

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 24th July, 2008

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

PAPERS LAID

The following Papers were laid on the Table:-

Report of the Departmental Committee on Administration of Justice and Legal Affairs concerning the Truth, Justice and Reconciliation Commission Bill, 2008.

(By Mr. Abdikadir)

Report of the African Parliamentary Union conference on "Africa and Migration Challenges, Problems and Solutions" held in Rabat, Morocco, from 22nd to 24th of May, 2008.

(By Mr. Kioni)

Annual Report and Accounts of the Kenya Institute of Administration for the year ended 30th June, 2003 and the certificate thereon by the Controller and Auditor-General.

Annual Report and Accounts of the Kenya Institute of Administration for the year ended 30th June, 2003 (Bookshop) and the certificate thereon by the Controller and Auditor-General

Annual Report and Accounts of the Kenya Institute of Administration for the year ended 30th June, 2004 (Bookshop) and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for
Roads (Dr. Machage) on behalf
of the Minister of State for
Provincial Administration and
Internal Security)*

Annual Report and Accounts of the Agricultural Finance Corporation for the year ended 30th June, 2004 and the certificate thereon by the Controller and Auditor-General.

Annual Report and Accounts of the Nyayo Tea Zones Development Corporation for the year ended 30th June, 2007 and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for
Roads (Dr. Machage) on behalf
of the Minister for Agriculture)*

Annual Report and Accounts of the Electricity Regulatory Board for the year ended 30th June, 2005 and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for
Roads (Dr. Machage) on behalf
of the Minister for Energy)*

Annual Report and Accounts of the Gilgil Telecommunications Industries Limited (A subsidiary of Telkom Kenya) for the year ended 30th June, 2000 and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for
Roads (Dr. Machage) on behalf of
the Minister for Information
and Telecommunications)*

Annual Report and Accounts of Golf Hotel Limited for the year ended 30th June, 2001 and the certificate thereon by the Controller and Auditor-General.

Annual Report and Accounts of the Golf Hotel Limited for the year ended 30th June, 2002 and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for
Roads (Dr. Machage) on behalf
of the Minister for Tourism)*

Annual Report and Accounts of the Kenya Medical Supplies Agency (KEMSA) for the year ended 30th June, 2004, and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for
Roads (Dr. Machage) on behalf of
the Minister for Medical Services)*

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

*(By the Assistant Minister for
Roads (Dr. Machage) on behalf of
the Minister for Regional
Development Authorities)*

NOTICE OF MOTION

ADOPTION OF APU CONFERENCE REPORT

Mr. Kioni: Mr. Speaker, Sir, I beg to give notice of the following Motion:-
THAT, this House adopts the Report of African Parliamentary Union Conference on "Africa and Migration, Challenges, Problems and Solutions" held in Rabat,

Morocco, from 22nd to 24th May, 2008, laid on the Table of the House today, Thursday, 24th July, 2008.

QUESTIONS BY PRIVATE NOTICE

WITHDRAWAL OF KRCS/GOVERNMENT AID FROM IDPs IN NAIVASHA

Mr. Mututho: Mr. Speaker, Sir, I beg to ask the Minister of State for Special Programmes the following Question by Private Notice.

(a) Is the Minister aware that thousands of Internally Displaced Persons (IDPs) in Naivasha are now living under gross inhuman conditions after the withdrawal of aid by both the Government and Kenya Red Cross Society?

(b) Is the Minister further aware that one Mr. John Kimani died after taking some herbal concoction, and further that Messrs. Nahashon Muchiri and Benson Kamau are in critical condition after taking a similar concoction following the withdrawal of food aid?

(c) What is the Minister doing to remedy this grave situation?

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

(a) I am not aware that there are any IDPs in Naivasha who are living under inhuman conditions. To the contrary, I am aware that the IDPs in Naivasha are fully catered for. We give them food every one month. Only last week, we issued them with enough food which will be replenished when the stated period lapses. Sanitation in the IDP camps is taken care of by the Ministry of Health. Security in IDP camps is provided by the Ministry of State for Provincial Administration and Internal Security. We have facilitated those who voluntarily want to go back to their original homes.

(b) I am aware that Mr. John Kimani died and Mr. Nahashon Muchiri and Mr. Benson Kamau are admitted in Naivasha District Hospital and are responding well to treatment. They are out of danger. The death of Mr. Kimani and the hospitalization of Mr. Muchiri and Mr. Kamau was not as a result of withdrawal of food aid. It was after taking unknown concoctions prepared by a purported herbalist within the IDP camp. That matter is being investigated. Samples of the same have been sent to the Government Chemist and results are being awaited.

(c) The Government has enough emergency food and will avail the same to all the needy people across the country. That includes Naivasha. The Government will also sustain other services in IDP camps until they are resettled to their original homes.

Mr. Mututho: Mr. Speaker, Sir, first and foremost, I have not received the written reply up until now. That, notwithstanding, you have seen it in the Press. We saw people rioting and going to the district hospital because of lack of basic health services. You have also seen it in the media; people living in caves in Naivasha. That is because they do not even have the tents. In a place called Elementaita, they have not had any food supplies for quite a while. Could the Assistant Minister travel to Naivasha and confirm the facts, other than relying on that answer which he may have got by way of telephone?

Mr. M.M. Ali: Mr. Speaker, Sir, I do not need to travel to Naivasha to give the hon. Member an adequate answer. As we are speaking now, the last batch of IDPs in Naivasha is being attended to. The necessary facilitation is being carried out. We had four camps in Naivasha for the purposes of this Question, and three of them have been closed effectively. We had one at Kedong where we had 2,300 people. They willingly went back to their homes. We had a camp at Kiambogo which was closed because there was co-operation from the IDPs and the necessary support from

Red Cross and Government machinery. The IDP camp at St. Anne had 200 people and it has been closed. Out of 3,450 IDPs at the stadium, we only have 1,655 IDPs who are being attended to now as we are speaking. They are in the process of going back home. I can tell you that authoritatively.

Mr. Mututho: Mr. Speaker, Sir, there are IDPs who are not necessarily living in the camps. They are scattered and living with their relatives, particularly, in Laikipia. They have not been getting any food aid from the Government. What is the Government doing to ensure that it takes care of the welfare of those IDPs?

Mr. M.M. Ali: Mr. Speaker, Sir, we are not aware of any other IDPs who are not registered and who are scattered all over in Laikipia. Should there be any that the hon. Member is aware of, he knows the procedure. We have the Provincial Administration on the ground. They need to go and register with the relevant authorities and let the same be brought to our attention. They will be attended to.

Mr. Maina: Mr. Speaker, Sir, as Mr. Mututho has said, this House is not being told the truth regarding the issue of IDPs. The truth of the matter is that the IDPs have been suffering. I doubt whether the issue of IDPs is being regarded with the seriousness it warrants. I demand that the Ministry tells us whether it has a particular programme to address that problem. In the last Budget, a very small amount of money was allocated to that programme. I wonder when the Assistant Minister says that all is well and that people have gone back to their homes and settled--- From what we have witnessed in the IDP camps---

Mr. Speaker: Order, Mr. Maina! After that long address, what is your question?

Mr. Maina: Mr. Speaker, Sir, are we getting the real truth from the Assistant Minister? We are aware that the resources are not sufficient. The truth of the matter is that the IDPs are not treated the way the Assistant Minister is alleging. When will he ensure that things happen on the ground? He should visit the area, witness what is going on there and come back to the House to report.

Mr. M.M. Ali: Mr. Speaker, Sir, as far as the resettlement process is concerned, we do not have any problem. The issue in the newspapers refers to some demonstrations that took place in Naivasha against the issue of paying for medical services. I am aware of that issue. They were being asked to pay some money. We have spoken to the hospital. Since then, the Internally Displaced Persons (IDPs) who are registered and have been issued with registration cards by the Red Cross, are being treated free of charge. That matter has been sorted out.

It is also true that we have limited resources for the final phase, namely, reconstructing houses for the IDPs. That is the phase that we are going into. We are still fund raising. We are waiting for donations from well wishers. We have people who have donated very generously. This process is going on. If the hon. Members want to contribute towards the same cause, they are also welcome. As I speak, there is no crisis in resettling the IDPs. In fact, we are almost through with the process. We are attending to the last group of IDPs.

Mr. Langat: Mr. Speaker, Sir, the Assistant Minister has said very clearly that they have been receiving enough food quantities during the last one month. Could he give us the breakdown of the quantities of food and their value? How many IDPs are there in Naivasha in total?

Mr. M.M. Ali: Mr. Speaker, Sir, if the hon. Member was listening carefully, I mentioned that three camps in Naivasha, have been closed down. Currently, there is only one IDP camp at Naivasha stadium. However, we are finalising the process of its closure. At that camp, we have 1,655 people.

With regard to the breakdown of the food quantities, every family has been given enough food to last them for a month. That exercise was concluded two weeks ago. My Minister, Dr. Shaban, visited the area three days ago. I have informed the hon. Member very clearly that the matter in Naivasha is under control. There is no crisis as the hon. Member has alleged. The IDPs

have enough food to last them a month.

Mr. Mututho: Mr. Speaker, Sir, I am not satisfied with the answer given by the Assistant Minister because of the following reasons.

Mr. Speaker: Ask your last question, Mr. Mututho!

Mr. Mututho: Mr. Speaker, Sir, is the Assistant Minister aware that even businessmen whose big wholesale shops were burnt down are being compensated with only Kshs10,000? They are supposed to go back to their farms and yet, their businesses have not been reconstructed!

Mr. M.M. Ali: Mr. Speaker, Sir, indeed, the figure of Kshs10,000 is the amount of money we can afford at the moment. That is being given to all the IDPs, regardless of whether they are in Naivasha or in other parts of the country. That figure is uniform. We would have wished to give them enough money to ensure that they are back to their normal businesses, but it is not possible. This is a small token to enable them to undertake small activities when they go back home. We will continue feeding them until they get their next harvest.

MEASURES TO SAVE PERKERA IRRIGATION
SCHEME FROM COLLAPSE

Mr. Mwaita: Mr. Speaker, Sir, I beg to ask the Minister for Water and Irrigation the following Question by Private Notice.

(a) Is the Minister aware that River Perkera, which is the lifeline of over 30,000 people within Perkera Irrigation Scheme, is drying up?

(b) Is the Minister further aware that the construction of the proposed Chemosusu Dam upstream will lead to the collapse of the irrigation scheme?

(c) What urgent action is the Minister taking to address this problem?

The Minister for Water and Irrigation (Mrs. Ngilu): Mr. Speaker, Sir, I want to thank the hon. Member for asking this Question. At the moment, the answer that I have may not be very satisfactory to him. It is true we have set aside resources in this year's Budget to do this Chemosusu Dam. Unfortunately, I have not received any report as expected from the stakeholders and the community, who may have been involved in coming up with this project. This would have assisted me to see what effects the project may have.

Therefore, I would like to ask the hon. Member to give me some more time. I have put a team in place to investigate the project and report back to me. I do not want to put up a white elephant in the middle of an area where people need water.

Mr. Speaker: Madam Minister, I thought you would have said that very easily! That you require more time to prepare a satisfactory answer. Is that the position?

The Minister for Water and Irrigation (Mrs. Ngilu): Mr. Speaker, Sir, I will know whether the answer is satisfactory or not when I get the report.

Mr. Speaker: How much time do you require, Madam Minister?

The Minister for Water and Irrigation (Mrs. Ngilu): Mr. Speaker, Sir, I have put the team in place and I have asked it to report back to me in six weeks. We have set aside funds in this financial year.

Mr. Speaker: Okay! Fair enough! Mr. Mwaita, will you, please, indicate if you are prepared to be patient for six weeks?

Mr. Mwaita: Mr. Speaker, Sir, I can agree to wait on one condition. The Ministry has invited tenders for people to bid for the construction of the dam. If that can be suspended, I am prepared to wait.

Mr. Speaker: It is directed that this Question be revisited after six weeks from today.

(Question deferred)

DISPENSING OF GENERIC DRUGS BY KNH

Dr. Eseli: Mr. Speaker, Sir, I beg to ask the Minister for Medical Services the following Question by Private Notice.

(a) Is the Minister aware that the Kenyatta National Hospital has now resorted to dispensing only generic drugs and medication?

(b) Could the Minister explain the medical or scientific facts that informed such decision?

(c) What measures are in place at the hospital to ensure that these drugs or medication meet international standards on medication?

(d) Could the Minister confirm whether the use of branded drugs/medication has been completely discontinued at Kenyatta National Hospital?

The Assistant Minister for Medical Services (Mr. Mungatana): Mr. Speaker, Sir, I beg to reply.

(a) The Kenyatta National Hospital dispenses both branded and generic drugs, subject to prior efficacy testing and registration by the Pharmacy and Poisons Board.

(b) The medical and scientific facts that justify the procurement of generic drugs in the hospital are the quality, the efficacy and the safety of those drugs, subject to the testing and registration processes of the Pharmacy and Poisons Board.

(c) The measures that the hospital has put in place to ensure the drugs meet international standards include the following:-

(i) Testing and registration by the Pharmacy and Poisons Board.

(ii) Ensuring that there is no previous adverse report on the drug.

(iii) Conforming to standards labelling and packaging.

(iv) Conforming to the Kenyatta National Hospital formulary, which is reviewed from time to time.

(d) The use of branded drugs has not been discontinued at the Kenyatta National Hospital. The hospital has more than 600 items on its formulary and more than 40 per cent of these are branded drugs.

Dr. Eseli: Mr. Speaker, Sir, I would like to state that the Assistant Minister has not provided me with a copy of the written answer. However, I will try to interrogate that answer as best as I can.

The issue of branded or generic drugs is very important. At the moment, at the Kenyatta National Hospital, doctors are unable to discharge their duties effectively because the drugs they are giving the patients are sub-standard. They are not working. Even anaesthetist cannot put their patients to sleep for surgery. This is very dangerous.

Could he tell us when he will visit the hospital, check its medical stores and ensure that the brands that he is saying are there, are actually on site and available?

Mr. Mungatana: Mr. Speaker, Sir, I have no doubt that Dr. Eseli knows what he is talking about. Any information that he would wish to volunteer to me, I will definitely take it very seriously. I am giving my assurance to him and to the House, that we shall visit the hospital to make sure that, in fact, the drugs that are there, are efficacious. From the information that I have, the drugs that are administered at the hospital have been approved by the Pharmacy and Poisons Board. We are assured that they are working. Obviously, if this information is not correct, we shall interrogate it. We will need to go there without notice.

Dr. Khalwale: Mr. Speaker, Sir, it must be understood that the Director of Kenyatta National Hospital makes use of the supplies he gets from the Kenya Medical Supplies Agency

(KEMSA). It should be understood further that the KEMSA that we have at the moment was set up by Dr. Richard Muga, who was then the Director of Medical Services in the Ministry. The Minister has sacked the new Board and replaced it with the Board that has Dr. Muga as head.

Is the Assistant Minister convinced that the man who is currently auditing himself, will solve the problem that he created?

Mr. Mungatana: Mr. Speaker, Sir, the decision to dissolve the Board of KEMSA and to set up a task-force was informed by the number of complaints that we received in terms of the distribution of drugs. The complainants were not limited to practitioners in the field, but among them were Members in this House who said that drugs were not reaching specific rural health centres.

We took a decision at the Ministry's headquarters to set up a task-force that is being chaired by Dr. Richard Muga. This decision was taken on 10th July, 2008. We have received an interim report. I believe that the recommendations of that report, will work. I have no doubt that Dr. Richard Muga will do a good job. So far, we have no reason to doubt that his recommendations will work.

Mr. Ochieng': Mr. Speaker, Sir, is the Assistant Minister aware that most of the deaths that are occurring in our hospitals are due to these generic drugs, which are being dispensed in all the hospitals in this country?

Mr. Mungatana: Mr. Speaker, Sir, it is not correct to say that the deaths that occur in hospitals are caused by generic drugs. Maybe, I need to explain to the House that the difference between generic drugs and branded drugs is that generic drugs are a cheaper version of the branded drugs. The selling prices of branded drugs, includes the costs of innovation. So, you find that the same active ingredient in a particular drug is two times, or four times, the cost in a branded drug. The same active ingredient is the one that will treat you. It will have equivalent pharmacological effect. So, in order to use effectively the resources voted for by this august House, we have, as a matter of policy that has also been adopted through procurement rules that were passed by this House, agreed that we can, in fact, tender for and purchase generic drugs.

Mr. Speaker: Last question, Dr. Eseli!

Dr. Eseli: Mr. Speaker, Sir, the Assistant Minister has been kind enough to explain the differences between generic drugs and branded drugs. He has explained that the Pharmacy and Poisons Board is the one that checks the quality of these drugs. Is he sure that the generic drugs that we use in this country actually meet the international standards? Let us not play games with human life. So, I wish to urge him not to fall in the grasps of the mafia of "Mafya House".

Mr. Speaker: Order! Order, Dr. Eseli! You have asked your question already.

Mr. Assistant Minister, are you able to respond?

Mr. Mungatana: Mr. Speaker, Sir, I want to assure the good doctor that the generic drugs being utilised in Government hospitals are proper drugs. They have the same qualities, the same efficacy and the same safety standards as the branded drugs. The difference between the generic and fake drugs must be distinguished. A fake drug would be one that somebody just sits down and compounds a tablet which does not contain even the active ingredients and sells it as, say, piriton, but, in fact, it is not a piriton. That is a fake drug. So, that is a different issue altogether. The generic drugs that we pass through the Pharmacy and Poisons Board have as good quality efficacy and safety as branded drugs. It is only that they are cheaper and, therefore, we are able to use more resources to purchase more drugs.

Mr. Speaker: Next Question, Mr. Linturi!

ORAL ANSWERS TO QUESTIONS

*Question No.123*MEASURES TO PROTECT KENYANS
FROM COUNTERFEIT GOODS

Mr. Linturi asked the Minister for Industrialisation:-

(a) whether he is aware that currently there are too many counterfeit goods from other countries flooding the Kenyan market;

(b) whether he is satisfied that the Kenya Bureau of Standards (KEBS) is performing its duty of inspection to ensure that goods and services meet the set standards; and,

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

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

(a) I am aware that counterfeit goods from other countries have been flooding the Kenyan market. The Ministry has made efforts with other key institutions in fighting the influx of counterfeit goods into the Kenyan market. Counterfeiting, as a global phenomenon, is rampant in many countries, including Asia and elsewhere, and is estimated to be worth well over US\$20 billion worldwide. In our country, this malpractice is estimated to cost the public in excess of Kshs4 billion every year. This has consequently left many Kenyans jobless, and many more have lost the sources of their livelihood, not to mention revenue loss to the Kenya Government, as well as posing health threats to consumers. My Ministry has played a major role in co-ordinating other Government institutions such as the Weights and Measures Department in devising mechanisms to curb the entry of counterfeits and substandard goods. Some of the measures taken include the following:-

(i) Awareness creation to the public through the Ministry and its affiliate institutions, stakeholders and the Press.

(ii) Enhancement of penalties through the Finance Bill, 2002, which includes destroying counterfeit goods at the cost of the importer and withdrawal of relevant licences.

We have established the Anti-Counterfeit Bill, 2008. This Bill seeks to incriminate dealing with counterfeit merchandise and to consolidate the various pieces of legislation that govern this area.

(b) The KEBS has in the recent past made continuous improvement on inspections to ensure that goods and services meet the set standards. However, 100 per cent verification is a big challenge to the KEBS, particularly because of porous borders with our neighbouring countries as well as the diversion of goods destined for those countries, which come through Kenyan ports. The KEBS is working out modalities to carry out detailed tests and verification of goods imported to Kenya once the major areas of concern raised above have been addressed.

(c) The Ministry has enhanced funding for the KEBS to purchase modern equipment for use in testing suspected counterfeit goods. The Standards Act, Cap.446, Laws of Kenya, has also been amended to reinforce the operations of the KEBS. Further support will be accorded to KEBS to acquire more equipment, train and recruit personnel in order to improve sophistication in looking at all merchandise destined for the world market.

(Loud consultations)

Mr. Chanzu: On a point of order, Mr. Speaker, Sir. You can hear that the hon. Members

on the other side of the House are consulting very loudly. Is it in order?

Mr. Speaker: Order! Order, hon. Members! It is, certainly, out of order. Hon. Members, will you, please, lower the level of your consultations in terms of decibels that you apply.

Proceed, Mr. Assistant Minister!

The Assistant Minister for Industrialisation (Mr. Muriithi): Thank you, Mr. Speaker, Sir.

(c) The Ministry, in conjunction with the KEBS, has been conducting joint surveillance activities with other Government agencies such as the Weights and Measures Department (WMW), to address the issue of counterfeits, as well as with the Ministry of Energy to address dumping and adulteration of petroleum products.

Mr. Linturi: Mr. Speaker, Sir, I must commend the Assistant Minister for his attempt to answer this Question. However, I would want him to tell this House the actual core mandate of the KEBS.

Mr. Muriithi: Mr. Speaker, Sir, the KEBS is mandated to promote standardisation. As the house is aware, if you produce goods in Kenya and you want to sell them throughout the COMESA market, for instance, you must ensure that those goods meet certain standards and specifications. So, the core mandate of the KEBS is to, in fact, promote the use of standards to ensure that the goods we export and those which come into this country meet specified standards for purposes of protection of consumers and promotion of trade.

Mr. Outa: Mr. Speaker, Sir, is the Assistant Minister aware that KEBS officers are the chief architects of encouraging trade in counterfeit goods in this country by colluding with unscrupulous businesses to engage in this illegal business?

Mr. Muriithi: Mr. Speaker, Sir, I am not aware of what the hon. Member alleges. The Kenya Bureau of Standards (KEBS), as the hon. Members will notice, is at the moment engaged in ensuring that goods sold in this country have the diamond mark of quality. This has been an on-going process over the last year or so, in order to ensure that goods that are sold in this country are up to the expected standards. As I have already indicated to the House, we have published the Anti-Counterfeit Bill, which we shall be asking this House to pass into law. This will criminalize this activity and, therefore, ensure protection for our consumers.

Mr. Linturi: Mr. Speaker, Sir, the Assistant Minister has admitted before this House that one of the major challenges that the KEBS is facing is inadequacy of staff and equipment. Could he tell us what he is doing to make sure that there is enough staff and equipment, so that the KEBS is able to address that problem?

Mr. Muriithi: Mr. Speaker, Sir, in very specific terms, this year the KEBS will have a budget in excess of Kshs2 billion in order to ensure that its resources and its capability are enhanced. I should also say that I am delighted to inform the House that the entire International Standards Organization is, in fact, visiting this country. Today the organization's leadership is in this country. This is part of our efforts to ensure that we engage globally to protect Kenyan consumers and ensure that the KEBS is networked across the globe, so that in every source of goods, it is possible to verify that the goods meet standards and specifications before they are imported into our country .

Question No.171

EVICION OF OGIEK COMMUNITY
FORM KIPKURERE FOREST

Ms. Chepchumba asked the Minister of State for Special Programmes:-

(a) whether the she is aware that about 397 families of Ogiek community in Eldoret

South were evicted from Kipkurere Forest in 1997, and have since become Internally Displaced Persons (IDPs), living with relatives; and,

(b) what urgent steps she has taken to resettle these families.

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

(a) I am not aware, at all, that there are 397 families of the Ogiek community who were displaced in Eldoret South from 1997.

(b) Since the Ministry is not aware, there are no urgent measures that it has taken to sort out the problem the hon. Member is claiming exists.

Ms. Chepchumba: Mr. Speaker, Sir, I am surprised that the Assistant Minister is not aware that the Ogiek were evicted in 1997. I come from the constituency and these are my voters. These are people who are suffering; they have no homes, no shelter and no food. In fact, they are being denied other basic rights like enjoying sex like anybody else would like to do in normal living conditions. Could the Assistant Minister confirm to this House that he is not aware of this? I know that they are there.

Mr. M.M. Ali: Mr. Speaker, Sir, actually this is very saddening. I am not aware as I have said. If the hon. Member is aware, she should let us know who evicted them. I have said that should there be any member of her community, or constituency, who is, for one reason or another, displaced, they should be registered with the relevant authorities. It has not come to our notice, but she is implying that there are people who were evicted from there. If indeed they were, then she should hold the relevant Ministry responsible and ask it to give them alternative land. If not, then as a Ministry, we have to be officially told and given the data and be involved by the relevant authority. As far as we are concerned, this is heresy to us.

Mrs. Odhiambo-Mabona: Mr. Speaker, Sir, thank you for giving me this opportunity. Could the Assistant Minister clarify this matter, because it falls under his docket? If he is not aware, who should be aware?

Mr. M.M. Ali: Mr. Speaker, Sir, I have just been informed that they were evicted. If so, then the hon. Member knows and should tell us who actually evicted them out in the first place. I am not aware personally, but what I want to state is that should that have happened then there are authorities on the ground who are representing different arms of the Government, and they should be properly informed so that they can inform our Ministry. That is the procedure.

Mr. Imanyara: Mr. Deputy Speaker, Sir, the issue of the Ogiek community is a notorious fact. In fact, they have been in court on many occasions. Perhaps, the reason why the Assistant Minister is not aware is because he has not done any consultations with the office of the Attorney-General, which is representing the Government in these proceedings. In fact, the High Court of Kenya has ordered that they be resettled. Is it in order for the Assistant Minister to mislead the House that he is not aware when the matter is in court?

Mr. M.M. Ali: Mr. Speaker, Sir, I must admit sincerely that I am not officially aware.

(Laughter)

These are facts!

Mr. Ruto: On a point of order, Mr. Speaker, Sir. This Question was given to the Ministry, with enough time for them to cross-check. The Assistant Minister is saying that he is not officially aware. He does not seem to know anything. Is it not in order for us to ask the Ministry to go back and do their homework? They are doing us an injustice; they are not telling us anything. They are simply wasting our time. This is a classic example of the most useless Ministries we are having at the moment.

Mr. Speaker: Mr. Assistant Minister, in the light of your own answer--- It implies that you are aware only that you are not so aware officially. That is not good enough! We will defer this Question to Tuesday next week for you to come back with a more comprehensive answer.

The Minister for Justice, National Cohesion and Constitutional Affairs (Ms. Karua): On a point of order, Mr. Speaker, Sir. Is it Parliamentary for the hon. Member to call Ministries "useless"? Is it Parliamentary language or should criticism be "under-performing" or whatever other parliamentary language?

Mr. Speaker: It is certainly unparliamentary! Mr. Ruto, will you, please, withdraw the word "useless".

Mr. Ruto: Mr. Speaker, Sir, with due respect to the hon. Deputy Prime--- I am sorry, Ms. Karua; I want to withdraw the words "most useless" and say that it is not one of the useful Ministries.

Mr. Speaker: Next Question by Mr. Pesa!

Question No.165

POSTING OF TEACHERS TO
PRIVATE SCHOOLS BY TSC

Mr. Pesa: Thank you, Mr. Speaker, Sir, for giving me this opportunity ask this Question No.165. However, before I ask it, according to Standing Order No.75, I would like to declare my interest in that I am the director of two private schools; a primary and a secondary school.

Mr. Pesa asked the Minister for Education:-

- (a) whether he could explain the Government's policy on the role of private schools in the development of education in the country;
- (b) what support measures the Government is providing to investors in private schools in order to help improve the standard of education in the country; and,
- (c) if the Government could consider posting at least two Teachers' Service Commission (TSC) teachers to the private schools on permanent and pensionable terms at the expense of the private schools that will pay TSC.

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

(a) The Government's policy on the role of private schools in the development of education in the country is stipulated in Sessional Paper No.1 of 2005 on a Policy Framework for Education, Training and Research. In the policy, the Government will do the following:-

(i) Work with the partners to mobilise additional resources to finance education and training.

(ii) Promote increased private sector financing of educational services.

(iii) Remove constraints to private sector participation in education by giving incentives designed to make education more attractive to investors.

(b) The support measures the Government is providing to the investors in the private schools in order to improve the standard of education in the country include the following:-

(i) Establishing guidelines for registration of education and training institutions to guide officers and bodies charged with this function at all levels in order to ensure that all facilities meet health, environmental, security and quality standards.

(ii) In-servicing of teachers by the Ministry during the school holidays to upgrade skills in the delivery of mathematics, science and technology. The Ministry has, therefore, established a regional centre known as Centre for Mathematics, Science and Technology in Eastern Africa.

(iii) Undertake regular reviews of the various education and training management bodies at

all levels of education and training in order to work out modalities for entrenching professionalism to enhance their management and co-ordination capacities.

(iv) Provision of curricula and guidelines for the development of curriculum support materials.

(v) The examination and certificate services.

(c) The Government cannot post at least two TSC teachers to the private schools on permanent and pensionable terms at the expense of the private schools that will pay TSC due to the following reasons:-

(i) Due to the high teachers wage bill, it is not possible to sustain deployment or release of teachers to private schools.

(ii) The failure by the private schools or the teachers involved to remit the required contribution of 31 per cent and 2 per cent of their basic salary to safeguard the teachers pension upon retirement.

(iii) The acute national teacher shortage in the public education institutions will not allow for the release of teachers to private schools.

(iv) The rapid establishment of the new schools and increase in student or pupil enrolment has not matched the supply of teachers.

Mr. Pesa: Mr. Speaker, Sir, I am quite satisfied with the Assistant Minister's answers to part "a" and "b" of my Question but I am very disappointed when he attempts to say that they have a very high wage bill of teachers in this country. The private schools are willing to pay the TSC for these teachers to be hired and posted to secondary schools. For the last seven years, when I started--

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Mr. Speaker: Order, Mr. Pesa! It is Question Time and you are not allowed to make a speech, debate or argue. Ask your question!

Mr. Pesa: Mr. Speaker, Sir, could the Assistant Minister allow the private schools to pay the wage bill they are talking about to the TSC so that we have quality and efficiency in private schools?

Prof. Olweny: Mr. Speaker, Sir, the hon. Member knows that there are so many trained teachers in this country who are not employed. Why can the private schools not employ them directly? Why do you want the TSC to recruit them for you?

(Laughter)

Mr. Pesa: Mr. Speaker, Sir, it is unfortunate. I know that there are those type of teachers. These teachers cannot work on permanent terms but on contracts of one or two years. Could the Assistant Minister ensure we have permanency in private schools so that efficiency and proper teaching management is carried out in private schools by providing teachers who can stay for a longer time in the private sector?

Prof. Olweny: Mr. Speaker, Sir, these are private institutions which are privately managed; and you declared your interest a few minutes ago. Why have you not then employed yours permanently?

(Laughter)

Mr. Olago: On a point of order, Mr. Speaker, Sir. In answer to the last question by Mr. Pesa, the Assistant Minister has directed his answer personally to the Questioner. Is that not offensive to Standing Order No.63 that requires answers to be directed to the Speaker and nobody else in the House?

Mr. Speaker: It is definitely out of order. Next Question, Mr. Lekuton!

Question No.132

WASTE MANAGEMENT IN
NAIROBI METROPOLITAN REGION

Mr. Lekuton asked the Minister for Nairobi Metropolitan Development:-

- (a) whether he could indicate the current level of pollution in the Nairobi Metropolitan region;
- (b) whether he could further indicate the cleanliness status of the Nairobi River; and,
- (c) what measures the Government has taken to improve the overall human and industrial waste management within the Nairobi Metropolitan Region to ensure that environmental laws are adhered to.

The Assistant Minister for Nairobi Metropolitan Development (Ms. Ongoro): Mr. Speaker, Sir, I beg to reply.

(a) The level of pollution in the Nairobi metropolitan region has not been determined. However, studies have been conducted in the Nairobi River and its tributaries to determine pollution levels.

(b) The level of cleanliness in the Nairobi River basin is very low because of poor management of both effluent discharge and solid waste from different sources.

(c) The Government has initiated action in collaboration with the United Nations (UN) agencies of United Nations Environmental Programme (UNEP) and UN Habitat on rehabilitation of the Nairobi River basin including mitigation measures against effluent discharge and solid waste management. The Government will use the services of the National Youth Service (NYS) to remove solid waste from the National Museum of Kenya (NMK) to the Racecourse roundabout after which they will proceed to other illegal dumping sites.

Secondly, the National Environment Management Authority (NEMA) has developed regulations on management of effluent, solid waste, hazardous waste and plastic waste as part of operationalisation and enforcement of environment quality standards as provided in the Environment Management and Co-ordination Act of 1999.

Thirdly, as a Ministry, we have brought on board the private sector participation in solid waste management in the Nairobi Metropolitan Region.

Fourth, the Ministry, in conjunction with the various local authorities within the Metropolitan Region is involved in the creation of environmental awareness in its area of jurisdiction.

Fifth, the local authorities are also engaged in the promotion of the three "Rs" of Reduction, Re-use and Recycling, including separation at source.

Sixth, we have enhanced monitoring of the entire solid waste management cycle from generation, collection, transportation, intermediary treatment and final disposal.

Mr. K. Kilonzo: On a point of order, Mr. Speaker, Sir. If you have looked at this Question and listened to the answer by the Assistant Minister, it is clearly touching on the National Environment Management Authority (NEMA), which is under the Ministry of Environment and Mineral Resources. Is the Assistant Minister in order to answer this Question while it is supposed to be directed to the Ministry of Environment and Mineral Resources?

Mr. Speaker: Madam Assistant Minister, do you want to react to that question?

The Assistant Minister for Nairobi Metropolitan Development (Mrs. Ongoro): Thank

you, Mr. Speaker, Sir. Under our collective responsibility, we, as a Ministry, decided to work with the Government institutions that are already in place, and who have been mandated to undertake certain---

(Applause)

We are not intending to re-invent the wheel. As a Ministry, we are simply going to co-ordinate with the various authorities to ensure that the right policies are put in place and implemented.

Mr. Speaker: Very well! Madam Assistant Minister, you have acquitted yourself!

Proceed!

The Assistant Minister for Nairobi Metropolitan Development (Ms. Ongoro): Thank you, Mr. Speaker, Sir. As I was saying, we have enhanced the monitoring of the entire solid waste management cycle from generation, collection, transportation, intermediary treatment and final disposal.

Lastly, Mr. Speaker, Sir, the Government has enacted laws, regulations and local authority bylaws to improve the Nairobi Metropolitan region waste management. Examples of the said bylaws include:-

- (i) The Public Health Act Cap.242;
- (ii) The Environmental Management Co-ordination Act of 1999;
- (iii) The Ban of Polythene Carry Bags Bylaws of 2007; and,
- (iv) The Factories Act.

Mr. Speaker, Sir, the Ministry, in collaboration with NEMA and various local authorities within the metropolitan region will co-ordinate the enforcement of those regulations.

Thank you, Mr. Speaker, Sir.

Mr. Lekuton: Mr. Speaker, Sir, I do appreciate the Assistant Minister's elaborate answer. But it tends to deal, mostly, with Nairobi River.

Mr. Speaker, Sir, this is a growing City with a growing population. Major cities in the world do have cases of air pollution. Why have we never determined the level of air pollution in our cities? On top of that, what are we telling Kenyans? How dirty or clean is the air that the people of Nairobi breathe? Why have we not conducted that study?

Mrs. Ongoro: Mr. Speaker, Sir, in the ten weeks that this Ministry has been in existence, we have decided to conduct a thorough audit of existing conditions and to collect data, so that we could have a firm foundation before implementing all the policies that we want to implement. The new Ministry, whose first budgetary allocation was only passed by this House a few days ago, is currently in consultation with the relevant authorities to ensure that the right equipment with the capacity to give us appropriate air quality conditions will be imported in due course. We are going to present to this House the air quality assessment within the metropolitan region.

Ms. Shebesh: Mr. Speaker, Sir, could the Assistant Minister tell us what they intend to do about the Dandora Dumping Site, that is situated within a highly populated area and it is causing a lot of damage to the environment around that area? It is also causing a lot of diseases to the children who are born in that area.

*[The Minister of State for Defence (Mr. M.Y. Haji)
walked in dressed in Islamic
religious attire]*

Mr. Outa: On a point or order, Mr. Speaker, Sir. There is a stranger in the House!

(Applause)

Mr. Speaker: Is that so?

Mr. Outa: Yes, Mr. Speaker, Sir.

Mr. Speaker: Where is the stranger?

Mr. Outa: The stranger is in the House with a dress code that I would like clarification on whether it is acceptable in the House.

(Loud consultations)

Mr. Speaker: Order, hon. Members! Order! That is supposed to be a very weighty matter but, unfortunately, it does not meet the specifications as set out in the Speaker's Rules on the dress code. The hon. Minister is dressed in accordance with the Speaker's Rules in as much as he is partly dressed in a religious attire and partly in a traditional African attire, which is in order.

*[The Minister of State for Defence
(Mr. M.Y. Haji) stood up and displayed
his Islamic religious attire]*

(Laughter)

Madam Assistant Minister, could you respond to the question by Ms. Shebesh?

Mrs. Ongoro: Mr. Speaker, Sir, on the thorny issue of the Dandora Dumping Site, as a Ministry, and according to our policies, not only are we going to relocate it, but we have decided to completely do away with the manner in which garbage is being disposed of in this country. We are currently in consultation with the relevant authorities like the City Council of Nairobi, NEMA, the United Nations (UN) Habitat and, as I have mentioned before, we are going to not just transfer that problem to yet another location, but we are going to implement a comprehensive waste management system. It will be an integrated system that is not only going to solve the problem, but it is going to generate electricity to be sold to the Kenya Power and Lighting Company. It is also going to generate water for use within the neighbouring community. It is also going to provide employment opportunities.

Thank you, Mr. Speaker, Sir.

(Applause)

Mr. Speaker: Last question, Mr. Lekuton!

Mr. Lekuton: Mr. Speaker, Sir, now that the Assistant Minister has told us that they are going to do a very comprehensive report on pollution, the report had better be done quickly because eight out of 10 Nairobians are coughing.

Mr. Speaker, Sir, the City Council of Nairobi is responsible for licensing the industries that contribute to the pollution of the rivers. Could the Assistant Minister give us the number of industries that have been warned, fined or whose licences have been revoked as a result of polluting the Nairobi River?

Mrs. Ongoro: Mr. Speaker, Sir, as I mentioned before, the Ministry does not want to start implementing without, first of all, creating a firm foundation. We are collecting data which is going to be finalised in two weeks. But, currently, although I did not intend

to give you a half-baked answer, we have already confirmed that there are over 200 industrial effluent discharge points. We have already established the ones who are polluting the Nairobi water sources along the Ngong River. There are 30 industrial discharge points along the Ngong River, 30 sewerage discharge points and 30 domestic effluent discharge points. In total, we have 212 such discharge points. But that exercise is still on-going.

Mr. Speaker, Sir, I want to tell hon. Members that we intend to prosecute offenders. But we do not want to start implementing that policy before we have a thorough audit of all the existing data collection system that can be laid on the Table of this House.

Mr. Speaker: Very well! The balance of the Questions are out of time for this afternoon. I will, therefore, defer them to Tuesday afternoon. They will take priority against those Questions that may be on the Order Paper for Tuesday.

Question No.150

CLASSIFICATION OF LOCATIONS IN
LOWER NDARAGWA AS ASALS

(Question deferred)

Question No.178

IMPLEMENTATION OF REPORT
OF PRESIDENTIAL COMMITTEE
ON MUSLIM CONCERNS

(Question deferred)

Question No.128

REHABILITATION OF KISUMU-
KAKAMEGA ROAD

(Question deferred)

Question No.158

EQUIPPING OF CDF YOUTH
POLYTECHNICS IN MUTITO

(Question deferred)

Mr. Speaker: Hon. Okemo, you are notorious for staying down and wanting the Speaker to see you when you are seated!

(Laughter)

POINT OF ORDER

ESTABLISHMENT OF THE
PRIVATIZATION COMMISSION

Mr. Okemo: Mr. Speaker, Sir, thank you for those kind remarks. I stand to seek a Ministerial Statement from the Minister for Finance on the issue of the Privatization Act.

Mr. Speaker, Sir, the Privatization Act provides for the establishment of a privatization Commission. The provisions of that Act also go on to specify how such a Commission is to be constituted and the process and procedure for doing so. Could the Minister explain to the House why he constituted a Commission without reference to the relevant Committee of Parliament as provided for in the Privatization Act? Secondly, the privatization process is also very clearly stated in the Act. We know, for example, the Safaricom IPO was one such privatization. But if the Commission was put in place even though illegally, there is no evidence whatsoever that the Privatization Commission has been involved in the privatization process as required by the law. Again, this is one---

Mr. Speaker: Order, Mr. Okemo! When you seek a Ministerial Statement, the rules are clear. You do not then take the opportunity to give your own opinion nor debate, nor make a speech. You set out the matter of concern in brief and you seek points of clarification. That is what you ought to do.

Mr. Okemo: Thank you very much for your guidance, Mr. Speaker, Sir. That is exactly, what I was doing.

Mr. Speaker: Certainly not, Mr. Okemo!

Mr. Okemo: Mr. Speaker, Sir, I want to conclude by asking, therefore, the Minister to inform the House the involvement of the Privatization Commission in any privatizations that have either taken place or are contemplated to take place in the near future.

Mr. Speaker: Very well!

The Assistant Minister for Finance (Dr. Oburu): Mr. Speaker, Sir, can I attempt to reply?

Mr. Speaker: Not now, Mr. Assistant Minister! We have already run out of time. Could you do so Tuesday afternoon?

The Assistant Minister for Finance (Dr. Oburu): Okay, Mr. Speaker, Sir, but I was ready now.

Mr. Speaker: Hon. Members, further Ministerial Statements will have to await until next week. Mr. Fred Gumo, your Ministerial Statement will be given on Tuesday next week.

COMMUNICATIONS FROM
THE CHAIR

POSTPONEMENT OF WORKSHOP
ON STANDING ORDERS

Mr. Speaker: You will all recall that a Communication was made from the Chair on 1st July, 2008 regarding the ongoing review of the Standing Orders. In the communication, the Chair conveyed the timetable to the review of the rules of procedure by the Standing Orders Committee and stated that on 19th July, 2008, the Committee will consider the Report of the sub-committee after which all Members will be invited to a workshop wherein they will be appraised on the proposed amendments to the Standing Orders.

Hon. Members, as the Chair of the Committee on Standing Orders, let me take this opportunity to brief the House on the progress made so far. Having considered Draft No.7 as adopted by the Committee of the Ninth Parliament, amongst other proposals, the sub-committee

presented its Report to the Committee on the 17th July, 2008. The Committee held a two day retreat between 18th and 19th July, 2008 wherein it considered the said Report. The Report of the Committee styled Draft No.1 of the Tenth Parliament will be available for Members' perusal in due course. The Standing Orders being the basic rules of procedure are of vital significance on the way Parliament executes its legislative, oversight, representative and deliberative roles. It is, therefore, imperative that the review process is done meticulously. It is against this backdrop that I wish to inform the House that the intended workshop for all Members which was planned to take place on 25th to 26th July, 2008 has been rescheduled to 20th to 22nd August, 2008. In this regard, the Clerk is directed to ensure that copies of the said: "Draft No.1 of the Tenth Parliament" are available to all Members in good time to enable them prepare adequately for this very important workshop.

DISTINCTION BETWEEN ORDINARY
QUESTIONS AND QUESTIONS
BY PRIVATE NOTICE

Mr. Speaker: Second communication. Hon. Members, over the past several weeks, my attention has been drawn to apparent difficulties being encountered by Members with respect to making a distinction between ordinary Questions and Questions by Private Notice and the scope and form of Ministerial Statements. I would, therefore, like to provide the following guidance to assist Members to appropriately utilise the various processes in executing their mandate.

Hon. Members, Section 17(3) of the Constitution states as follows and I quote:-

"The Cabinet shall be collectively responsible to the National Assembly for all things done by or under the authority of the President, or the Vice-President or any other Minister in the execution of his office"

The House, through the Standing Orders, has devised mechanisms to ensure due performance of this function by the Government. One among this is the provision to Members to ask Questions. In this regard, I request hon. Members to familiarise themselves with the provisions of Part IX of the Standing Orders. Standing Order No.35 (1), for example, states as follows:-

"Questions may be put to a Minister relating to public affairs with which he is officially connected to proceedings in the House or to any matter of administration for which he/she is responsible"

The Standing Orders classify Questions into two categories, namely; Ordinary Questions and Questions by Private Notice. Ordinary Questions may seek either oral or written replies. The difference between these forms of Questions relate to the content and urgency of the matter. For Ordinary Questions, Ministers are allowed ten days to respond, whereas they are expected to answer Questions by Private Notice within two sitting days, following notice thereof, pursuant to the provisions of Standing Order No.36(2) which states as follows:-

"Questions which in the opinion of Mr. Speaker are of an urgent character and relate either to matter of public importance or to the arrangement of business may also be asked of a Minister after private notice and shall be answered within the next two sitting days following such notice".

I would like to specifically draw the attention of the House to the provisions of Standing Order No.35(2). This is important, Members. Please, note that. It states:-

"A Question shall be of a genuinely interrogative character and its purpose shall be limited to seeking information or pressing for action.

Standing Order No.35(3) further defines the scope of Questions as follows:-

" A Question shall not be made the pretext for a debate".

We appear to be doing this only too often.

The Chair has had occasion to enforce this rule. For instance, on 6th July, 1994, Mr. Speaker directed as follows:

"This is Question Time. You are supposed to rise, ask Questions and not to support or reject any philosophy. There is time for accepting or rejecting philosophy."

The Chair, therefore, normally allows other Members to put supplementary questions to the Minister, arising from the answer he or she gave to the original Question. Members should, therefore, not use the opportunity given to them to ask supplementary questions and ask completely different Questions. Members shall also note that Question Time is not considered as part of the House Business. Therefore, the period spent in deliberating on Questions should be managed in such a way that it does not encroach on or eat into Business Time.

With regard to Ministerial Statements, the established practice is that they cover issues of a wider range that are both of urgent nature and require immediate urgent action, and that cannot, consequently, be dealt with through Questions aptly. These are normally issues that entail policy. Ministers also are at liberty to use the opportunity to brief the House and country on critical issues of policy, incidents or actions in order to place them on the official record or public domain. Consequently, Members are expected to ask for clarifications arising from the contents of the Ministerial Statement and not to question, oppose or support the Ministerial Statement *per se*.

Finally, while a Ministerial Statement may be requested by a Member or a Minister may, out of his or her own volition, furnish the House with one, a Question, whether Ordinary or by Private Notice, must be filed by a Member and put on the Order Paper.

It is further directed that Members seeking Ministerial Statements shall give indication before the Sitting commences. In other words, it is not expected that Members will approach the Chair, as you have been doing, to seek an opportunity to be accorded a chance to ask for Ministerial Statements. We have had a lot of this and it has been distracting on the Chair.

I hope that this information will be useful to Members. I, however, recommend that Members intending to ask Questions or request for Ministerial Statements will be at liberty to contact the office of the Clerk for necessary assistance.

Thank you.

Dr. Khalwale: On a point of order, Mr. Speaker, Sir. The whole House would like to thank you for the progress that you have made on Standing Orders. But given that the new Standing Orders are anticipating to operate under a House that is guided by a new Constitution and because we are not too clear on the progress and urgency that the Government is giving to the issue of bringing a new Constitution to this country, could I request that the Chair directs that since we traditionally break for recess at around the end of July or the beginning of August, the Government may bring the Constitutional Amendment Bill that wishes to pave way for a new Constitution in this country, so that it goes through the First and Second Reading---

Mr. Speaker: Order, Dr. Khalwale! The Constitutional Amendment Bill as well as the Constitution of Kenya Review Bill have been published. So, you are seeking to anticipate debate, if not pre-empt deliberations. Be guided accordingly! Maybe you had not acquired your copy of the Kenya Gazette or you have not looked at your pigeon hole for sometime. Please, be guided accordingly!

Dr. Khalwale: Mr. Speaker, Sir, I have received my copy and read it. But I was requesting that since it would require the Departmental Committee on Administration of Justice and Legal Affairs to look at this amendment Bill after it has gone through the First and Second Reading. This should be brought to the House before we go on recess. During recess the various interest groups can have an opportunity to make their input in this very important law.

Mr. Speaker: Very well, Dr. Khalwale. I would want the Minister to respond to that.

The Minister for Justice, National Cohesion and Constitutional Affairs (Ms. Karua): Mr. Speaker, Sir, I want to assure this House that the matter is being given the attention it deserves. We will be seeking that the matter be given priority by the House Business Committee.

(Applause)

MOTION

ADOPTION OF SESSIONAL PAPER
NO.1 ON GOVERNMENT
GUARANTEE LOAN FROM JAPANESE BANK
OF INTERNATIONAL CO-OPERATION

THAT, this House approves Sessional Paper No.1 on Kenya Government Guarantee of 26.7 Billion Japanese Yen, equivalent to Kshs16.18 Billion loan from the Japanese Bank for International Co-operation (JIBC) to the Kenya Ports Authority (KPA) for the Mombasa Port Development Project laid on the Table on Tuesday 10th July, 2008.

(The Minister for Finance on 10.6.2008)

*(Resumption of Debate interrupted
on 10.6.2008)*

Mr. Speaker: Hon. Members, it is on record that this Motion had been moved and seconded, but it was not proposed. So, I will now propose the Question.

(Question proposed)

The Minister of State for Public Service (Mr. Otieno): Thank you, Mr. Speaker, Sir. I rise to support this Motion. This certainly is a very good loan facility, at 40 years, with ten years grace, 0.2 per cent interest in one component and 0.01 per cent interest on the rest.

The Ministry of Finance, Ministry of Transport and the Kenya Ports Authority (KPA) need to be congratulated in concluding this deal with the Japanese Government. We are likely to see a properly structured and operated Port, but there may be discordance that the rest of the transport system in the up-country will be a bottle-neck. You cannot have an efficiently operating port and, yet, the railway system is not able to move the containers up- country and the road system is overloaded in every other section. So, the problem upstream needs to be considered currently with this facility, so that in five to seven years, when the port will reach world class standards, our railway and road systems should equally by then have been prepared. If anything, the challenge of this facility is that the Ministry of Transport and Ministry of Finance should look for additional funding to streamline the railway, at least, right through the central system and ensure that the road network is able to cope with the goods that will be coming up-country.

[Mr. Speaker left the Chair]

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

Mr. Temporary Deputy Speaker, Sir, I have in mind the fact that most container traffic should go through our rail system. On reaching Kisumu, the same containers should be distributed throughout the entire lake region without having to spoil our roads once traffic and the goods are upcountry. In this regard, I would like to propose that the Ministry of Transport immediately considers the transfer of the operation of the inland ports away from the Rift Valley Railways (RVR) to the Kenya Ports Authority (KPA). The same way that the Kenya Airports Authority (KAA) takes care of all airports, the KPA should take care of all inland ports particularly the ports on Lake Victoria.

Mr. Temporary Deputy Speaker, Sir, as I am talking now, the port of Kisumu is in shambles. It is clogged. It is silted. The lake traffic is jammed. You cannot reach the port. All the other ports on Lake Victoria; in Kendu Bay, Homa Bay, Usenge and all other places are not what ports should be. The law should be amended so that the RVR which up to now is in charge of all inland ports should transfer that responsibility to the KPA. In any case, the RVR is bankrupt. They have no resources to manage anything. Similarly, all petroleum products transported by pipeline should be distributable throughout the lake region via properly designed oil tankers within the lake. This would require that the KPA works with the Kenya Pipeline to build an oil jetty in Lake Victoria. That port should be dredged at Lake Victoria so that the oil tankers can lift oil from Kisumu and distribute it in the entire lake region. This way, pressure on our roads will reduce.

Mr. Temporary Deputy Speaker, Sir, as of now tankers from Tanzania lift petroleum from Nakuru. They destroy the road through my constituency all the way up to Tanzania. So, as we improve on the port, if anything, we need five times the 16 billion Japanese Yen that has been offered to streamline the entire transport system, by rail and road up to the lake port and by tankers into the lake region. Possibly, Rwanda can access it from the Bukoba Port. So, instead of just looking at one which has successfully been put together, urgent measures should be put in place so that in the next five to seven years, when this facility will be developed in Mombasa, the rest of the system should be streamlined upcountry.

I beg to support.

Mr. Imanyara: Mr. Temporary Deputy Speaker, Sir, I also rise to support this Motion. In doing so, I associate myself with the comment made by the Minister with regard to the admission that the RVR is dead. We should not be depending on it, expecting that it can perform any useful role in this country.

That notwithstanding, I wish to commend the Government of Japan for the manner in which they give money and the transparent procedures that are followed. One would wish that the other countries with which the Government deals and give money to this country would adopt the procedures that the Government of Japan does in granting money to this country. This is particularly with regard to Libya which appears to have a lot of money which can be invested in this country for good use. Rather than engage in conduct that only raises suspicion, one would wish that such governments that wish to do real business with Kenya such as Libya, and for which we support fully to invest, would adopt the same procedures that involve the National Assembly of Kenya.

This is important so that we know the amount of monies involved, how it is disbursed, the outlets for disbursement of this money and the period of repayment including the grace period. That way, there would be no questions of deals being made by senior Government functionaries and representatives of foreign investors wishing to invest in this country.

Mr. Temporary Deputy Speaker, Sir, I wish to say that Parliament should support this Motion. Let it be passed together with the commendation to the Government of Japan, and other investors be advised to pursue the same procedures adopted by the Government of Japan.

I beg to support.

The Assistant Minister for Medical Services (Mr. Mungatana): Mr. Temporary Deputy Speaker, Sir, may I also take this opportunity to thank the Minister for moving this Motion. I want to also associate myself with the views of hon. colleagues who have spoken before me.

I want to support this Motion but with some reservations. These are very strong reservations. The reason I chose to lean on the side of supporting this Motion is that the benefits are obvious. This is what hon. colleagues have dwelt on. We know that the Great Lakes Region--- In fact, the Minister in moving this Motion stated that the growth capacity of the region in the great lakes is growing at 5.6 per cent per annum. The port is the main support system for this economy but we are not expanding at the rate that is required.

Mr. Temporary Deputy Speaker, Sir, he told us that this is a loan that is acquired under what he called STEP or Special Terms for Economic Partnerships. Therefore, we have the 10 years grace period, 40 years repayment period and 0.2 per cent interest. These are excellent terms that we recommend. The obvious benefits of this project require us to support this Motion. However, as I have always argued in this House before, everything that is good can be made better. This is where my reservations are. I want the Ministry to take this in the spirit in which we need to take these matters.

There has been an attitude that everything and anything that is foreign is good. So, everything and anything that is proposed from outside this country is better than what is inside this country. I wonder why the Ministry of Finance did not consider--- When it was considering the financial facility and the instrument that was developed for the Safaricom Initial Public Offer (IPO), they targeted to raise Kshs50 billion. However, what was raised from this country; Kshs150 billion was three times that amount. This is three times the amount that was targeted. What am I talking about here is a loan facility that is going to commit this country for the next 40 years. It is Kshs16.18 billion only and yet the other day, after the sale of the Safaricom IPO we were struggling with refunding Kshs100 billion back to the Kenyan public. What are we doing?

Mr. Temporary Deputy Speaker, Sir, when the Minister was moving this Motion he said that already they had committed and what they are doing now is just being transparent. We need to support him because this is a good thing. They had committed because exchange notes had already been passed between the Governments of Kenya and Japan. The Japanese International Corporation Bank had already signed with the KPA. Therefore, an Executive action had already been taken and we are now giving it Parliamentary sanction. We will support them but could they please have a paradigm shift in their thinking? There is money in this country and we need to get it. The people of this country need to own these equipment that is the heritage of this nation. We do not need to mortgage ourselves out to individuals, corporations, banks or whatever money that comes from outside this country. Let us look at what we did with the Rift Valley Railways (RVR)! We gave extremely good concessions to a South African Company. When they came over, what did they do? The Chief Executive Officer is paid Kshs7 million. The next thing, people are not paid their salaries! Are we saying that if the Ministry of Finance took time to develop an instrument and invited Kenyans to put in their money, we would not have raised the billions of shillings that were required to start off the RVR Project?

Mr. Temporary Deputy Speaker, Sir, I argue that even for the Port of Mombasa, we could have raised this money. We need to have a paradigm shift towards this issue. We need a complete attitude change in the Ministry of Finance right from the top to the bottom. This is because even other Kenyans are the same. If you go to Nairobi to purchase a suit, as long as it is Kenyan made, you think that it is not useful. You have to go to Paris where you will be sold the same suit at four times the cost. The Ministry of Finance needs to take the lead. We need to have a change and it has to start right at the top, that is, the Executive in this country.

Yesterday, we watched on television the Chief Executive Officer of Coca Cola from USA. He came into Kenya and he was received at State House. That is a good thing. But what news did he have for us? It was reported that he was investing Kshs600 million in the country through a new plant. Here, we have the biggest taxpayer; the East African Breweries Limited, which gives the highest cheque to the Exchequer, in fact, last year, they got the award for the top contributor. They gave out one cheque worth Kshs18 billion. In September, they are putting up a plant worth Kshs2.4 billion. That matter is in the Press. They have not been invited to high places. I think it is only the Minister for Finance who called them at the beginning of the year to ask them for the cheque. The attitude that is prevailing in this country is that everything a Mzungu comes with is good, but we are not good enough ourselves. We need a paradigm shift. This Parliament needs to say it. We need to go on record that we do not want to mortgage the heritage of this country. Let this be the last time we are saying that this port is going to borrow money--- We can raise this Kshs16 billion. It is just for the Ministry of Finance to tell us, "We have arranged this and that. Could you, please, bring your Kshs20,000 so that we can buy shares and own the heritage of this country."

Let me turn to the Privatisation Commission of Kenya. It should help Kenyans to own the resources of this country. We need to think afresh. We do not need to think like our Independence fathers. This is the problem because policy makers are living in the Independence times. They used to think that everything from London is good. They even take their suits to the laundry in London to be washed. I want to invite the Minister for Finance to have a paradigm shift. We need to own these things. We have children! Those policy makers are retiring and their children are already in secondary school, or in the university or they are already working. They are going! What shall we then give our children? We are still giving birth! When our children grow up, Kenya Airways will be gone. There will be no airport. The Port of Mombasa will not be there because it would have been taken by other people. The game parks will be gone and all the roads shall have been concessioned and yet they will still be paying loans. That attitude must change. I hope that the Acting Minister for Finance will lead us in that direction.

Mr. Temporary Deputy Speaker, Sir, I support this Motion, but with those very strong reservations.

Mr. Chanzu: Thank you, Mr. Temporary Deputy Speaker, Sir. I also want to support this Motion, but also with reservations. This is because right now what we are playing about with is the issue of interest rates. Again, it is a matter of playing about with terminologies. If enough ground work could be done in a matter such as this one, it would have been better for us. There is no point of putting up a facility and yet you are not able to move. There is a lot of congestion at the Port, but there is also a lot of business in this country which we can do with other countries which are using our facilities, for example, the Port of Mombasa. However, the road network is not there. The railway system is dead! Moving cargo from Mombasa to Nairobi is a hell of a problem. In the recent past, we have seen trucks from Mombasa to Nairobi being diverted from the highway because certain sections of the road are impassable. Businessmen who use our facilities end up losing a lot of time and their reputation.

Mr. Temporary Deputy Speaker, Sir, I suggest that we go ahead, but as the previous speaker said, we need to be carrying out broader studies before we come up with this kind of venture. It is not just enough for somebody to say that he is giving you a loan at an interest rate of 0.2 per cent. By the way, there is no prosperity in borrowing because you accumulate debts. If we can spend our own money, the better. In some of the Votes that might not be brought before this House, you will realise that we are already allocating money to pay debts to some individuals or organisations that we ourselves denied knowing. Whom are we going to pay that money? If you put in the Budget, say, Kshs4 billion that ought to pay Anglo Leasing related debts and yet we said that we did not know who we were dealing with, whom are we paying?

Mr. Temporary Deputy Speaker, Sir, in future, we need to involve more Kenyans in these issues. We cannot just say that somebody in Treasury is more knowledgeable than the rest of the Kenyans. We want this thing to be floated so that ideas from Kenyans are put on the table. Even with regard to the Safaricom IPO, there are institutions in this country, for example, banks that made a lot of money overnight. I know of a bank which made about Kshs6 billion just in a matter of handling papers. There are many of them which were involved. In fact, a Question was asked here on that Safaricom IPO. Why did we have to select only four or five banks? Why did we not involve many of them across the board so that if it is a matter of Kenyans benefitting, then many more of them would have benefitted? So, there is a lot of money that we are wasting here ourselves and looking for money outside thinking that, that money is better than ours. So, I support this Motion because of its urgency---

QUORUM

Mr. Odhiambo: Mr. Temporary Deputy Speaker, Sir, there is no quorum in the House!

The Temporary Deputy Speaker (Prof. Kaloki): Yes, indeed, there is no quorum. I order that the Division Bell be rung!

(The Division Bell was rung)

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Members, we now have quorum. Proceed, Mr. Chanzu!

Mr. Chanzu: Mr. Temporary Deputy Speaker, Sir, as I was saying, I think what the Government has done, in terms of development, over the last few years is commendable, but what I would like us, as a country, to do, is to look further. We should look at the entire country rather than concentrating facilities in a place where they may end up not useful to Kenyans. That is why I am also making a suggestion that the Government considers widening the road from Mombasa, the northern corridor, by making it a dual carriageway, and making mandatory regular maintenance of our roads, in terms of what is expected or what the requirements are, so that we do not end up congesting--- Like the case of the Port of Mombasa, I notice that in the Sessional Paper, the role of the Kenya Ports Authority (KPA) is covered very well, I mean the coverage area around the Port.

The management of sea ports in Kenya, which include Mombasa, Vanga, Shimoni, Mtwapa, Kilifi, Funzi, Malindi, Kiunga and Lamu--- If we could think of extending some of these services to places like Lamu, we start some kind of nucleus there, we will be decongesting the already---

The Minister for Regional Development Authorities (Mr. Gumo): On a point of order, Mr. Temporary Deputy Speaker, Sir. In view of the fact that we are all agreed, would I be in order to move that the Mover be now called upon to reply?

(Loud consultations)

The Temporary Deputy Speaker (Prof. Kaloki): Order, hon. Members! Please, repeat what you said!

The Minister for Regional Development Authorities (Mr. Gumo): On a point of order, Mr. Temporary Deputy Speaker, Sir. Would I be in order to move that the Mover be now called upon to reply?

(Question, that the Mover be now)

*called upon to reply,
put and agreed to)*

The Assistant Minister for Finance (Dr. Oburu): Mr. Temporary Deputy Speaker, Sir, I want to thank all hon. Members who have contributed to this important Motion. The points raised by hon. Members are very pertinent; they are issues to do with connectivity. As has been stated in both the Sessional Paper and in the presentation which I made here, this loan is meant to improve the capacity of the Mombasa Port to handle cargo, and even passengers for tourism purposes.

On the issues raised by Mr. Mungatana, about the mobilization of internal resources to finance ventures like this one, this is a very important issue, which is being discussed by the Government very actively. The line we want to take is to issue long-term infrastructure bonds.

(Applause)

This will mobilize internal resources which will help us to finance some of the infrastructure projects like this one of Mombasa. However, the terms of this loan are such that even if we floated bonds, we cannot match locally the terms offered by the Japanese Government. It is not easy to find a concessionary loan--- If you mobilise funds locally, that will still be a loan. It will still be a public debt and will still have to be serviced. It will have to be serviced at reasonable market prices in terms of interest.

If we get donors who give us concessionary loans like this particular one, I think it is prudent that we give Japan a pat on the back, because no country has given us this kind of concessionary loan, including our biggest multinational donors like the World Bank and others. So, I think Japan has done very well in this respect. Even if we move in that direction of mobilizing internal resources, it cannot be the exclusive source of funding. We must look for all the resources, including from donors, and study each and every case on its own merit and give it consideration.

Mr. Temporary Deputy Speaker, Sir, the issue of the railways and the road network are very important, because we need connectivity. We need to move from the Port to inland; we need to improve our road network in order to make this project meaningful.

Hon. Members have spoken about the Rift Valley Railways (RVR), which is managing our railway system. This is, again, one issue which the Government is discussing very actively, and it will soon be resolved. The intention for giving that particular concession to the RVR was very good, but as in every venture, a good thing might turn out to have a problem. However, the problem has already been identified and it is being resolved.

Mr. Temporary Deputy Speaker, Sir, we have given the Ministry of Roads a good budget, and we hope that the road network will continue to be improved. The road from Mombasa is already being constructed. It will soon reach Nairobi. The northern corridor road is under construction. So, we hope that the improvement that we require in order to actualise and make this project more effective is in place.

I am, therefore, pleading with hon. Members to bear with us that everything is being done to involve a private public partnership which, again, is in the pipeline. We are developing a structure which will show exactly how the Government intends to involve the private sector in the development process, including the mobilisation of resources, which are quite available locally.

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

(Question put and agreed to)

BILLS

*Second Reading*THE NATIONAL ETHNIC AND RACE
RELATIONS COMMISSION BILL

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

(Resumption of Debate interrupted on 3.7.2008)

The Temporary Deputy Speaker (Prof. Kaloki): I now call upon the Minister to reply.

The Minister for Justice, National Cohesion and Constitutional Affairs (Ms. Karua): Mr. Temporary Deputy Speaker, Sir, I want to start by thanking all the hon. Members for their very valuable contribution. Most of the hon. Members who spoke made extremely valuable contributions on how to strengthen this law.

The first proposal was that we should have a mechanism for enforcing what the proposed law is advocating, and that is non-discrimination on basis of race or ethnicity and promoting cohesion. I want to agree with the hon. Members that we need to add a clause to deal with the issue of enforcement and also create sanctions for behaviour that does not promote ethnic and racial harmony. I want to, therefore, tell hon. Members that at the Committee Stage, I will make sure that, before then, we sit with the relevant Committee to harmonise the proposed amendments to strengthen this law.

Mr. Temporary Deputy Speaker, Sir, one hon. Member indicated that the proposed Commission should be independent. I want to agree and refer hon. Members to Clause 14(2)(a), which provides that the Commission shall not be subject to the direction or control of any person or authority. So, this is already taken care of. The proposed Commission is expected to operate independently, in the same manner the Kenya National Commission on Human Rights (KNCHR), and other independent bodies, operate.

Concerns were raised on the manner of removal of Commissioners. We are willing to look into this aspect. It was also suggested that the proposed Commission should have *quasi judicial* authority to be able to give directions to employers and other bodies about harmonising or putting their act together on issues of ensuring that they promote cohesion within their organisations. It is also suggested that this body should have powers to name those employers or bodies that will not follow the law, and also issue a notice to comply. I find all these valuable contributions, including the suggestion that we should look into whether the Title itself is negative and, perhaps, needs to read differently. I also agree with those who did say that this is an opportune time to have this Bill passed. One of the cancers we have in our society today is negative ethnicity. We need to deal with it. This law is proposing, not just to promote and advocate for national cohesion, but also to be able to consult with Kenyans and look at what other laws, and what other policies, will be necessary to strengthen our national cohesion.

Having indicated that we will take care of the concerns of hon. Members at the Committee Stage, I beg to move.

(Question put and agreed to)

(The Bill was read a Second Time and

*committed to a Committee of the
Whole House tomorrow)*

The Temporary Deputy Speaker (Prof. Kaloki): Next Order!

Second Reading

THE TRUTH, JUSTICE AND
RECONCILIATION COMMISSION BILL

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

The Bill seeks to establish a Truth, Justice and Reconciliation Commission as a body corporate that will be charged with the responsibility of promoting peace, justice and national unity; healing and reconciliation among the people of Kenya. The Bill is borne out of the realisation that lasting peace and co-existence cannot prevail in Kenya unless historical injustices and violations and abuse of human rights have been addressed. At the outset, I must state that this is one of the negotiated Bills - Bills which were envisaged by the National Accord - and were agreed upon when we, as Parliament and as a country, agreed that we need to come together to redress whatever ails this country. It, therefore, emanates from the deliberations of the National Dialogue team, which represents this House.

Having said that, I would like to take hon. Members down the memory lane. In August, 2003, a task force was created by His Excellency the President, headed by our very own Prof. Makau Mutua. One of the key findings of this task force was that Kenyans overwhelmingly desired a Truth, Justice and Reconciliation Commission. We failed to set up the Commission then, and we also failed to set it up throughout the last Parliamentary term. I believe that, as a nation, we have paid for failing to act then. With the upheavals that were witnessed earlier this year, we should not miss this opportunity of setting up a mechanism through which Kenyans can express themselves and through which, as a nation, we will be able to agree on how to resolve whatever issues that will have come out of this exercise.

The Bill, therefore, seeks to form a Commission. It is that law that will deal with historical injustices and violations of human rights. The setting up of the Commission is provided for in Part II, that is the proposed Section 3, which indicates that part which sets up the Commission as a corporate body, with legal powers and also establishes that its headquarters will be here in Nairobi. Clause 5 gives the objectives of the Commission as to promote peace, justice and national unity, healing and reconciliation among the people of Kenya. The Commission will, therefore, be establishing an accurate, complete and historical record of violation and abuses of human rights and economic rights inflicted on Kenyans by the State, public institutions and holders of public office, both serving and retired, between 12th December, 1963 and 28th February, 2008.

These two dates are significant. 12th December, 1963 is when we attained Independence while 28th February, 2008 is the date when the National Accord was signed. So, we want to examine how we have dealt with each other as independent State. However, Clause 5A(i) recognises that we may need to go beyond 12th December, 1963 to the antecedents, circumstances and factors so as to contextualise such violations. If we need to go beyond 12th December, 1963 to discover the genesis of the problem, the proposed Clause 5B does indicate that we can go as far back as possible in order to establish a complete picture of the causes, nature and extent of the

gross violation of human and economic rights committed between the period I have stated and including antecedents and circumstances.

Mr. Temporary Deputy Speaker, Sir, the Commission will also look at perspectives of victims and the motive, and also the perspectives of persons responsible for commission of the violations. In other words, both the victims and perpetrators will have an avenue to go before this Commission and express themselves, so that we may discover the truth and bring ourselves to forgive one another, where applicable and also to heal from the grievances that we may be harbouring against each other.

The Commission will also be empowered to conduct investigations and hold hearings, and also investigate gross human rights violations and violations of international human rights law and abuses, including massacres, sexual violations, murder and extra-judicial killings, and will determine those responsible for the commission of the violations and abuses. We have many questions that arise about people who have disappeared or died and it is not known how they died. This will provide an avenue for their families, friends and supporters to come before this Commission and give all the evidence that may either have been suppressed or ignored, to enable vindication of either these crimes or to discover what really happened, so that we may begin to heal.

Mr. Temporary Deputy Speaker, Sir, it will also be mandated to investigate economic crimes, including grand corruption and exploitation of natural or public resources with the action, if any, taken in respect thereof. I think we are all aware that one of the big issues that has refused to go is the issue of corruption. There is a feeling by the man on the streets that grand corruption has not been properly handled in this country. There is also the logistical difficulty in that some of the investigations that are going on now date more than a decade back and, therefore, there is the challenge of getting witnesses and documentation. There is also the issue of fear of people with relevant evidence. This Commission will also provide an opportunity for such people to come forward, either in camera or publicly, to say their things, so that we may be able to settle all these issues.

Mr. Temporary Deputy Speaker, Sir, another issue that has been with us, and has refused to go, is irregularly acquired land and illegal acquisition of public land. We all know that although we had the Ndung'u Report, we are yet to comprehensively act on it. This proposed Commission, will also be mandated to inquire into the irregular and illegal acquisition of public land and making recommendations on the repossession of such land, or the determination of cases relating to land. Even for the pending cases, there may be recommendations by this Commission which may help us resolve all those past issues.

The Commission will also inquire and establish the reality, or otherwise, of perceived economic marginalization of communities and making recommendations on how to address the same. All these are the issues, or the under currents, that precipitated the upheavals that we have witnessed from time to time, especially at the beginning of this year. The mandate will extend to the issue of misuse of public funds and institutions for political objectives, acts of State, repression, including torture, cruelty and degrading treatment. That is the very issue of human rights, which has been raised by various individuals and communities. Also, it will inquire into the causes of political violence before, during and after the elections that were held in 2007 and how to address these causes, so as to prevent future occurrences of such violence.

Mr. Temporary Deputy Speaker, Sir, hon. Members may want to know how this Commission will relate to the Commission on Post-Election Violence, which is already ongoing. The Commission on Post-Election Violence, or the "Baby Commission" as it is popularly called, is a stop-gap measure while waiting for this long-term Commission. That one will help us to wrap up the issue of the criminal cases arising out of the post-election violence, whereas the Truth, Justice

and Reconciliation Commission will go beyond the post-election violence into the issues of historical injustices, and all the other issues that I have indicated, including past violation of human rights, economic injustices and marginalisation. It will also, most probably, be able to deal with violations or offences that have occurred during the post-election period, which may not necessarily have been reported or investigated.

Mr. Temporary Deputy Speaker, Sir, so, it is a comprehensive way and a long-term issue of dealing with the problems while the post-election Commission or Waki Commission is a short-term measure to address the burning issues.

The Commission is also intended to provide victims of human rights abuses and corruption-related offences with a forum to be heard so that their dignity may be restored. It is also to provide an avenue for repentant perpetrators or participants in gross human rights violations to confess their actions as a way of bringing reconciliation after which this Commission will be expected to compile a report providing a comprehensive account and also make its findings and recommendations on measures to prevent future occurrence of such violations.

Mr. Temporary Deputy Speaker, Sir, the powers of the Commission are quite wide. The functions of the Commission as proposed in Section 6 go hand in hand with the powers and scope of the Commission and I need not repeat.

The Commission will have powers as proposed in Section 7, that the Commission should have powers that are necessary to execute its functions and will not be subject to the direction or control of any other person or authority. For a Commission like this to be able to properly function, it has to be independent and Clause 7 is bringing in this independence.

Mr. Temporary Deputy Speaker, Sir, the Commission will also be able to gather by any means it deems, appropriate information including requisition of reports, records, documents or any information from any source which include governmental authorities and will have powers to compel production of such information as and when necessary. It will also have the powers to visit any establishment or place without giving prior notice and also to enter any land or premises as necessary.

It is proposed in Section 7 to give the Commission adequate powers to ensure that it is able to carry out its duties. It will also have powers to summon and interview any individual, organisation or group and also to call upon any person, so long as they make adequate provisions for such person's expenses, to attend a session or a hearing. In other words, similar powers to a court of law to summon and compel witnesses. This is the standard in all commissions. The only exception is in Section 7(3) which says that:-

"Protected areas will not be subject to this provision".

Mr. Temporary Deputy Speaker, Sir, there are also penalties provided for in Clause 7(4) for any person who obstructs or otherwise interferes with the work of the Commission and a fine is provided for that. Penalties are also proposed for people who refuse to appear before the Commission without any reasonable excuses.

How will this Commission be selected? This is a key issue in any commission. It is proposed that a selection panel will be constituted and it will consist of two people, jointly nominated by a forum of religious organisations which comprise the Episcopal Conference, National Council of Churches of Kenya (NCCCK), Evangelical Alliance, Hindu Council, Seventh Day Adventist (SDA) and the Supreme Council of Kenya Muslims (SUPKEM). If you look at that religious sector, it is the same format that has been used in other Bills where we need the religious groups to come together. We are conscious that it may not include every denomination but it broadly represents the religious sector in this country. Two people from the religious sector will be part of the panel and then there will be one person nominated by the Law Society of Kenya (LSK), one person nominated by the Federation of Kenya Women Lawyers (FIDA) and one person jointly

nominated by the Central Organisation of Trade Unions (COTU) and the Kenya National Union of Teachers (KNUT). Mr. Temporary Deputy Speaker, Sir, this again broadly represents the workers. One person nominated by the Association of Professional Societies of East Africa, one person nominated by the Kenya National Human Rights Commission (KNHRC), one person jointly nominated by the Kenya Private Sector Alliance (KEPSA) and the Federation of Kenya Employers (FKE) and one person nominated by the Kenya Medical Association (KMA).

Other than the bodies that are given a slot specifically, the rest are groups together. We realise that it is not possible to pick each individual sector and make them members of the nominating panel. It will be too unwieldy but I want to circulate to the Members that this is a representative sample of the House.

Mr. Temporary Deputy Speaker, Sir, how will this panel go into the selection? This is given in the First Schedule and the procedure is that the selection panel, within 14 days of the commencement of the Act, will advertise in the *Kenya Gazette* and, therefore, Kenyans will be able to apply. Once you apply, these applications will be forwarded to the selection panel within 21 days of the advertisement. The qualifications of those persons are provided for in the Act and the procedure on how the panel moves is given in the First Schedule. The panel will then nominate the persons, that is, the six appointed persons. The list will be submitted to the Minister for onward transmission to the President for appointment so that it is actually the selection panel hiring but it is the President appointing, which again is standard.

Mr. Temporary Deputy Speaker, Sir, to enhance the independence of the panel, the panel will elect its chairperson and vice-chairperson. About the commission that is going to be selected by the panel, whose members are selected by the panel, it will consist of seven commissioners, three of whom shall be non-citizens and who will be selected by the Panel of Eminent African personalities, that is the Kofi Annan Group and four shall be citizens of Kenya selected by the selection panel in accordance with the procedure I have indicated, which is in the First Schedule.

One may wonder why we would want non-citizens in the selection panel. The exercise of a Truth, Justice and Reconciliation Commission is a painful one to any nation. Things are coming forward that have been hidden and buried and information is coming sometimes about people in authority and power. Having come from the rough incidence of the beginning of this year and the mistrust that has characterised our politics, it was agreed that it is necessary to seek for assistance from our friends so that we have non-citizens to sit with us to temper whatever emotions may be raised by the issues that are put before the Commission and also to minimise the suspicions that the political class and Kenyans in general may have of each other and by extension, of the people we eventually nominate to the panel. This again is not new. That is what is happening in the two commissions we have; the Independent Review Commission on the Elections and also the Waki Commission, where we have a panel set up as citizens and non-citizens.

Mr. Temporary Deputy Speaker, Sir, the qualifications of the people to be nominated to the Commission are:-

"(a) three shall have knowledge of and at least 15 years' experience in matters relating to human rights law;"

You will realize that most of the violations that have come to light - and that people may come out - in a Truth and Justice Commission relate to violation of human rights. That is the justification of seeking that, at least, three of the Commissioners shall have experience and knowledge in matters relating to human rights law.

"(b) four shall have knowledge of and experience in forensic audit, investigations, psycho-sociology, anthropology and social relations, conflict management, religion or gender issues."

Those are all the areas that are envisaged, and where we need expertise for a Commission

of that nature to be successful.

Mr. Temporary Deputy Speaker, Sir, we are not inventing the wheel. Other countries, especially South Africa, have had an experience of a Commission like that and we are relying on what has happened around the Globe and what is thought to be prudent.

Mr. Temporary Deputy Speaker, Sir, a commissioner also:-

"(a) is of sound mind;

(b) is of good character and integrity;

(c) has not in any way been involved, implicated, linked or associated with the perpetrators or supporters of the acts, crimes or conduct under investigation;"

No person can be a judge in their own course. It is expected that such a person:-

"(d) shall be impartial in the performance of the functions of the Commission under this Act and who will generally enjoy the confidence of the people of Kenya".

Mr. Temporary Deputy Speaker, Sir, Section 6 of the Bill states:-

"A Commissioner, once appointed, shall cease active participation in the affairs of any political party or other organization, whether registered or unregistered, propagating partisan views with respect to the work of the Commission."

That, again, is to protect the independence and integrity of the Commission.

Mr. Temporary Deputy Speaker, Sir, the Chairperson of the Commission shall be appointed by the President, but from among the commissioners selected by the Panel. That Chairperson shall have powers like all other chairpersons to preside over the meetings of the Commission, to be the spokesperson for the Commission, and to supervise and direct the work of the Commission. The Commissioners themselves will elect a vice-chairperson, whose role is to work in the absence of the Chairperson which, again, is normal.

Mr. Temporary Deputy Speaker, Sir, the tenure of that Commission will be from the date of the appointment to the dissolution of the Commission. The Commission will appoint its staff, including the secretary, who will serve on a full-time basis, and who will be the chief executive of the Commission.

Mr. Temporary Deputy Speaker, Sir, like in all other commissions, they will have to take oath to be administered by the Chief Justice. As for the allowances and emoluments, that will be determined as per the normal Government procedures in consultation with the Ministry of Finance and the relevant Ministry.

Mr. Temporary Deputy Speaker, Sir, a procedure has been provided on how to fill the vacancies when a commissioner either resigns, dies or is declared bankrupt. It is envisaged that, out of the six people who will have been selected by the selection Panel, only four will be appointed. So, the President will be left with a bank of two names that, in case a vacancy arises out of the four selected by the selection Panel, then that vacancy can be filled by the reservoir of the two left from those recommended by the Panel. If it is among the international commissioners, then the vacancy will be filled by the Panel of Eminent Personalities. The procedure for removal, again, is provided for and it is standard.

Mr. Temporary Deputy Speaker, Sir, the hearings of that Commission shall be open. But the Commission shall have powers to direct that such proceedings be held in camera when the security of the perpetrators, victims or the witnesses is threatened, or when it would be in the interest of justice or prudent to do so; or when there is a likelihood that harm may ensue to any person as a result of proceedings being heard in open. That is very critical because there are witnesses, whether victims or perpetrators, who may fear for their safety, unless they are provided with a sitting in camera. That is what is happening even with the two Commissions that are currently ongoing. It is, again, a standard and necessary proposal for the work of that Commission.

Mr. Temporary Deputy Speaker, Sir, the Commission will also have powers to establish

special units to address issues and to adopt specific mechanisms and procedures to address the experiences of women, children, persons with disabilities and other vulnerable groups as the need may emerge during the hearings. They will also have to adopt mechanisms that will pay particular attention to gender-based violations and provide opportunities for people to relate their experiences.

Mr. Temporary Deputy Speaker, Sir, individuals who have been summoned to appear before the Commission will have the right to seek legal representation or to appear with a lawyer. That, again, is standard, so that they may be able to safeguard their interest or rights. The rest of the provisions are for the functioning of the Commission and they are standard.

Mr. Temporary Deputy Speaker, Sir, on the issue of amnesty mechanisms and procedures in Part III, it is being proposed in Clause 34 that:-

"The Commission shall not grant or recommend amnesty if the act, omission or offence to which the application relates is an act, omission or offence that constitutes crimes against humanity or genocide within the meaning of international human rights law".

Mr. Temporary Deputy Speaker, Sir, it is provided for; and there is a proposal in this Bill that individuals who wish to appear before the Commission to apply for amnesty may do so. But the proposed Clause 34 clearly indicates that those guilty of gross human rights violations and crimes against humanity as envisaged by international human rights law will not be eligible for amnesty. That, again, is in accord, not only with our Constitution, but with international human rights law to which we are a signatory.

Mr. Temporary Deputy Speaker, Sir, Clause 35 indicates that those who wish to apply for amnesty in respect of any acts of omission or offence, must do so within one month from the date the Commission puts an announcement. But the Commission may give an extended period if it so wishes. The procedure for receiving the applications for amnesty is elaborated in the proposed Clause 36.

Mr. Temporary Deputy Speaker, Sir, why are we talking about amnesty. Throughout the world where these commissions have been formed there are mechanisms for self expressions and also for justice to be done. There is also an avenue for the country to reconcile. So, the issue of amnesty has to come up so that we do not stay with baggage of old cases whether it is amnesty in relation to economic crimes or violation of human rights that does not amount to gross violations or to any other offence that is within the mandate of this Commission. The Commission will not itself give amnesty but it will be in a position to recommend amnesty, which must then come to the House. When the Commission has recommended amnesty to any person in respect of an act or omission which formed the ground of a civil judgement and which was delivered before granting amnesty, it should not affect the operation of that judgement. But once the Commission has recommended, it will be up to the Government and this House to act on those recommendations and to make the necessary policy and legal framework to facilitate the granting of the amnesty recommendations. The Commission may also recommend reparations and rehabilitations of the offenders. That, again, is covered in Part IV.

In my view, the Act is as comprehensive as it can be and I would urge hon. Members to support it to enable us to embark on the painful but necessary journey of expressing ourselves so that we may know the truth about the issues that have been bringing conflict between us and among us for a long period so that we may then come up with mechanisms of reconciliation and healing and we may be able to become a strong country.

With those many remarks, I would urge Members of this House to support the Bill and I beg to move. I urge my colleague from the Serena Team, the Minister for Agriculture to second.

The Minister for Agriculture (Mr. Samoei): Thank you very much, Mr. Temporary

Deputy Speaker, Sir. I rise to second this Motion realising that this Motion came about as a result of the long deliberations that we were involved in the Kenya National Dialogue and Reconciliation Team.

Mr. Temporary Deputy Speaker, Sir, the events of the last General Election taught this country a lot of painful lessons. It has given us a chance to reflect on our past. It has become absolutely necessary to bring our past to some closure so that we can move ahead as a country. The Truth, Justice and Reconciliation Commission is the avenue through which Kenyans from all walks of life, and with truth, justice and reconciliation being their mission, come together to express themselves in this exercise so that they can bring their past to a closure and open a new chapter for us to move a head as a country. It became clear that among the things that informed the near destruction of our country in the last General Election were issues that have been pending for a long time. There were historical injustices and prejudices that were informed by past events, deeds and actions by individuals, organizations and governments. It is necessary for us to bring that to a closure so that Kenya can exit from these prejudices and perceived or real injustices that were meted to the people of Kenya, thereby causing the mistrust that exists between our citizenry. The Bible says; "if you know the truth, the truth will set you free". It is important for us to get to know the truth so that, as a country, we become free. It is important for the things that have been said about people and communities be known. The truth about Government bodies, individuals and public officers must be known. The truth must be known so that we can set our country free. It is said that injustice anywhere is a threat to justice everywhere. It is, therefore, important for us, as a country, to deal with injustices that have been meted upon citizens of our country whether they are perceived or real so that again we can live in a just society.

After we have laid bare these issues, it, therefore, forms a basis for us to embark on the necessary journey to reconcile our country. We believe that it is important for us to go through this exercise of telling each other the truth and find out where justice is so that when we reconcile ourselves, as a country, with the mission of moving our country forward, only then can we, in a very meaningful and practical way, be able to build the Kenyan society.

Mr. Temporary Deputy Speaker, Sir, it is true that at the moment we have ethnic tensions in our country. We have mistrust between communities in our country. We have issues that are outstanding whether we are talking about land and historical issues that exist between Kenyans. These are the issues that breed the mistrust and the prejudices between Kenyan communities and the Kenyan people. If we want to meaningfully move forward, as a country, we must talk to each other in a framework that allows everybody to say their peace, in away that nobody is scared of saying what they know and what they believe will heal this country. Part of the failure of our attempt to have a new Constitution, in my opinion, was partly because of prejudice and mistrust among our Kenyan communities so that very innocent documents sometimes are judged not by the content but by whoever is propagating and the prejudices that come in actually defeat the very good that exists in all the documents that we occasionally try to put across. Therefore, this Commission will provide Kenya the opportunity to speak to itself about issues because for a long time we have talked at each other. This is an independent forum through which Kenyans can talk to each other without fear in an open manner with a mission to try and reconcile our country. We have many outstanding cases of impunity that need to be dealt with whether we are talking about land issues, human rights issues or historical issues. They are outstanding and form a sore spot in the life of our nation. There is not an easy way out of it. We have to provide the necessary forum and framework that is legal and constitutional, for us to be able to move ahead and sort out these sore points in our country.

Mr. Temporary Deputy Speaker, Sir, part of the objectives of the TJRC shall be to promote peace, justice, national unity, healing and reconciliation among the people of Kenya. Its mission is

not to divide the country or cause any more tension in the country. Its mission is to provide the platform for us to reconcile by telling each other the truth and fixing the areas that injustice has prevailed in the past.

Mr. Temporary Deputy Speaker, Sir, maybe many people will ask why we have put there a time-line of 12th December, 1963. If I refer to Clause 5(b), it says:

"Establishing as complete a picture as possible of the causes, nature and extent of the gross violations of human rights and economic rights which were committed during the period 12th December, 1963 and the 28th February, 2008 between the---"

But it also says, "including antecedents, circumstances, factors and context of such violations." So, nothing limits the TJRC from looking at issues before the date we have set of 12th December, 1963. The TJRC will be free to look at what happened before 1963, that may involve the injustices that were carried out after 1963. It was necessary because it is a tradition elsewhere, that this is how TJRCs operate. I also want to support the presence of non-Kenyans in the TJRC because TJRC is not a concept that is only limited to Kenya. It has been practised elsewhere in the world. It is, therefore, unnecessary for us to invent the wheel when we can actually borrow expertise from the international community. We have an avenue through the Panel of the Eminent African Personalities for us to access that resource which is already available in the international community, to assist our country to resolve our issues.

Secondly, it is necessary for us to have other people who are not necessarily Kenyans to look at the issues that will be put before the TJRC, from a perspective that is not Kenyan. This is because when we are talking about human rights, it is not limited to Kenya. It is a universal concept. An international or non-Kenyan view point is as important as a Kenyan view point. Even if we are talking about historical injustices, a perspective that is non-Kenyan is as important as a Kenyan perspective.

Mr. Temporary Deputy Speaker, Sir, I believe that, we, as a Government, did commit ourselves; that there are some steps that we will take to ensure that this country does not return to the state in which we were early this year. Amongst those steps is the setting up of this TJRC which has been pending for the last five years. We were unable to agree on the correct framework of the enactment of legislation that would provide the framework for a TJRC. Now that we are in a Coalition Government, with everybody being comfortable that nobody is going to take advantage of them or the TJRC to be used against individuals or communities, I think it is the correct turn in our history to conduct this exercise, so that we can bring the historical injustices and prejudice that has engulfed our country, including issues of land, to a closure, so that we can move ahead as a country.

Mr. Temporary Deputy Speaker, Sir, the selection panel is wide enough to bring on board the widest opinion possible for us to have the personnel with the necessary capacity to undertake this momentous exercise. With the Independent Review Commission investigating the post-election violence in place, this Commission is the other pledge we did make as a Coalition Government, that it will be in place. It will be followed by the Constitution Review Commission (CRC), which hopefully, will be brought to this House soon. This will enable us to be focused on putting our country back on the rails and moving it forward.

Mr. Temporary Deputy Speaker, Sir, the powers of the TJRC are not in any way unique. The TJRC by the nature of its work, needs to have sufficient authority to be able to conduct this very delicate and painful exercise. Therefore, it is necessary that it has sufficient ground and scope to be able to carry out this very important exercise. It is important for the people of our country to know that this TJRC will serve their interests and that their participation is paramount for the success of this TJRC. This is because the truth and injustices are out there. Kenyans have the

obligation and responsibility to bring it to the attention of the TJRC as soon as it is launched and Parliament passes this legislation, so that we can begin this exercise.

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

(Question proposed)

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government (Mr. Githae): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to voice my comments on this very important Bill. I rise to support this very important Bill which, in my view, should have come to this House 45 years ago.

I would like, first of all, to commend the team that was at Serena. The team that had a very heavy responsibility of trying to bring peace in this country. It voiced the concerns of their Principals and it has actually drafted this very important Bill. I am saying that because their job was not very easy. They had a lot of problems to sort out. They were also under immense pressure from their Principals, the Eminent Persons and even Kenyans as a whole. This is an important Bill and therefore, it requires all our support. It is a result of negotiations. Although it has been moved by the Minister for Justice, National Cohesion and Constitutional Affairs, it has not actually emanated from her office. It is a result of negotiations that took place in Serena Hotel, where the two main political parties were well represented by very able personalities.

Mr. Temporary Deputy Speaker, Sir, I am supporting this Bill because, for the first time it is going to give Kenyans an opportunity to tell their side of the story. It is unfortunate that we have come up with the date of 12th December, 1963 when Kenya attained Independence. If I would have been asked, I would have said we need to go backwards to when Kenya as a nation we know today, first existed. I would have gone back to 1895. This is the time that some of the so-called historical injustices started. I have talked of the year 1895 because before then, Kenya, whether a colony or a protectorate, did not exist. This then would have given Kenyans an opportunity to go as far back as memory can remember. This would give the basis for the so-called historical injustices. Some of the so-called historical injustices are actually a result of colonialism.

Mr. Temporary Deputy Speaker, Sir, I understand the dilemma in which the negotiation team were in. We are also used to blaming everything on our colonial masters knowing that they are gone and will not come back. So, in a way I can understand. However, in my view there is a provision where they can consider all pertinent and relevant issues. My advice to the Commission is that, they should not restrict themselves to the date of 12th December, 1963. They should obtain and receive evidence and hearing on matters that go beyond 12th December, 1963. That is the only way Kenyans would have an opportunity to tell their side of the story once and for all.

I have compared this to the South African Act and there are quite a number of similarities. One of the main exceptions is that, for the South African one they had no foreigners in their Commission. Here we are borrowing three Commissioners who would be foreigners. Again, I would have preferred if this was a purely Kenyan affair. We cannot expect foreigners to come and tell us what is wrong with us. We know what is wrong with us! We know what is wrong with this country. We know the historical basis for some of the things that have happened. But, again, I can also understand the dilemma of the negotiation team in Serena Hotel when they wanted to give this an international outlook.

Mr. Temporary Deputy Speaker, Sir, probably, we could have given it an international outlook even with Kenyans in the diaspora. We have people like Prof. Makau who have been outside this country and Prof. Mazrui. Therefore, there could have been a provision for Kenyans but in the diaspora. But, again, as I said, I can understand the dilemma of the negotiating team at Serena Hotel. Probably, that is something that can be looked into.

One of the functions of this Commission is to find the so-called historical injustices. I am one of the people who have been unable to understand what this so-called historical injustice is. I am saying this because it is more related to land, and more particularly, land in the Rift Valley. Again, going backwards, you will find that one of the reasons why we have the so-called settler communities in the Rift Valley was a result of colonial practices. When farms in the Rift Valley wanted workers, some workers were obtained from other places. When Hut Tax was imposed and some people did not want to pay it, they ran away. Most of them ran away to the Rift Valley in order not to pay the tax. Others went there looking for money to pay for the Hut Tax. So, it is important that this is realised.

Mr. Temporary Deputy Speaker, Sir, the first settlement of non-indigenous people in the Rift Valley occurred very early in the life of this nation. I am told that it was as early as 1933. That was the first time official settlement occurred somewhere in Molo and Burnt Forest. Since then, it has continued. When we attained Independence the administration of Jomo Kenyatta came up with the rule of willing buyer, willing seller.

Again, they say that the law is an ass. It prevents both the rich and the poor from begging on the street. This is true! You cannot expect a rich man to beg on the street. It is also true that when you have a willing buyer, willing seller, those with money will buy land. So, for us to understand the historical injustices, then we need to find out if we need to continue with this policy. As far as the Constitution is concerned, you can own land anywhere in the Republic of Kenya. You can work anywhere in the Republic of Kenya. You can marry from anywhere in the Republic of Kenya but when it comes to land issues, this contradicts the actual position on the ground.

Mr. Temporary Deputy Speaker, Sir, in this country, there are some places where banks never used to lend money with land as security. This is because an "outsider"--- I will later come to the reasons I do not like words like, "outsiders", "ancestral land", "settlers" and such things.

There is definitely a contradiction. One of the functions that this Commission should investigate is whether we should amend the policy of willing buyer, willing seller. What happens is that, sometimes you buy land then after 40 years or so, when the sons of the person who sold you land are told that the so-called "settler" bought the piece of land at Kshs300 an acre, they say, "no, my father must have been conned!". But if you look at the value of the shilling at that time, probably Kshs300 an acre in 1963 is equivalent to Kshs400,000 an acre today. So, there is that confusion and that is why you find some people saying, "our community was conned". There was no conning, it was just because of the value of the shilling then. Again, the Commission must investigate and come up with a conclusion. If it does not, the same contradictions that we see will continue.

Mr. Temporary Deputy Speaker, Sir, it is so sad that in this country we do not recognise local investors. I remember reading an article in the *Newsweek* in which the Boeing Corporation of America wanted to set up their headquarters. They wrote to all their States. They said, "we want to set up our headquarters, what incentives can you give us"? The 60 States went on a wooing spree trying to woo the Boeing Corporation to set up their headquarters in their State because of the various advantages. At the end of the day, the State had to give them free land and tax rebates. I think that was in the State of Washington where the Boeing Corporation put up their headquarters. So, we need to do the same thing here in Kenya. We need to give incentives to our local investors. A local investor need not necessarily be a person with Kshs100 million and above. Even a person who is buying one acre of land is an investor. He needs to be given protection, encouragement and incentives. It should not really matter where that local investor comes from because that is one of the dangers. If somebody is putting up a shop in an area, does it really matter where that person comes from? Does it matter from which community that person comes from? The fact is that if he

puts up, say, a shopping complex there, then clearly, it might be rented out and people will be employed there. Therefore, it is to the advantage of that community for that person to put up that kind of shop. So, we need to accept and encourage local investors. We also need to give them incentives. We should not just think of investors as foreigners.

Mr. Temporary Deputy Speaker, Sir, one of the functions of the Commission is to investigate the illegal grabbed land. I wonder whether it is better to sweep thing under the carpet or to talk about them. This is because I can see us opening wounds when we talk about grabbed land. What exactly is it? What are we talking about? I can see resistance from the land grabbers. In fact, I see them sabotaging the work of this Commission. This is because they are a powerful cartel. They are the ones who grabbed land belonging to institutions like schools, hospitals, airports and so on. Some of them have actually developed them. So, the Commission should be prepared to face resistance from the land grabbers. It should be prepared for its work to be sabotaged by land grabbers because it will be going against what they have acquired. However, I would like to advise them to soldier on. At least, let us know how 200 acres of land belonging to JKIA was reduced to about 100 acres to the extent that even people have built houses and flats on the flight path of aeroplanes.

We also want to know more about the current problem in Mau Complex where we are told that a certain amount of land was set aside for resettling the landless. There were some people who were living in the forest and they needed to be resettled in the Mau Complex. However, the land ended up with civil servants, senior military officers and senior politicians. Again, the Commission should expect a lot of resistance from the people who were given land in the Mau Complex. They are going to sabotage its work. This is because when they begin their investigations, they will realise that the 1,900 people with titles are not the original allottees. Most of them have actually bought it from politicians who had been allocated that land. So, the Commission should expect a lot of resistance.

Mr. Temporary Deputy Speaker, Sir, the other function that the Commission will perform is that it will give Kenyans an opportunity to let off steam. Some people have had gloomy faces since we finished our elections. This will give them an opportunity to let off steam and ventilate. Probably, they will become less stressful. So, in a way, it is good.

The other issue I like about this Bill is immunity. I was not prepared to support this Bill if it was going to give immunity to rapists and arsonists. I have always said that if you gang-rape an old lady, a young lady or even a child, what democracy are you practising? I do not see any connection between that and the so-called fighting for democracy or protesting against election. As far as I am concerned, such a person just wanted to take opportunity of the chaos to commit rape. So, I am very glad. In fact, when I saw the first draft, that is where I went. I had said that if I see a possibility of a rapist being given immunity, then I would not support this Bill. Fortunately, the crimes of rape and burning of houses have been exempted from immunity. So, for that reason, I support this Bill.

Mr. Temporary Deputy Speaker, Sir, there is one more issue I would like to take up with the Minister and that has to do with damages. Fine, the Commission will investigate and establish whether certain injustices were committed, but it is only fair that they recommend the redress. If, for example, you had been taken to Nyayo House and your manhood had been tortured, what can be done to redress that if you are already impotent? At least, you can be given some money as compensation. I do not know what they mean when they say, "To recommend a redress". I think there should have been a provision for damages so that once the Commission identifies the wrong that was done on you, then it should be able to recommend a certain payment. However, at the moment, it is not there. That is something that needs to be looked into.

Again, the Commission has taken 28th February, 2008 as the latest day in which they can consider issues. I guess that is the day the National Accord was signed. We have been hearing of

youth that are still in jail. The reports that have been given by the police indicate that only about 300 people are continuing with court proceedings and yet we have been told that over 5,000 youth cannot be accounted for. The Commission is also supposed to investigate what happened to this. We have been told that there are no youth in the prison. Some youth ran away from their homes fearing that they would be arrested. These are the youth we are being told have supposedly been arrested by the police. So, it would be good to tell the youth who have run away from their homes to go back. They should not run away from their homes. They should go back home so that even politicians can stop making political propaganda on this issue. We are told that only 300 are either in remand or in jail, because they were fined some money and were unable to pay it. I am told that it was not much. For some it was Kshs1,000, Kshs2,000 and for some Kshs5,000. So, we would also like to appeal to the people who had engaged these youths to go and pay for them the fines, so that they come out of jail. So, as we continue considering the Bill, this issue can be put to rest.

Mr. Temporary Deputy Speaker, Sir, on specific provisions of the Bill, I see that the headquarters will be in Nairobi. I wish this was not specified, so that the Commission can set up its headquarters wherever it likes. If it wants to set it up in Ndia, or in any other constituency, that will be most welcome; that may be a good idea.

To conclude, this is a good Bill; it should have come like yesterday but now it is with us. I am requesting all hon. Members to support this Bill, so that we can start giving Kenyans an opportunity to say what they know, what injustice they have suffered from 1963 to now. This will also give them a chance to ventilate whatever is in their heart, so that this country can move forward. However, as we do this, sometimes it is not possible to legislate against people's hearts. You cannot legislate that you love your neighbour or somebody from another community. You cannot do that! This is an attempt, and it is a good one. Let us understand it, so that some of the generalizations that have made communities not like each other can be looked into, so that communities in Kenya can start living together.

It was sad to see a fellow Kenyan taking up arms against his neighbours. Even more sad, was somebody taking up arms against their own children, just because their mother is not from their community. It was so sad! I think it has never occurred anywhere else except in this country. Even in places where genocide, for example, in Rwanda, took place, a man would retain the children and chase away the wife who was from a different community. But in Kenya, I think we got into the Guinness World Book of records, where during these chaos, parents and fathers chased away their own children and wives. It was sad! Clearly, a wife belongs to the community in which she is married. Once somebody has been married there, she belongs to that community. She belongs to that clan and, therefore, she ceases to be a member of her previous community. It was sad when some were being chased away, even with their own children. I think this is something that we should not allow to occur again. It is good that these people will be given an opportunity to come forward and tell us why they chased away their own children and wives.

Mr. Temporary Deputy Speaker, Sir, the people who revenged are no better than the ones who perpetrated genocide. They are no better, because even the good book says: "Leave vengeance to me, says the Lord!" Two wrongs do not make a right. Even the ones who revenged did wrong. In this country we believe in the rule of law and, therefore, we should have allowed the law to take its course. It may be slow but that is the law.

This Bill now gives us an opportunity to know what really happened for all those years, what really happened at the Nyayo House Torture Chambers and what happened to the land that was grabbed. It will also enable the Commission to investigate all the past civil servants; everybody who has been a public servant can also be investigated. But it has been given an onerous job of trying to know the motive and perspective of the person responsible for commission of the

violations. I think it is a tall order to really try to investigate what somebody was thinking, what was in somebody's heart when they were doing this thing. It is a tall order, but I have no doubt that if the right commissioners are appointed, they will achieve this. If credible commissioners are appointed, I have no doubt that they will achieve this. If experienced people are appointed, I have no doubt that they will achieve their purpose. There is no point of inventing the wheel. I think the first job of this Commission should be to invite the former Chairman of the Truth and Justice Commission in South Africa, Archbishop Tutu, to come and show them how he managed to achieve what he did. He will also show them how he managed to conduct investigations, and get the respect of all the parties in South Africa, whites, blacks and the various other communities. I think they will, first of all, need to invite him to come and tell them how he did it. There is no point of inventing the wheel; it has been done.

I think they should also visit Sierra Leone, because it also has a commission of this nature. They should go there and learn how it was done, because the purpose of this Commission is not to create jobs. This country almost collapsed. It is by the grace of God that it is still in one piece. The forces of evil were rained on this country, but God loves this country and we were able to come together. What is required is to preach reconciliation, and for the leaders to talk to their people and urge them to accept the people who are returning to their farms. What is required now is for the local authorities to accept the IDPs, who were hawkers in their areas of jurisdiction, because I understand there is still a problem. Some of the hawkers have been unable to go back to the towns in which they were hawking their products. So, it is now upon us, leaders, to preach reconciliation and peace. We should stop politics, so that this country can move forward, because God loves it.

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

Mr. Muthama: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to contribute to this Bill. I rise to support this very important Bill. I think it is acceptable to all Kenyans. It will chart the way forward in terms of bringing peace and stability to this country. If what is contained in it is implemented, it will guide this country properly.

Mr. Temporary Deputy Speaker, Sir, I want to refer to Clause 5 of the Bill. It says:-

"The objectives of the Commission shall be to promote peace, justice, national unity, healing and reconciliation among the people of Kenya---"

All these are issues which are known to Kenyans. Every Kenyan knows very well that he needs to abide by what is being advocated under this clause. Commissions have been formed before. We had internal problems like what happened early this year, following the December elections. I fail to understand - and I am not convinced entirely - what changes will be effected by creating this commission. I know that Kenyans will do anything within their means to achieve peace in this country. This is one way of doing it.

Mr. Temporary Deputy Speaker, Sir, Clause 6 of the Bill says:-

"The functions of the Commission are to (a) investigate violations and abuses of human rights relating to killings, abductions, disappearances, detentions, torture, ill-treatment and expropriation of property suffered by any person between 12th December, 1963 and 28th February, 2008;---"

These issues which will be addressed by the proposed commission, are not new. We have security agencies in this country, which have dealt with these issues before. I agree that with the addition of the proposed commission, things may change, but we need to do more than just forming the proposed commission. Kenyans are being asked to talk among themselves in a friendly way.

Mr. Temporary Deputy Speaker, Sir, some legislators in the Tenth Parliament failed to understand what negotiations are required amongst Kenyans. Some Kenyans have been mistreated and intimidated by their brothers for a long time. Some of them were evicted from their farms.

They bought those pieces of land and settled on them. They worked hard and produced food to feed other Kenyans. They also used to pay taxes to the Government.

Mr. Temporary Deputy Speaker, Sir, if the law of the land is not going to be obeyed, or the law is going to be set aside--- If the Constitution that Kenyans spend money to come up with, is sidelined, or put aside, and replaced with a framework document, then I do not think that there is any commission that will ever do anything to change that. I am suggesting that in the formation of this Commission, our laws of the land must be respected. It should be very clear that I do not need to negotiate with my neighbour in a friendly manner, so that I may live well and in a peaceful situation on my own land. The negotiations between myself and my neighbour, if we cannot talk as friends, should be guided by the law. The law should come in and say, "since the two of you cannot live together and have problems, this is what the law says."

Mr. Temporary Deputy Speaker, Sir, if you look at Clause 10 of this document, it says that the Commission shall consist of seven Commissioners, of whom three shall be non-citizens and selected by the Panel of Eminent African Personalities. With the knowledge that we have as Kenyans, and the respect that we command internationally, after 45 years of Independence, and being a free country, while the idea is good, it does not safeguard our respect. To have people from outside Kenya, who are not citizens of this country, to come and investigate our internal problems and tell us that this or that is happening is not good.

Mr. Temporary Deputy Speaker, Sir, what we know is that the creators of these problems are not the common wananchi. Where is reconciliation and healing coming from in Kenya? We fought for our Independence and we are free people, yet we now need healing! That is a very serious issue which needs to be addressed with all the seriousness that it deserves. The four Members out of the seven will be citizens. We have the National Security Intelligence Service (NSIS), who are paid money to tell us what will be happening in the coming days. We have the police force that is paid to make sure that security is provided to all citizens. We have the military, which is catered for to make sure that our boundaries are well-protected from outside aggression. We have other commissions within the country, which are still functioning and spending taxpayers' money.

Mr. Temporary Deputy Speaker, Sir, as I said, it is a good idea to have an additional one but the law must be followed to make sure that the Commission that is going to be put in place does not fail to perform and then in another two years, we are here again proposing to come up with another Commission to replace the existing one. If that one does not also perform, then in another two years we have another one. So, in ten years we are going to have ten commissions which are doing the same business.

Mr. Temporary Deputy Speaker, Sir, I want to kindly refer to what happened during the post-election period. I want to say that Kenyans do not like to discuss and negotiate with one another. Some people say, for example, that they do not know why they should negotiate with someone who has bought a piece of land in Runda and constructed a house. That land belonged to someone, somewhere at some given time. What difference does it make if another Kenyan buys a piece of land in Taita, Rift Valley or in Maasailand? The land where Parliament stands today was not empty but it belonged to someone sometime. The right of ownership should be respected and all the problems we are having today are because of land. To get to a situation where we have to form a Truth, Justice and Reconciliation Commission, it is because we, leaders, have incited people; we have told them to harass certain communities so that they do not vote for certain candidates. We should carry the responsibility squarely. We should desist from misguiding and misleading and lead our people with truth and openness.

I want to beg my children to be Kenyans and be free to go and swim down in Mombasa. I want them to go fishing in Kisumu. I also in turn want the Kisumu people to come to Machakos

and work there. People from Nyanza are very good stone makers and builders. Since we have a lot of stones there, they can do dressing there. This is the kind of life we want.

So, with these remarks, I beg to support.

The Assistant Minister for Medical Services (Mr. Mungatana): Mr. Temporary Deputy Speaker, Sir, let me take this opportunity to congratulate the Minister for Justice, National Cohesion and Constitutional Affairs for bringing this Bill to this House for discussion. The Memorandum of Objects and Reasons gives us the reasons for this Bill.

Mr. Temporary Deputy Speaker, Sir, one of the things the Minister said while moving this Bill, and I was listening very carefully, is that it is supposed to be a Bill that promotes peace, justice, national unity, healing and reconciliation amongst the people of Kenya. Peace and justice are essential commodities for the peaceful existence of this country.

Mr. Temporary Deputy Speaker, Sir, the healing bit of this is national unity and reconciliation. That was contained in the first three lines of the actual reason for the existence of this Bill in this House.

So, Mr. Temporary Deputy Speaker, Sir, the thrust of all the provisions and in exercise of all the powers, this Bill should be focused. It should not be punitive. It should not be a Bill that punishes. It should not be a Bill that creates acrimony. All the provisions and the thrust of everything that we are going to do under this Bill should be toward promoting peace and national reconciliation.

But, Mr. Temporary Deputy Speaker, Sir, I believe that one of the things that we have to be extremely careful about in terms of who sits as commissioners in this Bill is that, the criteria for selection or for putting people who are going to act as commissioners should be very, very heavily biased towards people that we believe will further the objects and the real reasons for the creation of this Bill and the law that we want to pass in this Parliament.

Mr. Temporary Deputy Speaker, Sir, I am laying the foundation or trying to initiate a movement of thinking away from the ordinary in terms of selecting the panels that will exist for that purpose. Why I am saying that is because I am particularly focusing on the proposed Clause 9 of this Bill. If you look at that Clause, I would be much more comforted if the thinking and the selection criteria of the people who are going to man that Commission will be biased and based upon people that the Kenyan public can trust with the promotion of the memorandum that the Minister mentioned when she was moving this Bill.

Mr. Temporary Deputy Speaker, Sir, we must select a very serious criteria. They must be kind of people that when they stand up to speak, we will feel there is peace. We will feel that there will be justice. We will feel that they will promote national unity. They will promote healing. They will promote reconciliation amongst the people of Kenya! They should not necessarily be professionals from professional bodies. They should not necessarily be people who from the ordinary "run of the mill" kind of organizations, no matter how professional or dignified they are. But the kind of professional bodies that we have put in Clause 9 is the same that we put in so many other Bills that we have passed in this Parliament!

Mr. Temporary Deputy Speaker, Sir, I want to challenge the Minister, this House and even the Departmental Committee on Administration of Justice and Legal Affairs - where this Bill will be taken - to be a bit more creative. The section that we have put here could have been replicated from many of the other Bills that we have passed in this House. In my five years in the last Parliament and in this one, it is the same thing. People say one person should be nominated from the Law Society of Kenya. One person should be nominated from the Federation of the Kenya Women Lawyers--- There is a mistake in Clause (h) where it states:-

"(h) One person nominated by the Kenya Medical Association."

We have repeated that mistake several times! I would, particularly, want to correct that one

and say that the Kenya Medical Association (KMA) is not the association of doctors. The doctors are controlled and regulated by the Kenya Medical Practitioners and Dentists Board. So, if there is any person who should be nominating, it should be that one and not KMA! Are we going to say that any doctor or any member of the Kenya Medical Practitioners and Dentists Board who is nominated to the panel will become a member? No! Are we going to say that any lawyer who is nominated by the Law Society of Kenya should be a member? Are we going to say that anybody who is nominated by the Central Organisation of Trade Unions (COTU) or the Kenya National Union of Teachers should be a member? Are we going to say that any person who comes from these organisations shall be allowed to sit in that panel? Are we going to say that only one person should be nominated by the Association of Professional Societies of East Africa? No! The Minister, in her own words, said that this Bill is intended to promote peace, justice, national unity, healing and reconciliation among the people of Kenya.

Mr. Temporary Deputy Speaker, Sir, we need to create criteria of nominating members from these professional organizations. If we are going to nominate any person whether a doctor or a teacher, we have to take into consideration their credentials. I am an officer of the court. Although, I am a Member of Parliament here, I practise in those courts. There are a lot of belligerent lawyers out there who do not promote peace but they are very senior in their profession. They could very well influence their way into being nominated into this panel. They are other lawyers who are so well politically connected that they could very well influence their ways to be appointed through the Law Society of Kenya as the people who will seat in this Commission. There could be very popular lawyers who could become members or even be elected the Chair of the Council. But are those people promoting, peace, justice, national unity, healing and the reconciliation that this country needs? I do not agree with these provisions. We need to think afresh even about the representatives of the churches who are provided for in the Bill. The Bills says: "The Minister shall constitute a selection panel consisting of these people" Some of these people are openly belligerent. We have seen members of various sects fighting within the same church and yet they could be very senior people. This has been covered by the Press. So, I propose that we should come up with a very clear category. We must have proof for any person who is going to be nominated from any KMA or any other association to sit in this panel. It should be proven from those nominating bodies that this person has promoted these kind of objectives even in his profession before nominating them. They should not pick the bosses of those professions or churches to come and sit in the Commission. We have seen it. Every Commission we have formed, every law where people say, for example, COTU is supposed to nominate one person to the Commission, it is the bosses who come. If is not the Secretary General or the Deputy Secretary. If it is not the Deputy Secretary General, it is somebody in the management. For this particular law, we must be very clear so that we do our best to establish a criteria which is humanly possible. We should do our best so that we can have the best people who would have a record of promoting peace, justice, national unity, healing and reconciliation among the people of this country. For example, there are lawyers who have been known to run Non-Governmental Organizations (NGOs) which preached peace in this country. There are other people, for example, priests or clergy who have been extremely active in seeking peace, especially when we had the problem of post-election violence. We know clergy that moved across the country and clearly set up a record of sorts in preaching peace. I remember seeing this on television. Those were very difficult moments. There were people who were standing out there and saying, "we are brothers and sisters." Those are kinds of people that we would want to see. This criteria must come. Somebody must show that apart from just being a member or one person nominated by the Kenya Private Alliance and Federation of Kenya Employers--- That person was also there. We saw some of them. Very good people in the Internally Displaced Persons (IDPs) camps preaching peace and doing good for

this country. This is the kind of criteria that we want to see. For example, if it is just a guy who is a boss in the Federation of Kenya Employers, but he never even visited an IDP camp or appeared anywhere near those camps, such person should not be nominated to this Commission. In fact, when some of them heard that there was violence, they took off. If the same person comes and is nominated, because he is such a powerful person, I do not think we will be doing justice to this Commission.

There has got to be a very clear category. We want people who have a heart for this thing to sit on this council. I am emphasising this again, because the kind of commissioners that we will appoint will form the character of this Commission. They will also form the kind of results that we will get.

They will also create the confidence amongst the people of this country. I do not see a representation in the NGO world here. But there was a very strong NGO which was on television all the time speaking about peace. Even we, the legislators, are not provided for in this Bill. Why are we not provided for? I remember some legislators who went out and laid flowers for peace at Uhuru Park. There were legislators who were consistently preaching peace.

Let the people who will sit on this Commission be people who come with credentials that even Kenyans themselves can recognise. It should not just be some professional bodies and big bosses who are coming to sit in this Commission. For example, in South Africa, the chair of the commission that was there, Rev. Desmond Tutu, came into that commission with such credentials that by the time he was named the Chair everybody was saying, "something good is going to happen." By the way, he was even a Nobel Laureate by the time he sat on that Commission, having won a prize for peace. That was excellent selection.

ADJOURNMENT

The Temporary Deputy Speaker (Prof. Kaloki): Order! Hon. Mungatana, you will have 15 minutes to contribute next Tuesday.

Hon. Members, it is now time for the interruption of business. The House is, therefore, adjourned until Tuesday 29th July, 2008, at 2.30 p.m.

The House rose at 6.30 p.m.