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

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

Mr. Temporary Deputy Speaker, Sir, the Commission--- I beg your pardon, Madam Temporary Deputy Speaker. I had not noticed the change of the Chair. I was contemplating on the Bill.

Madam Temporary Deputy Speaker, the rest of the staff of the Commission, including the Secretary to the Commission, will be hired by the Commission itself. The procedures are indicated in this Act. Clause 11 also provides for the removal from office of members of the Commission. That is a standard procedure. It is borrowed from the removal of officers of *quasi*-judicial bodies or judicial bodies. It is, more or less, borrowed from the manner in which members of the Judiciary or judges can be removed from office. Clause 11(2) says:-

"A person who wishes to have a Commissioner removed from office may apply for removal of the Commissioner to the President through the

Minister, and such application shall be copied to the Chairperson."

So, Madam Temporary Deputy Speaker, I need not go through the procedure there. It is elaborate to ensure that a person will not be removed as a member of the Commission in a frivolous manner, which would undermine the integrity and independence of the Commissioners. So, the procedure for the removal is designed, in a way, that the Commissioners will secure their independence in the performance of their duties.

Madam Temporary Deputy Speaker, the filling of a vacancy, if it arises in the Commission, follows the same procedure and instead of the advertisements as in the first case, the President would consider the balance of the names already placed before him by the National Assembly.

So, what will this Commission do? The Objects and Functions of the Commission are listed in Clause 13, one of which is to:- "Facilitate and promote equality of opportunity, good relations, harmony and peaceful co-existence between persons of different ethnic communities of Kenya--

Maybe, there, we need to add also:- "Ethnic communities and all races of Kenya",  
"---and to advise the Government on all aspects thereof".

The Commission may also:-

"(a) promote the elimination of all forms of discrimination on basis of ethnicity;  
(b) discourage persons, institutions, political parties and associations from advocating or promoting discrimination or discriminatory practices on the grounds of ethnicity;"

Madam Temporary Deputy Speaker, here, again, I would like to reiterate that wherever the word "ethnicity" appears, at the Committee Stage, we will also be spearheading the adding of the word "race". So, where we have the word "ethnicity", we also have race relations. The Commission will also promote tolerance, understanding and acceptance of diversity in all aspects of national life and encourage full participation by all ethnic communities in the social, economic, cultural and political life of other communities.

The Commission will also plan, supervise, co-ordinate and promote educational and training programmes to create public awareness, support an advancement of peace and harmony among our ethnic communities and races. It will also promote respect for religious, cultural, linguistic and other forms of diversity in a plural society. It will also promote equal access and enjoyment by all persons of all ethnic communities and races - I am adding the word "races - to public or other services and facilities provided by the Government. It will also promote arbitration, reconciliation, mediation and similar forms of dispute resolution mechanisms in order to secure and enhance ethnic harmony and peace.

Madam Temporary Deputy Speaker, we know that, at a time like this, we need these activities. We need them, not on an *ad hoc* basis, but on a continuous basis, not only in order that we may have reconciliation and healing, but to prevent the occurrences of early this year ever again occurring in our country.

That Commission will also investigate complaints of ethnic or racial discrimination and make recommendations to the Attorney-General, the Kenya National Commission on Human Rights or any other relevant authority on the remedial measures to be taken where such complaints are valid. I am imagining that any other authority can even be an employer, who is discriminating on the basis of ethnic or racial grounds.

The Commission will also investigate, on its own accord or on the request of any institution, office or person, any issue affecting ethnic and - I am adding race relations - it will also identify and analyze factors inhibiting the attainment of harmonious relations between ethnic communities, particularly barriers to the participation of any ethnic community in social, economic, commercial, financial, cultural and political endeavours and recommend to the

Government and any other relevant public or private body, how those factors should be overcome.

Madam Temporary Deputy Speaker, we have heard, in the past, a lot of complaints from people who have faced marginalization in employment and in the provision of services. That will be the right body to get into those issues, whether it is a Government agency or just a private employer. That institution will have the mandate to get into that and promote a harmonious society where we can all co-exist. It will also determine strategic priorities for socio-economic, political and development policies of Government impacting on ethnic and race relations and advise on their implementation. It will recommend to the Government the criteria for deciding whether any public office or officer has committed acts of discrimination on the grounds of ethnicity or race. This is very important, because we do not have legislation and policy, it will monitor and review all legislations and all administrative acts relating 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.

Madam Temporary Deputy Speaker, if we recall, we have had a continuing row since 1990s, where Kenyan Somalis are subjected to different standards in acquisition of identity cards and passports. This body will monitor such discriminatory practices and ensure that action is taken immediately. It will also initiate, lobby for, and advocate for policy, legal or administrative reforms on issues affecting ethnic or race relations. It will also monitor and make recommendations to the Government and other relevant public and private sector bodies on factors inhibiting the development of harmonious relations between ethnic groups and races and on barriers to the participation of ethnic groups and races in the social, economic, commercial, financial, cultural and political lives of the people.

There is a lot of silent discrimination on ethnic and racial grounds going on in private institutions, and also sometimes in public offices in this country. We need this body to monitor and take complaints from the public, who would otherwise not have anybody else to turn to.

Madam Temporary Deputy Speaker, it will also undertake research and studies and make recommendations to the Government on any issue relating to the ethnic and racial affairs, including whether ethnic and race relations are improving. In other words, it will give periodic reports to show us where we are, whether we are improving and what more we need to do. It will also report to the National Assembly in a similar manner the status and success of implementation of its recommendations. We have a blanket clause which enables it to do all other acts and things as may be necessary to facilitate the efficient discharge of its duty. The importance of that last clause is that it is not possible to include everything. So, in case something is inadvertently left out, this leaves it wide enough for this body to do all such other acts as are necessary.

This body is not going to be a toothless bull dog. For it to be able to function, it has to have teeth. Clause 14 indicates that the Commission will have powers necessary or expedient for the proper performance of its functions. They shall not be subjected to the direction of or control of any other person or authority. They are going to be independent from the moment they are appointed. They may enter into association with such other bodies or organisations within or outside Kenya, as they may consider desirable or appropriate and in furtherance of the purpose for which they are established. So, if there are similar Commissions elsewhere, they can twin with them and learn from them.

They will control, supervise and administer the assets of the Commission in such manner and for such purposes as best to promote the purpose for which they are established. We have also provided that they can receive grants, gifts and donations that are legitimate. This comes in because more often than not semi-autonomous Government bodies and even Ministries complain that the budgetary allocation is not enough. Therefore, we encourage where institutions are able to fundraise or find other means of getting funds. We combine these methods so as to supplement what the Exchequer provides and not to tie the

operation of this independent body. They will have power to summon witnesses as it is usual with the Commissions of this nature, and also to get witnesses or other persons to produce books, plans and other documents that may be necessary. They will also have powers like a court to reimburse witness expenses. So, in other words, we are really giving them quasi-judicial functions.

In the conduct of their business in Clause 18, the Commission will regulate its own procedure. But certain directions are given in the third schedule. The Commission is allowed by Clause 19 by resolution or generally, in any particular case to delegate to any committee of the Commission or to any member, officer or employee or agents the exercise of any of its powers. This is a usual clause to allow them to work through their staff.

Their remuneration will be determined by the Minister in consultation with the Treasury. This is necessary so that it is in harmony with the rest of the Government departments. The staff of the Commission will be appointed by the Commission and their terms of service will also be determined by the Commission with the usual consultations. They are obliged to observe the principles of ethnic and gender balance in their staff appointments. There, I will not suggest that we add the word race, because the races are not many and we cannot balance that in employment. But ethnic, we need to watch and to make sure that this Commission represents the face of the country.

Madam Temporary Deputy Speaker, under Clause 23, the Commission is also protected from personal liability, when they are conducting their duties. This again, is to insulate them so that they are able to work without hinderance or fear. As I had stated earlier, on part 3 Clause 25, funds of the Commission are provided for. These are monies appropriated by Parliament and such monies or assets as may accrue to the Commission in the course of the exercise of its powers and from any other source provided for or donated or lent to the Commission.

Clause 26 guides them on how to prepare their annual estimates, which then have to be forwarded to the Treasury with prior approval. This is a standard procedure to harmonise the spending of Government, because we must live within our means. All Ministries are moderated by the Treasury on how they spend. Our competing needs, as Ministries and Government agencies, have to be moderated so that no one is neglected in the allocation of funds and so that every Government agency and Ministry is provided for even if it is not to the fullest extent demanded. The usual provision for audit is in Clause 27 and also Clause 28 sets out how the funds may be invested, which is standard Government procedure.

Madam Temporary Deputy Speaker, Clause 29 does obligate the Commission to make its annual reports, prepared each financial year, which include the financial statement, and which then must be transmitted to the National Assembly, as is usual, within 30 days. However, the Commission may make special reports, not just the yearly reports, to the National Assembly when the need arises, as Clause 30 proposes. Offences are created by the proposed Clause 31 for anybody who refuses, without sufficient cause, to obey the summons of the Commission, or refuses to swear or be affirmed when appearing before the Commission. This, again, is giving the Commission powers equal to those of a court when summoning or hearing of witness.

Madam Temporary Deputy Speaker, in the First Schedule, the procedure for nominating the Commissioners by the National Assembly is set out, where the Clerk of the National Assembly, within 14 days of the commencement of this Act, by an advertisement in the Gazette, and in at least three daily newspapers of national circulation, will invite applications from persons qualified under this Act for nomination as Commissioners. So, for the National Assembly to select, an invitation will publicly go to every one, so that people have equal opportunity. It is the right procedure because this Act is seeking to create equal opportunities for everyone. So, it begins by selecting the Commission by inviting the applications from members of the public.

Then any group of people or organization that proposes a person to be nominated will apply, then the relevant Parliamentary Committee, in consultation with the Minister, shall consider all the applications and recommend to the National Assembly the persons qualified. Here is where I

am saying that, as a measure to strengthen this Bill, we should add that the relevant Committee of Parliament, with the help of a reputable human resources firm, the necessary human resources complement, which is not, otherwise, available in Parliament.

Madam Temporary Speaker, The rest of the procedure is set out between Clauses 3 and 7 and is the usual standard procedure. The Second Schedule provides for the Oath of Affirmation when you appear before the Commissioners. Then the Third Schedule provides for the conduct of the business and the affairs of the Commission. The Commission is obliged to meet not less than four times in every financial year, and not more than four months shall elapse between the date of one meeting and the date of the next.

The rest are the standard Clauses, where the Commission Chairperson is obliged to convene a meeting, if requested by at least three commissioners and the quorum for the conduct of the Commission business shall be seven members. This is a Commission with about 11 members. So, a quorum of seven members is a high threshold; because Commissioners will be dealing with a very delicate issue of ethnic relations, I want to persuade hon. Members that this high threshold is actually called for. Then the standard procedure that the Chairperson shall preside at every meeting and in the absence, the members shall elect one of their own who will then be able to preside.

Regarding the issue of how members will vote, in the absence of unanimity, it will be by a majority of the votes of members present, and the person presiding will have a casting vote. The rest are the normal provisions for a commission to have a common seal and so on.

Madam Temporary Deputy Speaker, I would want to say that we had expected to be able to have produced, as a negotiating team, this Bill by the end of May, but it was not possible. Actually, it is dated 8th May, 2008 but we went on one month recess. I would like to confess that we were a little late by one month, but we are moving on, and are trying our best to fulfil what was agreed in the National Accord.

With those very many remarks, may I now hand over the Bill to the Members of the National Assembly to enrich and mould as necessary, remembering that it was negotiated on their behalf. I have already appeared before the Parliamentary Committee on Administration of Justice and Legal Affairs, and we are also expecting their feedback as we go to the next stage.

I beg to move and request, with the permission of the Chair, Prof. Ongeru to second.

**The Minister for Education** (Prof. Ongeru): Madam Temporary Deputy Speaker, I stand to second this Bill. This is a Bill which was necessitated by the recent debacle that the nation went through. It was quite clear that when these events took place, the mechanism and the manner in which to resolve issues became illusive. Other than the criminal law and the civil law, which have their own time limitations, there was no single piece of law that would govern the relationships between people, tribes and races. We realised that this nation can slip back to anarchy, unless we put into place a law to restore the dignity and the lifestyles of our people to have the ability to move all over the country.

History is replete with many examples. We saw roadblocks everywhere. That was not conducive to easy travel and easy access to markets, towns and other places. Therefore, people found themselves balkanized in their own country. There were spontaneous outbursts. Even people who had been the best of friends were not able to contain themselves. Therefore, as a team, we felt that it would be prudent to generate a Bill to this House, that is, the National Ethnic and Race Relations Commission Bill. This is the Bill.

As you aware, two commissions are to be put in place: The Truth, Justice and Reconciliation Commission which is of a long-term nature. Then there will be a working commission, which we call "the baby commission" which is of a short-term nature, because there is a time limit that has been fixed for that working commission. This is to be able to inform this nation what happened during the elections. The Krieglger Commission will be able to inform the nation what we can do to one another when faced with such grim situations like the one we

witnessed in the last three months. Therefore, if you look very carefully, this is a negotiated document.

If you look at Clause 2, for example, it clearly gives a definition of the terminologies that are likely to be applied when seen. I want to invite the hon. Members to look at the definition of "ethnic relations." The ethnic relations, include racial, religious, tribal and cultural interactions between various communities. The words "ethnic" and "ethnicity" shall be construed accordingly. It is not the wish of anybody that this nation should be discriminating itself against race. We did away with that at the onset of Independence.

We fought for this nation to be free, so that its people can be free agents moving in their land freely. Never was the Independence war won on the basis of balkanisation. It was won on the basis that it will be a free country; free in movement, speech, action, socio-economic life and political life, so that people in a political society and party can move freely and be able to expound their policies freely. Because of the overtones that sometimes were injected in the conduct and style that we noticed, this might have been a trigger mechanism that brought about this very tense racial and ethnic relations that were spoilt. Therefore, Clause 2 basically deals with the definitions themselves. It would have become apparent by now that this Bill is people-friendly. It is not starting on a very punitive note. It is people-friendly in the sense that we now realise that we are Kenyans. We now realise that we stay in the Republic of Kenya. It is not a mistake to be born where you are born. It is not a mistake to belong to a particular tribe.

However, it is mistake to use a tribe to incite and create problems for another tribe. Therefore, there is need for the law to be able to put this issue into perspective. That is why I am saying that it is people-friendly. We have existed together for the last 44 years without having major frictions. We have just had occasional ones which are determined by the village elders from both sides of the divide wherever it has occurred. The issue has been a thing of the past. But this particular one, rather went deep into the feelings of the people. People internalised this problem. It became very difficult to be able to disentangle. Even now as I speak, it will take quite a bit of counselling and sitting together to be able to heal this nation. Because of these obstacles, it was felt that a Bill of this nature, if it is translated to an Act of Parliament, can help in cementing and bringing people together in a friendly manner. So, Clause 2, therefore, defines what the Bill is all about.

The most important part of it is when you look at Clause 13. It states the objects and purpose for which the Commission was established. Clause 13(2) gives the various duties or responsibilities assigned to the Commission. I want to draw the attention of the hon. Members of this House to the fact that sub-clauses "a", "b", "c", "d", "e", "f" and "g", deal with the promotional aspects of the Bill. For instance, "a" says:

" To promote the elimination of all forms of discrimination on the basis of ethnicity."

We do not want to see ethnic bias in appointments and all other activities of the Government of Kenya. For that matter, in both private and public sector, there has to be a formal conduct where Kenyans are seen as just one big group of people who are living together despite their diversities. We want to cash in and enrich our diversity in order to be able to create a favourable environment for our people to work. Therefore, when you look at sub-clause "a" it is basically talking of promoting the elimination of all forms of discrimination. I do not think that hon. Members will have a problem with that. It is really our responsibility, as leaders, to be able to promote that element of living and being together and promoting the growth and culture of this nation as a people. I am always proud when I see the Bomas Cultural Troop going out of this nation. What they exhibit, even the people from one tribe signing the songs of another tribe---

I am always reminded vividly when I attend the drama and festival activities of schools and

colleges. It is rich of what I would call cultural repertoire. It is so rich that you feel that you belong to a nation. When you see a Pokot dance being exhibited on stage, you feel like jumping with them, because it is dignity that they show. When you hear a Luhya song being sang on stage, everybody stands up to go and dance, because you feel that, that is an expression.

When I hear a Kalenjin song, I feel like being part that song. We feel that within our own culture, there are those cultures which are so important in promoting good neighbourliness and living together. Hon. Ruto is my neighbour and we have always chatted together about what we think are things that divide us and put us together. We ignore those that divide us and move along with those that put us together. I think this is the type of promotion that we are talking about in this particular Bill. Let us spend more of our time and energy promoting what is good and eliminating what is bad in those cultures.

Sub-clause "b" discourages persons and institutions, including political parties and associations, from advocating or promoting discrimination or discriminatory practices on the ground of ethnicity. We do not want to see a mushrooming of political parties which are tribal-based. I think that is a retrogressive step for this nation. At the level where we are politically, I think we should be looking for a better product mix - if I may borrow the economic language - where you have a small Turkana from there, Kisii from there, another Luo from there and another Kikuyu from there. All the tribes of Kenya reflecting the mood which is based on issue-oriented policies other than the tribal-oriented hegemony. I think that is what we must avoid. Anything that smells tribe spells disaster for this nation. Therefore, if we pass this Bill, it will help us engage in these activities. It will enable us promote tolerance. The level of tolerance in us is very small. The margin between eclipse--- We were standing at the precipice of just dipping in the sea, but by the mercy and grace of God, we were retrieved from that position. We have been given a second chance like Jonah was. This is a second chance to look at ourselves and our relations as we move along. Therefore, Sub-clause (b) is to discourage any person who promotes hate speech, hate language and hate relations. Such a person is not a useful member of our society and so he should be discouraged from doing that.

The Bill is people friendly. It does not say that you pick up a rungu or a machete to settle scores with an individual. It behoves us, as Members of Parliament, to say: "Sorry, you cannot do this against the established law of the land." That is why we believe that, that aspect of it will give us the impetus, power and authority to deal with the errant individuals in a polite manner. Above all, we should be able to bring understanding and acceptance that we are Kenyans first and foremost. We must respect our diversity and the way we live. Wherever you are, whether you are established in farming, business or in a certain job, you are entitled to be in that area as a Kenyan.

Madam Temporary Deputy Speaker, if we must craft the laws that will help us deal with this monster of tribalism, ethnicity and racism, I think it will be a worthwhile exercise. It took South Africa the Truth, Justice and Reconciliation Commission to deal with the monster of apartheid. We have not reached those levels in terms of race relations. However, we were almost drifting to a level where one tribe was seen as an enemy of the other simply because we disagreed on certain issues politically and the way we should be doing our things.

I do not think that the politics of the day should override the daily lives of people. Politics is a competitive exercise. In politics, issues are determined at the time of the general elections. At any rate, it is a one day affair and the matter is settled by the people themselves. We should not place our people on the warpath of any nature. That is what this Bill seeks to do.

If you look at Sub-clause (h) downwards, the Bill gives the 11 Commissioners power to investigate. Indeed, in Subclauses (h) and (i) it talks about investigation. In Subclause (j) it talks about identifying and analyzing factors inhibiting the attainment of the harmonious relations. From Subclause (k) downwards, the Bill talks about the Commission determining the position after having investigated, found out the truth and the essence of the problems affecting us in one way or

the other and in any given situation. There must be a legal framework that will help them to determine the strategic priorities which can be recommended to the Government for the purpose of change. They should also be in a position to monitor and do all other things.

Madam Temporary Deputy Speaker, if you look at Subclause (p), we do not want to create Acts of Parliament and Commissioners whose business is only in consonance and in tandem with the Act that establishes them. These particular Commissioners and the Act that we shall put in place should have an input in its own work by engaging Sub-clause (p). They should undertake research and studies and make recommendations to the Government on any issue relating to ethnic affairs, including information whether ethnic relations are improving or not. So, they should not just go there and sit to earn a salary. They should be proactive. They should look ahead and analyze on the basis of the information available to them. They should be able to inform this House how they are progressing. After all, they will be reporting to this House through the responsible Minister at that time. They should make the necessary recommendations as is stated in Subclauses (q), (r) and (s).

Looking at the overall strategy of this Bill, it will really bring harmony and peace. There is no alternative. Peace is a very expensive commodity and you must insulate it in order to reach tangible social and economic growth. You must, of necessity, insulate peace. Without insulating peace, we will be talking at cross-purposes and in parallel systems. No nation will move. Our children were totally devastated and they have yet to erase the memories of the recent events. Therefore, one way in which we want to bridge this gap is by creating an enabling environment where children will soon learn about the past events.

To that end, we in the Ministry of Education have realised that this is a very fertile group of people who are likely to form prejudices that will be very difficult to clean up in the years to come. We, therefore, shall be launching a peace manual, that is, how a child will look at another from another tribe. They should look at each other as schoolmates and not enemies regardless of whatever political events that may have taken place. They are supposed to be good friends and neighbours and need not involve themselves in what has already happened.

Madam Temporary Deputy Speaker, the peace manual will be in a form of a curriculum that they will have to go through. As part of the teaching process, there will be an in-built counselling that will help our children to overcome this debacle. It is a good thing and I would like to encourage hon. Members to be part of this process so that we can make our children learn faster.

Another manual that we are rolling out is the safety manual. Our children must be safe in our schools, roads and other places. It was a very painful event yesterday when I learnt with agony the death of children from Marani Primary School. On their way to the music festivals in Kisumu, they unfortunately had a very bad road accident. We lost about four children and the others were injured.

I take this opportunity, through this august House, to pass my condolences and of hon. Members to the bereaved families. It is not the intention of the Government to create any problem. These children were going to Kisumu to share in the music festivals with other people in Nyanza Province. They had a message of hope and peace. When the festivals reach the national level, I am sure that is what we are going to see being exhibited by the children themselves. It is, therefore, important that we take every single event, be it a cultural, musical, church or funeral to promote race and ethnic relations that bring fresh memory of good things and not bad ones.

This Bill, however small it may look, is very rich in the functions that it is calling upon. Above all, the Commissioners should monitor and report to the National Assembly the status and success of implementation of the recommendations. I think the rest of the Bill deals with the normal administrative process. It deals with how they will be getting their funds from Parliament; how to administer the process and how to do it. That is clearly set out in the schedules.

So, when you look at the first Schedule, it lays down the procedure to be followed by the



National Assembly in nominating persons for eventual appointment as Commissioners by the President. Once again, the National Assembly is being given the opportunity to nominate those people; who should be people of integrity, high calibre and who are beyond rebuke. Therefore, this House, will, once again, be called upon to carry out that noble function.

The second schedule provides the manner in which they will take their oath; both the Commissioners and the Secretary. The third schedule contains the provisions on the conduct of affairs and business of the Commission.

With those few remarks, I beg to second.

*(Question proposed)*

**The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government** (Mr. Githae): Thank you, Madam Temporary Deputy Speaker, for giving me this opportunity. I also note that we are making history. I think for the first time in the history of this Parliament, the person on the Chair and all the Clerks-at-the-Table are from the same gender. We are making history! We are making progress! That is the way it should be.

*(Applause)*

I rise to support this Bill. I support it fully because we have seen the consequences of political chaos that almost brought this country to ruin. One of the functions of that Commission is to assist the Government to eliminate all forms of discrimination, ethnic relations that bring bad blood between the various tribes, and tribalism.

First of all, we must all confess that we have been tribalists in this country. Why am I saying that? If you look at our personal staff--- Let me start from there because we must, first of all, look at our own selves. Look at our secretaries. Do they come from your ethnic community? Does your driver come from your ethnic community? Does your maid come from your ethnic community? Does your cook come from your ethnic community? If what I have said is correct, then you are a tribalist. We are all tribalists! We must all accept that and then ask ourselves: How do we eliminate tribalism?

One of the functions of that Commission is to assist the Government to eliminate discrimination. For us to do that, we must ban certain terminologies like ancestral land. How far do we go when someone says that somebody else should go back to his or her ancestral land? We must

ban that term in this country, if we are going to maintain good relations among various ethnic groups. Calling a Kenyan a foreigner; how can you be a foreigner in your own land? It is not possible! We must ban that word as long as it relates to Kenyans. Alien! How can you be an alien in your own land? You cannot! The Commission must ban the usage of such words. There are others which have come up! Settlers. How can you call somebody a settler in his or her own country?

Madam Temporary Deputy Speaker, the Commission must come out clearly and ban some of these terminologies, if we are going to have good ethnic relations in this country. We must also ban generalisations like: "This community is lazy. This community has jiggers! This community has brown teeth! People in this community are all short. This community is sexy. The whole of these community members are arrogant! They are best cooks and watchmen." We must ban those generalisations. That is what causes ethnic hatred. The Commission must be forthright that anybody who generalises another community in those terms must be taken to account.

Let me now come to hate speech and Short Text Messages (SMSs) that were very well used

during the campaigns. The Commission must come out very clearly in banning hate speeches and jokes. Some jokes do not encourage ethnic relationships. Whereas we must ban hate speech, those who are advocating for the banning of vernacular radio stations, I think, do not know what they are talking about. A vernacular language in itself cannot incite or cause hatred among ethnic communities. Vernacular language, as popularised by Frequency Modulation (FM) radio stations cannot, in themselves--- It is the speaker! It is that person who is issuing that hate speech who should be taken action against, and not the radio station. The radio station is innocent! It is just a machine. It is the person.

If you go to Russia, their vernacular radio station they use the Russian language. So, will the Russians also ban their radio station? If you go to Spain, the vernacular radio station will transmit in Spanish? So, can we then ban Spanish radio? The languages of our various communities are rich. We must encourage them! If you look at our mothers and fathers, if we say that they must listen to the radio in English and Kiswahili---

Most of them do not know those languages. So, we must, right from the outset, say that vernacular radio stations, in themselves, do not cause hate speech. It is the people; that person who is making that announcement and the interviewer who make those hate speeches. It is not the radio stations. In fact, we should encourage more. I look forward to the day when we will have vernacular television stations. We must encourage our languages.

Madam Temporary Deputy Speaker, the Bill will also encourage cultural and religious respect. That is correct. That will encourage peaceful co-existence. But I have got some various comments and, fortunately, the Minister for Justice, National Cohesion and Constitutional Affairs has requested us to enrich this Bill. In Section 4(1) the Bill says that the headquarters of the Commission shall be in Nairobi. Why Nairobi? In fact, it should establish branches in all the provinces and districts. That is where the people are. If it stays in Nairobi, it may just serve the town dwellers. So, I would like to see a provision where it is not mandated that it must be in Nairobi. It can be anywhere in the Republic of Kenya. Again, under Section 4(2), the Commission may hold its sittings in any place in Kenya. I think it must be mandated that it must hold meetings, not "may", in, at least, all the towns in the Republic of Kenya. That will make the Commission more effective.

The other clause that I have a problem with is Section 5(1)(c). It says that the Commission shall consist of--- It says the Chairperson of the Kenya National Commission on Human Rights (KNCHR). My experience has been that when you mandate the actual person and not the representative, you are bound to lack quorum. So, I think we should also add a clause that says: The Chairperson or his or her representative. That way, the Commission will not lack quorum.

We should also do the same for the Chairpersons of the National Commission on Gender and Public Complaints Standing Committee. Otherwise, this Commission may lack quorum. I have seen this happen previously, where the Treasury used to see the Permanent Secretary, but was not able to see the Attorney-General and the Attorney-General or the Minister was not able to attend in person. Therefore, where there was no provision for a representative of either Minister or the Attorney-General in the boards of corporations, most of the times, there was no quorum. So, in order to avoid the issue of lack of quorum, let us also have also their representatives.

Madam Temporary Deputy Speaker, Clause 5(3) says:

The Commissioners shall, at their first meeting, elect a vice-chairman from amongst the commissioners appointed under subsection (2)(b).

I would prefer a clause which says that if the chairperson is a man, then the vice-chairperson must be a woman, or the other way round. This will show that when we talk about gender, we actually mean it. We do not just talk about gender for the sake of it.

Madam Temporary Deputy Speaker, Clause 6(2) spells out reasons for disqualifying a person from being appointed as a commissioner. Clause 6(2)(d) says:

"has promoted sectoral, ethnic, racial or religious animosity or openly advocated for partisan ethnic positions or interests."

Such a person should not be a member of the Commission. In fact, my view is that it is actually that person who needs to be a member of the Commission, so that he can change. There is nothing good like a person who is talking from experience. So, the fact that somebody once promoted negative attributes and, subsequently, changed to campaign for good ethnic relations, should not be appointed a commissioner just because of that change.

Madam Temporary Deputy Speaker, Clause 7 seeks to fix the term of the Commission at three years. This is a very short period. By the time the Commissioners have known what they are doing, one year is over. They will start working in the second year. By the time the third year has come, they have started campaigning for re-election. So, the Commission will not be effective. I would prefer that the Commissioner be appointed for a term of five years. Even better, they could be appointed for term of seven years, non-renewable, so that there will be corporate history and continuity in their working. Three years is a very short period.

My main problem is on Clause 11(2). It says:-

"A person who wishes to have a commissioner removed from office may apply for removal of the commissioner to the President through the Minister, and such application shall be copied to the Chairperson."

Madam Temporary Deputy Speaker, we have a lot of busybodies in this country, particularly from the civil society. If you provide that any person who wishes to have a commissioner removed from office may apply for the removal of the commissioner to the President---

**Mrs. Odhiambo-Mabona:** On a point of order, Madam Temporary Deputy Speaker. Is the hon. Member in order to refer to members of civil society as busybodies? I come from a background of civil society, and I do not perceive myself as a busy body.

**The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government** (Mr. Githae): Madam Temporary Deputy Speaker, if you come from a civil society background and you are not a busybody, then you should not actually be from that society. The work of a civil society is activism. An activist is, by nature, a busybody. So, you must be a busybody for you to be effective.

**Mrs. Odhiambo-Mabona:** Madam Temporary Deputy Speaker, Sir, perhaps it is our understanding of the English language that differs. Perhaps, you could guide the House; the term "busybody" has a negative connotation. Perhaps you could advise the House.

**The Temporary Deputy Speaker** (Prof. Kamar): Mr. Githae, I think it is the definition of words that matters. When you talk of a "busybody", what exactly do you mean?

**The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government** (Mr. Githae): Madam Temporary Deputy Speaker, a busybody is a person who is busy. Right now, I am very busy contributing to this Motion. So, I am actually a busybody as far as parliamentary matters are concerned. I am only saying that a person who works very hard is a busybody.

**Mr. Baiya:** On a point of order, Madam Temporary Deputy Speaker. The hon. Member on the Floor is misleading the House. "Busybody" means someone whose presence is not relevant. It is somebody who invites himself, but who unduly interferes. It is actually unparliamentary.

**The Temporary Deputy Speaker** (Prof. Kamar): Mr. Githae, could you, please, re-phrase what you said. Include the words "busybodies" in the way you had said it, so that we can determine whether you are one of the busybodies, as you said.

**The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government** (Mr. Githae): Madam Temporary Deputy Speaker, I am actually surprised that somebody has taken offence at my usage of the words "busybody". It means you are active and

busy. That is why you are a busybody. If a body is active, it is actually busy. I said this in good faith.

**Mrs. Odhiambo-Mabona:** On a point of order, Madam Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Prof. Kamar): Order! Order! I would like to, first, get a clear explanation. I have asked for a re-phrasing of the statement that the hon. Member made, including the words "busybody", so that we can determine whether the words "busybody" should be withdrawn or they appropriately describe everybody who is busy, including himself. Please, re-phrase what you said, Mr. Githae.

**The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government** (Mr. Githae): Madam Temporary Deputy Speaker, that is exactly what I said: A person who is active in his duty. Any persons who are very busy in performing their duties are actually busybodies.

**The Temporary Deputy Speaker** (Prof. Kamar): Order! Order, Mr. Githae! Please, re-phrase what you had said about the civil society, so that we see whether it fits the very definition that you have given.

**The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government** (Mr. Githae): Madam Temporary Deputy Speaker, now, I will not say that they are busybodies. I will say that they are active bodies.

**The Temporary Deputy Speaker** (Prof. Kamar): Mr. Githae, would you like to withdraw those words? It looks like you cannot re-phrase what you had said. It may have been a slip of the tongue.

**The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government** (Mr. Githae): Madam Temporary Deputy Speaker, as I said, it was actually a compliment to members of the civil society. However, since they have taken offence, I withdraw the words.

**Mr. Ruto:** On a point of order, Madam Temporary Deputy Speaker. Is it in order for Members of Parliament to continue harassing the "busybody" Member of Parliament called Githae? He has admitted that he is a busybody, and we have always known him as such.

*(Laughter)*

Whenever he comes to Parliament, he advises Kenyans to eat lizards and rats. That is the work of busybodies like Mr. Githae!

**The Temporary Deputy Speaker** (Prof. Kamar): Hon. Members, before we divert, I had requested Mr. Githae to re-phrase his earlier statement, bringing in the words "civil society", so that we see whether his definition of "bushbodies" was actually offensive or it was described exactly the way he has defined it.

**The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government** (Mr. Githae): Madam Temporary Deputy Speaker, I withdraw the words "bushbodies". There are many busybodies.

**The Temporary Deputy Speaker** (Prof. Kamar): Are you withdrawing the words "bushbodies"?

**The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government** (Mr. Githae): Yes, Madam Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Prof. Kamar): You must withdraw the word "bushbodies." You have to withdraw that word if it does not mean exactly what you said. What you told us is that it belongs to busybodies, including yourself. So, I wanted you to re-phrase exactly

what you had said about civil society as "busybodies", so that we determine whether the words are positive or they are words which are supposed to be withdrawn. So, you are either withdrawing the words "busybodies" or you are defining civil societies in the manner you have defined busybodies.

**The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government** (Mr. Githae): Madam Temporary Deputy Speaker, I withdraw the words "busybodies" and "civil societies". As I said, my intention was not to malign civil societies.

**The Temporary Deputy Speaker** (Prof. Kamar): If you have withdrawn the words "busybodies", continue.

**The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government** (Mr. Githae): Madam Temporary Deputy Speaker, I was saying I do not like the clause which proposes that any person who wishes to have a commissioner removed, can apply for that commissioner's removal. As I said, we have people, in this country, who do not seem to have much to do, and who always apply for people to be removed from office. This is the same clause we had in the Bomas Draft Constitution, which says that any person can apply for the removal of a Member of Parliament. Subsequently, the National Convention at the Bomas of Kenya, in its own wisdom, removed that recall clause. So, I am saying, that clause is dangerous. Furthermore, it amounts to having a noose on the necks of the commissioners.

Again, Clause 11 says:

"A Commissioner shall be removed from office if two thirds of the Members of the National Assembly vote to remove the member, on the recommendation of the Parliamentary Committee."

Madam Temporary Deputy Speaker, my experience in this House is that you can never raise two thirds majority on any issue. That is the only reason why we were unable to enact a new Constitution. There is no party with two thirds majority in this House. You cannot get two-thirds of Members of Parliament having the same opinion. So, what that means is that it will almost be impossible to remove any Commissioner, if you require a two-thirds majority in Parliament.

Madam Temporary Deputy Speaker, as I finish, my main problem is that there are no penalties in the whole Bill, except where you refuse to attend when you are summoned or when you refuse to produce documents. But what happens if, for example, you have somebody who is constantly discriminating, practising tribalism, preaching hatred or harassing people who may have settled in their area? What happens if he is told: "Please, stop", and he does not? We must have a provision where that person who incites members of his community to evict other people and he is warned to stop and he does not and continues--- There must be a penalty. That person must be taken to court and jailed. We cannot have those kind of people in this country!

So, we need a penalty where, once you advise somebody who practises those ills to stop and he does not, he is taken to court! If there are no penalties, then this will be more like an advisory body rather than an executive body. It must be given powers to take people to court. It has no powers! It has been given powers to sue and to be sued, but I do not see the powers to prosecute here! That body must be given powers to prosecute and, probably, it would be the best body to prosecute those who involved themselves in the recent political chaos that we saw in this country! That, probably, is the best body for that. But it does not have the teeth. We want it to have teeth so that it can prosecute. If it does not, then not much will be achieved.

Madam Temporary Deputy Speaker, coming now to the mandate, the Commission must come out clearly and advise Kenyans that the Constitution allows any Kenyan the right to live anywhere in the Republic of Kenya. The Commission must tell Kenyans that! The Commission must tell Kenyans that the Constitution allows any person to own land anywhere in the Republic of Kenya. I repeat the word "anywhere". I have looked at the Constitution and there is no place it says that you cannot buy or purchase land in a particular area. There is no such clause!

Once again, Madam Temporary Deputy Speaker, the Commission must tell Kenyans that having or purchasing land in a particular place is your right; it is not a privilege! You should not be given any conditions at all! There should be no conditions! You should be allowed to buy land; you should be allowed to work anywhere; you should be allowed to marry anywhere! That is what the Constitution says. Anybody who advocates otherwise must be dealt with by the Commission, if this Commission is to achieve its purpose!

Madam Temporary Deputy Speaker, even for the political parties, we must also not allow tribal political parties. We must have national parties; parties with membership from the whole country. If you look at the last elections and the two main parties, it was like the country was divided into two. We want a situation where any person can vie for a seat in any constituency. I would like a situation where Mr. Isaac Ruto can come to vie in Ndia and be elected! I would like a situation where I can go and vie in Kisumu and be elected because of my qualities and not because of the party ticket. We must work for that!

Lastly, Madam Temporary Deputy Speaker, there is a clause which I am not very happy with. That is Clause 10(e), which talks about physical infirmity. Unfortunately, whenever any Act says that you can be removed from office because of physical infirmity, it actually discriminates against our vulnerable members of the society - the disabled. When most of the people see physical infirmity, they associate it with physical disability. The two are not the same. In fact, the physically disabled people are the most hard working members of our society. So, I would like to ask the Minister to remove that Clause. The intention is good, but when "physical infirmity", is put there, it is associated with physical disability. The two are different. So, if we can add or remove the things that I have talked about, I think we shall have enriched this very important piece of legislation that was negotiated at Serena.

Madam Temporary Deputy Speaker, we must commend the people who negotiated this agreement in Serena for the hard work that they did; for the long hours that they put in; for being steadfast in their obligations and in being steadfast in representing their Principals. Whatever they said was not personal. It was what their Principals were telling them. So, we must commend them and say "thank you" to them for coming up with this Bill. I am asking hon. Members to pass this Bill very quickly, so that the Commission could start working. We must emphasize and tell Kenyans that the purpose of that Commission is not to create jobs for people. That is a very important Commission. We should have had it a long time ago.

In places like the United Kingdom, they even have a dictionary of politically correct words. There are some words that you should not use because they have got different connotations when that message is received by a person who is not from your ethnic community. So, we must commend the negotiating team for coming up with this Bill. My request is that we should support and pass it. We have been given the mandate by the Minister to enrich it. What I have been doing is to enrich it. The suggestions that I have given are meant to improve this Bill so that, what happened in December shall never, never, ever again occur in this country.

With those few words, I beg to support.

*(Applause)*

**Mr. Ruto:** Thank you very much, Madam Temporary Deputy Speaker. Of course, I will not take as much time as hon. Githae. I want to be mindful of others who wish to contribute and---

**The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government (Mr. Githae):** On a point of order, Madam Temporary Deputy Speaker. I take great exception to the remarks made by hon. Ruto. We have been allowed the required number of minutes and I have not spoken a second longer than the time I was allocated. Could he withdraw

for imputing an improper motive on me?

**The Temporary Deputy Speaker** (Prof. Kamar): Thank you, hon. Member. I think you are correct. You finished on time!

**Mr. Ruto:** Yes, he has finished on time, but I just wanted to say that I am not a busybody. I will take even shorter time.

Madam Temporary Deputy Speaker, the Bill before us is a little bit, in my view, not quite right for introduction into this House, and I stand to oppose it. I think the intention of the drafters may have been good, but the functions they have assigned this Commission are generally, if they are for good intentions, best left to the vicars of the Anglican Church, the Catholic Church and other religious organisations. It can also be best left to *wazees* at home. It can be best left to men of good will, grandmothers and grandfathers to teach these ethics. We are developing a tendency in this country to legislate on every issue. It is apparent that the intentions are not quite well thought out because this Bill was rushed.

I am grateful that the Minister for Justice, National Cohesion and Constitutional Affairs is here. I want to beg my good sister to reconsider this Bill. For one, we appear to be setting up commissions like it used to be done in the dark ages. This Commission is meant to go round the country and find out who is tribalistic. The Bill talks about setting up a Commission which may as well set up another body under it that should be named Ethnicity Impact Assessment, which will check everything everybody does in this country. If we look at paragraph "K" on Objects and Reasons, it says: "One of its functions will be to determine strategic priorities in all the socio-economic, political and development policies of the Government impacting on ethnic relations and advise on their implementation." How do you implement this sort of exercise? What are you going to do? We are going to start another National Ethnic Impact Assessment Organisation so that every decision will have to be checked against this yardstick.

Madam Temporary Deputy Speaker, secondly, it will also recommend to the Government the criteria for deciding whether any public office or officer has committed an act of discrimination on the ground of ethnicity. We should ensure that our Civil Service is properly trained ethically and that nationalism is inculcated in our children at early stages and throughout their life instead of coming up with yet another body that looks like the Ministry of Political Guidance. I do not know what this will do for yesteryears. These things were well known in communist states such as Russia and other places where somebody would be eavesdropping on what you are doing to determine whether one is politically-correct or not. The previous speaker had another definition for what is politically-correct. This Bill should be withdrawn and looked at afresh. There are several issues in this Bill which, if implemented, may actually create more tension. It may also create witch-hunting. At the end of the day, as I heard some of the Cabinet Ministers say that the responsibilities of this Commission may probably be to check who your driver is. I am quoting a Cabinet Minister who has just spoken. If you have a driver and an askari from one ethnic group, then you might have committed a crime which will be defined by the Commission for Ethnic Relations. I do not think it is really the business of this House to come up with some ridiculous commissions to deal with issues that can best be left to other organisations that handle morality.

Madam Temporary Speaker, further to this, much as we have come out from a highly charged electioneering period, we should not imagine or divert attention that the problems were elsewhere other than within ourselves. It is the stealing of election results by the Electoral Commission of Kenya that led to violence. It is the failure by Government---

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua): On a point of order, Madam Temporary Deputy Speaker. The Member on the Floor has just claimed that elections were stolen by the Electoral Commission of Kenya. Could he substantiate or withdraw that remark? We do not know of any stolen election. Elections are won. If he stole his,

elections were won by others!

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

**The Temporary Deputy Speaker** (Prof. Kamar): I wanted him to respond to the point of order. Could you respond to that?

**Mr. Ruto:** Madam Temporary Deputy Speaker, I am ready to substantiate, if the need arises. I am really surprised, if Madam Karua is not aware of the evidence, for example the one of Molo where they were sending wrong figures to KICC. I was sitted with Madam Karua and we argued over the same issue. She was there, Madam, and she knows it very much that this election was stolen. She also knows that the Administration Police Commandant, Mr. Mbugua---

**The Assistant Minister, Ministry of State for Public Service** (Maj. Sugow): On a point of order, Madam Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Prof. Kamar): Could I take another point of order?

**The Assistant Minister, Ministry of State for Public Service** (Maj. Sugow): Madam Temporary Deputy Speaker, I think it very important that the Member substantiates those allegations. He should not tell us arguments they have had with a Member outside the House. He should table evidence of elections having been stolen or withdraw the remarks.

**Ms. Odhiambo:** On a point order, Madam Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Prof. Kamar): Is it on the same issue?

**Ms. Odhiambo:** Yes, Madam Temporary Deputy Speaker. I do know that when the hon. Minister for Justice, National Cohesion and Constitutional Affairs was on the Floor on a point of order, she raised a further question that is unsubstantiated that they won the election and yet commissions have been set up and a Coalition Government was set up because the results were disputed. Is she in order to mislead the House while raising a point of order?

**Mr. Ruto:** May I continue unless---

**The Temporary Deputy Speaker** (Prof. Kamar): May I allow her to respond to that, first. We have to clear the issue and come back to the original point of order!

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua): The proof of winning the election is the declaration by the Electoral Commission of Kenya which is what is making every Member in this House claim to be validly elected. It is the same Commission that declared Presidential, Parliamentary and Civic results. But the proof of stolen election is through petitions in a court of law, a declaration by the court and not an assertion by a disgruntled loser.

The Standing Orders are very clear. You cannot impute improper motives either on an hon. Member, even on a member of the public or an institution. The Electoral Commission of Kenya has been accused by the Member on the Floor and we are demanding, through you, substantiation or withdrawal.

**The Temporary Deputy Speaker** (Prof. Kamar): Are we clear with the second point of order, so that we can go back to the original one?

**Mrs. Odhiambo-Mabona:** Madam Temporary Deputy Speaker, I am not clear because, while speaking, the hon. Member raised the same issue that she raised by imputing that other hon. Members are disgruntled, and that is why they are speaking. Unless, she has proof that other hon. Members are disgruntled, she should also withdraw or give proof. In Zimbabwe, Mr. Mugabe has declared himself President through the electoral commission. That does not make him a winner. We know the facts in this country and the Coalition Government was formed to bring healing and cohesion. She is in charge of cohesion; she is not going to raise issues that raise tempers in this House. Can you, please, rule that the hon. Member is out of order!



**The Temporary Deputy Speaker** (Prof. Kamar): I am on Floor! I do not want to allow the extension of this debate. I wanted us to go back to the original point of order for clarification. What the hon. Minister has said has produced another point of order. So, I wanted the second point of order to be cleared, so that we could go back to the original point of order.

**Mr. Ruto:** On a point of order, Madam Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Prof. Kamar): Can you, please, be seated, as I am still standing? Let us sort out the first point of order. I wanted the second point of order to be clarified as to what the Minister said, so that we can go back to the original point order and clear it, so that we can proceed. I do not want any deviation from the original debate. Can you allow the Minister to clarify to Ms. Odhiambo whether her response is about the first point of order?

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua): Madam Temporary Deputy Speaker, I think you need to give guidance. The Standing Orders are very clear. You do not substantiate the obvious. The reason the elections are disputed is because the losers, as declared by the Electoral Commission of Kenya, were disgruntled. That is why we are having a commission. If there was nobody who was disgruntled---

**Mrs. Odhiambo-Mabona:** On a point of order, Madam Temporary Deputy Speaker.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua): Madam Temporary Deputy Speaker, I am still on my feet!

**The Temporary Deputy Speaker** (Prof. Kamar): Order! Can we allow a response then we will wind up.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua): Whichever word you use, when you say that you are not satisfied, either there is a forum to arbitrate or a way to enquire. So, there is nothing to substantiate; it is obvious.

**The Temporary Deputy Speaker** (Prof. Kamar): Madam Minister, I think the question was about the issue of the Coalition Government. She is saying that the reason why we have a Coalition Government is because the results were not clear, or were disputed. So, I wanted us to go back to the original point of order and then come back to the debate.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua): Absolutely not! That is calling for my view, and my answer is absolutely not.

**Mrs. Odhiambo-Mabona:** On a point of order, Madam Temporary Deputy Speaker. As the Chair in this House, the hon. Member cannot guide you in the way you conduct business in this House. You have asked her to clarify and she cannot say "absolutely not". This House takes judicial notice of the fact that we have a Coalition Government based on the fact that the results of an election were disputed. We cannot, therefore, be calling other hon. Members of this House losers, unless the hon. Member wants to raise temperatures in this House and to bring problems within the Coalition Government. Kindly guide the House. Could the hon. Member withdraw? She cannot call other hon. Members losers.

**The Temporary Deputy Speaker** (Prof. Kamar): Order! May I defer the decision on this matter, because I think the whole issue is very weighty. We are talking of issues that have resulted in us being the way we are in the House this way. I would like to defer my decision on that matter until tomorrow. Can we go on with the debate?

Mr. Ruto!

**Mrs. Odhiambo-Mabona:** On a point of order, Madam Temporary Speaker.

**The Temporary Deputy Speaker** (Prof. Kamar): Ms. Odhiambo, we want to continue!

**Mrs. Odhiambo-Mabona:** My point of order is on a different issue.

**QUORUM**

I wish to draw your attention to the fact that we have no quorum in this House.

**The Temporary Deputy Speaker** (Prof. Kamar): My attention has been drawn to the fact that there is no quorum in the House. Could the Clerks-at-the-Table confirm that?

Ring the Division Bell.

*(The Division Bell was rung)*

Hon. Members, please, take your seats; we now have a quorum and debate resumes.

Mr. Ruto!

**Mr. Ruto:** Madam Temporary Deputy Speaker, I was finalising by saying that I will not need to substantiate the obvious. It is obvious that the elections were stolen and, therefore, I do not need to substantiate. I can table the Chairman of the Electoral Commission of Kenya (ECK) tomorrow.

**The Temporary Deputy Speaker** (Prof. Kamar): Order, Mr. Ruto! I think I made a ruling that I will be able to pronounce the stand of the Chair on that issue tomorrow. So, let us not refer to it.

**Mr. Ruto:** Madam Temporary Deputy Speaker, I wanted to raise the issue that this Commission that we are setting up has been given powers to investigate, on its own accord or request from any institution, office or person, any issue affecting any relations. We were told, and this will not be guided by any authority, that the inclusion of this particular Clause is meant to give the Ministry of Justice, National Cohesion and Constitutional Affairs the powers to investigate even very flimsy things. This confirms that this Commission is going to become an inquisition. Therefore, we do not require inquisitions in the 21st Century. I want to rest my case there and suggest that this Bill be withdrawn.

**Mr. Ogindo:** Madam Temporary Deputy Speaker, thank you for giving me this opportunity to contribute to this Bill that seeks to establish the National Ethnic and Race Relations Commission. This Bill has come as a result of the post-election violence that we had. I rise to oppose the establishment of this Commission. As we speak today, we have the Kenya National Commission on Human Rights (KNCHR). I think that Commission deals with human rights here in Kenya.

Madam Temporary Deputy Speaker, we have very many laws in this country. I know that Parliament is in the business of making laws. It is important every law we make, we do it for the good of this country. If we will not respect our primary laws that we already have, then there is no point coming up with other laws. This is because it is due to the same impunity that we have lost respect for the existing laws. Therefore, we shall still have no respect for future laws. I think, we, as a country, need very few laws. One of the laws that we need is the law of love. I do not know how we will legislate that. The other law that we need in this country is the law of fairness. The other one that we need is the law of equity. All the ethnic tensions and violence that came up were as a result of inequity and skewed distribution of resources and positions in this country.

I wish to bring to the attention of this House the fact that unless we inculcate the culture of love amongst us all as Kenyans, then no amount of written laws will bring us together. It goes up to the villages and within the ethnic groups. If there is no fairness in the distribution of resources and positions, even the Luos, Kikuyus and Kambas will fight amongst themselves. Instead of coming up with a law to establish this Commission, I think we need to deal with the primaries.

Madam Temporary Deputy Speaker, I want to take this House back to early times this year.

After the elections, it was agreed under the National Accord and Reconciliation Act that we share the Government. It is important that things be seen to be shared fairly and equitably. The only route left for this country is to come up with a law that establishes a quota system that takes care of the welfare of all Kenyans. I want to see a quota system that ensure that the Turkanas, Kikuyus, Rendiles, Kambas, Luos and every other tribe get their corresponding equatable share of the resources of this Republic.

Madam Temporary Deputy Speaker, the other key factor that fans ethnic tension is the distribution of jobs and positions in this country. If you go to some Ministries, you will find a situation where members of a single ethnic community run from top to bottom. I want to see a law in this country that will say, "no three successive members of the same ethnic community will run in a rank." We want to see a situation where if we have the Permanent Secretary coming from one ethnic community, that precludes the same ethnic community from becoming the director in the same Ministry. When it comes to the distribution of Ministerial positions, I want to see a law that will say that the Minister for Finance will not be from the same ethnic community as the President. I want to see a situation where the Governor of Central Bank will not come from the same ethnic community with the Minister for Finance. If we do that, then we will be building a Kenya for all Kenyans.

If we see positions and resources in Kenya equitably distributed, then there will be love amongst Kenyans. But if we go the route of establishing a Commission to deal with ethnic and racial relations, in all fairness, we will be shadow-boxing. We know where we have come from and the causes. It is important that we deal with the causes of ethnic and racial tensions. The only way to do that is to share resources and positions of this Republic fairly. You will remember in the run-up to the formation of the Grand Coalition Government, certain Ministries were being fenced away from one side of the Coalition, and that created tension. It is in that light, that I wish to say that the establishment of this Commission will not take this country any far. Already, we have enough Commissions and laws, but if we do not respect the primary ones--- Instead of bringing this, I would suggest and persuade this House to consider bringing a law that guides the distribution of resources and positions in this Republic, so that no one community gets more than 10 per cent of any resource or three successive positions in any department or Ministry.

Madam Temporary Deputy Speaker, with those few remarks, I beg to oppose this Bill.

**The Assistant Minister, Ministry of State for Public Service (Maj-Sugow):** Thank you very much, Madam Temporary Deputy Speaker. I rise to support this Bill. Before I do so, I feel that although the Minister indicated the reason for the delay, this Bill should have come the same time as the National Accord and Reconciliation Bill. I believe that our attitudes would have been different than they are now if these Bills were brought together. The fate of the common man who is always incited against each other would have been decided before we decide how to distribute political positions amongst ourselves, the politicians. But now we are okay. Most of us have positions and, therefore, there is no much interest in trying to find out a solution to the fate of the common man, so that Kenyans can live together amicably.

Madam Temporary Deputy Speaker, the title of this Bill is: The National Ethnic and Race Relations Commission Bill. For me the problem is not ethnic relations between different ethnic communities in this country. All along from colonial times, there has been a problem between the State and the different communities in this country. It is the State that is the greatest discriminator against any community in this country. For me, it should actually have been "the National State and Race Relations Commission Bill." That is what actually it should have read.

Most successive governments have continued to govern this country along the lines of the colonial masters. They ruled this country on a divide and rule basis. Most of our provinces were designed along ethnic lines. We maintained the same. All the Governments that came to power

perpetuated the same divide and rule method. Today, the situation, as far as governing this country is concerned, is such that a person from a minority community such as the El Molo or Somali will never hope to rule this country. If I cannot rule this country, do you expect me to get resources? Things are skewed in such a way that you have to be in power to get resources in this country. That is what is bringing ethnic tension.

Madam Temporary Deputy Speaker, I actually agree with my colleague who spoke before me that we need laws that will determine the distribution of resources in this country because that is the major issue. However, that does not mean that we reject this Bill. We can still have that Commission set up. We can still have the Commission's recommendations implemented to ensure that we get resources distributed. This is because every Government that has come to power has been unable to get us out of this quagmire.

Let me give a very good example: Since the NARC Government came to power in 2002, our President had promised to give some sort of affirmative action to hitherto marginalised areas in this country. His policy pronouncements were never put into implementable programmes in the Budget. They remained political pronouncements in this House. The Ministry of Development of Northern Kenya and other Arid Lands was established recently. Its budget allocation is Kshs400 million. This is far much less than what we feel the public may have lost through the sale of Grand Regency Hotel. Therefore, this Bill is very important, but the mandate of the Commission should be such that it addresses the underlying problem of ethnic tension which is perpetuated by the State.

Madam Temporary Deputy Speaker, every Kenyan sees the community that controls State House as the one that takes the resources. The practical situation appears so since Independence. The best some of the marginal areas got in the decades we have passed through since Independence, are promises. These promises actually started in the last term and continued to the present term, but that is just it; promises! How does an ethnic community that lives in the marginalised areas feel? Do people of that community feel that they are part of Kenya? Will they feel so? What is their attitude towards the community that is perceived to be in charge of the State? It is that perpetuation of discrimination by the State that is bringing all these problems. Therefore, let us not blame ethnic communities in this country. We must determine what we actually need in order to address the inequalities created over the decades since the colonial times. We just continued that practice after Independence.

Madam Temporary Deputy Speaker, I want to see a situation where an El Molo or a Turkana can run for the presidency of this country and have the confidence to win. They should be able to get votes from Central Province, North Eastern Province, Coast Province and elsewhere in the country. Under the current situation, that dream is not there. Unless the community whose man occupies State House sees fairness in the distribution of resources, the culture of struggling to ensure that a community's member gets to State House will never end. The competition to go to State House so that we can get resources will never end unless we address the question of distribution of resources.

Therefore, that is the gist of the matter. We must give this Commission powers to investigate and come up with recommendations. They should get views from all over the country and address the underlying problems. It is not about ethnic relations, rather it is about how we run the State. It is about the relationship between the State and communities. How should the State conduct itself in this country?

Madam Temporary Deputy Speaker, I generally agree with the establishment of the Commission. I agree with the constitution or membership of the Commission. However, I would like to add that the eight members that are appointed through the House, be indicated to come from the eight provinces without necessarily undermining the qualifications needed. We can still get the

same from every province. We must state that in the Bill. We must not leave it open.

It is very critical that this Commission is independent. In fact, I would have, probably, recommended that it becomes a total creature of the National Assembly without the involvement of the State. That is what I would recommend. This is because if we feel that, probably, it is the State that is in a way the culprit, we cannot give the State a great role in establishing the Commission. With regard to remuneration, it should not be determined by the Minister in consultation with Treasury as it is stated in the Bill. The Commission should be independent and its remuneration should be determined by an independent body and should come directly from the Exchequer. That should be provided for. The remuneration should not be determined by the Minister and Treasury. This matter should not be at their behest. We want the Commission to be independent.

Madam Temporary Deputy Speaker, with regard to powers to prosecute, this does not arise in the first place. What we need to address is the inequalities in resource distribution. If we address that, Kenyans will live amicably. We will not have any antagonism between communities of this nation and, therefore, the question of prosecution will not even arise.

The other thing is the implementation of reports by commissions. This country has a history of letting reports gather cobwebs somewhere on Government shelves. There is no need for this House to continue to allow the use of public resources to form commissions whose reports are never implemented. Therefore, when that Commission will be established and the report produced thereof based on its terms of reference, implementation must take place. Kenyans are yearning for peace and togetherness.

Madam Temporary Deputy Speaker, ethnicity in this country is a disease, just like corruption. Unless we change our society from the grassroots level; unless we develop curricula to promote nationalism and ethics in our foundation in the community, we will never defeat those two monsters - ethnicity and corruption. We must, therefore, look at our education system. We must inculcate nationalism at that level. We must inculcate ethics and responsibility in our young generation at that lower level. We, up here, are corrupted already - ethnically and ethically. There is very little we can do! We need to save the lower generation.

I urge my colleagues not to simply dismiss this Bill. We can adjust it to suit the situation, but we should not just dismiss it. Kenyans need action! The suggestions that we are making should be ploughed into this Bill through amendments. But let us not just dismiss it for the sake of it saying that, maybe, it has been overtaken by events or it is irrelevant. The truth is that Kenyans need each other. There is serious ethnic hatred in this country. Let us put mechanisms in place to address those issues.

With those few remarks, I beg to support.

**Dr. Eseli:** Thank you, Madam Temporary Speaker, for giving me this opportunity to support this Bill. I feel vindicated because in my Maiden Speech in this House, I asked the Minister for Justice, National Cohesion and Constitutional Affairs to expedite bringing a Bill to this Parliament to take care of our ethnic animosity. Ethnicity has reached such a point in this country that one fears for the future.

I have had the opportunity to live under the three regimes, right from the Independence regime, through to the middle one and to the current one. But they all have one similarity: Ethnicity! Ethnicity is a cancer that is eating our very foundation gradually. In time, this nation will crumble, as, indeed, almost happened after the 27th December, 2007 elections.

It has got to a point where ethnicity has permeated our political systems to the extent that every political party is associated with certain ethnic groups. It is such that if you are not with party, then you are with a different ethnic group. It reached a point where, even our children, who did not know anything about ethnicity, now it has become part of their lifestyle. Our method of governance has actually entrenched ethnicity in our children. We have the so-called district focus where a child

born in Kakamega will go to nursery school in Kakamega, secondary school in Kakamega and even university in Kakamega! He or she has never seen any other person from any other tribe. When that child is finally posted to go and work in North Eastern, he will think that all Somalis are *shiftas*. He will think that if he is posted to a place like Ukambani, all the Kambas are witches. That is the stereotyping that the child has grown up with.

I remember our days in education when we could do Certificate of Primary Education (CPE) anywhere in this country and choose any secondary school and go there. Indeed, it was reducing ethnicity. But when we started this system of district focus, we have entrenched ethnicity in our minds to the extent that everybody graduating from the university right now has ethnic leaning. You find ethnic-based university students organisations masquerading as district student organisations. That is how badly ethnicity has been entrenched in this country.

Madam Temporary Deputy Speaker, usually, many people fear change. For such a Bill, many people might fear - both the victims and the villains because they do not know what it holds for them. However, I dare say that given the way we have lived our lives in this country, this Bill was long overdue. Yes, it might have flaws, but that can be corrected by referring it to the Departmental Committee on Administration of Justice and Legal Affairs to fine-tune it, in case it has such flaws at all. But really, the essence of the Bill in trying to control our ethnicity is long overdue. We have failed to control ethnicity in this country. So, we need legislation.

Many times, when you have got a pack of pets, say like dogs, and they have stolen something and eaten it, you will not be able to identify which dog did it, until you lift the stick! The dog which did it would start running away. I think many people are fearing this Bill because, maybe, they are the dogs that ate the canary. So, they want to run off. However, the fact is we all participated. We are all participants in the ethnicity of this country and, if we cannot control it by loving your neighbour alone, as the Bible says, then we need a law to govern it. We need some ombudsman to watch over our run-away ethnicity.

It is such run-away ethnicity that, when it comes to employment, we tend to employ people from our own ethnic communities. When anybody gets an opportunity, he or she calls people of their ethnic community to participate, either in the ravaging or theft of national resources. In fact, ethnicity has promoted corruption in this country. If we fear and say that we do not want this Bill because we fear that, maybe, we did something in the past and the Bill might catch up on us--- Remember, somebody else may do something against you in future and yet, you have thrown out this Bill at this moment. I think what we need to do is to accept that it is in good faith, sit down, fine-tune it and make it better so that we can administer it better than it is at the moment.

When you look at things like employment, I have had opportunity to work in very many areas, including the Armed Forces, the Civil Service and the university systems. You realise that the ethnicity involved is so severe that anybody going out there to recruit candidates for any place, is looking out for his or her ethnic community. In fact, one might wonder why I have jumped from job to job. Mainly, it has been ethnicity that has been pushing me out of jobs. I am even in Parliament because of ethnicity. My tribesmen voted me here. I guess, with time, they might change their minds and kick me out again. So, it has been either I get a job out of ethnicity or lose a job out of ethnicity. I know many of us in this House have experienced the same.

By refusing to look at this Bill, we are blinding ourselves that we are safe. We are not safe! We are not safe because of our poverty. Because of poverty, therefore, resources become very important. When resources are scarce, then ethnicity will play a role. We need to govern and control that ethnicity.

Madam Temporary Deputy Speaker, when you look at the way that Commission should be constituted, I think that if you go through the provisions one by one, you will identify several places that need to be changed. For example, Section 6(2)(d) where it says:-

"No person shall be qualified for appointment for a Commissioner if such a person has promoted sectoral, ethnic, racial or religious animosity or openly advocated for partisan ethnic positions or interests."

That would be very difficult to prove! That will be very difficult to prove because, as we sit here, many of us have participated in ethnicity at one time or the other. We are, therefore, disqualified from being members of the proposed commission. So, we might need to look at this provision more carefully, because it is difficult to prove that.

Madam Temporary Deputy Speaker, on how the commissioners and the chairperson can be removed from office, we have said that the President can ask for removal of a commissioner or a chairperson for misbehaviour or misconduct. As the previous speaker said, the State has been the main perpetrator of ethnicity. If we allow the President to have a say on how this commission will function, we are, again, giving the President too much power. So, I believe that this commission should be divorced totally from the President.

Madam Temporary Deputy Speaker, as far as the remuneration of the chairperson and the commissioners is concerned, this should be direct from the Consolidated Fund, without passing through the Minister concerned, so that we give the commission some measure of independence. We all know that it is very important to give the commission financial independence, if we want it to discharge its duties without fear or favour.

Madam Temporary Deputy Speaker, when we talk of this commission promoting equal access and enjoyment by persons of all ethnic communities to public or other services and facilities provided by the Government, we need to be more specific. Many times, it has been said: "We gave this to such an area because people there did not have it." Nobody will mention that other areas also do not have that resource. So, we need to be very specific on that kind of thing.

In whole, Madam Temporary Deputy Speaker, I agree that this Bill was long overdue. It should have come to this House earlier. However, we need to go through it with a fine tooth comb and make it more user friendly.

By and large, I support that Bill.

**Mr. Chepkitony:** Thank you very much, Madam Temporary Deputy Speaker, for giving me an opportunity to contribute to this Bill. The Bill has arisen out of what happened in this country. What happened was unfortunate. It is common sense that ethnicity in this country has played both negative and positive roles. We have constituencies which are delineated in terms of ethnicity. People of different ethnic groups live in certain areas and they are given constituencies. People also live in areas with mixed ethnic communities. An example is Nairobi and other settlement areas.

So, to me, if this Bill is passed, it will only apply to areas with mixed ethnic communities and a place like Nairobi, which is a national city, which controls employment. Otherwise, if you go to the North Eastern Province, for example, you will find that non-local people are those who have been posted there to work. You will have no reason to hate a Somali tribe person, because you are there to serve them; unless you discriminate. Therefore, as I said, once this Bill is passed, it will only apply in certain areas.

Madam Temporary Deputy Speaker, there is mention about the kind of people who are to be nominated to serve in the commission. It talks about people of integrity and moral uprightness. This will not determine the output, because the problem of everything is justice. Justice must appear somewhere in the Bill. There is no mention of justice in this Bill. The Bill just talks about ethnicity. I have not seen any clause talking about co-existence and justice.

So, we have to look into this because inter-ethnic relations arise from the way people of different ethnic communities treat each other. The perception that members of one community have about members of another community matters a lot. It is the undermining and backbiting of

each other that brews trouble. You can hear someone say: "So-and-so is from that tribe. Look at what they are doing! Look at what they are saying. These people are always like that. They cannot rule this country or they cannot do this."

Madam Temporary Deputy Speaker, such an attitude brings friction, leading to bad inter-ethnic relations. We should learn from other countries, where ethnicity is not a factor any more, like Tanzania. The people who drafted this Bill should have gone to Tanzania on a study tour before they drafted it. They should have gone there to learn how Julius Nyerere managed to control the many tribes in that country such that today, there is no tribalism in that country. There is no negative ethnicity. People co-exist in harmony without any sign of ethnicity. How did it happen in Tanzania? We have this Draft Bill, but we do not know how it will be implemented.

We should follow the example of Julius Nyerere and how leaders there managed to overcome the problem of ethnicity. There was mention of the fact that if you look at each one of us, you will see that we have employed a driver or house maid from each of our tribe. There is the Swahili saying which goes that "*Ukarimu huanza nyumbani*." If you do not employ a person from your area, then who are you serving? Is that negative ethnicity? It is okay to employ personal servants from your community. However, when it comes to national offices, this is where we have to balance. If you go to certain offices, you will find that the secretary, the messenger and other workers, are from the same ethnic community. The officers in the office speak in their vernacular language. If you are a visitor, you will wonder whether it is a public office.

Madam Temporary Deputy Speaker, Sir, those are some of the things which promote tribalism. They promote negative ethnicity. You feel offended, because you expect everybody to speak the languages of the office, which are Kiswahili and English. So, such things must be reflected in this Bill. We should provide that the language to be used in public offices must be English and Kiswahili, unless one is talking to his or her mother, who happens to visit that office, and who cannot understand the official languages.

There are certain issues like tribal associations emerging. The Gikuyu-Embu-Meru Association (GEMA), for instance, was recently re-launched in Meru. We are talking about this Bill here, while on the other hand, we have such tribal associations coming up again. Such development negates the desired effect of this Bill. Other tribes will follow suit and launch their own tribal associations. They will say: "Others have their own associations. We are also going to have our own." That way, tribalism will continue. Nothing will stop them.

Madam Temporary Deputy Speaker, therefore, we need to look into all issues. The Bill should provide for the banning of such tribal associations, because they will promote negative ethnicity. Another form of negative ethnicity is tribal chauvinism. Members of certain tribes feel that they are more superior than members of other tribes. They believe that they are more intelligent than others. They think that they are better off than others. Such pride will make others feel offended. Violence can arise as a result of such an attitude.

Regarding the issue of prosecution, I agree with what is contained in the Bill. The commission should not be given powers of prosecution, as it happened in many other Bills in the past. The proposed commission should only investigate and pass on the matter to the Attorney-General to prosecute. I do not agree with what a previous speaker said - that, the commission should be given powers to prosecute. The power to prosecute should be left with the Attorney-General.

Regarding the kind of people to be appointed to serve in the commission, allegations regarding certain individuals having committed offences should have been proved before a court of law. Otherwise, once one is appointed to serve in the Commission, he or she should continue serving, unless someone has evidence from a court of law---



**ADJOURNMENT**

**The Temporary Deputy Speaker** (Prof. Kamar): Mr. Chepkitony, you will have a right to 22 minutes when we resume debate on this Bill tomorrow.

Hon. Members, it is now time for the interruption of Business. The House is, therefore, adjourned to tomorrow, Wednesday, 2nd July, 2008, at 9.00 a. m.

The House rose at 6.30 p.m.