

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 14th May, 2008

The House met at 9.00 a.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

PAPER LAID

The following Paper was laid on the Table:-

Report of the 118th Assembly of the Inter-Parliamentary Union held in Cape Town, South Africa, between 13th and 18th April, 2008.

(By Mr. Wambugu)

NOTICES OF MOTIONS

SELECT COMMITTEE TO INVESTIGATE
ORGANIZATION/ACTIVITIES OF
UNLAWFUL ORGANIZED GROUPS

Mr. Kioni: Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion:-

THAT, noting the presence of several unlawful organized groups in the country, who draw their membership mainly from the youth; further aware that their activities have led to an unmitigated loss of lives, properties and livelihoods; appreciating the fact that the Government has attempted to crack them down unsuccessfully in the past, and cognizant that they pose a serious security challenge to the country; this House resolves to constitute a Select Committee to investigate their membership, organizational structure and operations, the underlying causes for their proliferation, and that the Select Committee reports its findings to the House within eight months, and further that the following be Members of the Committee:-

Hon. Jeremiah Kioni, MP

Hon. Charles Kilonzo, MP

Hon. George Thuo, MP

Hon. Eugene Wamalwa, MP

Hon. Elias Mbau, MP

Hon. Isaac Muoki, MP

Hon. Sophia Abdi Noor, MP

Hon. George Nyamweya, MP

Hon. Johnstone Muthama, MP

Hon. Lewis Nguyai, MP
 Hon. Ekwere Ethuro, MP
 Hon. M'Mithiaru Ntoitha, MP
 Hon. Mwangi Muturi, MP
 Hon. Milly Odhiambo, MP
 Hon. Kambi Kazungu, MP

ADOPTION OF REPORT OF
 118TH ASSEMBLY OF IPU

Mr. Wambugu: Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion:-

THAT, this House adopts the Report of the 118th Inter-Parliamentary Union Assembly and related meetings held in Cape Town, South Africa, between 13th and 18th April, 2008.

ORAL ANSWERS TO QUESTIONS

Question 029

MEASURES TO BOOST FOOD
 SECURITY IN KENYA

Mr. Ethuro asked the Minister for Special Programmes:-

(a) what criteria the Ministry employs in the distribution of GOK Emergency Relief Food;

(b) whether she could table statistics showing the allocation and distribution of the relief food to each location of Turkana South, Turkana Central and Turkana North Districts since the year 2005; and,

(c) what measures the Government is putting in place to improve food security in the country.

The Assistant Minister for Regional Development Authorities (Mr. Ole Metito):

Mr. Deputy Speaker, Sir, in the spirit of collective responsibility, I beg to reply.

(a) The criteria used to provide relief food is basically determined at the local level. Relief food is distributed to the people only if they need and deserve it. People may require relief food assistance if and when their normal livelihood is disrupted by a natural, or man-made disaster, thus making them unable to fend for themselves. For example, a natural event such as drought or floods can destroy the ability of people to feed themselves, hence the intervention by the Government through the provision of relief supplies. Man-made disasters like violence, or conflict, can also render people destitute, and unable to cater for their own food needs, hence the necessity for relief supplies.

(b) I want to table the statistical summary showing the distribution of relief food from 2005 to date for the larger Turkana District.

(c) Some of the measures that the Government is putting in place to improve food security in the country include:-

(i) Maintenance of strategic grain reserves with the National Cereals and Produce Board (NCPB) to serve as buffer stock.

(ii) Stockpiling and distribution of relief food during instances of famine and other

disasters.

(iii) Mitigation and resettlement of internally displaced persons through provisions of farm inputs and livelihood support.

I have the table showing the statistical summary for the distribution of relief food for the larger Turkana District since July, 2005.

*(Mr. ole Metito laid the document
on the Table)*

Mr. Ethuro: Mr. Deputy Speaker, Sir, I want to thank the Assistant Minister for answering the Question. He has invoked collective responsibility. My understanding of collective responsibility is that the Cabinet has collective responsibility to Parliament on actions undertaken by the President, and not in answering a Question from one another, especially from a junior Minister. Are you satisfied?

Mr. Deputy Speaker: Mr. Ethuro, proceed and ask your supplementary question! Collective responsibility is an obvious phenomenon in any Government. If the Assistant Minister chooses to say that, **[Mr. Deputy Speaker]** he has the liberty to do that. Proceed and ask your supplementary question!

Mr. Ethuro: Mr. Deputy Speaker, Sir, with respect to you, I will look for an opportunity to interpret that. For now, I will proceed because this is about food security in Turkana. I want my people to be fed properly.

What criteria does the Ministry employ in the distribution of Government of Kenya emergency relief food? That criteria is not properly elucidated here. If that criteria was here, then we would be talking of the exact and precise number of people who are currently supposed to be fed by the Government. There is a big problem now. I have over 100 people in my compound who are looking for food and there is no food. The Government has completely no basis on which it distributes the food that it gives. I want to commend the Government for providing relief food, but the distribution mechanism on the ground is wanting. That collective responsibility hurts.

Mr. Deputy Speaker, Sir, how many people in Turkana need relief food?

Mr. ole Metito: Mr. Deputy Speaker, Sir, the Government undertakes an assessment, twice in a year, in every district that may require relief food. Turkana District, just like any other arid district in the country, has continued to get relief food through the two-fronts approach, namely, the Emergency Operation Programme (EMOP) and the Government of Kenya. May be the hon. Member has not had the opportunity to look at the statistical summary. In 2005/2006, the Government provided the following---

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. My question was precise. How many people need relief food? I have the figures here! The Assistant Minister has not told me how many people he is feeding and what ratio he is using. He is talking about food security.

Mr. Deputy Speaker: Order! Hon. Assistant Minister, the hon. Member wants to know how many people qualify for food distribution and how many beneficiaries are there, if I get it right.

Mr. ole Metito: Mr. Deputy Speaker, Sir, the information I have is on the food ratio. I must admit that I do not have the precise number of people who have been fed since 2005. I have the ratio and the different kinds of food that they were provided with.

Mr. C. Kilonzo: Mr. Deputy Speaker, Sir, I come from a region where, every year, there is perennial famine. Famine has become big business for people who import maize and other cereals. In the Budget, we always spend Kshs4 billion or Kshs5 billion on importation of food and no funds

are allocated for irrigation. For example, in 2005, no funds were allocated for irrigation. In 2006, a mere Kshs100 million was allocated for irrigation. The Assistant Minister has said that he is responding to the Question on collective responsibility. Part (c) of the Question is asking: "What measures is the Government taking to ensure that enough money is allocated for irrigation?" We want to hear that Kshs5 billion or Kshs10 billion has been allocated for irrigation.

Mr. ole Metito: Mr. Deputy Speaker, Sir, I have already given the measures that the Government is taking to improve food security in the country. One of the reasons why we have famine in most of the areas is due to inadequate rainfall. We can supplement that through irrigation in arable lands. The Government will ensure that enough money is channelled through the Ministry of Water and Irrigation---

Mr. C. Kilonzo: How much?

Mr. ole Metito: Mr. Deputy Speaker, Sir, I may not be able to tell how much we will give, but we will allocate sufficient amount of money to that Ministry to ensure that the Irrigation Department gives good service to the people.

Dr. Khalwale: On a point of order, Mr. Deputy Speaker, Sir. Less than three minutes ago, the Assistant Minister admitted that he has no idea how many people need food in Turkana. Now he has said that he has no idea how much he intends to spend to solve the problem permanently. Will I be in order to request that we defer this Question until the Assistant Minister is prepared to answer it?

Mr. ole Metito: Mr. Deputy Speaker, Sir, based on what the hon. Member has said, I do not see any reason for deferring the Question because the issue of---

Mr. Deputy Speaker: Order, Mr. Assistant Minister! Order! The determination of the deferment of a Question is the prerogative of the Chair. It is not for the Assistant Minister to decide!

Mr. ole Metito: That is correct, Mr. Deputy Speaker, Sir. The issue of asking how much money is channelled through the Ministry of Water and Irrigation, to ensure that there is food security in this country, is completely a different Question. Maybe the hon. Member could put that Question to the relevant Ministry and then he will be answered.

Mr. K. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. There is a tendency in this Parliament by the Ministers and Assistant Ministers, when they do not have sufficient information to answer a Question, to keep on insisting on giving vague answers to this House and to the Kenyan people. The Assistant Minister has confirmed that he does not have sufficient information to deal with this Question. Therefore, will I not be in order to ask that this Question be deferred until the Assistant Minister has sufficient information or the substantive Minister comes to answer it?

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister has confirmed to this House that in spite of his youthfulness and willingness to answer the Question, he is very incompetent in this particular subject. We are talking about food and livelihood. Kenyan people in the larger Turkana are going without food. The Assistant Minister has failed to tell us how many people he is feeding and the basis he is using to distribute relief food. I would have asked more supplementary questions, but given that the Assistant Minister has already demonstrated that he does not have information, I have a lot of sympathies for him! May I ask the Chair to defer the Question until the substantive Minister comes and answers this Question?

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

Mr. Deputy Speaker: Order! Mr. Assistant Minister, you cannot talk about relief distribution without the knowledge of how many people are affected in the first place and the amount of food and the distribution mechanisms. I have looked at this answer and I think it is

devoid of the substance that is required by the Members. Therefore, the Chair rules that this Question is deferred to Wednesday next week. You should come with a complete answer on whether it is the affected people who are benefiting from this or not. The mood in the House is that sometimes people who do not deserve food aid are the ones who get it and those who deserve it do not get it. So, can we have a comprehensive answer to this Question? We will have this Question deferred to Wednesday morning, next week.

Mr. ole Metito: Much obliged, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Order! The ruling of the Chair is final.

(Question deferred)

Question No.031

CONSTRUCTION OF ELECTRIC
FENCE AROUND MWEA GAME RESERVE

Mr. Mbai asked the Minister for Forestry and Wildlife whether he could inform the House when the Ministry will erect an electric fence around Mwea Game Reserve to reduce the existing human/wildlife conflict in the area.

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

My Ministry has already erected a 16 kilometre two string electric fence which stretches from Thiba River in the east to Tana River in the north-west. The fence was put up mainly for human/wildlife conflict mitigation. The part of the reserve that is not fenced is approximately 30 kilometres long and it forms the boundary between the reserve and Masinga Dam to enable access to water by both wildlife and people.

My Ministry has no immediate plans to fence the unfenced part of the Mwea Game Reserve at this moment. However, if requested to do so by the stakeholders, then the process can start.

Mr. Mbai: Mr. Deputy Speaker, Sir, first of all, I want to thank the Assistant Minister for the answer. Wild animals from Mwea Game Reserve have caused many problems to the people of Masinga. Elephants and buffaloes cross Tana River and destroy crops. Of late, elephants have been crossing into Masinga human settlement, especially Kiangoti Village. Could the Assistant Minister consider constructing some water points in the game reserve so that these wild animals do not harass people in Masinga?

Mr. Nanok: Mr. Deputy Speaker, Sir, as you are well aware, the Mwea Game Reserve is managed by the Kenya Wildlife Service (KWS). The reserve is 42 square kilometres. The KWS has outposts in Kangaita, Sagana, Dundori and Kerugoya areas. If there are other areas where hon. Members think game reserves should be established, I think it is upon the stakeholders to decide that and make recommendations to the KWS headquarters.

Mr. Mbai: Mr. Deputy Speaker, I think the Assistant Minister is not addressing my Question. I am talking about wild animals which come out of Mwea Game Reserve to Masinga and harass people. What is the Assistant Minister doing to compensate those people whose crops are destroyed by these wild animals?

Mr. Nanok: Mr. Deputy Speaker, Sir, to add to what I have told the hon. Member, the cases of human/wildlife conflict have more or less declined due to the erection of the 16-kilometre electric fence. It is only when water levels in the dams and rivers reduce, which in this instance is rare, that a herd of three to five elephants will cross to human settlement areas. This usually happens from September to November.

Mr. Deputy Speaker: Mr. Mbai, do you have further supplementary questions? Are you satisfied with the answer?

Mr. Mbai: Mr. Deputy Speaker, Sir, I am not satisfied with the answer. I think in future, Masinga people will have to arm themselves and defend themselves from these animals.

Mr. Muturi: Mr. Deputy Speaker, Sir, I think the question of human/wildlife conflict has not been properly addressed. This Question is not confined to Masinga. You find that in other areas such as Gaturi Location in my Kiharu Constituency, we have problems with monkeys. These wild animals are roaming all over the place.

Mr. Deputy Speaker, Sir, earlier on, an Assistant Minister told us that they do not know how many people they feed in Turkana District. What are we going to do with this monkey menace in our rural areas? Wild animals are roaming all over and nobody is taking care of them. Shall we resolve in this House that we should start slaughtering these wild animals to reduce their number? Peasant farmers cannot harvest their beans, maize and other crops because of wild animals. Yet, we are told that they cross into human settlements because the level of water in the river or dam has gone down. What do we do with this monkey menace?

Mr. Nanok: In response to the hon. Member's question about monkeys, I think he should report this issue to the KWS. In all areas where we have conservation, we have KWS wardens---

Mr. Muturi: On a point of order, Mr. Deputy Speaker, Sir. The KWS wardens often just come to the bush and fire into the air. That does not scare the monkeys. That is not a solution. Would the hon. Assistant Minister like to go with us to witness the monkeys as they jump up the trees? How do they intend to handle this problem in the less disadvantaged areas of Murang'a North East District?

Mr. Deputy Speaker: Hon. Assistant Minister, could you give an adequate answer to the human/wildlife conflict?

Mr. Nanok: Mr. Deputy Speaker, Sir, indeed, managing monkeys is a challenge to the Ministry. I hope the hon. Members and other stakeholders can devise a joint strategy to save our people and their crops from the damages caused by monkeys.

Mr. Mututho: Mr. Deputy Speaker, Sir, I have just heard the Assistant Minister say that managing monkeys is a serious problem. What can they manage? They cannot manage elephants and lions! It is a common feeling in the KWS, and the Assistant Minister can confirm that, that animals are more important than human beings. No where on the planet earth where we are relegated to lesser mortals than monkeys!

Thank you, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Hon. Assistant Minister, if your Ministry cannot manage monkeys, then what are you going to manage?

Mr. Nanok: Mr. Deputy Speaker, Sir, it is not that we have failed to manage the human/wildlife conflict. The hon. Member knows very well that, through the KWS, we have made all efforts to manage the problem caused by animals such as elephants, hippos, buffaloes, lions, crocodiles and baboons. Some mitigation measures which have been put in place include construction of wildlife barriers. We are aware of electric fences that we have erected around certain conservation areas such as Aberdares and beaches. We also have wildlife translocation, education and awareness programmes to communities, formation of rapid response teams, community conflict resolution committees and compensation mechanisms including implementation of community projects such as provision of water, construction of classrooms and health facilities.

Mr. Deputy Speaker: Okay! Is there any point of order?

POINTS OF ORDER

Dr. Khalwale: Mr. Deputy Speaker, Sir, I rise on a point of order to seek a Ministerial Statement from the Attorney-General of Kenya in respect of the funds drive for the Internally Displaced Persons--- **Mr. Deputy Speaker:** Order! Order, hon. Member! The practice and the tradition is that you clear with the Chair before you rise on a point of order to seek a Ministerial Statement.

DEMOLITION OF BUILDINGS
ALONG MOMBASA ROAD

Mr. K. Kilonzo: Mr. Deputy Speaker, Sir, I rise on a point of order to seek a Ministerial Statement from the Minister for Roads on the wanton destruction of properties along Mombasa Road which was witnessed yesterday. We have come from the post-election violence where properties were destroyed. Here, again, we saw properties of the poor being destroyed along Mombasa Road. When the Minister makes the Ministerial Statement, I request him to consider the following points:-

One, those people in Embakasi whose properties were destroyed allege that they had title deeds which are sacrosanct documents issued for land ownership. I want to know whether those people were given adequate notice. If these people had title deeds, what will the Government do to compensate them? At the same time, we remember that when the NARC Government came to power, some properties were destroyed because they wanted to construct by-passes. I would want the Minister to tell us why to date those by-passes have not been done. Is this a repeat of the same exercise, or they are going to do proper road reserves? I want to know why this Government cannot do this with a human face.

Yesterday we saw on television, poor Kenyans crying. I also believe that the Leader of Government Business sympathised with those people who were crying because their houses and other properties had been destroyed and they had nowhere to go. Therefore, the Minister, should very urgently tell Kenyans for how long the poor people will continue to suffer when their properties continue to be destroyed and nothing is being done.

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Thank you, Mr. Deputy Speaker, Sir. I take serious note of the request by the hon. Member for Mutito. We will urgently communicate this matter to the Minister for Roads. If you recall, there was also a similar destruction of property earlier on. The Minister should come up with a comprehensive Statement on this issue and particularly on the issue of compensation.

I thank the hon. Member.

STATUS OF AGENDA FOUR ON
MEDIATION TALKS

Mr. Ethuro: Mr. Deputy Speaker, Sir, I rise to seek a Ministerial Statement from the Minister for Justice, National Cohesion and Constitutional Affairs on the status of Agenda Four on the Mediation Talks. The House will recall that the preamble to the National Accord and Reconciliation Act made it abundantly clear, that it was purposely for getting a political solution to create an enabling environment in which the long-term problems would be addressed.

Agenda Four addresses those problems. It is incumbent upon the Government to keep informing the House about the progress, noting that sometimes, the committee has been lacking quorum.

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

Speaker, Sir, I thank the hon. Member for Turkana Central. Similarly, this matter will be addressed urgently by the Minister for Justice, National Cohesion and Constitutional Affairs. However, it is also important to note that all of us have committed ourselves to giving this country a new Constitution within the next 12 months. I think Agenda Four will have taken that into account. However, be that as it may, this matter will be communicated to the Minister for Justice, National Cohesion and Constitutional Affairs.

MOTIONS

INTRODUCTION OF OFFICES OF MINISTER OF GOVERNMENT OF KENYA BILL

Mr. Ethuro: Mr. Deputy Speaker, Sir, I beg to move the following Motion:-
THAT, aware that the public mood of Kenyans is to have a lean and clean Cabinet that reflects its GDP; noting that Section 16(1) of the Constitution of Kenya provides that "There shall be such offices of the Minister of the Government of Kenya as may be established by Parliament"; aware that since the inception of the Republic of Kenya, Parliament has not established such offices of the Minister of the Government of Kenya, resulting in the arbitrary and the uncontrolled establishment of excess Ministries; this House do grant leave to introduce a Bill for an Act of Parliament to create offices of Minister of the Government of Kenya and to provide for the requirements for appointment and for related matters.

Mr. Deputy Speaker, Sir, this is a historical moment. The Tenth Parliament must go into the annals of history as a reformist Parliament that has taken its duties and obligations very seriously. Since Independence, there has been failure on the part of Parliament to provide for a law that will make sure that a President is bound by the number and portfolios of the offices of the Minister of the Government of Kenya. This is a constitutional provision and we are asking the House to discharge its obligations under the Constitution. This Motion calls upon the House to rise to the occasion; an occasion where we can look at what is required.

We are just recovering from post election violence, whose eminent solution was to craft a Grand Coalition Government. Section 17 provides for the functions of the Cabinet. It says that the functions of the Government shall be to aid and advise the President. You do not need a classroom or an entire assembly to advise you. You just need a few advisers. Suggestions of numbers have been given on the ideal Cabinet to have. Mine is to make a recommendation. This House will finally decide in its collective wisdom on the number that is appropriate to be appointed to the offices of the Ministers of the Government of Kenya.

Mr. Deputy Speaker, Sir, proposals have been made that we should have between 20 and 24 Ministers. Hon. Members will recall that at the height of negotiations, each parliamentary group decided to use the number of Ministers for political bargaining. The numbers were ranging between 38 to 44 Ministers. These negotiations would not have been necessary if these numbers had been previously determined. If you look at the current scenario, you will see that we have about 42 Ministers. This Motion is not a statement against the Grand Coalition Government. Being transitory in nature, one would make an argument about this. However, if the law had been made very clear, then this transitory arrangement would not be valid. If you look at Uganda which is a country that does not have the political and cultural richness we have, it has already legislated in its Constitution how many Ministers the President can appoint. It has indicated that Uganda shall have 21 Ministers.

Mr. Deputy Speaker, Sir, we have borrowed from the commonwealth practice in terms of our democracy. The mother of all parliaments, the United Kingdom, has only 22 Ministers. Even across the Atlantic, the great USA has 17 Ministers. The largest and most populated African country, Nigeria, has only 19 Ministers.

Mr. Deputy Speaker, Sir, these are just some examples to demonstrate that there is no basis for us to have a bloated Cabinet. I wish Ms. Karua was here. I hope the Chief Whip is whipping Ministers too.

Mr. Deputy Speaker, Sir, when we were debating the issue of the election of members to the East African Legislative Assembly (EALA) by the Kenyan Parliament, there was an altercation between her and the former Member for Keiyo South, Mr. Biwott, to the extent that the Government had already appointed people to the Assembly, including some Members who were from a bloated Government. So she understands this concept very well. She has used it in this House before. I, therefore, do not expect any resistance from that side. If anything, I would expect the Government to embrace this. It is for their own good; so, the rest of us who are seeking positions cannot be pushing them too hard. They will be able to demonstrate that their hands are tied. They will have only particular numbers.

Mr. Deputy Speaker, Sir, when you look at what obtains--- Whenever you have a large Cabinet it means decisions cannot be made easily. As you have just witnessed, our Ministers are speaking at cross-purposes. It is just the sheer size. The large numbers are not manageable! We are talking about Government expenditure that is hitting the roof. Yesterday, we passed the Appropriation Bill. The week before, we had the Supplementary Estimates. It was very clear from the Minister for Finance that an occasion has arisen for Government expenditure to be increased. We hope that when we finally bring the Bill, we will be able to rationalise the Ministries. Part of the problem within the Cabinet are turf wars about who should be responsible for what docket. This leads to serious wastage of public time and resources.

Mr. Deputy Speaker, Sir, we also hope that when this House finally grants us the opportunity to bring this Bill, we shall not only be looking at a lean and clean Cabinet, but will also be considering issues of competence. There is no reason to have an eminent professor to look around maternity wards when he should be busy planning for us.

(Applause)

We should be looking at the rationale on the basis of which appointments are made. Appointments should take into account regional balance, gender considerations, and more importantly a more youthful-looking Cabinet, and not just portfolio balance between parties. A county cannot reform when the people leading it are old, tired men, who are recycling ideas of yester-years! This is happening a time when the rate of transformation through the internet and ICT is the in-thing. Do we organise a crash programme for our Ministers to learn computers? You do not teach old dogs new tricks! The only thing we can do is to make sure that the Cabinet will not only have a few old men for the sake of their wisdom--- We trust some of them. We are not ignoring our old men. They have a place in the society, but you cannot make them constitute more than 50 per cent of the Cabinet.

(Applause)

Mr. Deputy Speaker, Sir, there are very young Members who have just been reduced to mere Assistant Ministers. These are people who would have done a better job. Kenyans have already given them to this House! We are not going to shop for them at the market place. They are

already in this House. The President is required by Section 16(2) of the Constitution to appoint Ministers from Parliament. They are here!

Mr. Deputy Speaker, Sir, when we talk of a clean Cabinet we are talking about--- I was extremely happy when the Prime Minister took our new Cabinet to class. He made it absolutely clear to the President that if a Minister is mentioned in a corruption case, he or she should step aside. We are hoping that when this Bill comes to the House, we will make provision that if a Minister has an allegation of corruption made against them, they should step aside. We want the culture of impunity where a former Minister would go to court driving a GK vehicle with a flag, yet he has been accused of abuse of office--- It happened not very long ago. It was just in the last Parliament. You should be ashamed. As somebody given trust, when you are mentioned in an adverse manner, you should give an opportunity for investigations to be carried out.

Mr. Deputy Speaker, Sir, you will recall that in some of the great democracies, when there is an accident involving a train, the Minister for Transport resigns. Many times I wonder, on what basis that happens? He is not the train driver; he does not have the schedules and train operations are privatised. However, the responsibility he or she has accepted to execute on behalf of their country makes him or her resign in order to demonstrate that he or she has a job to do and it must be done properly.

Mr. Deputy Speaker, Sir, in the Kenyan context, when a ferry sinks and kills people we say it is an act of God.

(Laughter)

When buildings collapses there is a Minister responsible for public works, and he or she must ensure that buildings are constructed properly. Buildings collapse in this City and the President rushes to the scene to help with the rescue operations. The President should sack the Minister responsible before he goes to the rescue! These buildings take ages to come up. We all pass there, but the Minister responsible does not even care to ask what about what happens.

Mr. Deputy Speaker, Sir, we have Kenyans who have invested money in houses from mortgages. They pay dearly, yet their houses are now being demolished because they are on road by-passes. Where were the Ministers responsible when these houses were being built on by-passes?

Mr. Deputy Speaker, Sir, we want Ministers who will be clean, hopefully even in terms in terms of character and conduct, and competent in terms of productivity and academic credentials. As one good Assistant Minister told this House two weeks ago, when the Government employs drivers they are required to get a certificate of good conduct from the police; why not Ministers of Government? This is a mere GK driver. Could it be because if we provided for that, maybe half of the Ministers would go home? We want to deepen democracy in our country. We want to ensure that the resources Kenyans have given to us go to public goods and services.

Mr. Deputy Speaker, Sir, when you have a Government Budget, most of which spend on running costs, because of a large bureaucracy, then we have an issue to do with getting our priorities right. This country requires good roads. This country requires that northern Kenya developed. This country requires that the southern range lands be protected and reserved. This country, by necessity, requires that our environment be clean and sound.

We can only do that if the people who are managing public resources at the top and are mandated to create appropriate policy frameworks that will be competent enough and in a manageable size. Then we will be able to ensure that this country goes to greater lengths in terms of our development agenda.

So, this Motion is appealing to the House to exercise its constitutional obligation, to help the current President and future Presidents to ensure that we have a standard in which we know

what we are getting on to. It will also help us, in a very important manner, to ease the pressure by our constituents who think that once you are seeking for an elective office of the Member of Parliament, it is a direct ticket to be appointed a Minister. It is time they knew from the first day that the positions at the top are very limited and that not all of us will be appointed Ministers. This will ensure that we all feel very competent to serve as good Back-benchers, as I am doing now. Nobody should feel that, because he or she is not appointed, he or she is not good enough. It is just that we are so good, but only a few can be appointed to serve. They must serve because they have obligations to this country.

Mr. Deputy Speaker, Sir, a Cabinet position in this country is so important because people know that we can only have one President, one Vice-President, one Prime Minister and two Deputy Prime Ministers. So, the only other largesse is to be appointed a Cabinet Minister. So, it is so important that even after post-election violence the moment we have assumed those positions now, we are not talking about other agenda that were part of the mediation.

I want to submit that this country is more important than our positions and Cabinet. We need to address the issues that brought us, as a State, almost to the brink of collapse. I hope the Members from my party and the other parties will find it necessary to support this cause. It is for our good and that of the nation.

In William Shakespeare's books, we read the phrase that says: "It is not that I do not love Caesar, but I love Rome more." I am sure my good friend, Mr. Mungatana, will agree with me more. It is not that we do not love our Ministers. We love them, but we love Kenya more.

I beg to move and ask my good friend from Kisumu Town West Constituency, Mr. Olago, in the true spirit of partnership between PNU and ODM, to second this Motion.

Mr. Olago: Thank you, Mr. Deputy Speaker, Sir. I stand to second this Motion with a very heavy heart. This is because successive Parliaments, from 1963 to now, have abdicated their responsibility towards what the Constitution asked them to do.

We are debating Section 16(1) of the Constitution. I wish to say, without any fear of contradiction, that the supreme law of our country is the Constitution. Where any other law contradicts the Constitution, then the Constitution takes precedence. That is a clear principle on which all our laws are based. I wish to read out the Section that we are debating. Part Two of the Constitution, Section 16(1) reads:-

"There shall be such offices of the Minister of the Government of Kenya as may be established by Parliament, or subject to any provisions made by Parliament, by the President."

Mr. Deputy Speaker, Sir, those who come from a legal background, like I do, will appreciate that the use of the word "shall" in Section 16(1) of the Constitution, makes it mandatory. It is compulsory that Parliament must fix the size of the Cabinet. However, looking back through the HANSARD from 1963 to date, no Parliament has ever looked at this provision and enacted laws that can make it possible for this Parliament to decide on the size of the Cabinet.

There have been inconsistencies in the size of the Cabinet right from the first Parliament in 1963. I have gone through the HANSARD and the following came clear. In our First Parliament in 1963, there were 16 Ministers and 18 Assistant Ministers. In the Second Parliament, in 1969, there were 23 Ministers and 31 Assistant Ministers. In the Third Parliament, in 1975, there were 23 Ministers and 32 Assistant Ministers. In the Fourth Parliament, in 1980, there were 28 Ministers and 50 Assistant Ministers. In the Fifth Parliament in 1984, there were 24 Ministers and 41 Assistant Ministers. In the Sixth Parliament in 1989, there were 34 Ministers and 73 Assistant Ministers. In the Seventh Parliament, in 1993, there were 25 Ministers and 38 Assistant Ministers. In the Eighth Parliament, in 1998, there were 28 Ministers and 43 Assistant Ministers. In the Ninth Parliament, there were 27 Ministers and 28 Assistant Ministers. In the current Tenth Parliament,

we have a whooping 42 Ministers and 51 Assistant Ministers. It is a shame!

We have these inconsistencies because Parliament has not risen to the occasion to enact a law as provided by Section 16(1). If we had that in place, then Kenyan would not have gone to the brink of breaking down as it did. In my humble view, Kenya can do with just 13 Ministers, and not even 20 Ministers. In my humble view, if we look at the varying interests, Kenya has got to go beyond a tribal country. We must be global. If we have 13 Ministers, they could go as follows: The President, The Vice-President, The Prime Minister, The Deputy Prime Minister 1 and The Deputy Prime Minister 2. Then, the other posts would go to the regions as follows: One for Nairobi Province, one for Central Province, one for North Eastern Province, one for Nyanza Province, one for Western Province, one for Eastern Province, one for Rift Valley Province and one for Coast Province. Then, the Attorney-General would be an *ex-officio* Member. Those 13 Ministers would address the issue of gender as well. If we did that and, at least, one-third of the 13 would be women and then this Parliament would have its work cut for it.

Why are we in this quagmire? Why have we done what Kenyans, ordinarily, do not like? As Members of this Parliament, we cannot cheat ourselves and say that the ordinary Kenyan on the streets of Nairobi or Kisumu is happy with the size of the Cabinet. Whatever the reasons were for having such a Cabinet was because we did not have rules in place!

Mr. Deputy Speaker, Sir, I wish to convince this august House to rise up to the occasion and live to the expectations of Kenyans. We should take advantage of Section 16, approve this Motion and let us have a law that is going to fix the size of the Cabinet! If we do that, we are going to make it easy for the President and the Prime Minister to limit what they need to do. That is why Kenya cannot be held at ransom any more!

Mr. Deputy Speaker, Sir, I wish to say here clearly that the Cabinet of the Republic of Kenya, as presently constituted, contravenes Section 16 of the Constitution and is, therefore, illegal!

(Applause)

It will take only one courageous or brave Kenyan to go to the High Court and within one day, he will have an order dissolving this Cabinet!

(Mr. Orenge began reading a newspaper)

Mr. Deputy Speaker: Order! Order, Mr. Orenge! The reading of newspapers in the Chambers is not allowed!

Mr. Ethuro: Throw him out!

Mr. Olago: Thank you, Mr. Deputy Speaker, Sir. My friend, hon. Muthama, is reading the newspaper when I am talking about the size of the Cabinet. He wants it to be bigger!

Mr. K. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. Following your ruling that reading of the newspaper is not allowed in this House, is the Minister for Lands, hon. Orenge, in order to come with a newspaper here, read it and even go to the extent of showing the Deputy Speaker some of the pictures or some colourful--- Is he in order?

(Laughter)

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

Mr. Deputy Speaker: There is a ruling on a point of order, so you cannot rise on a point of order--

An hon. Member: He is totally out of order!

Mr. Deputy Speaker: Hon. Orengo is not in order. He is totally out of order!

(Applause)

Proceed, Mr. Olago!

Mr. Olago: Thank you, Mr. Deputy Speaker, Sir---

The Minister for Lands (Mr. Orengo): Mr. Deputy Speaker, Sir, I thank you for giving the hon. Member a chance to bring excitement to the House!

(Laughter)

Mr. Deputy Speaker: Proceed, hon. Olago!

Mr. Olago: Thank you, Mr. Deputy Speaker, Sir. I was saying that the Cabinet is illegal. Although we do not wish to throw a spanner into the works, it will take the movement of just one brave Kenyan to go to the High Court and, at the end of the day, he will have an order declaring the present Cabinet of Kenya as contravening Section 16 of the Constitution, and the President will be ordered to dissolve the Cabinet.

Mr. Deputy Speaker, Sir, my dear brothers and sisters, honourable Members of this House, it is my humble prayer that you should all support this Motion and grant leave to introduce a Bill that will operationalize Section 16(1) of the Constitution so that we have restrictions on the size of the Cabinet.

Thank you, Mr. Deputy Speaker, Sir.
I beg to second.

(Question proposed)

The Assistant Minister for Medical Services (Mr. Mungatana): Mr. Deputy Speaker, Sir, I rise to support this Motion.

(Applause)

Mr. Deputy Speaker, Sir, this is a very, very serious Motion, and when hon. Ethuro was moving it, he mentioned the question of a lean Government. A lean Government---

An hon. Member: And clean Government!

The Assistant Minister for Medical Services (Mr. Mungatana): Yes, a lean and clean Government, but let me start from the lean Government. A lean Government is not something that should be seen in isolation. In the whole world right now, there is the concept of leanness in productivity. This applies not only to industries and corporate organizations, but even to the Government.

Mr. Deputy Speaker, Sir, there is one economist by the name John Miller who spent 12 years in Singapore. In his interaction with the government, he came up with the concept of a lean government, which he defined from his own experience in the industry. A lean government will be defined as one that will solve the people's problems based on the facts. It is the one that will provide the highest quality of life to as many people as possible. It will be one that will deliver services to the people at the lowest cost possible. It will be one that will be doing this as quickly as possible. It will be one that will be doing this in a sustainable manner beyond its own tenure.

Mr. Deputy Speaker, Sir, if we are talking about leanness, we are talking about efficiency

and productivity. When we are talking about productivity, even in the corporate world, there is the Pareto Principle, which goes that: If you are able to concentrate all your efforts, resources and power to produce in the 20 per cent of your production capacity, then you should be able to achieve maximum results. What am I saying? I am saying that it is possible to reduce the size of the Government and to reduce the waste in the Government.

Mr. Deputy Speaker, Sir, when we are talking about leanness, even when you go to a shop or a restaurant and you are ordering lean meat, what you are saying is that you want to get rid of all the fat. You want to eat the lean or "real" meat. When we are talking about a lean Government or Cabinet, we are talking about a Cabinet that is going to give people the service it requires. Even the people who have defined leanness-- We are not talking about something that is sustainable just for now, but it will be sustainable even beyond the current Government.

Mr. Deputy Speaker, Sir, when we are supporting this Motion, as far as I am concerned, we should support it also with the circumstances that we are in, being informed of them. Because when we are legislating, we just do not legislate for ourselves, but for the people of Kenya as well. When we support and pass this Motion, it is my prayer that it will apply even in the next Government and not necessarily this one because we are in special circumstances. I would like to urge the House to understand it in that sense because we need a movement that I see in this House. Many of us who believe that we should never have waste in the Government are seated in this Parliament. We need to legislate so that, in future, our Parliament and Government are going to be effective.

Mr. Deputy Speaker, Sir, I would like to give an example. If you sit in most Government departments nowadays; the Government is structured along departments, you will find separate departments. Now, there is a *mwananchi* here who wants a Government permit, may be, to perform certain duties for his sustenance. He will go from this department to the other department and to the other department. In the sense of a lean Government, we feel that, that law we are coming up with should have a creation of work cells. In this country, we can group Ministries that are relevant to each other to be in one place so that if you are applying for, say, a permit you do not have to go round and round in Nairobi. Ministries which are related can be merged so that a citizen who is looking for a permit to perform certain things or approval from the Government can get service from one building. He does not have to move from one department to another.

Mr. Deputy Speaker, Sir, I argue that this is a Government that is serving customers. It is like a business that is serving customers. Our customers are the citizens of this Republic of Kenya. They are the ones who sent us to this Parliament. When these customers come to us, they need to be served efficiently. There is no use of having so many departments scattered all over. We should mix these people. We should mix these departments and reduce the number of our Ministries. I agree entirely with Mr. Ethuro that there are some Ministries that can be easily grouped together for efficient delivery of service to our customer who is the citizen of this Republic.

If you go to the street today, you will realise that the people who do business in the streets cut down on their costs. They do everything possible to cut down their costs in order to serve the ordinary customers well. If you go to the corporate world, they also cut down on their costs in every thing possible so that they can serve their customers. In Government, time has come for us to legislate a law that will cut down the cost of serving our customers who are the citizens of the Republic of Kenya. One of the things that needs to be done is to set standards. One of those standards is setting the number of Ministries. I entirely agree with this Motion that we need to limit the number of Ministries.

The Seconder of the Motion, Mr. Aluoch Olago, whom I have great respect for, has given his own proposition. It is good for this country that we debate all manner of ideas in this Chamber. This is the height of ideas. However, we need to think a little more about how we should constitute

that Cabinet, what maximum number of Ministries should be there and so on. This should not be our own wisdom as Members of Parliament. Remember we are serving the customers who are outside there in the countryside. They are the ones who sent us here. My own thinking is that, yes, we should agree with the concept. However, with regard to the details, let us pass this Motion. Let us bring the law. When the law is here, we will have enough chance to consult our constituents and be able to propose something that is customer- or citizen-friendly. I will not go as far as saying that we should have a certain number of Ministries. That is not the way to go. We should be edging towards satisfying the customers who are our citizens.

With those remarks and the limited time that we have here to debate this Motion, I beg to support. We should be legislating for the future and the good of this country.

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry): Thank you, Mr. Deputy Speaker, for giving me this opportunity to contribute to this very important Motion. I stand to support the Motion.

(Applause)

It is Parliament which has failed in its duty. This is because the law as prescribed by the Constitution demands that Parliament should set the number of Ministries of the Republic of Kenya. However, successive Parliaments, from 1963 up to now, have failed. I would, therefore, like to thank my very good friend, Mr. Ethuro, a very able Member of this House, for bringing this Motion.

Mr. Deputy Speaker, Sir, I would like to clarify a few issues. First of all, the situation we are in today as a country is very unique. Therefore, it is not a mistake that the Government is "that big". We know where we have all come from. So, it is Parliament which has failed right from the outset to give direction on how to appoint a Cabinet. I would like to agree with my colleague, Mr. Mungatana that we should not come here and apportion the size of the Cabinet. We should, first of all, look at the needs of Kenyans in terms of the economy, security, infrastructure, education, health services and water services. We can then only say that the next Cabinet of the Republic of Kenya will be based on these factors. This is really fundamental. When we come here and say, "The commonwealth model", we should realise that we are no longer a colony. We will go by our own standards and create a Cabinet which reflects the needs of our people.

I agree entirely with the fact that had we passed this law a long time ago, these arbitrary appointments and recycling of wrong people would not have arisen. The recycling of corrupt people would not have arisen!

(Applause)

It is shameful because we know that there are people who have been mentioned adversely, but they are still being recycled. I am a retired military General. I faithfully served this country for 32 years. When I was in Form Three, some people were Permanent Secretaries. Now, those people are still here. Now, for how long are we going to keep our young people waiting before they get positions of responsibility?

(Applause)

It is Parliament which has not set the law right. It is not really the mistake of the current Cabinet or Kenyan Government. It is, indeed, the failure of Parliament and not the Government. Since Parliament has failed, the country must be governed and the President has a right to appoint

whatever size of the Cabinet.

Mr. Deputy Speaker, Sir, talking of a lean Cabinet, I do not think "lean" means numbers, that is, three, ten or 20. "Lean" means the delivery of services. How many people did we have in this country in 1963? We had about eight million people, but now we have about 34 million. So, you might as well say that the needs of our people have also grown. We have drought now as opposed to the past when we had very good climatic conditions. We are now experiencing problems with the climate. For example, there is global warming. We now have to address such issues. So, we have to expand and, therefore, you cannot really target and bash the Government for its "large size". It is actually about the needs of the people and the situation as it is today.

As we contribute to this Motion, we need to be more rational on the issues affecting our country today. With regard to a "clean" Cabinet, I support that. If you are corrupt, you should not be in the Government. If you have been mentioned in any criminal activity, you should not be in the Government. It is very important that we have a clean system.

I support this Motion and wish that we pass it so that a Bill is brought before this House.

Mr. Abdikadir: Mr. Deputy Speaker, Sir, I support this Motion wholeheartedly.

In setting the infrastructure of the State, the Constitution envisaged that Parliament would be the driving seat because this is a Republic and not a monarchy. The way things have been, everything was done by an Executive that acted more like a monarchy. It is time Parliament took its position and actually took back the driver's seat.

Mr. Deputy Speaker, Sir, Ministers are part of the Executive. My learned colleague, Mr. Aluoch Olago talked about "shall". The word "shall" is meant to oppose "may" and is supposed to be stronger than "must". Therefore, when the Constitution talks about "shall" it means that something has to be done that way.

Mr. Deputy Speaker, Sir, with your permission, let me read out Section 16 of the Constitution. Other than the term "shall", I would like to draw the attention of hon. Members to the phrase "subject to".

Section 16 of the Constitution says:-

"There shall be such offices of Minister of the Government of Kenya as may be established by Parliament or, subject to any provisions made by Parliament, by the President."

Since Independence, the President has been using the part that says "or subject to any provisions made by the President". In other words, even when Parliament has not checked, the functions and setting up of establishment should have been subject to Parliament's approval. This has not been happening.

Mr. Deputy Speaker, Sir, to add to that, Section 23 gives the executive authority of the State to the President. However, Sub section 2 says:-

"Nothing in this section shall prevent Parliament from conferring functions on persons or authorities other than the President."

In other words, this section allows Parliament - even when we were setting up the Office of the Prime Minister - without recourse to the Executive, to go ahead and do so. Now, for Ministers, we most, certainly, must do so. That means their establishment in terms of number and functions as to what they are supposed to do. So, I think it is time for Parliament to take back the driver's seat in this regard.

Mr. Deputy Speaker, Sir, in the theory on separation of powers, the law establishes - because the law is king in our Republic - the functions of the State. There should be separation of powers, so that each arm of the Government can go ahead and do its work. A couple of days ago, when Ministers and Permanent Secretaries attended a conference, I heard the Right Hon. Prime Minister say that the Judiciary should be loyal to the Executive or the Judiciary should be loyal to

the Government of the day. That, most certainly, is not how it is supposed to be. Since the Right Hon. Prime Minister said that the Back-benchers in this House should be checking the Government, we will certainly do so. We need to tell him that, certainly, the Judicature must not be loyal to the Executive of any day, leave alone the Executive of the day.

The historical subjugation of Parliament is what has brought us to this level. Since the last Parliament, Parliament has been seeking self-determination. It is only when Parliament gets complete independence that hon. Members of this House can then serve their constituencies properly.

With those few remarks, I wholeheartedly support the Motion.

The Assistant Minister for East African Community (Mr. Munya): Thank you, Mr. Deputy Speaker, Sir. I support this very important Motion.

Mr. Deputy Speaker, Sir, the blame is on Parliament, because it is Parliament which has failed over the years to establish the Offices of the Ministers of the Government of Kenya. If we had done what we are obligated to do by the Constitution, we would not be in the mess we are in. So, the right time to do so, is now. If we never did it before, it is now that we need to do it. The Constitution clearly gives the mandate of providing the number of Ministers to Parliament.

I want to specifically say what the Constitution says. The Constitution is not telling us to provide the limit. The Constitution says: "There shall be such offices---" So, our obligation here is to create the offices. We are supposed to say

"a", "b", "c" and "d", but it is not say that this is the limit and then allow the Executive to wriggle around it. Our obligation is to create those particular offices and say: "There shall be Minister for Lands, Minister for Energy" *et cetera*, so that we can give effect to what the Constitution says.

Mr. Deputy Speaker, Sir, why is it necessary to have these offices clearly spelt out in law? That way, we will avoid manipulation. Even hon. Members who want to be appointed to the Cabinet manipulate the appointing authority. They intimidate the appointing authority, because they want to be appointed Ministers. The appointing authority sometimes bends to those manipulations and intimidation and then, we end up having a huge Cabinet, that may not necessarily serve the purpose for which it is intended.

So, if Parliament creates those offices and limit their number, there will be no room for everybody feeling that "I want to be in that Cabinet". Those are the sentiments that Mr. Ethuro was raising when he said that if there was a criteria of appointment, and the offices were limited, then not everybody would be wanting to be in the Cabinet. However, if we have so large a Cabinet, why should you miss out? If every Dick and Harry is a Member of the Cabinet, why should you miss out?

Mr. Deputy Speaker, Sir, there were times, especially when we were in High School and other places, we used to hear that a Minister was coming to visit that region and you would see that the whole region was alive. In those days, the Ministers were few, respected and they used to carry themselves with decorum. They were clean; they were not associated with corrupt deals. These days, it does not matter. Even if you were involved in Goldenberg, you can become a Cabinet Minister tomorrow.

If you get out, after a few years, you can be recycled back into the Cabinet even if you were involved in the Anglo Leasing scandal. Then, at the same time, we are telling Kenyans to forget about corruption; that we are zero-tolerant to corruption. We want to move forward. Who will give the example? It is the Ministers and other top Government officers that Kenyans are supposed to look up and then know that, that is the direction we are taking. That is why Kenyans never take us seriously. We give speeches that are public relations speeches. We say we are going to have a Cabinet that is clean and lean and then when it is announced, you all get shocked. You wonder what "clean" and "lean" means, and whether those words have acquired new meanings. This is

because what you see is not what you had heard you were going to get.

Even more importantly, there is what is called "institutional memory". That what we lose when we hive Ministries from other Ministries and move departments every year. Today, we hear that the Department of Sports is under a certain Ministry. The next day, you hear that it is under the Ministry of Youth and Sports. We do not even know which Ministry women affairs fall under.

An hon. Member: They are in the Ministry of Gender and Children Affairs!

The Assistant Minister for East African Community (Mr. Munya): Mr. Deputy Speaker, Sir, I do not even know which Ministry the Department of Adult Education falls under. This is what we want to end, so that we have some durability. We want to have institutional memory, so that if you are appointed a Minister, once you take office, you can know what was happening there, 20 years ago, or 15 years ago. You learn from that information. That is how we build institutions. We cannot build institutions when there is no permanency in anything.

In Kenya, we play politics of making everything euphoric. Even the appointment of the Cabinet is euphoric and then we say we want to have durable institutions. How do you get durable institutions if there is no permanency in anything? A Minister serves for a few months. Even before he understands how his Ministry works, he is moved to another Ministry. He is not moved because he was not able to perform very well in that Ministry. He is not moved because his Ministry is not working very well. He is moved because of the politics of that time. Political considerations override everything else.

Mr. Deputy Speaker, Sir, I know that it is not possible to provide for a criteria of appointment in our laws, but, surely, sometimes, we wonder. We find a Ministry that is not performing at all and then we find the same Minister being returned to that Ministry. That happens in Ministries which drive our economy. We find the same people being returned to those Ministries despite the fact that nothing appears to change in those Ministries. Then you wonder what drives our Government. That is why we need these offices created. We need to put it in the law, so that we can move forward.

With those remarks, I beg to support.

Prof. Kamar: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to contribute to this Motion. I rise to support the Motion. We have been informed that we are in a very special situation, and that is why we have the kind of Cabinet we have. We have a Cabinet that was formed to take care of political parties, regions and, I dare say, tribes, sub-tribes and gender. But why did we do that? We are aware that there are complaints from all the three quarters that were supposed to have been considered. This means that even with the 40-plus Ministers and 50-plus Assistant Ministers we did not satisfy exactly what we wanted to satisfy. That calls for a good reason why we have a Cabinet and why we choose people to sit in it.

Mr. Deputy Speaker, Sir, in the Ninth Parliament, we had 28 Assistant Ministers, who almost went on strike. They even went to State House to say they did not know their duties, and that nobody was giving them any job. How will 51 Assistant Ministers perform their duties? With 42 Cabinet Ministers and dissatisfaction from the regions, one would easily say that since we have 42 tribes, we should have given one representative to each tribe. Then we would have been satisfied and we would have fewer complaints!

(Applause)

Mr. Deputy Speaker, Sir, the greatest problem now is that we have 42 Ministers, 51 Assistant Ministers and no satisfaction on the ground. The most worrying thing to me is what we wanted to satisfy more than worrying about having 42 Ministers and 51 Assistant Ministers. We shall not satisfy what we wanted to. Instead, we are creating what we are supposed to be killing.

The problems that arose soon after the general election last year tended to divide us along tribal, regional and party lines. We know our political parties have been ethnicised. We are trying to promote that even when are coming up with a Cabinet. This law should help us resolve those things.

Nigeria, which is very huge, dared not discuss regions. They decided to come up with 19 Cabinet Ministers, looked at their qualifications, put them on board and said: "These are national leaders of repute". We need to change the way we look at our Cabinet.

Mr. Deputy Speaker, Sir, I would like to support the issue of a lean, clean and performing Cabinet. It is very sad sometimes to have a Cabinet Minister, who attends international fora and can only read the written speech but cannot interpret it!

(Applause)

If you compare the quality - and I did mention this early in the year when I and hon. Kabando wa Kabando were presenting our Report--- When you attend an international forum, immediately debate begins we have less participation by Kenyans. One wonders, is it because we did not prepare the Minister well, or it is because our Ministers are misplaced? This happens when we have misplaced appointments, where someone like me, who is a soil scientist, is appointed as the Minister for Security, for example, and I cannot dare go out to represent this country.

I thank the hon. Member who has come up with this Motion. We need to have rationale as to why we must have a Minister in a certain Ministry. We must define the Ministries. We must also agree that whoever will be the Minister will represent this country, and not someone who wants to satisfy a region or a specific group of people, otherwise we will not be able to "kill" the bad culture that we are supposed to be "killing".

Mr. Deputy Speaker, Sir, Uganda has a very interesting scenario. We have been informed that Uganda has 21 Ministers. They have 300 hon. Members. They also have a cut-off point for who goes to Parliament. For one to be an hon. Member he or she must have a Form Six certificate. Why are they doing that? This is because they think the leadership must be able to speak on behalf of the country. When selecting leaders, unless you are very careful in the way you place them, they will not only not perform in this House--- Yesterday, the Chair ruled that we must have the right answers from the Cabinet. We also need people who can represent us in international fora.

Mr. Deputy Speaker, Sir, I would like to call upon the Mover to go ahead and grab---

Mr. Deputy Speaker: Order, Prof. Kamar! Your time is up!

Prof. Kamar: Thank you, Mr. Deputy Speaker, Sir.

I beg to support.

Ms. Noor: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to contribute to this important Motion. I stand to support the Motion.

As a House, we have the responsibility to serve the interests of this country. We must stand by that responsibility, which was given to us by the people of this country. In the past, elected leaders had their personal interests at heart. They forgot the interests of those who gave them the responsibility to represent them in this House. This is a unique Parliament. We made history by passing the Peace Accord. In the same spirit, we must make history and show a difference in our leadership this time round. We must stand up to face the challenges facing this nation.

The mood of this country is very clear. The Executive must listen to Kenyans. It is Kenyans who have given the mandate to the Executive to manage the affairs of this country. It is only wise to respond positively to the issues affecting our people. We need to emulate the world. We need to listen to our constituents. Our constituents are very sensitive, they need people who can help them. They want a lean and clean Cabinet.

Last year political parties campaigned on a platform of zero-tolerance to corruption. But do we really practise what we say? Do we really walk the talk? The leaders of this country have failed us. As national leaders, we must stand up---

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

Mr. Deputy Speaker: Mr. Chepkitony, what is your point of order?

Mr. Chepkitony: Mr. Deputy Speaker, Sir, we are all in support of this Motion. Would I be in order to request that the Mover of this Motion be now called upon to reply?

Mr. Deputy Speaker: Order, Mr. Chepkitony! You are out of order!
Proceed, Ms. Noor!

Ms. Noor: Thank you, Mr. Deputy Speaker, Sir, for protecting me! We are aware that in the developed countries, some Cabinets are formed outside of Parliament. We need to look at this when we are passing this law. We need to form our Cabinet outside Parliament. That will be when we will stop competing and avoid divisions along tribal and regional lines. That will be when we will have an opportunity to scrutinise the qualifications of people, the responsibilities we give them and the skills they have. We need experts who will manage the affairs of this country. Only then will we be able to give Kenyans the services that they deserve. That is the only time when we will have capable people in offices, who will manage our affairs well, and give the best services and have the best interests of this country at heart.

Mr. Deputy Speaker, Sir, I come from a region where services have never been delivered and people who come from different regions just because they have the power and are well connected in the system, get all the services. At this age, it is unfair for a country to give different services to different people. It is only technocrats and experts who can serve this country equally because they will be responsible. This time Members of Parliament and Ministers should be honest and not only serve their constituencies. If we have a Kenyan with clear terms of reference, then that is the only time that he or she will deliver clear services to this country.

Mr. Deputy Speaker, Sir, in the past, this House has failed this country. As I have just told you, this Parliament is unique on its own. So, please, let us demonstrate that uniqueness.

I beg to support the Motion.

The Assistant Minister for Youth and Sports (Mr. Kabando wa Kabando): Thank you, Mr. Deputy Speaker, Sir. I rise to contribute to this very important Motion. The kind of Ministries we need in this country should be commensurate with Vision 2030 that we have set in order to propel Kenya as the first nation that is harvesting its potential, self-reliance and absolutely without the overdependence on the so-called donor support which essentially comprises of neo-colonialism. This is because a country without economic roots, cannot make its own decisions and cannot move the interests of its citizenry.

Mr. Deputy Speaker, Sir, secondly, the Cabinet that I see being contemplated by this Motion should not just talk about, as my colleagues have said, numbers. It should talk about leaning towards dynamics of the country. It needs to lean towards the intellectual capital that is existing in the nation. To date, Kenya leads, among other African countries as I have said before, in the number of students in tertiary colleges and reputable universities in the United States of America (USA). We have the critical mass of young professionals who need to be absorbed to contribute effectively and positively to the national development. Therefore, we should be leaning towards the 72 per cent of the population of Kenya that is below 30 years of age. To have a Cabinet dominated by 5 per cent of the population to marshall plans for 72 per cent that is below 30 years of age, is in itself a departure from the interests of the nation. It is, therefore, important that whatever rules and regulations that will be developed in order to conduct this Motion when it comes into law, should essentially lead towards getting the nation reflected in its national leadership. It should be a Cabinet that is leaning towards diversity. That will avert the sort of

confusion that we are getting.

Mr. Deputy Speaker, Sir, it is interesting that we also in this House are at the forefront of complaining that our districts and sub-ethnic groups were not involved in this Cabinet. Yet, we are also saying that we need to be drivers and shapers of the nation that is the Republic of Kenya. At one stage, we want Kenya which is one family to be on the platform of the leadership of East African Community (EAC) and as it is today in the academia world. At the same time, we are reduced in press conferences to complainants talking about our petty, small and unfocussed issues. We, as Members of Parliament, need to embrace our role and ensure that our utterances within and out of the House actually do not excite the critical mass that is so frustrated and vulnerable for misuse or some other vices that easily come when people do not have economic engagements.

Mr. Deputy Speaker, Sir, the Cabinet that is being contemplated in this Motion should be "clean". However, the question of the day is: We have the Public Officer Ethics Act of 2003 for Members of Parliament and other public servants. The law is clear. It was established five years ago. Is it being implemented? Do we need to complain inside and outside the House that some unclean people who have cases pending in courts of law are dominating or being awarded posts because of voting patterns and ethnic arithmetics that are being considered in appointments? We have to boldly and courageously step forward and say that even laws that have been put just as this section of the Constitution says: "Parliament may establish the offices of Ministries and, therefore, even the numbers of those Ministers." We have a law that talks about our integrity as Members of Parliament and also as Ministers. That law needs to be implemented without hesitation. We have the Kenya Anti-Corruption Commission (KACC) which needs to be clear and not just giving speeches and saying that they have audit reports, but it needs to cite publicly that if you are charged in a court of law for misappropriation of public resources, you do not need to be accorded a flag to intimidate the citizenry and be saluted wherever you go.

Mr. Deputy Speaker, Sir, finally, it is in the spirit of nationhood that we need to endorse the dismantling of our ethnic cocoons and not rewarding, as I said, regions and groupings. Therefore, it may be necessary as was contemplated in deliberations at Bomas, although it may not have come about in the referendum, that we need to also outsource from outside. Companies in the corporate world are outsourcing. They are outsourcing skills. It may happen at one time that all the Members of Parliament are from one discipline. That can happen. We need to contemplate harvesting from external arena by getting eminent Kenyans who are professionally and intellectually qualified to also sit in the Cabinet. Those are issues that we need to bring forward, so that we, as a nation, can ensure that we get the diversity of skills that will enable us to move forward.

Mr. Deputy Speaker, Sir, very finally, there is the need for us to have a serious call that goes beyond this Motion, which I support very strongly because it is long overdue. We need to voice the concerns, interests and the duty that we, as Members of Parliament, do not see Ministerial appointments as belonging to certain districts and political parties. Since there are things that have been done that cannot be undone, those who have been given appointments, accepted them and have sworn to defend the Constitution and the Republic of Kenya, should deliver. There should not be doubt that those in those positions will not deliver. Whatever Ministries that some of us have been given, it is now the time for us to make a difference. A difference we are making.

I beg to support.

Mr. C. Kilonzo: Mr. Deputy Speaker, Sir, I rise to support the proposed Bill. Before the Government was formed, Kenyans gave notice to the politicians and all the party leaders. It was very clear that they wanted a lean Cabinet; a small Cabinet. The voice of Kenyans must be heard through Parliament. Parliament must speak on behalf of the common man. The common man is very clear: He wants a lean Cabinet. He also says he wants a clean Cabinet. This word "clean" seems to have been misunderstood. When they say clean, they are talking about corruption-free

fellows; fellows with no criminal records. It is not fellows putting on very good suits. The fact that you have been elected to Parliament from your constituency to represent your people does not cleanse you from the crimes you committed!

(Applause)

In this Parliament, we have hon. Members who have been involved in Goldenberg and Anglo Leasing scandals and they know themselves. Others even stole water pumps and they sit in the Cabinet.

An hon. Member: Shame!

Mr. C. Kilonzo: Mr. Deputy Speaker, Sir, they have been mentioned for prosecution and others have been recommended to be locked up yet they sit in the Cabinet. Today, we are talking about 96 Ministers and Assistant Ministers. I beg to differ with my colleague, Maj-Gen. Nkaisserry, that in the 1960s, the Cabinet was small because the population was small. In this era of information technology, truly, it does not make much difference. It should even be smaller! Mr. Munya was very clear and I agree with him. When we have a Cabinet of 40, then every community - there are 42 communities in this country - and they all want to be represented. If they are 40, then it must have been on the basis of every community! We want a slot. However, if you have a small Cabinet, everybody will understand. There were days when you would sit down for an examination and you are asked to name the Cabinet because they were 15 or 20 and you would know them. Today, even if the best brains only were asked to name the 95 Ministers and Assistant Ministers and say what Ministry they belong to, it will not work. Nobody will pass! That shows that there is something very wrong.

Of importance to this House, and which we must accept, is that the Executive has poached 95 hon. Members to go and do Executive work. The role of Parliament is to, first and foremost, legislate. So, when you take almost half of Parliament to go and do Executive work, then what have you done to Parliament? You are actually killing it! If this law will be passed, we need to see a very small fraction, perhaps, not more than 15 per cent or 20 per cent maximum. However, as we talk today, we have hon. Members sitting in three watchdog Committees. There is one who is sitting in four Committees because we do not have enough hon. Members for those Committees. They have been poached. Perhaps, we should change the law and have the Assistant Ministers sit in these Committees but, of course, it will not work.

Mr. Deputy Speaker, Sir, when we talk about 95 Ministers, this is a luxury we cannot afford. It is an expense we cannot afford. Some of those Ministries are departments. It is even worse; others are sections of departments and we say we have a Ministry just because we want to make sure we satisfy an individual with a flag. It is wrong! That era of pleasing a few politicians is gone. We are proud as Back Benchers and there is nothing wrong with a Back Bencher. We are not saying that this Bill is for the sake of it. We are saying that when it is enacted, we want to see Ministers being sacked or demoted and others being sent to the Back Bench. The last time I saw Mr. Kamama and Dr. Machage, they were okay. They might be complaining but they are okay. They were demoted from the Cabinet. Out of that 95, we want to see 50 back to the Back Bench where they belong because they are hon. Members.

You saw what happened over the weekend. People want to see the Opposition. They want to see Parliament talk for them. The word "Opposition" has been misconstrued to mean we want to bring down the Government. So, when we see 90 something of them saying that they do not want to hear something about the Grand Opposition, we say something is wrong. We want our people back to the Back Bench, and not in the Executive.

Just to finalise, it is unfortunate that we have gone back to the single-party era. Somebody

said that KANU, as a party, will rule for 100 years. It is obvious; it is all here now.

(Laughter)

The number one is KANU; number two, KANU; number three, KANU; number four, KANU, and number five is also KANU! If you will remember, KANU, as a party, never liked opposition. It was used to appeasing people with slots. That is why we have this problem. It is a party that never liked opposition. That is why all the five do not want to hear about the opposition!

(Applause)

Mr. Deputy Speaker, Sir, we need the Back Bench where they belong. There is no way we can have a strong Back Bench if they are serving in the Government. They have been silenced and they cannot talk freely. We want to thank those youthful hon. Members; the likes of Messrs. Munya, Kiunjuri and the rest. They should not be silenced because they are Assistant Ministers. We need to agree and accept this.

With those few remarks, I beg to support.

The Assistant Minister for Forestry and Wildlife (Mr. Nanok): Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity. I rise to support this Motion. Basically, the purpose of this House and the Government is to deliver service to the Kenyan public. There are so many problems that the Government and this House are supposed to solve ranging from poverty to marginalisation of various areas, insecurity and others. We would like, as much as possible, to see that over 60 per cent of the Government's Budget is devoted towards delivery of service and not towards hon. Members, arguing and discussing about being overlooked in the appointment of the Cabinet.

The second most important thing is the clarity of responsibilities. We now have a Cabinet - and also in previous Cabinets - where we have a Minister and Assistant Minister who assist the Minister but has no substantive portfolio to a point where hon. Members are, more or less, made to act like personal assistants of Ministers. This is, indeed, not very good. If this Motion will define the portfolios of Assistant Ministers and probably make them Deputy Ministers or Ministers of State, as it happens in many other countries, this will ensure that hon. Members will not feel inferior to other hon. Members who get appointed as Ministers.

I might also say that a huge Cabinet is confusing the Kenyan public. We have a lot of overlapping responsibilities. People out there, even in my own constituency, do not know which Ministry to run to over certain issues. That is the reason why I really support this Motion. The Constitution gives this House the responsibility to redefine the number and portfolio of the different Ministers of the Government of Kenya.

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

The Assistant Minister for Regional Development Authorities (Mr. ole Metito): Mr. Deputy Speaker, Sir, thank you for giving me an opportunity to also support this Motion. A lot has been said on the importance of Parliament fixing the number of Ministries, and defining or specifying the Ministries we should have. One hon. Member said that nowadays that honour of being a Minister is no longer there, because there are so many Ministers and people do not even know their definite roles. There are other reasons why we need to specify the kind of Ministries that we should have. Section 16 of the Constitution says that we must have offices of Ministers of Government of Kenya. There are some Ministries right now which are not recognised in some regions. People may not even recognise you as a Minister, because the definition of your Ministry does not extend to that region. An example is the Ministry of Nairobi Metropolitan Development.

For example if the Minister for Nairobi Metropolitan Development goes to Nakuru, people might not see him as a Minister, because they think that the jurisdiction of that Ministry ends in Nairobi. Another one is the Ministry of Northern Kenya and Other Arid Lands. If you go to Coast Province and you are the Minister for that Ministry, people at the Coast may not identify you as a Minister, because the jurisdiction of that Ministry does not include the Coast Province. We must define the kind of Ministries we have, so that they are Ministries of the Government of Kenya, so that wherever you are, you are seen as a Minister for the whole Republic. The idea of taking care of northern Kenya or Arid Lands---These could be departments under substantive Ministries.

Mr. Deputy Speaker, Sir, many departments are overlapping. I take issue with a body like KETRI, which should be under the Ministry of Livestock Development, but now is under the Ministry of Agriculture. Bodies like the Kenya Vaccine Production Institute should be under the Ministry of Livestock Development, but they are under the Ministry of Agriculture. This is because, as Parliament, we have failed to define the specific Ministries and their functions. The organization of the Government has been left to individuals. Every time you see a reshuffle of the Cabinet what follows next is the organization of the Government, and departments are no longer where they were; that should come to an end.

Mr. Deputy Speaker, Sir, finally, regarding the issue of a clean Cabinet, when the Mover was moving this Motion, he elaborated so well that Kenyan Ministers do not step aside when mentioned in corruption. What happens is that the law says you are innocent until proven guilty. So, when somebody takes a Minister to court over alleged corruption, the Minister will go to court to seek a Constitutional reference and then that case drags on for years and years. We should have a clause in the proposed Bill that will say that once you are mentioned, you should step aside until you are proved innocent by a court of law.

With those few remarks, I beg to support.

The Assistant Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Kipkorir): Mr. Deputy Speaker, Sir, before I respond, may I request that I donate five minutes of my time to Ms. Odhiambo.

Mrs. Odhiambo-Mabona: Mr. Deputy Speaker, Sir, I thank the hon. Member for donating five minutes to me. I want to support the Motion by saying that it is a noble idea. I want to encourage the hon. Member, who brought the Motion to bring a Motion to amend the Constitution. If you look at Section 16(1), an issue of this magnitude should actually be entrenched in the Constitution. The reason why I am saying so is that it will help us deal with a lot of disgruntlement that we saw here. Other than the reason that people call personal, the reason why people get disgruntled and complain is because of lack of equity in the appointment of Ministers, first by region, and secondly by gender. It is an embarrassment that the President promised that 30 per cent of all public appointments shall be women, but if you look at the Ministerial appointments, I am not lobbying for myself because we are not going to get any further appointments, you can see that they are very lopsided in relation to gender and regions. There are regions in this country that have been marginalised in the sense that they still do not have adequate representation.

Mr. Deputy Speaker, Sir, finally, regarding a clean Cabinet, most of us think of "clean" only in terms of corruption; we forget that there are Ministers who have committed sins of omission and not only of commission. During the period of violence there are Ministers who ordered people to shoot Kenyans. Police were ordered to shoot fellow Kenyans. Therefore, when we talk of a clean Cabinet, it should exclude such Ministers.

With those few remarks, I beg to support.

The Assistant Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Kipkorir): Mr. Deputy Speaker, Sir, first and foremost, I would like to thank the Mover for bringing this very important Motion to this House. The Mover and the Secunder of the Motion

gave very clear reasons to justify its passing. It is, indeed, true that after the last general elections, and before the formation of the Grand Coalition Government, we were able to hear and see the mood of Kenyans. They wanted a lean and clean Government. I do not wish to dwell on the definition of what word "lean" and "clean" mean, because the substance of this Motion is for this House to give the Mover the opportunity to bring a Bill to this House. At that point in time, the meaning of "clean" and "lean" will be addressed effectively. It is in public knowledge that Kenyans, religious leaders and the civil society desire to have a clean and lean Government. Therefore, due to the arguments which have come out in this House today, I want to support this Motion.

Mr. Deputy Speaker, Sir, from the inception of this Parliament, it has continued to breach the law. We breach the law by commission or omission. This Parliament has omitted to do what it was supposed to do. That is, to establish a law by virtue of the provisions of Section 16 of the Constitution. It should have come up with a law that regulated or limited the size of the Cabinet. That is why the Mover was right when he said that, because of the lack of an appropriate law, there has been arbitrary and uncontrolled establishment of the Executive, or the Cabinet. That has been so because of the failure by Parliament to pass the law. My learned friend, Mr. Olago, went ahead to raise very serious legal interpretation, and commented that the current Government is illegal.

Mr. Deputy Speaker, Sir, Section 16 of the Constitution, which is the subject of this Motion says:-

"There shall be the offices of the Ministers of the Government of Kenya as may be established by Parliament or subject to any provision made by Parliament or by the President".

The current President of the Republic of Kenya and the previous ones have simply been acting within the law by appointing the Cabinet because Parliament has failed to direct those Presidents as to the number of Ministers they are supposed to appoint. To that extent, I want to submit that, indeed, the current Government is legally in place. I want to refer to Section 24, which should be read together with Section 16 of the Constitution. It says:-

"Subject to this Constitution and any other law---"

Mr. Deputy Speaker, Sir, there is no any other law. That is what I think we want to come up with today. The powers of constituting and abolishing offices for the Republic of Kenya, making appointments to any such office and terminating any such appointments shall vest in the President.

I, therefore, submit that there has been no breach of the Constitution of the Republic of Kenya. Therefore, the 16 Ministers and 18 Assistant Ministers in 1963, 23 Ministers and 31 Assistant Ministers in 1969, 23 Ministers and 32 Assistant Ministers in 1975, 29 Ministers and 50 Assistant Ministers in 1980 and 24 Ministers and 41 Assistant Ministers in 1984, all these appointments were done in accordance with the provisions of the Constitution. Therefore, the blame squarely lies in this House. It has taken my brother Ethuro 45 years of Independence to open his eyes in 2008. I knew he was in the Ninth Parliament and I think this is his third term in this House. I thank God that his eyes are open now to see that we have been breaching the law. He has given a reason that he has been on this other side and he has not been able, therefore, to move this Motion.

Now that hon. Ethuro has moved this Motion, this Motion is very important. This House should not act in vain. It should not make laws and fail to see those laws complied with. Otherwise, if Members of Parliament are the ones who are breaching the law, then how do we, therefore, enforce the law to the public? The Motion has come at the right time. I think what has made this Motion to come forward is in view of the current situation where we have a big Cabinet of 42 Ministers and 52 Assistant Ministers. The timing is also right. I want to submit that this Motion is, indeed, important for this House to consider and pass.

Mr. Deputy Speaker, Sir, we now have a Grand Coalition Government in place. It has made very serious commitments that within the next 12 months, we are going to have a new Constitution. Hon. Members will be players in that process, whether in the House or outside the House or in our constituencies. Given the 12 months time that we have to have a new Constitution, we are going to look at every section of our Constitution. We are going to repeal some sections and amend some, which we feel are not now consistent with the conditions in our country. Section 16, in my view, is one of those sections which I think will be an issue when the process begins. Therefore, as I support this Motion, I would like to propose to the Mover that the timing is good. He may consider it, so that in the constitutional review process, we can bring the issues together, so that we do not have piece meal amendments of our Constitution from time to time.

Mr. Deputy Speaker, Sir, I would like to conclude by saying that the Government and, indeed, the Ministry of Justice, National Cohesion and Constitutional Affairs, is committed to having a democratic country. Our vision is very clear; to have a just democratic country. We support this Motion because the objectives behind it are noble. There is no mischief, in my view, and I support it.

Mr. Deputy Speaker: I now call upon the Mover to respond.

Mr. Ethuro: Mr. Deputy Speaker, Sir, before I respond, I would like to donate strictly three minutes to hon. K. Kilonzo.

Mr. K. Kilonzo: Mr. Deputy Speaker, Sir, I thank the Mover for donating three minutes to me. I am going to be, indeed, very brief.

First, I support this Motion because previous Parliaments have been used as rubberstamps by the Executive. This is the time the Tenth Parliament is reclaiming its rightful position. That position is by legislating and making sure that Kenyans are not again going to have a bloated Cabinet as it is this time. May be the circumstances this time are different.

My friend, hon. Mungatana, referred to the Kenyan people as customers. I want to refer to them as our employers. Our employers asked for a lean and clean Cabinet. Our employers were not wrong. That is what they wanted. The civil society was all over asking for that, but the politicians defied that by awarding their cronies. The issue of the size of the Cabinet and the people who are going to be in it depends on who you know as opposed to what you can do. Clearly, the definition of any Government is the government of the people by the people, for the people, but this Government has not listened to the people. That is why we are coming up with this law to make sure they follow it. We saw what happened on Labour Day, Kenyans walked out on the President when he addressed the issue of the salary hike for workers. That was a clear message that Kenyans are unhappy with the big Government. The workers are wondering why we cannot give them a salary hike if we are able to meet the demands of this big Government.

Mr. Deputy Speaker, Sir, because I have very few minutes, I want to say that may be we should consider the proposed Bill when it is introduced in the House and carry out a comprehensive constitutional review to determine the mode of Government we would want to adopt. Do we want to adopt a Government where Ministers are appointed from elected Members of Parliament whereby party chiefs will favour their cronies, or do we want the presidential model in America where the Secretaries or Ministers are appointed from outside Parliament? In this case, parliamentarians will be left with the work of Parliament. Or do we want to go the parliamentary way?

With those few remarks, I beg to support this Motion.

Mr. Ethuro: Mr. Deputy Speaker, Sir, I wish to take this opportunity to thank Members of the House, across the political divide for their overwhelming support for this Motion.

I want to start by agreeing that, first and foremost, this Motion, in my view, will not be applicable in the current arrangement. So, Members seated before me can stop panicking and be

reassured of their jobs in the mean time, at least, for the life of the Grand Coalition Government. I also want to say that we are actually fulfilling our obligation under the Constitution. You will appreciate that lawyers being what they are, a number of them have spoken and three have contradicted each other. In fact, I want to thank the Seconder, the Member for Kisumu Town West and the Member for Mandera Central and the Assistant Minister for reading the relevant Sections of the Constitution, Section 16, which I quoted. They went ahead to read Sections 23 and 24. We do not need to amend the Constitution as many speakers have suggested. What the Constitution says is: Provided the Parliament has made a law, then, it will go by that law. If Parliament does not make a law, then we will follow the precedence. I want to agree with the Assistant Minister completely that the current Cabinet is very constitutional and legal. There is nothing illegal about the Cabinet. I think the grand idea of the Grand Opposition has taken the better part of the Seconder, but he misapplied it to this occasion. He would have an opportunity to apply it properly.

Mr. Deputy Speaker, Sir, what Members have said and I totally agree that this mismatch where a general is a deputy to a Provincial Commissioner (PC) and a PC is a deputy to a District Commissioner (DC) should not be entertained. Every party when campaigning talked of forming not more than 25 members of the Cabinet. We want to protect ourselves. The beauty about having laws is that we can protect ourselves from ourselves. When these parties sell their manifestos to Kenyans, they vote for them on the basis of a particular number of the Cabinet. But once they come to power, they forget all the promises they had made to Kenyans. We want to live up to the manifestos that we sold to Kenyans on the basis of which they elected us. We told them that we will have a lean Cabinet and we should subscribe by it.

Mr. Deputy Speaker, Sir, you will appreciate that the more younger and youthful you are, the more vigour you have in contributing and agreeing with us. I think Kenyans have taken note and definitely this Parliament has taken note of this fact. The older Ministers did not contribute to this Motion. I think that says something. It says that the future is for the youth and not oldies. They need to pack and go home. The Assistant Minister has said that we should wait for the constitutional review. My experience in this House, which I have invoked now, when you are on that side, I want to tell the fresh Assistant Minister, he is lucky to start from there, you get blinded. You do not see these things. You only see these things when you cross. You know, you need your Damascus! It is not that you do not see them. You may seem them but you cannot bring a Motion like this one. So, that is what is constraining us. It is not that we are not even seeing. We felt it was good. I would really want agree that there is something wrong about the Kenyan politician. The moment he is out there looking for votes, he believes in opposition. But the moment he goes into Cabinet, like now our Prime Minister, he cannot even contemplate an opposition leave alone a Grand Opposition! I mean it is inconsistent that we if we believed in something, we should live through it. There is nothing wrong being on this side or the other side. We affirm that each one of us needs to play his or her respective role at any particular time. Parliament has not failed to bring this Motion.

Mr. Deputy Speaker, Sir, I want to inform the House that in the Ninth Parliament, hon. J.B. Muturi gave a notice of this Motion, but it did not reach this stage because of the mood and frustrations. Even before hon. Muturi, hon. Muite had brought a similar Motion but it did not come to fruition. I think we want to thank this Parliament. I thought the Assistant Minister was going to offer, that we would go into joint partnership with him to come up with the Bill. There is no mischief in this Motion. We are not interested in power games. I know the minorities in this country suffer when big tribes always meet.

An hon. Member: Which big tribes?

Mr. Ethuro: Mr. Deputy Speaker, Sir, do not ask me, I will remind you again. For the sake of my good friend, Mr. Kabando wa Kabando, the issue is not that we are complaining because it

was big enough. So, how do you fail to be in the big one? But if it was small, we would agree. Two, when you go to my home district, you would have to look at who is in that place. When you go to Ukambani you have to look at who is that place so that the appointment will be based on merit. This is to say this is the best from that particular place. So, just because a Member happens to be in the mediation talks, does not mean he should be in the Cabinet. You see that all the Members who were in the mediation talks got a Ministry including the one of Nairobi Metropolitan Development which is competing with the City Mayor. This is what we want to abolish.

Mr. Deputy Speaker, Sir, finally, we want to release this House from the frustrations of the House Business Committee. Many times, Members bring good Motions like this, which are overwhelmingly supported by the House, but the House Business Committee will not allocate time for us to bring that Bill. I want to give a notice, and the Deputy Chief Whip is here, that when we are ready, the proposed Bill should be given priority to be debated so that it does not elapse. We want to do it and I will be there to make sure that we will do it while we are still alive.

With those few remarks, I want to thank each and every Member for supporting this Motion and I beg to move.

(Question put and agreed to)

Mr. Deputy Speaker: Next Order! Hon. C. Kilonzo!

A BILL TO AMEND THE
KENYA COMMUNICATIONS ACT

Mr. C. Kilonzo: Thank you, Mr. Deputy Speaker, Sir. I beg to move the following Motion:-

THAT, considering that Kenya has over eight million mobile telephone subscribers; considering further that mobile phones have almost replaced land line phones as the means of communication; cognizant that mobile phones can be used to spread hate messages through short message services (sms) as it happened during the post election period; aware further that in most countries all mobile subscribers are required by law to register with the service providers; this House do grant leave for introduction of a Bill to amend the Kenya Communications Act No.2 of 1998 in order to make it mandatory for mobile phone subscribers to register with the service providers.

[Mr. Deputy Speaker left the Chair]

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

Madam Temporary Deputy Speaker, the mobile phone sector has grown. As a matter of fact, it has, indeed, virtually replaced the old land lines. Looking at the background of this sector, the figures at the Communications Commission of Kenya (CCK) indicate that there were about 11.4 million subscribers in Kenya at the end of the year 2007. This market is shared among the key players. The key player is Safaricom which has 9.2 million subscribers, both active and inactive. The Safaricom IPO prospectus which was issued recently shows that the subscriber base consists almost, exclusively, of prepaid customers. Out of the total subscriber base, 99 per cent are prepaid. When you come to Celtel, the World Cellular Information Service Data indicates that Celtel has

about 2.1 million subscribers. Again, majority of these subscribers are prepaid customers. Of course there are other players like Econet Telkom.

Madam Temporary Deputy Speaker, what is the rationale? Why do we need to have SIM cards registered? There is a clear need for registration of subscribers as a mandatory regulatory requirement of all mobile service providers. Why do we need to compulsorily register SIM cards? First and foremost, we need to do it because of national security, and of course, personal safety. Once we do that, we will have enhanced the national security and personal safety. Criminals often exploit the anonymity of the fact they cannot be identified through a SIM card. This makes them avoid being known.

In certain cases around the world, there have been bombings which have happened by use of mobile phones and detonators. A good example is Singapore where criminals used prepaid SIM cards to communicate and commit crime. Registration of subscribers is critical to law enforcement agencies on the ability to investigate serious and organised crime. Imagine if you went to a police station to report a case where someone called you, you welcomed him into your house thinking that he was genuine and he attacked you. Even though you may have that person's number, what would the law enforcers do?

Currently, criminals have an effective anonymous means of communication. They can communicate freely and nobody would track them. The fact that the service providers do not require or impose full proof identification upon purchase of SIM cards renders the identification of the actual users virtually impossible.

Madam Temporary Deputy Speaker, during the post election violence, the use of mobile phones played a key role in inciting people especially through the use of sms. This was a very clear case of how the law enforcers would have acted if only they knew the people who were sending the sms. Con men are doing thriving business. Lack of mandatory registration has enabled con men to fleece unsuspecting members of the public. I know and I am almost sure that virtually all of you have been receiving messages reading; "You are the lucky winner of Kshs1 million from Safaricom." That is one! Another one reads: "You are the lucky winner of Kshs250 million from Unilever." When you call these fellows they ask you to send them airtime so that they can make some payments to facilitate in processing the cheque.

Recently, I had to rescue my own councillor. He had boarded a vehicle somewhere in Machakos and he called and told me that he was the lucky winner of Kshs1 million from Safaricom. I told him that he was being conned but there was no action he could take. If you can walk into a supermarket or a kiosk and buy unlimited numbers of prepaid SIM cards and throw them away after committing a crime using them that tells you about the mandatory need of registration of SIM cards by service providers.

What do you do to fellows who call you to abuse you? You are all politicians, you must have received many abuses. You cannot do anything! A fellow calls you without identifying himself, abuses you, yet there is nothing you can do about it! Should you be denied your right to take legal action? Mandatory registration of SIM cards will allow the aggrieved party to sue and get compensated. However, most important, it will allow the relevant Government agencies, in particular, the Communications Commission of Kenya (CCK) and the Kenya Revenue Authority (KRA) to keep track of potential and the actual revenue base of the players in the mobile phone sector.

Madam Temporary Deputy Speaker, currently, the two agencies, the CCK and the KRA, depend on information that the service providers wish to give at their own discretion. This is a sector that is making billions of money. If I am not wrong, last year alone, Safaricom posted a profit to the tune of almost Kshs18 billion. The KRA relies on what these fellows tell them. There should be a clear-cut way where the KRA can estimate the revenue. This can only happen through

registration of SIM cards. Of course, compulsory registration will also assist the Government in policy development and regulation of mobile banking. At any time, the Government should know which areas have a concentration of mobile phones and which areas need to be developed. Further still, compulsory registration will ascertain the actual numbers of *bona fide* subscribers not only for organisational planning and accountability but also improvement of customer service and development by keeping accurate data.

Madam Temporary Deputy Speaker, are we the first ones to come up with this law? We are not. Countries with some enacted regulations to enforce registration of SIM mobile phone users include Switzerland, Australia, India, Malaysia, Thailand, and even our neighbours in Sudan. In Europe, in response to the London bombings, the Council of European Union discussed mobile retention of telecommunications data to facilitate investigations by law enforcement agencies. In Australia, telecommunication service providers are required to collect and retain customer information for all types of subscriptions, including prepaid mobile phones. This requirement is specifically in the Telecommunications Act of that country of 1997. It was amended in 2000. Therefore, we are not the first ones seeking to do this.

Madam Temporary Deputy Speaker, Australia maintains a National Integrated Public Number Data Base for emergency services and law enforcement purposes. Each mobile phone operator is required to submit registration information to this national body, which collects all the numbers registered.

Madam Temporary Deputy Speaker, in Malaysia the Government has put in place policy guidelines on the registration of end users of pre-paid cellular services. These guidelines came into effect on 31st January, this year.

In Singapore, likewise, regulatory controls on pre-paid sim cards were introduced on 1st, November, 2005. There are many other countries. We are not going to be the first one.

Madam Temporary Deputy Speaker, when the players come, you might get resistance because they are doing business. They know that registration means they are going to incur costs. However, we are saying that in a sector where companies are making billions of shillings, should we compromise the security of this nation for the sake of profits? What is the proposed way forward in Kenya?

Madam Temporary Deputy Speaker, there is need for a review of the Kenya Communications Act, No.2 of 1998, to make it compulsory for service providers to register the customers' particulars. The Ministry of Information and Communications, in collaboration with the Communications Commission of Kenya (CCK), should work together with mobile service providers on a practical regulatory regime of pre-paid sim cards.

Madam Temporary Deputy Speaker, this is the time for all patriotic citizens to consider national interest, with the hind sight of what Kenya, as a nation, went through during the post-election violence over the last four to five months.

Madam Temporary Deputy Speaker, the Government might need to support the amendment of the Kenya Communications Act, 1998, to make it mandatory for mobile service providers to register, electronically, the details of the service providers. I am stressing this point, because I know the Government collects a lot of taxes from the mobile phone service providers. It should not be influenced by the tax element alone, and forget the duty and role of Government to provide security to this nation.

Madam Temporary Deputy Speaker, what am I saying basically? I am not saying that if you are not registered your phone will not work. Indeed, we should have a grace period of six months' notice to existing subscribers to register their particulars. Customers should not be required to pay for registration of sim cards. Users should also continue to use their pre-paid sim cards during the six-month period.

Madam Temporary Deputy Speaker, it is only when they do not register during the said period that the pre-paid sim card can be deactivated. But why do we need to register? There should not be a long form with ten questions. All we need are the particulars. If you are a Kenyan citizen then your Identity Card or passport should do. If you are a permanent resident in this country, then your resident identity card, or a passport, should do. If you are a service man in the forces, the police force and the rest, the service identity card will do. What about foreign workers? The work permit will do. For foreign tourists, if they want to buy a sim card, let them produce their passport. We, who have had the opportunity to travel worldwide, know that it is only in Kenya where you walk into a shop, get a sim card and walk away. In other countries, even if there is no law, there is a policy within the sector, which requires that you identify yourself.

Madam Temporary Deputy Speaker, the other consideration and requirement that we might have to think about is the minimum age. The service providers, Safaricom, Celtel and businessmen would want to sell sim cards to anybody. Is it in order to sell a sim card to Standard One, Two or Three pupils? These are considerations we need to look into.

Madam Temporary Deputy Speaker, we might also need to think about the maximum number of sim cards, one should be allowed to have. In countries like Singapore and Malaysia, one is allowed to have ten sim cards. Why would you buy a sim card today, change the number tomorrow and so on? It means that you have a hidden agenda. At the same time, we need to have protection of privacy. We do not want the Government to intrude into the privacy of its citizens. The subscriber details captured by the mobile phone companies should be strictly confidential. If law enforcement agencies require subscriber details, they will have to go through established legal procedures.

Madam Temporary Deputy Speaker, to sum up, I think this is a law that, if enacted, will be one big step in assisting law enforcement agencies to fight crime.

With those many sentiments, I beg to move and ask Mr. Ethuro to second.

Mr. Ethuro: Madam Temporary Deputy Speaker, I beg to second this Motion.

I want to first of all thank Mr. C. Kilonzo for bringing this Motion. This is one of those very important Motions. I would not even want to waste time on it. If I were the Minister responsible, and I see that my good friend, Mr. Khaniri, is here, I would just come and say, "Yes, I agree" and we terminate the discussion.

However, I have a responsibility to second the Motion. In seconding it, I am in consideration of personal safety and national security. All of us are politicians and you know how we came here. Most of the time you will get funny messages sent to you. You get funny phone calls; people abuse you and there is not much you can do about it. This is because somebody just walked into a shop, got a sim card, used it and disposed of it.

Madam Temporary Deputy Speaker, just two weeks ago, I got a really bad one involving--- I knew it was the work of my political detractors. I just had the sense of dismissing it with the contempt it deserved. It would really have caused problems with the Provincial Administration and the rest of the people. What this Motion is asking for is really obvious. It is a matter of common sense. Sometimes I really wonder whether our business in Parliament is to remind the Government of some obvious things! When you have conflict--- The mutiny by the prison wardens became a national strike just because of mobile phone short messages. When we are travelling along our highways, anybody who wants maybe to eliminate or rob you can organise that so easily. In fact, if you saw the account on NTV, on the death of the *Mungiki* leaders, messages were just being sent. They were giving registration numbers of vehicles during the day; that they have left Nairobi, they are heading to Naivasha and now they have been killed. I have my suspicion that those numbers may not be registered. If this law was in place, where we register all these numbers, the police work would be so simplified. They would have been able to get those people who were responsible. This

is because the person who was sending those messages was fully aware of what was happening with a lot of precision. These are the kind of things that we are talking about. This Motion is so important even for our security services. They need it like yesterday.

Madam Temporary Deputy Speaker, I just want to appeal to Safaricom Limited, Celtel and other mobile phone service providers that they need to extend their services to the rest of the country. In Turkana District, we have Lodwar, Lokichoggio and other big centres which, fortunately, have those services. But on the highways, like between Lodwar and Lokichoggio where we have a lot of highway banditry, if the services were being provided it would have been even easier for those criminals and the police to respond. The Minister should compel the service providers to ensure that, at least, they cover the rest of the nation. Maybe for economic considerations, if they feel that it may not be that viable, which I suspect is not the case--- I am aware that they are actually trying to do something. We need to encourage and expedite the process. But even if that were to be the case, the Government should have a commitment in terms of ensuring equitable development across the board and to underwrite in some of those cases to ensure that the rest of Kenya is covered by this very important facility of communication.

In fact, my statistics show that people from North Eastern actually raise a lot of money compared to people from other places. We do more of talking and, therefore, generate more revenue to the service providers. So, I am making an appeal to the Minister that places like Kerio in Turkana, Kalokol, my place of birth, and Lorgum should get these services. People who live there need to appreciate these things, so that they know that their son is in parliament and he has made sure that these services come to them quickly.

I would wish that either the Minister or Mover, finally, would consider actually amending the Motion in the sense that instead of just ending this move with the service providers, let the service providers be agents of the Communications Commission of Kenya (CCK), so that they collect the information because they are at the entry point. Once they have the information, that information should be with a Government regulator and not service provider, so that when the Kenya Revenue Authority (KRA) is looking for money, it is easier for a Government regulator than a service provider--- When the police will be looking for that information, it is easier for a Government regulator to be the provider of that information even to other Government agencies.

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

(Question proposed)

The Assistant Minister for Medical Services (Mr. Mungatana): Thank you, Madam Temporary Deputy Speaker, for giving this chance to make my little contribution to this Motion.

This is one of those Motions which are spot on and are actually needed in this country today. Therefore, I congratulate hon. C. Kilonzo for, once again, rising to the occasion and bringing a Motion that will give us the law that we currently require.

Madam Temporary Deputy Speaker, right now, the statistics in this country show that in Kenya alone, on a daily basis, an average of ten million short messages are sent. This converts to four billion short messages per year. The issue at hand is that with these kind of volumes and communication that we are experiencing right now in Kenya; is it right for the Government and Parliament not to bring a law that will regulate this kind of flow of information? Obviously, that question answers itself. We need to have a law that will regulate the kind of information that flows within these short messages. That is why I support this Motion.

Madam Temporary Deputy Speaker, in the 1990s when you wanted to purchase a mobile phone, you would spend about Kshs300,000. It was an exorbitant cost, separate from the SIM card, which would be about Kshs12,000. Apart from the forbidding costs, you were supposed to go

through a clearance procedure by the Criminal Investigation Department (CID). The CID would subject you to some form of clearance. You would be asked questions and your identity registered. They would get to know whether or not you are a criminal. They would get to know your criminal record and take your finger prints. They would also get to know your history as far as law abiding is concerned. There was a clear procedure that was available and it was not restricted to any persons. This procedure was going on even for people who were supposed to be VIPs. Even for us who were in private practice in those days, if you wanted a mobile phone, you had to go through serious processing by the CID, irrespective of the fact that you were actually a lawyer; an officer of the court. This tells you what it actually means to have a system that communicates and nobody knows who you are. From the point of view of security, it was taken very seriously.

How low have we fallen from those standards? We have fallen totally from those years to date. Today, you would walk on the streets of Nairobi, like the Mover of this Motion said, and get SIM cards almost for free. Actually, SIM cards are issued free by competing mobile phone service providers. They do not care! What they want is simply to sell. The word "SIM" means Subscriber Identity Module. There is something about the identity of that subscriber. That is the meaning of "SIM." We just say "SIM card", but actually it is Subscriber Identity Module card. It means that even the people who set up to provide us with mobile phones, they were well aware of the security implications of the SIM Card, and they even named it: "Subscriber Identity Module (SIM)" so that we can know the identity of the subscriber. It is a crucial thing for purposes of security. Even the people who manufacture or who are basically interested in making money, they were interested in making sure that there is some angle to it of security provision.

Madam Temporary Deputy Speaker, with an anonymous SIM Card nowadays, you can send an anonymous Short Message Service (SMS) to any person without any fear of being exposed. We need a law that will deal with this anonymity of the subscriber, because even the subscribers themselves know that they have no fear of doing funny things. That is why statistics from the Kenya National Commission on Human Rights (KNCHR) originating from a survey they did during the campaign time state that, at the height of the campaign, there were some subscribers who were receiving at least 50 hate messages per day. We were being bombarded by this political party and the other political party, and they were sending all manner of hate messages.

Madam Temporary Deputy Speaker, the Permanent Secretary then in charge of Communication, Dr. Bitange Ndemo, and I am being informed that he still is the Permanent Secretary, he was requested to do something about it because it was becoming a bit bad. He got a list of, at least, 1,700 people who had forwarded multiple messages to people during the General Election campaigns, and these messages were hate messages. But even after gathering the list of 1,700 subscribers, he admitted that there was no proper law in existence in Kenya right now that can deal with people who were misusing that communication flow by spreading hate messages.

Madam Temporary Deputy Speaker, if the Permanent Secretary in charge of Communications and the regulatory body of the Communication Commission of Kenya (CCK) is saying that there is no law to regulate this, then there is every reason for us, as a Parliament, to provide that law. Therefore, we should, as hon. Members here, support this Motion with all unanimity that we can gather.

Madam Temporary Deputy Speaker, we need to have this law, again, because unlike the radio, and you will remember even during that time, the Minister then in charge said that he is not going to allow live radio call-in because, again, they were being used to perpetrate the same hate messages. He did that for radio because right now in radio, you can simply move and do something about it. It is more difficult to spread hate through radio than it is through SMS. There is nothing that has been done about the SMS.

Madam Temporary Deputy Speaker, this law is good, it should be supported; it is timely in

Kenya and I also join those who are calling for a further spread of the use of mobile services to remote areas. I hope the Minister for the Development of Northern Kenya and other Arid Lands will collaborate with the providers to ensure that we have this service everywhere.

My time is gone! I support.

The Assistant Minister for Education (Prof. Olweny): Thank you, Madam Temporary Deputy Speaker. I wish to make very brief comments in support of this Motion. I congratulate Mr. C. Kilonzo for this wonderful idea. In fact, I had this idea in the last Parliament, but then we did not have enough time because we were sent home.

I was actually a victim of this modern technology some time back when I was fighting for and championing the rights of the stakeholders of the sugar industry. A number of people decided that I should be warned and told that if I continued with whatever I was doing, they would kill me. I gave the information to the police. They tried to trace where the call was made from. They actually found out that it was made from a mobile telephone booth which is called "*Simu ya Jamii*". However, the person operating the booth did not know who made the call. The person just came there, paid money, talked and went away. So, this modern technology can really be abused the way the Rwandese abused their FM stations and the way the Germans abused their old type of radio stations during the Second World War. The communication technology which is so good for everybody in the world can be abused.

Madam Temporary Deputy Speaker, I know there was a case in this country where a murderer, who was part of a gang, was traced using the mobile phone. The gangsters thought that the police would not trace them through the mobile phone. The police managed to get hold of the gangsters. Currently, you cannot trace those who use the "*Simu ya Jamii*". There are those people who buy the SIM card just to use it to deliver a message and then dispose of it. You cannot get it after that. We must put in place a way of getting hold of people who send hate messages, organise or arrange to kill and execute all manner of crime in this country using the mobile phone technology. In fact, this thing should even be extended to our FM stations which are being misused today. They were misused a bit during the General Election and the Referendum that we had.

There are a few people who are known because they will always be used to do campaigns the wrong way. So, we need to come up with a method of identifying whoever buys a mobile telephone line, that is, the SIM card. As you buy it, you should identify yourself. Your name, ID or passport number needs to be registered. If you do not have all that information to be recorded, then you should not buy the line. This should be done from whichever outlet, be it from a kiosk vendor or wherever. If the kiosk vendor sells the line to you without taking note of your details, then he or she should be held responsible. If you make a bad call or send a bad message through the "*Simu ya Jamii*" and you do not leave your details there, then it is the subscriber of that "*Simu ya Jamii*" who should be held responsible.

Madam Temporary Deputy Speaker, if we do that, then Kenyans will be more responsible. A good number of Kenyans are very malicious and mischievous. They could be in their thousands or millions, but so many Kenyans who own mobile telephone lines are very bad. During the campaign, I used to get a lot of insults - not less than five - in a day. The senders do not identify themselves. They would say the rubbish they wanted to tell me and disconnect. If you asked someone to call that number, he will not go through. Probably, somebody just bought the SIM card to deliver the message he wanted to deliver to you and then disposed of it. Probably, that person would throw it in the water. Once that card gets wet, it becomes useless. It will not work again.

So, I support, Mr. C. Kilonzo, for bringing this Motion. We, as a House, must pass it, so that he can bring the Bill as soon as possible. Let us pass the Bill, so that we can get hold of some of those mischievous Kenyans.

With those few comments, I beg to support.

Mr. Muthama: Madam Temporary Deputy Speaker, I want to take the opportunity to support this very important Motion and also congratulate Mr. C. Kilonzo for his important thought.

We have many motor vehicles in this country. It has become possible to detect and identify any motor vehicle that has committed a crime, because the vehicle is registered. It is possible to identify an illegal weapon which has been used to commit crime, because all the weapons are registered. I almost became a victim of short text message in the last general elections. Some of my opponents sent out text messages saying "Muthama has withdrawn from the race". I believe that although I got 75 per cent of the votes in my constituency, if it were not for that text message, I would have ended getting 95 per cent.

Madam Temporary Deputy Speaker, it has been mentioned here that the post-election violence that affected this country was fanned through short text message. I totally agree with my colleagues that short text message played a big role. It would be wise and very important to make it mandatory for any person purchasing a mobile telephone handset and SIM card to produce his or her identification card. Any foreigner should also produce his or her passport when buying a SIM card. We have seen our law enforcers detect people who have committed crimes because they have used their mobile phones. It will be very important for SIM cards holders to be registered. A law must be enacted to provide for prosecution and punishment of anybody who commits crime through short text message. I am saying this because it is very possible for somebody to be trailing you. You start your trip, for example, to Nakuru and somebody may have been monitoring your movements. He or she may send a message to your enemies on the way, give them details of the vehicle you are travelling in, and you will, probably, be ambushed and attacked. It is possible for that kind of person to remove that SIM card, throw it away, buy another one, arrange a robbery in a bank, throw it away and buy another one in the afternoon, and send a malicious message saying: "In this constituency, we have a group of people heading to place "x" or "y" and they are going to kill people". If such a person sends such a message he or she will create anxiety in that constituency. The person who receives that message will start running around and giving people that information. If there will be a register which gives details of who owns what SIM card, and the mobile number, it will be easy to control such activities. That way, it will not be easy to spread malicious messages.

Madam Temporary Deputy Speaker, I want to agree with my friend, Prof. Olweny, that Kenyans are sometimes mischievous. As a result of unemployment Kenyans want to keep themselves busy with anything that is available, including the little toys known as mobile phones. It is easy to play around with these phones because, some people have absolutely nothing to do. So, you find that people use these gadgets to send messages and incite people. The repercussions are what we saw in this country earlier in the year.

Madam Temporary Deputy Speaker, with those few remarks, I beg to support this Motion. We should enact the law as soon as possible.

Mr. M.H. Ali: Madam Temporary Deputy Speaker, this is a timely Motion. I wish to thank Mr. C. Kilonzo for bringing it. If he did not bring it, I would have done that.

If this law is passed people will have better things to do with their mobile phones rather than writing hate messages, or just making unnecessary calls all the time. I normally get several messages everyday, some of which are not useful and others which are threats. The time I use reading such messages could be used for other useful purposes. Most of the threatening messages are mostly targeted at politicians. I wish that this proposed law is passed fast.

Madam Temporary Deputy Speaker, in various instances when I have had an opportunity to travel to other parts of the world, I have not been able to get a SIM card as easily as any person can get one in this country. In those countries, one has to register using a passport, or any other identification, so as to get a SIM card. But in Kenya any visitor, or Kenyan, can just buy a SIM

card, and after using it for a call or two, throw it away. That person may have made some calls and caused some harm, or threatened somebody inside or outside the country.

Madam Temporary Deputy Speaker, my constituency is not covered by the mobile service providers. I request the Minister concerned to provide mobile services to my constituency, Mandera East. Right now, it is only Mandera Town that is enjoying these services. The interior is very far. There are no proper roads and, probably that is why maybe these mobile service providers are not able to reach those areas. I wish to welcome them to my constituency which comprises of a very large area, including Lafey, Haradhi, Lebedhia and several other regions. There are many people and they would like to communicate to the rest of Kenyans. I request them to take their services there, because we have people who want to do business with the rest of Kenyans.

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

Ms. Noor: Thank you, Madam Temporary Deputy Speaker, for giving me this chance to contribute to this very important Motion. This Motion is long overdue. During the campaign period of the last general election, it was very clear that hate messages were being passed over to the young generation of this country. Those messages divided this country very badly. We have children whom we want to grow in a very responsible manner. Our children went through our mobile phones and saw the hate messages that our friends communicated to us. They saw that the hate messages targeted certain communities in this country. Those kind of messages gave a very bad impression to our children. Through this, our children felt that this was a normal way of communication and, in turn, they also communicate in a similar manner. We are passing over very bad communication skills to our children. It is not right for us, as grown ups, politicians or leaders, to pass over those messages. Our own constituents also passed those messages using this modern communication system. These messages have violated human rights and ethics in our society.

Madam Temporary Deputy Speaker, there have been high level crimes that have been organised through usage of this modern communications system in our country. Many Kenyans have lost their lives and properties through criminals using these mobile phones because we do not have a law that protects them. SIM cards retail for Kshs50 and anybody can buy them, including criminals who have interest of harming other people. We have seen the kind of crimes that have occurred in our country through this technology. How many people have we lost through highway and bank robberies through this kind of communication technology? All of these crimes have been organised using the modern communication system due to lack of a law that can put some structures in place where users of mobiles can be registered and thus mobile service providers can have information of criminals.

Madam Temporary Deputy Speaker, there have also been other ways of people using the phones to steal money or even go to your wife, they use mobile phones. When a woman wants to date my husband because a law is not in place, you never know--- Your husband could be seated with a woman somewhere and he will tell you: "I am attending a meeting in Naivasha" yet he is in the next door. So, if we have a law that can regulate the mobile phone system and have a track record of the kind of messages we are sending out to our people, then it is the right time that we enacted that kind of law. It is this House that can protect the interests, rights of the country and the lives and properties of Kenyans.

With those few remarks, I beg to support.

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 think this is a very important Motion that has been brought by my friend, Mr. C. Kilonzo. I will not comment on the hate messages because that has been adequately dealt upon by hon. Members. My main concern is we, as politicians, Ministers and Assistant Ministers, Permanent Secretaries and chief executives of parastatals, there should also be a law on hiding the

identity of the caller. My policy is that if you call me and you have hidden your identity, I do not pick your call because I do not see why you should hide your caller identity. I also do not hide my number and I have never done so. I think we need to pass another law to prevent people from hiding their identities. Why should you hide your number if you are calling me? What are you hiding? This habit is more common from the so-called top-guns; the Ministers, Assistant Ministers, Permanent Secretaries and chief executive officers of parastatals.

If you go Singapore and Turkey, at the airport, if you want to buy a SIM card, you have to present your passport. My contention is that we do not even need a law. An administrative instruction can be issued by the Minister telling the two mobile companies that before you allow somebody to purchase a SIM card, they must produce an identity card pending formal law on this issue. We can sort out this problem. I think it is not too much to ask.

Concerning the other messages about husbands and wives cheating on their spouses, there is not much we can do about that. We can only call upon people to be honest. Do not say you are in Naivasha when you are in the next house doing something immoral. Particularly, we have now seen short message service (SMS) used to cheat on examinations. There are so many ways that these SMS are being misused. We have even had a case of someone who killed his wife when she received a message on her phone saying that: "I am missing you, I am waiting for you." But there is not much we can do about those kinds of messages. I am more concerned with the hate messages.

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

ADJOURNMENT

The Temporary Deputy Speaker (Prof. Kamar): Hon. Members, it is now time for the interruption of business. The House is, therefore, adjourned until this afternoon, at 2.30 p.m.

The House rose at 12.30 p.m.