

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 27th November, 2008

The House met at 2.30 p.m

*[Mr. Speaker in the Chair]*

### PRAYERS

### QUESTIONS BY PRIVATE NOTICE

#### SUSPENSION OF PAYMENT OF GROUND RENT IN TEN-MILE COASTAL STRIP

**Mr. Joho:** Mr. Speaker, Sir, I beg to ask the Minister for Lands the following Question by Private Notice.

(a) In view of the General Notice issued by the Minister on 27th May, 2007, regarding suspension of payment of ground rent by owners of houses built in the Ten-Mile Coastal Strip, could the Minister clarify whether he authorized the proclamation and subsequent public auction as a consequence of Distress of Ground Rent on house owners?

(b) Has the Minister exhaustively facilitated dialogue between the owners of the land and those of the houses?

(c) Could the Minister rescind the auction and explain the steps he will take to ensure that the land issues in this region are resolved once and for all?

**Mr. Speaker:** Where is the Minister for Lands? Apparently, the Minister is not yet here. Let us move on to the next Question by Private Notice.

#### KILLING OF MR. D.M. MUTHOGO BY POLICE

**Eng. Maina:** Mr. Speaker, Sir, I beg to ask the Minister of State for Provincial Administration and Internal Security the following Question by Private Notice.

(a) Under what circumstances did the police shoot to death Mr. David Macharia Muthogo in Karatina on 13th October, 2008?

(b) Could the Minister state the disciplinary action he has taken against the perpetrator of this crime as well as the steps he has taken to compensate the family of the deceased?

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

On 13th October, 2008, the said David Macharia Muthogo was accidentally hit on the right leg by a stray bullet fired by a police officer. He was taken to Karatina District Hospital, but succumbed to the injury later. The police officer was armed with an AK-47 riffle and fired at a robber who was escaping after robbing one Joseph Munyungi Wairimu of a mobile phone.

The suspected robber, Thomas Muriithi Nyawira, though not shot or injured, was later arrested with efforts of other officers who were on patrol duties. He was arraigned before the Karatina Court vide file No.CR.251/250/008 of 602/008 for the offence of robbery in Karatina.

(b) The officer, Force Number 37726, P.C. Charles Mulango Ngui who accidentally fired

the fatal shot that injured and killed the deceased was dealt with under the Police Disciplinary Regulations and dismissed from the force. A police inquest file on the death was opened and forwarded to the hon. Attorney-General's Chambers for comments. The same were received vide a letter Ref.No.AG/LEG/1/1/Vol.V/2008/170 dated 23rd October, 2008, with recommendations that the file be placed before a magistrate for a formal inquest into the death. This has already been done.

With regard to the issue of compensation, the family will be considered, but after the inquest proceedings.

**Eng. Maina:** Mr. Speaker, Sir, whereas I appreciate the action taken so far, the issue of police officers shooting innocent people cannot be tolerated. The issue of opening a case file is encouraging. However, the police officer has already been set free. This seems to be another case that will not end well. What guarantee does the family have that this particular policeman will be disciplined accordingly and that this kind of incident will not happen again?

**Mr. Ojode:** Mr. Speaker, Sir, you heard me say that the police officer has so far been fired. This was a case of an accident which is tantamount to misuse of a firearm because there were no orders given to him. That is why we decided to fire him. It is sad that we lost this gentleman as a result of an accidental firing. If the family goes to court, whatever the court will decide, we will comply.

**Mr. Bett:** Mr. Speaker, Sir, this is a case of a police officer who misused his weapon while dealing with members of the public. Recently, at Kapkatet, a police officer used a rifle to intimidate members of the public to obtain money. What steps is the Assistant Minister taking to prevent police officers from misusing weapons for the benefit of this country?

**Mr. Ojode:** Mr. Speaker, Sir, that is a very sad allegation. If there is any evidence to prove that any of my officers use their guns to extort money from members of the public, I will order for their arrest and we will take them to court and fire them. I would like the hon. Member to tell me the personal number of the particular officer and I will take the necessary action, otherwise, as it is now, that is a very sad allegation.

**Eng. Maina:** Mr. Speaker, Sir, the issue of this policeman is not solitary. Incidences of policemen shooting people and colluding with criminals in this area have been going on. What measures is the Assistant Minister taking to ensure that the area gets policemen who understand their duties and are ready to protect *wananchi*? The issue is not as light as it sounds. The policemen in that area are known for this bad habit. This is not the first incident that has been reported, according to the Assistant Minister's file. What action will he take to ensure that this does not happen again?

**Mr. Ojode:** Mr. Speaker Sir, let me confirm to the House that, indeed, we inherited a police force that was full of criminals. However, we have really tried. We have weeded out the criminals. As I speak, we do not have police officers who are engaged in criminal activities. If there are any, my office is open. Let us know the person and we will take an appropriate action.

## ORAL ANSWERS TO QUESTIONS

*Question No.468*

### MEASURES TO ADDRESS SECURITY THREATS BY TRIBAL MILITIA

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

- (a) whether he could provide a list of all known tribal militia in the country and indicate the respective regions within which they operate; and,  
(b) what steps the Government is taking to address security threats posed by these tribal militia in the country.

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

- (a) The unlawful organisations in Kenya are as follows:-

*Mungiki*: This group usually operates within Nairobi, Central Province, Rift Valley Province and some parts of Eastern Province.

**Dr. Khalwale**: On a point of order, Mr. Speaker, Sir. Hon. Members are aware that sometime ago, this House formed a Committee to investigate this matter of militia. In fact, the Committee has already held several sittings. Would it be in order for us to go ahead and handle the Question as if we are anticipating debate on the report that will eventually be tabled by this Committee?

**Mr. Speaker**: Order! Mr. Assistant Minister, what is your response to that?

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Speaker, Sir, the hon. Member should have waited because I have also touched on that issue in my answer.

Mr. Speaker, Sir, I have mentioned the *Mungiki* group which operates within Nairobi, Central Province, Rift Valley Province and some parts of the Eastern Province. The other one is the Sabaoth Land Defence Force popularly known as (SDLF). This group has almost been rendered inoperational. It operated within Western and parts of Rift Valley Province. We also have the *Taliban* group which is currently dormant but operates within Nairobi. We also have the *Jeshi la Mzee* which is currently dormant but operates within Nairobi. The *Sungu Sungu* group is currently dormant but operates within Kuria District of Nyanza Province. We have the *Baghdad Boys* group, currently dormant, but operates in Kisumu. We also have the *Itirongo* which is currently dormant and operates also in Kuria District. We have the *Chinkororo* group which is currently dormant, but operates in Kisii District. We also have the *Republican Revolutionary Council* which operates within the Coast Province and finally the *Kamjesh* group which is currently dormant, but operates in Nairobi.

(b) In order to secure its citizens from these marauding groups, the Government issued a Legal Notice No.42 of 2002, which declared these groups dangerous to good governance in Kenya, and proscribed them. Consequently, security agents have continued to crack down on the illegal gangs, and have immobilised most of them.

This House has also formed a Parliamentary Committee to investigate these groups and recommend measures to deal with the gangs. Once the Committee files its report, the Government will implement the recommendations forthwith.

**Mr. Sambu**: Mr. Speaker, Sir, I must admit that sometimes Questions take a long time to come to the Floor of the House. This Question was filed sometime back. At the time it was filed, the Parliamentary Committee to investigate this issue had not been established. Perhaps, that is why it is before the House. Nonetheless, I would like to ask a few questions.

**Mr. Speaker**: Yes, you are allowed to ask supplementary questions that arise from the answer given by the Assistant Minister.

**Mr. Sambu**: Mr. Speaker, Sir, I would like to thank the Assistant Minister for that very detailed answer to the Question. However, I would like to seek a few clarifications.

Mr. Speaker, Sir, since these groups were proscribed in 2002, I believe they are illegal. How many of them have been charged for their illegal activities since 2002?

**Mr. Ojode**: Mr. Speaker, Sir, anybody who takes the law in his or her own hands is

breaking the law. We normally arrest and charge such people. It will be very difficult for us to realise that those two or three people who have contravened the law come from such and such a group. But anybody, within Kenya, who breaks the law must be arrested and charged. By the way, even those who hire these goons commit a crime. It is a criminal to hire a goon. There is a rule of complicity which can be used to arrest even the person who hires the thugs. That is what we are doing.

**Mr. Sambu:** Mr. Speaker, Sir, I do not think the Assistant Minister is answering my question. It is not enough to say that even those who hire these goons will be arrested. I want to know how many people have been arrested and charged because these groups have been operating for a period of time. We all know that they have been very active, particularly during the election time. If there are people behind these groups, who are they? Have they been charged?

**Mr. Ojode:** Mr. Speaker, Sir, so far, we have arrested a total of about 84 goons. About 62 goons have been charged. Investigations are still ongoing. Once investigations are complete, the rest will be charged in accordance with our laws.

**Mr. Speaker:** Mr. Assistant Minister, do you have the correct number or you are talking about numbers that are approximate? A human being cannot be "about". It must be a complete number!

**Mr. Ojode:** Mr. Speaker, Sir, I was talking about the number of the goons who have so far been charged.

**Mr. Speaker:** How many have been charged?

**Mr. Ojode:** Mr. Speaker, Sir, I am talking about 62 goons.

**Mr. Speaker:** No, it cannot be "about 62!"

**Mr. Ojode:** Mr. Speaker, Sir, it is 62!

**Mr. Speaker:** Very well!

**Mr. Ethuro:** On a point of order, Mr. Speaker, Sir. When the Assistant Minister was mentioning the militia groups, he referred to the Government side every time. Does he want to confirm that these militia groups are owned by the Government?

**Mr. Ojode:** Mr. Speaker, Sir, this Government cannot own militia groups. It will never! This is a very clean Government! The Backbenchers should emulate what this Government is doing.

*Question No.426*

NON-ISSUANCE OF TITLE DEEDS  
TO TURKANA RESIDENTS

**Mr. Ethuro** asked the Minister for Lands:-

(a) whether he is aware that residents of Turkana Central District in general, and Lodwar Municipality in particular, are unable to access credit facilities for lack of titles to their parcels of land;

(b) whether he could table the names, acreage and location of title deed holders in Turkana North, Turkana Central and Turkana South districts;

(c) whether he could state, giving the dates of the areas that benefited from the Government scheme in 2006/2007 to fast-track issuance of title deeds to the landless, squatters in the marginalised areas; and,

(d) when he will commence issuance of title deeds to the larger Turkana and most of the pastoralists districts that have not been issued with title deeds.

**Mr. Speaker:** Minister for Lands! This is the second Question to that portfolio! Madam Deputy Leader of Government Business, where is your Minister?

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua): Mr. Speaker, Sir, first of all, I must express regret that the Minister and the Assistant Minister are not here. If you grant us indulgence for a while, I will seek the answer and provide it.

**Mr. Speaker:** You also will have to attend to Question No.1 by Private Notice, which is to the same Minister.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua): Thank you, Mr. Speaker, Sir.

**Mr. Speaker:** Very well.

*Question No.199*

BENEFICIARIES OF YEDF MONEY IN LIMURU

**Mr. Mwathi** asked the Minister for Youth Affairs and Sports:-

(a) whether she could state the number of youth groups and individuals who have received funds from the Youth Enterprise Fund Scheme in Limuru Constituency since its launch indicating the amount received by each; and,

(b) what measures she will take to ensure that on-going businesses as well as needy youths without bank accounts access these funds.

**The Assistant Minister for Youth Affairs and Sports** (Mr. Kabando wa Kabando): Mr. Speaker, Sir, I beg to reply.

(a) Twenty youth groups from Limuru Constituency have received Kshs50,000 each from the Youth Enterprise Development Fund (YEDF) through the Constituency Youth Enterprise Scheme Fund (CYDEF). The CYDEF lends money to youth groups; individuals below 35 years and above 18 years of age. The youths in Limuru are also able to access loans as individuals, companies or groups from the financial intermediaries partnering with the YEDF and operating in the constituencies. Another Kshs1 million was allocated to every constituency in the Republic, including Limuru, for on-lending to youth groups. I am sure applications for these funds are being processed by the Divisional Youth Enterprises Fund Committee.

(b) The Ministry is exploring possibilities of using the youth credit methods such as Posta Pay and M-Pesa to ensure that the ongoing businesses as well as the needy youths without bank accounts access these funds.

**Mr. Mwathi:** Mr. Speaker, Sir, I would like to thank the Assistant Minister for that answer. In fact, I have a more comprehensive written answer here with me. Could he tell the House what programmes are there to sensitize and advise the youth on how to access the funds at the grassroots level?

**Mr. Kabando wa Kabando:** Mr. Speaker, Sir, Provincial and District Directors of Youth Affairs, in partnership with the constituency youth officers, have been holding the following fora:-

(i) Career days to ensure that the youth are educated on opportunities available, both for enterprise and in general areas of employment.

(ii) The youth has also benefitted from the youth market days, which have been held in all the provinces and in a significant number of districts. Again, this is meant to expose the enterprises that they are carrying out and to explore good connection with the possible buyers of their products.

(iii) There have been fora to empower the youth on issues that are afflicting, namely, general health, reproductive health, governance and ethics to make them more responsible.

**Dr. Nuh:** Mr. Speaker, Sir, the Muslim youth in this country has not benefitted from this YEDF because of the interests involved. With the introduction of Islamic banking in this country,

there could be room for the Muslim youth to benefit from this YEDF. What initiative is the Assistant Minister taking to ensure that the YEDF conforms with the Muslim teachings, so that the Muslim youths in this country are not locked out of this opportunity?

**Mr. Kabando wa Kabando:** Mr. Speaker, Sir, there is no form of discrimination. In fact, the greater challenge for the disbursement of these funds is to access the intermediaries in the remote parts of this country. That is why I have said that we are exploring methods to ensure that the youth, including Muslims, particularly in the remote parts of this country, may access the funds through other more creative links in addition to the existing banks.

We, as a Ministry, are not insisting that the connection will be with the commercial banks. It will also include, like I said, M-Pesa, Posta Pay and other creative methods. Therefore, there is a bank that has been launched recently, namely, the Community Bank, which is focused on accessing the potential beneficiaries within the Muslim community in a more unique and particular manner.

**Mr. Ngugi:** Mr. Speaker, Sir, the youth of this country have been accused of lacking initiative. That is why they have not accessed these funds. Two days ago, the youth of Kinangop launched a Savings and Credit Co-operative Society (SACCO). In which way could the Assistant Minister assist this Kinangop Youth SACCO or any other SACCO that the youth may start in any other constituency, so that they can benefit?

**Mr. Kabando wa Kabando:** Mr. Speaker, Sir, I appreciate the need for this YEDF to work with Non-Governmental Organisations (NGOs), Community-Based Organisations (CBOs) and SACCOs. Indeed, the Ministry was very involved in the launch of the Kinangop Youth SACCO. In fact, this is an initiative of the Ministry. I want to urge the rest of the Members to liaise with their constituency youth officers. We have posted a Constituency Youth Officer in each of the 210 constituencies to ensure that the fora created to connect the youths also include the role of the Member of Parliament. We want to utilise SACCOs in order to mobilise and pull together the resources that may be in the informal sector, which we want to formalize. Therefore, the example of Kinangop is a major step forward. We need to empower that SACCO and copy the idea where possible.

**Mr. Olago:** Mr. Speaker, Sir, apart from the fact that Kshs1 million is totally inadequate for each constituency for the youth and the fact that the Kshs50,000 per youth group is also not adequate, what steps is the Ministry taking to enhance the amount allocated to each constituency and enable these groups to access more finances from financial institutions that collaborate with the Ministry?

**Mr. Kabando wa Kabando:** Mr. Speaker, Sir, the initial Kshs1 million per constituency has since been increased to Kshs2 million. This is meant to be a revolving fund. It is supposed to be borrowed and refunded. Every youth group is given a grace period of three months. So, there is some flexibility.

I appreciate that the Kshs1 million is not sufficient. I appreciate the input of the Members when the Ministry's Vote was being discussed in this House. However, this amount needs to be enhanced in the next financial year. From the Kshs1 billion which was allocated last year, we have an extra Kshs0.5 billion. There is every indication that this amount will be enhanced.

With regard to the Kshs50,000, this was a small step towards the bigger picture. I accept that the Kshs50,000 is not enough for starting any significant business. However, given the levels of poverty and the marginalisation of the young people in this country, it is appreciated that the Kshs50,000 will give an additional capacity and a route towards the youth expanding their opportunities.

**Mr. Mwathi:** Mr. Speaker, Sir, the Assistant Minister has stated that Kshs1 million is not enough for the youth. I agree with him. He should also be aware that the intermediary financial institutions are starting their own schemes and charging the youth 15 per cent interest rate instead

of the 8 per cent that is supposed to be charged. They pretend that this money is still coming from the Government.

What is he doing to make sure that the youth of this country are not exploited by these financial intermediary institutions?

**Mr. Kabando wa Kabando:** Mr. Speaker, Sir, in the last four months, we have been hosting district forums to educate and empower our constituency youth officers so that they can transmit more information to the youth and so that any borrowing from the Youth Enterprise Development Fund is devoid of exploitation that may have been reported in some instances.

In that regard, I urge all Members of Parliament to ensure that they access the monthly report from their respective constituencies. If there is any case reported of any youth group, company or individual being taken advantage of by any intermediary, there is a strong legal case for such an intermediary to be blacklisted. That youth group will be compensated for any exploitation that may have happened.

I would also like to thank the Questioner, Mr. Mwathi, for the good initiative that he has undertaken in his constituency, including organising a special sports day even before we have launched this sport activity for community soccer.

*Question No.452*

DELAYED PAYMENT TO  
PYRETHRUM FARMERS IN  
LELAN/TAPACH DIVISIONS

**Mr. Litole** asked the Minister for Agriculture:-

(a) whether he could explain why pyrethrum farmers from Lelan and Tapach divisions of Pokot Central District have not received payment for their produce from January this year,

(b) what action he will take to ensure that the payments are made immediately; and,

(c) given the undue delay, whether he could state what disciplinary action he will take against the officers of the Pyrethrum Board of Kenya officers who are responsible for this and also give assurance that the farmers will be paid their money with interest.

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

(a) The reason for the farmers not receiving payment of pyrethrum delivery is due to lack of funds.

(b) I have instructed Pyrethrum Board of Kenya to pay farmers all their arrears and subsequent deliveries from the sale proceeds without further delay.

(c) I have further instructed the Pyrethrum Board of Kenya administration and management board to observe prudent management and good governance and ensure that payment of farmers' dues for flower delivery are prioritised over the debt and effect without undue delay.

**Mr. Litole:** Mr. Speaker, Sir, I think that question has not been adequately answered. First of all, the area in question produces the best pyrethrum in the world. The Assistant Minister has told us no payment has been made for the last 11 months because of lack of funds. I am happy that the Minister for Finance is here. Is the Assistant Minister saying that either the Board is broke or by extension, the Government?

Secondly---

**Mr. Speaker:** Ask one question at a time!

**Mr. Ndambuki:** Mr. Speaker, Sir, it is true we have been having problems with the

Pyrethrum Board. They lost money and the factory was burned. Yesterday, the Ministry established a three-member team which will look into the restructuring of the Pyrethrum Board of Kenya, with a view of putting some money to pay all the farmers. As we speak, the total amount outstanding which has not been paid to date is Kshs64 million. This was a higher figure.

In order for production to continue, we have to accumulate flowers up to a tune of 120 metric tonnes. It is taking too long for the flowers to accumulate. During the January post-election violence, we lost 3,200 acres of pyrethrum.

**Mr. Ethuro:** Mr. Speaker, Sir, Pokot is generally a semi-arid area. When they get an opportunity like this one in a good agricultural area like Lelan where they are able to grow quality pyrethrum and the PBD fails to pay them--- Could the Assistant Minister ensure that Pokot farmers who are ordinarily unable to plant are given priority when the payments are made in order to encourage them to continue growing crops so that they can weather the famine situations that are quite frequent in this area? Could he give an assurance to the House?

**Mr. Ndambuki:** Mr. Speaker, Sir, we would like to give priority to every farmer to be paid his debt. That is what we are working on. That is why we put in place a new management yesterday to revitalise this subsector and make sure that normal production is resumed.

**Mr. Litole:** Mr. Speaker, Sir, I am happy that the Board has been dissolved. This is an area that produces the best pyrethrum in this country and the world. Is the Ministry considering appointing one or two people from the area to the new Board because they are major stakeholders?

**Mr. Ndambuki:** Mr. Speaker, Sir, the mandate of the team which is there is to make sure that it promotes production of pyrethrum, determine appropriate pricing of the pyrethrin, carry out staff overhaul, prepare---

**Mr. Litole:** On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** Order, Mr. Litole! Please, allow the Assistant Minister to complete the answer. You cannot raise a point of order before the statement is completed. Where does the out of "orderness" arise from?

**Mr. Litole:** The relevance of the answer, Mr. Speaker, Sir---

**Mr. Speaker:** Allow the Assistant Minister to complete the answer. We will then be able to determine whether or not he is relevant.

**Mr. Ndambuki:** Mr. Speaker, Sir, I would like to tell the hon. Member that out of the Kshs64 million outstanding, his constituency has about Kshs8 million. There are other farmers from other constituencies who really deserve to be paid. We have put in place a new management team to make sure that this Board is operational and that the growing of the crop is back to normal so that we can pay everybody. Immediately, we restructure the Board, the Government is ready to allocate some money to clear all the outstanding debts.

**Mr. Speaker:** Mr. Litole, do you still feel that the Assistant Minister is irrelevant?

**Mr. Litole:** Yes, Mr. Speaker, Sir. Could he consider appointing people from the region to the Board?

**Mr. Ndambuki:** Mr. Speaker, Sir, I do not want to assure the hon. Member that it will be done. If it will be done, we will take care of the region where the crop is grown.

**Mr. Speaker:** Very well! The Assistant Minister has conceded that he will consider people from your area.

*(Applause)*

Since the Minister for Water and Irrigation has pressing national duty that requires to be attended to presently, we will make a special case of Question No.436.



*Question No.436*

## CLOSURE OF YATTA CANAL

**Mr. Nyamai** asked the Minister for Water and Irrigation:-

(a) whether she is aware that the residents living around Mwitasyano River in Kitui District do not have water because the Yatta Canal which was the source of its water was closed and;

(b) what steps the Ministry is taking to ensure that the canal is re-opened and water supply to the affected areas resumed.

**The Minister for Water and Irrigation** (Mrs. Ngilu): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that Yatta Canal was closed on 25th September for routine desilting, repair and maintenance work. It was re-opened on 4th October after the exercise was completed. The water flowing in the canal reached Mwitasyano on Saturday, 11th October.

(b) In view of the foregoing, no further steps are intended to be taken by my Ministry.

**Mr. Nyamai:** I want to thank the Minister for attempting to answer the Question but with all due respect, her answer is not satisfactory. Before the canal was closed for routine maintenance and desilting, water was not flowing into the canal. Even after it was opened, water has just flowed for 45 kilometres. It has not even reached Matuu Town. The Ministry has just dug a dam to take care of water requirements there. What steps is the Minister taking to make sure the water from the canal flows like it used to when I was a young man, all the way up to Mwitasyano and Tiva River? It used to serve her people in Kitui Central.

**Mrs. Ngilu:** At what age was he a young man? However, I really appreciate that the hon. Member is concerned about what is happening. We have just began to open up this area and give people water. We have already negotiated with the African Development Bank. They have accepted that they will fund this whole area in the next financial year through the Treasury to ensure that we give people of this area more water.

**Mr. C. Kilonzo:** Mr. Speaker, Sir, the Yatta Canal originates from my constituency. The biggest problem is seepage. In the first 20 kilometres, it losses 40 per cent of the amount of water through seepage. When Ndakaini Dam was constructed with the source of water being Tiva River, the amount of water was reduced, which meant less water in the canal. What is the Minister doing to ensure that there is reservoir in Tiva River and that the canal is lined?

**Mrs. Ngilu:** Mr. Speaker, Sir, in fact, the hon. Member knows that we already have consultants on the ground. He has just told me how happy he is that there are people on the ground doing that work. Since they are already on the ground, as soon as I get the report and we are putting resources in place, water will be restored.

**Mr. Nyamai:** Mr. Speaker, Sir, in view of the way this canal has been successful in improving the agricultural potential of the area it is serving, what plans does the Ministry have to build more canals particularly as an extension of the existing canal and also to serve the upper parts of Kitui West and Mtongune area, particularly Katutu?

**Mrs. Ngilu:** Mr. Speaker, Sir, the Minister for Foreign Affairs is saying that this has become a very "*Kambasome*" Question. However, I do not think so.

However, I would like to tell the hon. Member that my Ministry is coming up with a strategic plan that will cover not only Ukambani area but the whole country to see exactly where water needs to be supplied to the communities. Therefore, this will be one of the areas that we will supply with water.

*Question No.579*  
QUANTITY OF MAIZE IMPORTS BETWEEN  
JANUARY AND OCTOBER

**Mr. Ochieng** asked the Minister for Agriculture:-

- (a) how many tonnes of maize was imported into the country between January and October, 2008,
- (b) whether he could provide the details of allocations of the maize per province and;
- (c) how many bags are available in various stores countrywide at the moment.

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

(a) The Government imported 144,254.97 metric tons which is 1,602,833 bags of 90 kilograms of maize between January and October, 2008.

(b) The distribution of maize in tonnes per province as at 14th November, 2008 was: Western - 450 tonnes; Rift Valley - 14,400 tonnes; Nyanza - 7,650 tonnes; North Eastern - 5,400 tonnes; Nairobi- 21,780 tonnes; Coast - 17,760.25 tonnes; Central - 29,369.25 tonnes; Eastern - 34,830 tonnes; Total - 131,639 tonnes.

(c) We have, as at 14th November, 1,332,690 bags of maize currently stored at various depots.

**Mr. Ochieng:** Mr. Speaker, Sir, considering that we are undergoing food shortages, could the Assistant Minister assure us that the fixed amount of bags that are in the stores at the moment will be enough to take us through this hunger period?

**Mr. Speaker:** Mr. Assistant Minister, are the amounts of reserves sufficient to cater for Kenyans who need maize?

**Mr. Ndambuki:** Mr. Speaker, Sir, they are not but we are in the process of making sure that this is increased. The 1.3 million bags we are talking about are for the strategic grain reserve and not for the National Cereals and Produce Board (NCPB) to sell. The commercial maize of NCPB was sold long time ago and they do not have any other extra maize to sell.

**Mr. Njuguna:** Mr. Speaker, Sir, could the Assistant Minister clarify why there is such a huge balance of maize stocks in our stores while Kenyans all over the nation are really suffering?

**Mr. Ndambuki:** Mr. Speaker, Sir, as I said, the strategic grain reserve is held by a trustee and until the trustee approves, the NCPB cannot sell it. However, our Minister presented a paper to the Cabinet and I understand they have approved 700,000 bags to be released to the millers and Kenyans.

**Mr. Were:** Mr. Speaker, Sir, in the Assistant Minister's answer to part "b" of the Question, he has indicated the distribution of maize per province. Could he inform the House what criteria was used because I realise Western Province has only 450 tonnes?

**Mr. Ndambuki:** Mr. Speaker, Sir, it is not that Western Province is not going to get enough maize. The maize we have in Mombasa is going to be transported and the bulk of it will go to Western Province and those other areas. There is a holding capacity requirement of maize per province and that is exactly what is going to happen once all this maize is transported to various depots all over the country.

**Mrs. Shabesh:** Mr. Speaker, Sir, could the Assistant Minister clarify why there are bags stored in the NCPB and why there is a discrepancy in the price that millers were supposed to buy the bags for since they were subsidised by Government?

**Mr. Ndambuki:** Mr. Speaker, Sir, there are two ways of buying this maize. One can buy maize in bulk which is not put in bags. It is being sold for Kshs1,750 but maize which is put in a bag is being sold for 1,910. The difference is because of the bag.

**Mr. Ochieng:** Mr. Speaker, Sir, as a matter of interest, could the Assistant Minister inform us under which criteria the millers have been getting maize from the NCPB for the last three months?

**Mr. Speaker:** I thought that question had been asked and answered already but Mr. Assistant Minister, make an attempt, maybe there is something more you need to say.

**Mr. Ndambuki:** Mr. Speaker, Sir, I would like just to pick on one area. For example, in Eastern Province, the required bags of maize there are supposed to be 310,000. This is based on the study of the NCPB which takes into consideration the historical requirements. That is what they follow to determine what is going to be held in Kibwezi, Moi's Bridge and so on.

**Mr. Speaker:** Next Question by Mr. M. Kamau!

*Question No.309*

HARMONISATION OF KPA/KRA/ICD  
OPERATIONS AT EMBAKASI

**Mr. J.M. Kamau:** Thank you, Mr. Speaker, Sir, for giving me this chance. I have just talked to the Minister concerned and as you are aware, this Question has been on the Order Paper for sometime. When I asked this Question, so many things were going on. I would like to state that it has been overtaken by events because there was a directive given and it looks like there is no problem so far.

**Mr. Speaker:** Hon. Members, the hon. Member confirms that satisfactory action has been taken. So, the matter, is therefore, dealt with. Mr. Minister, you are at liberty to leave.

*(The Minister for Transport  
(Mr. Mwakwere) withdrew  
from the Chamber)*

Next Question by Mr. Mbadi!

*Question No.480*

ERADICATION OF TSETSE FLY IN GWASSI

**Mr. Mbadi** asked the Minister for Livestock Development:-

- (a) whether he is aware that many farmers in both Gwassi East and Ruma locations of Gwassi Constituency lost several heads of livestock as a result of tsetse fly infestation;
- (b) what steps he is taking to eradicate this pest in the region; and,
- (c) when the Government will compensate the affected livestock farmers.

**The Assistant Minister for Livestock Development** (Mr. Duale): Mr. Speaker, Sir, I beg to reply.

(a) I am not aware that farmers in Gwassi East and Ruma locations have lost cattle as a result of tsetse fly infestation. In fact, our field records in the country show that over the last three years, tsetse fly density in the specific area have significantly reduced from 85 per trap by day in 2005 to 0.025 per trap per day in 2007 and currently at 0.01 flies per trap per day.

(b) My Ministry is currently implementing the Pan African Tsetse and Trypanosomiasis Eradication Campaign known as PATEC which was launched in the year 2000 by African Heads of Government. Phase 1 of this project started in 2005 and covers six areas within the Lambwe

Valley which also covers Gwassi Constituency. The impact of this project is that tsetse fly densities have reduced drastically in all the implementation areas in this country.

Further, the community members of Gwassi and the surrounding areas have been trained to make traps and deploy them into their farms to control tsetse flies. Also at the same time, we have provided free insecticides and acaricides to spray and dip the livestock that are found within Gwassi Constituency. In addition, massive vaccination of livestock was carried out free of charge during the months of April and May this year against the tsetse fly.

(c) Whereas there are no factual reported livestock deaths in Gwassi due to specifically tsetse infection, the Government currently has no compensation policy for loss of livestock for any diseases including tsetse.

Thank you, Mr. Speaker, Sir.

**Mr. Mbadi:** Mr. Speaker, Sir, the Assistant Minister has given statistics that probably I might not be able to prove. However, this Question was supposed to be answered yesterday. I remember walking to the Assistant Minister and explained to him that we lost these animals in the year 2002. His Ministry had asked the then Member of Parliament to provide the statistics, which he did. Now, the Assistant Minister is talking about figures of the year 2005. We lost animals in 2002 and those farmers were supposed to be compensated. What happened to the statistics that was provided to the Ministry by my predecessor?

**Mr. Duale:** Mr. Speaker, Sir, the Question that was sent to our Ministry by the Member does not specify the year. It says that livestock was lost in Gwassi East and Ruma locations due to tsetse fly. Therefore, we are looking at the Question as it is. The year 2002 is not specified in the Question. However, if the Member can give us figures---

**Mr. Speaker:** Order, Mr. Assistant Minister! That is evasive! The Question is general and, therefore, covers all periods that tsetse fly may have affected livestock in Gwassi and Ruma locations!

*(Applause)*

If your Ministry keeps records, which I expect that it does, and it called for figures so as to effect compensation, you were provided with those figures. What have you done to effect that compensation?

**Mr. Duale:** Mr. Speaker, Sir, there are no records of deaths of livestock in Gwassi and Ruma locations as per our records. If the Member has the figures---

**Mr. Speaker:** Order Mr. Assistant Minister! That answer, on the face of it, is unsatisfactory!

*(Applause)*

I will, therefore, defer this Question to Wednesday next week! Go and ascertain what records exist in your Ministry and come up with a fuller answer than you are giving!

*(Question deferred)*

*Question No.531*

PAYMENT OF HARDSHIP ALLOWANCE  
TO TEACHERS IN NYATIKE

**Mr. Anyanga** asked the Minister for Education:-

- (a) whether he is aware that Nyatike, Karungu and Mihuru divisions in Nyatike Constituency are classified as Arid and Semi-Arid Lands (ASAL);
- (b) whether he is further aware that teachers in the constituency are not paid hardship allowance; and,
- (c) what the Ministry is doing to urgently implement payment of hardship allowance to teachers in Nyatike Constituency.

**The Assistant Minister for Education** (Prof. Olweny): Mr. Speaker, Sir, I beg to seek the indulgence of the House to give us time until next week on Thursday to bring an answer to this Question. This is because before we give an answer, we have to consult with the Office of the President.

**Mr. Speaker:** Mr. Anyanga, what is your position?

**Mr. Anyanga:** Mr. Speaker, Sir, I agree with the Assistant Minister. However, let him bring a satisfactory answer to this Question.

**Mr. Speaker:** Very well! The Question is deferred to Thursday next week.

*(Question deferred)*

Next Question by Mr. Linturi!

*Question No.411*

REQUIREMENTS FOR REGISTRATION OF  
PRIMARY\SECONDARY SCHOOLS

**Mr. Linturi** asked the Minister for Education:-

- (a) whether he could state the requirements for registration of a primary and secondary school respectively;
- (b) whether he is aware that there are many schools operating without registration and which do not meet the basic registration qualifications; and,
- (c) what he is doing to stop this practice.

**The Assistant Minister for Education** (Prof. Olweny): Mr. Speaker, Sir, I beg to inform the House that the answer I am going to give is a little long. Therefore, you will bear with me. I beg to reply.

- (a) The requirements for registration of a primary or secondary school are as follows:-
  - (i) Duly completed and signed application forms from the institution.
  - (ii) Duly completed and signed application forms from the manager of the institution.
  - (iii) A recent full school inspection report from the DEO's/MEO's or PDE's office, stamped and signed.
  - (iv) A detailed recent public health/sanitary inspection report, stamped and signed.
  - (v) Title deed or allotment letter or a valid lease agreement covering a period of not less than eight years for the land on which the institution is.
  - (vi) Certified copies of professional and academic certificates of all teachers and managers of the institution.
  - (vii) Certified copies of registration certificates of the teachers with TSC.
  - (viii) Supporting DEB minutes or extracts from DEB minutes signed by the secretary and chairman of DEB.
  - (ix) Site/plans/sketches of the institution showing the existing facilities and future

development or extension plans.

(x) A copy of the registration of the institution's business name under the Business Names Act or a certified copy of the registration of the organization as a society or a limited company and copy of Memorandum of Association.

(xi) Charges to defray registration costs as follows:-

(a) For public schools, Kshs1,000, for provisional registration.

(b) For private schools, Kshs10,000 for provisional registration.

(c) For private schools, Kshs5,000 for re-registration and full registration.

(d) If a school belongs to a church or a religious-based organization, provisional registration or re-registration is Kshs4,000.

They are also required to bring a bankers' cheque made to the Permanent Secretary, Ministry of Education. Money or postal order is not accepted. It has to be cash.

(b) I am aware that there are some old schools that have not been re-registered and newly established ones which have not been registered. Some of these schools meet the basic requirements for registration while others do not.

(c) The Ministry has taken the following measures to stop the practice:-

1. Sensitization of stakeholders on the process of registration.

2. We have dispatched a circular from the Ministry to the Provincial Directors of Education, District Education Officers and the Directors of City Education instructing them to ensure that all schools and colleges within their areas of jurisdiction are registered. This was done on 5th September, 2008.

3. Information on registration of schools was made to the public during the Public Service Week and the Nairobi International Show.

4. Survey on the service delivery on the registration of schools is going on in the districts today.

5. We register schools which meet the basic requirements for registration upon receiving recommendations of the District Education Board.

6. We are piloting the e-registration system which will make it faster to have the registration done.

7. The Ministry has employed 334 Senior Quality Assurance and Standards Officers who will help us in ensuring that the registration is done faster.

8. We are making it a policy that complete application of registration of an education institution is processed in less than 28 days instead of it staying for a long time.

**Mr. Linturi:** Mr. Speaker, Sir, I appreciate the effort by the Assistant Minister to answer this Question comprehensively. However, he has brought about the issue of title deeds and allotment letters. I would like the Assistant Minister to tell us specifically what size of land is required for a school to be registered. The unrest we witnessed last term was a result of some schools not having adequate land for children to train. I want---

**Mr. Speaker:** Order, Mr. Linturi! You have already asked your question! What size of land is required for a school to qualify for registration?

**Prof. Olweny:** Well, the school must have sufficient land for building facilities, the playing ground and if it is within the--

*(An hon. Member interjected)*

**Prof. Olweny:** Well, I will give you the minimum because it depends on the land an individual has. But there must be adequate land. Let us say, one acre.

**Mr. Letimalo:** Mr. Speaker, Sir, in his answer, the Assistant Minister has indicated that it

is a requirement for school inspectors to physically check the schools to determine whether they meet the requirements for registration. The problem we have, particularly in newly created districts, is inadequate number of personnel, particularly in the Inspectorate Department. There is lack of transport to enable those officers move round the schools and do the inspections. What is the Ministry doing to ensure that those newly created districts are provided with the resources to ensure that the officers perform their duties effectively?

**Prof. Olweny:** Mr. Speaker, Sir, the Ministry of Education does not create districts. When those districts were created, we expected the Treasury to give the Ministry of Education enough money to facilitate that. If we have the money, we shall employ enough officers to serve those new districts. After all, it is we, the politicians, that forced the President to create new districts for us!

**Mr. Letimalo:** On a point of order, Mr. Speaker, Sir. The Assistant Minister is saying that it is the Ministry of Finance that is supposed to provide resources. Are you telling us that we have to wait until you get funds for the officers to be posted to the newly created districts? Is that how you work as a Ministry?

**Mr. Speaker:** Order, Mr. Letimalo! That, to me, is a question! The Assistant Minister will not respond.

Yes, Rachel?

**Mrs. Shabesh:** Mr. Speaker, Sir, I think the acreage needed to have a primary school is five acres. On that note, I want to ask the Assistant Minister: Since the Ministry is aware that secondary schools, especially in Nairobi, are not enough to absorb the pupils who graduate from primary schools, what is the Ministry doing since there is no land available in Nairobi to expand secondary schools?

**Prof. Olweny:** Well, Mr. Speaker, Sir, that is a challenge to the Ministry. It is true that we do not have enough land for educational institutions in Nairobi and other towns as well. But that is an issue that we, as a Ministry, are finding very difficult to sort out. That is because we do not have land in town. That is the truth!

**Mr. Speaker:** Very well, Mr. Assistant Minister! Last question, Mr. Linturi!

**Mr. Linturi:** Mr. Speaker, Sir, I am really surprised by the manner in which the Assistant Minister is answering this Question.

Mr. Speaker, Sir, in his answer to part (b), the Assistant Minister admits that he is aware that there are schools that are operating without registration. If that is the case, why should the Assistant Minister allow schools to operate without being registered? Is he there to perpetuate the breaking of the law or the guidelines that the Ministry has clearly set out for registration of schools? How many un-registered schools are there, since he has admitted?

**Prof. Olweny:** Mr. Speaker, Sir, I will tell you that when communities start those schools, they do it out of need. The Ministry is dealing with needy communities. They are referred to as "the needy society of Kenya." Once a school has been started, we shall help in facilitating the registration, instead of sending away the young Kenyans who need education!

**Mr. Speaker:** Very well! Except for Question number one by Private Notice, the balance of the Questions are deferred to Tuesday, next week. They will take priority over other Questions that may be due on Tuesday.

*Question No.309*

HARMONIZATION OF KPA/KRA/  
ICD OPERATIONS AT EMBAKASI

*(Question deferred)*

*Question No.523*

REHABILITATION  
OF KIBWEZI/MUTOMO/KITUI ROAD

*(Question deferred)*

*Question No.453*

DESTRUCTION OF WATER PIPES BY  
CONTRACTOR ON MERU/MIKINDURI ROAD

*(Question deferred)*

*Question No.533*

REMUNERATION OF BEACHES  
MANAGEMENT UNIT MEMBERS

*(Question deferred)*

**QUESTION BY PRIVATE NOTICE**

SUSPENSION OF PAYMENT OF GROUND  
RENT IN TEN-MILE COASTAL STRIP

**Mr. Joho:** Mr. Speaker, Sir, I beg to ask the Minister for Lands the following Question by Private Notice.

(a) In view of the General Notice issued by the Minister on 27th May, 2007, regarding suspension of payment of ground rent by owners of houses built in the Ten Mile Coastal Strip, could the Minister clarify whether he authorized the proclamation and subsequent public auction as a consequence of distress of ground rent on house owners?

(b) Has the Minister exhaustively facilitated dialogue between the owners of the land and the houses?

(c) Could the Minister rescind the auction and explain the steps he will take to ensure that the land issues in this region are resolved once and for all?

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua):  
Once again, Mr. Speaker, Sir, we apologise for not having the answer on time.

Mr. Speaker, Sir, on behalf of the Minister for Lands, I beg to reply.

(a) I did not authorise the proclamation and subsequent public auction by M/s Kinyua and Company Auctioneers as a consequence of distress of ground rent on house owners.

(b) A task force on the Ten Mile Coastal Strip was set up in September, 2006, and among its terms of reference, was to find a solution between the landlords and the tenants at will.

(c) I cannot rescind the auction because the land in question is private property. I have formed a Ministerial Committee on Land Issues in Coast Province to come up with the implementation plan of various recommendations made by previous task forces.

**Mr. Joho:** Mr. Speaker, Sir, I realize that the Minister is now saying that the land is private



and yet, when the notice was being given for people within that area not to pay rent, they were not made aware that the Government realizes it is private land and, probably, dues, rent and rate arrears must be paid. Now, those peoples' houses are about to be auctioned. What can the Minister do to ensure that they save those houses from being auctioned, since they are the ones who caused the problem?

**Ms. Karua:** Mr. Speaker, Sir, the best way of saving the land and goods of those tenants from being auctioned is by challenging the distress warrant in a court of law. That is because the real dispute, as I understand it, is the absentee landlords. The people who are actually levying the distress may not, themselves, have a better claim that those occupying the land. So, the best way is to encourage those living in those house to challenge the distress in court. In the meantime, the Minister is looking into the matter, through this task force, which will move with reasonable despatch to ensure that they find permanent solution to absentee landlords within the Coast.

*(Applause)*

**Mr. Speaker:** Last question, Mr. Joho!

**Mr. Joho:** Mr. Speaker, Sir, maybe, the Minister could tell us the timeframe. When is that Committee going to complete the task?

Thank you, Mr. Speaker, Sir.

**Ms. Karua:** Mr. Speaker, Sir, in the circumstances, may I say very soon!

**Mr. Speaker:** Very well! Order, hon. Members! We have two Ministerial Statements by the Minister for Foreign Affairs, which we will take now.

**Mr. Ethuro:** On a point of order, Mr. Speaker, Sir. There were two questions for the Minister for Lands that were--

**Mr. Speaker:** Order, Mr. Ethuro! Where were you here when I gave a communication five minutes ago?

**Mr. Ethuro:** Mr. Speaker, Sir, I was engaged by the Deputy Chief Whip, Mr. Midiwo. Maybe, he can take the blame.

**Mr. Speaker:** Very well! The circumstances are understandable! The balance of the unanswered Questions have been deferred to Tuesday, next week. They will take priority over Questions that may be due on Tuesday!

Proceed, Mr. Wetangula!

## MINISTERIAL STATEMENTS

### ARREST OF SOMALI MEMBER OF PARLIAMENT

**The Minister for Foreign Affairs** (Mr. Wetangula): Thank you, Mr. Speaker, Sir. I have two short Ministerial Statements that were requested by the hon. Member for Yatta, hon. C. Kilonzo.

Mr. Speaker, Sir, in the first one, hon. C. Kilonzo wanted to know the circumstances under which a Member of Parliament from the Somali Transitional National Assembly was arrested at the airport. There was a meeting convened by the Inter-Governmental Authority on Development (IGAD) at Summit level in Nairobi on 27th, 28th and 29th of October, 2008. Among the invitees were Members of Parliament from the Somali Transitional National Assembly. One Member by the name Abdi Ahmed Hagi Farrah arrived at the airport, went through Immigration and when his luggage was scanned through the machines at the Customs, he was found to be in possession of five rounds of ammunition of 7.65 calibre and a magazine. He had neither declared nor did he

show any valid certificate of ownership or possession. He was arrested, detained, arraigned in court and charged under the Civil Aviation Act with possession of prohibited items. I do not know why he was not charged with possession of firearms. He was fined Kshs20,000, which he paid and he was asked to leave the country, which he did.

**Mr. Speaker:** Any clarifications?

**Mr. C. Kilonzo:** None, Mr. Speaker, Sir!

**Mr. Speaker:** The hon. Member is satisfied; please, move on to the next Statement!

PRESENCE OF SOMALI MEMBERS  
OF PARLIAMENT IN KENYA

**The Minister for Foreign Affairs** (Mr. Wetangula): Mr. Speaker, Sir, Mr. C. Kilonzo also wanted to know the circumstances surrounding the presence of Somalia hon. Members in Kenya. As I had said in the first Statement, at this IGAD Summit, members of the Somalia Transitional Federal Parliament were invited to come and join the region in trying to find a way of helping the failed state of Somalia to find a way forward in resolving the endless disputes and conflicts in that country.

Two hundred and seventy eight hon. Members of the Parliament came to Kenya with the assistance of the European Union (EU), which paid their fares. The EU had also undertaken to pay their *per diem* for being in Kenya. After the meeting, the hon. Members declined to leave the country and constantly requested to be allowed to stay in Kenya a little longer. My Ministry and the Government communicated to them, that it was desirable that they go back to their country and face the challenges that face their people. It was necessary that they went back to their Parliament and carried out their legislative duties as directed by the IGAD Summit. To date, over 178 hon. Members of the Somalia Transitional Federal Parliament are still in Kenya.

Last Sunday I met the Somalia President and his hon. Members, and told them that while we welcome them in Kenya, and encourage them to treat it as their second home, as they have always done, it was the feeling of the region and the Kenya Government that their continued presence in Kenya was undesirable and unhelpful to their cause, because they were required to go back to their country. As I speak, they are still in Kenya; they have not gone. We will continue encouraging them to go; if they do not, then there is the alternatives that we can take of suspending their visas, so that they can go back home.

**Mr. Speaker:** Clarifications? Yes, Mr. Konchella!

**Mr. Konchella:** Mr. Speaker, Sir, for the last three years that Kenya has been trying to mediate and support the Somalia Government to get back on its feet, it has always been a problem for the Kenyan community, particularly the business community. They suffer because they say they are not paid. Some businesses close because of the support the Kenya Government gives the Somalis. Could the Minister, in future, ensure that before they hold anything in this Republic, in terms of support for the Somalia Government, which I agree that we must do, that funds are available, so that Kenyans are not inconvenienced and businesses do not close, because of supporting people who seem to be causing constant problems?

**Mrs. Shabesh:** Mr. Speaker, Sir, the conflict in our region emanates a lot from the question of Somalia. The Minister is aware that the countries that surround Somalia are always drawn into the conflict by such cases like what is happening in Kenya today. Is he not able to use the African Union (AU) to mediate in this issue, so that Kenya does not look as if it does not want to host the hon. Members from Somalia? We do not want to start the kind of problems that Djibouti and Eritrea have because of Somalia.

**Mr. Speaker:** Mr. C. Kilonzo!

**Mr. C. Kilonzo:** No, Mr. Speaker, Sir.

**The Minister for Foreign Affairs** (Mr. Wetangula): Mr. Speaker, Sir, on the issue of funds which was raised by Mr. Konchella, the continuing stay of Somali hon. Members in Kenya has nothing to do with funds. Indeed, they are staying in hotels, and I have no doubt they are paying. But what we have said is that there is a real danger of the vacuum they have left back in their country, because there they are a very critical institution; they must go back and do their work.

Kenya will continue under humanitarian law, to which we are a signatory, to host some needy cases of refugees from our neighbours, including Somalia, provided their presence does not compromise our security. Our border with Somalia is closed: It remains closed! It is also important and instructive for me to tell this House that even with the closure of the border, in the last six or seven months, we have had 55,000 Somali nationals registering at the Dadaab Camp as refugees, having walked through the closed border.

So, Kenya, as a country that is a little better off than its neighbours, - this is to the question by Mrs. Shabesh - should carry its responsibility to help others. The IGAD process is carried out by the region on behalf of both the AU and the UN. I think we should be lauded for being magnanimous. We assisted Southern Sudan and the Sudan Government to enter the Comprehensive Peace Accord (CPA). We are the midwives, as it were, of the transitional federal institutions of Somalia, and the difficulties they face notwithstanding, I encourage that Kenyans continue assisting the region because the absence of peace in Somalia remains a major challenge to us. It is our duty to ensure that there is peace there.

Thank you.

### COMMUNICATION FROM THE CHAIR

**Mr. Speaker:** Order, hon. Members! I have two communications to make.

#### RULING ON JUDICIAL REVIEW: ECK CHAIRMAN VERSUS ATTORNEY-GENERAL

First, hon. Members, you will recall that on Wednesday, 12th November, 2008, Mr. Olago, Member for Kisumu Town West, rose on a point of order to bring to the attention of the Chair, Nairobi High Court Judicial Review Petition, No.689 of 2008, Samuel Mutua Kivuitu and 22 others *versus* the Attorney-General. He tabled copies of the pleadings and ruling in the said case. The High Court had on 11th November, 2008, issued an order in the following terms:-

"A conservancy order be issued to restrain the Government of Kenya from taking or commencing any Executive or Legislative action or process to disband or abolish the Electoral Commission of Kenya (ECK) and/or remove its members from office pending the hearing and determination of this application".

Mr. Olago sought a ruling on whether this order amounted to a derogation from the Constitutional principle of separation of powers by the Judiciary. He asserted that the ruling of the High Court contravened Section 30 of the Constitution and amounted to a subjugation of Parliament by the Judiciary. The Chair undertook to give a ruling on Tuesday, 18th November, 2008. However, on 13th November, 2008, this House passed a Motion to adjourn the House until 25th November, 2008. On 25th November, 2008, hon. Olago Aluoch, rose on a point of order and sought to know when the directions and ruling would be issued. The Chair promised to issue the directions and ruling on Thursday, 27th November, 2008, which I hereby do.

Hon. Members, I have now carefully read the pleadings and ruling tabled in the said High Court Judicial Review Petition No.689 of 2008; Samuel Mutua Kivuitu and 22 others *versus* the

Attorney-General. It is clear from a perusal of the pleadings that the National Assembly is not a party to these proceedings. It is also clear that no orders have been made specifically, directed at this House. That notwithstanding, this House has been formally made aware of these proceedings by the tabling by hon. Olago Aluoch of copies of the pleadings and the order made by the Court. Furthermore, I am clear in my mind that a Member of this House is entitled to bring to the attention of the House an order made by a court and seek the directions of the Speaker on what, if any, is the effect of that order on the operations of this House. Let me, therefore, make it clear from the outset, that I am satisfied that the matter has properly been brought to the attention of the House and that the ruling of the Speaker has been properly sought.

Hon. Members, I find it necessary to make some reference to the *Sub Judice* Rule to be found at Standing Order No.74 of our Standing Orders and its application to the present matter. Standing Orders provide that no Member shall refer to any particular matter which is *sub judice* or to any matter which is, in its nature, secret. Briefly stated, the essence of this rule is that this House should not debate any matter awaiting the adjudication of a court. To do so, in a manner that anticipates the decision of the court or expresses a view on the merits and demerits of the matter before the court, will be clearly out of order. In the present case, I am satisfied that the *Sub Judice* Rule does not apply. What is in issue is the effect on this House of an order that has already been made and that is subsisting. For now, the order is a *fait accompli*. I am, therefore, satisfied that the House is properly entitled to know how, if at all, its conduct of business is affected by that order.

Hon. Members, Chapter III of the Constitution enacts Parliament. Section 30 of the Constitution stipulates that the legislative power of the Republic shall vest in the Parliament of Kenya, which shall consist of the President and the National Assembly. Section 46 of the Constitution provides for the exercise of legislative power of Parliament, while Section 47 provides for the manner in which Parliament may alter the Constitution itself. Section 56 of the Constitution provides that the National Assembly may make Standing Orders regulating its procedure, while Section 57 allows for the provision of powers, privileges and immunities of the Assembly and its Committees and Members. Section 12 of the National Assembly Powers and Privileges Act, Chapter 6 of the Laws of Kenya states:-

"Immunity from legal proceeding: No civil or criminal proceedings shall be instituted against any Member for words spoken before or written in a report to the Assembly or a Committee or by reason of any matter or thing brought by him, therein, by petition, Bill, resolution, Motion or otherwise."

Section 12 of the National Assembly Powers and Privileges Act states:-

"No proceedings or decisions of the Assembly or the Committee of Privileges acting in accordance with this Act, shall be questioned in any court."

Chapter II of the Constitution of Kenya, establishes the Executive, which comprises of the President, Prime Minister, Vice-President, Ministers and the Cabinet. Executive powers are also provided for under Chapter II. Chapter IV of the Constitution establishes the Judicature, which includes the High Court, Court of Appeal and other subordinate courts.

Hon. Members, I have recapped the above provisions of the law to emphasize the constitutional basis for the principle of separation of powers. It is now a well-settled principle of Constitutional Law which finds anchor in our Constitution, that Government functions best when its powers are not concentrated in a single authority, but are instead dispersed among different branches. It is a prerequisite for a functioning democracy. The Legislature makes the law, the Executive enforces the law, while the Judiciary interprets the law. Power thus divided, prevents the absolutism of the Executive, the possible anarchy of Parliament or presumption of the Judiciary.

The operation of the principle, both separates and blends powers so that each branch serves as a check and balance on the powers of the other. It ensures the protection of the rule of law and

secures the fundamental rights of the individual. The principle of separation of powers has a superficial simplicity, but is in reality, inherently complex. Each branch of Government must exercise its powers in a fine balancing act, to ensure that it properly and effectively carries out its functions, while at the same time, it does not infringe on the powers and responsibilities of the other branches of Government. Thus, Parliament enacts laws, but the Judiciary can review the constitutionality of such laws legislated if challenged, and can, indeed, declare a law made by this House to be unconstitutional or a nullity. The principle ensures that Parliament, as the representative of the people, cannot be prevented from giving voice to the will of the people. But, it also ensures that the Judiciary can scrutinize the legislation we make after we have made it, to ensure that we have been faithful to the Constitution.

To respond directly to the matters raised by hon. Olago Aluoch, it needs to be well understood that the legislative power of this House, under Section 30 of the Constitution, cannot be fettered by any person or authority outside this House.

Every hon. Member of this House has the unencumbered right, in accordance with the Constitution, to introduce a Bill for debate and enactment by this House. This right to bring a Bill before this House without obstruction by any person or authority is available equally to every hon. Member, whether such hon. Member be a private Member or Government Minister. No person or authority can fetter that right.

In the same vein, if a Bill is introduced by any hon. Member before this House, the House has the right to proceed upon that Bill in the manner provided for under our Constitution and the Standing Orders. I underline again that no person or authority can fetter this right.

Hon. Members, in answer to hon. Olago's question, I rule that the order of the court made in Nairobi High Court Judicial Review Petition No.689 of 2008 - Samuel Mutua Kivuitu and two others versus the Attorney-General - does not and, indeed, cannot prevent Parliament from carrying out its legislative functions.

*(Applause)*

Neither this nor any other order of a court can prevent any Member of Parliament from introducing a Bill before the National Assembly. It has been stated that next only to the privilege and immunity of free speech within the House, the most important privilege of this House is the right of the House to regulate its own procedure, free from intervention by the Executive or the courts.

Hon. Members, the House retains the right to be the sole judge of the lawfulness of its own proceedings. Accordingly, Parliament cannot be stopped or prevented from performing its legislative function. Any person or authority purporting to do so, would be acting in vain.

*(Applause)*

The Speaker of the National Assembly is under duty to protect the constitutional authority and role of Parliament. As your Speaker, I will diligently perform this role and jealously guard the constitutional authority of Parliament.

Thank you.

*(Applause)*

The hon. Members who are at the Bar may come in. Those hon. Members who may wish to come back to the Chamber may also do so. The next Communication from the Chair is also

important.

*(Several hon. Members entered  
into the Chamber)*

MISLEADING MEDIA REPORTS  
ON MEMBERS' FOREIGN TRIPS

**Mr. Speaker:** Hon. Members, you will recall that on Tuesday, 25th November, 2008, the Member for Gem, Mr. Jakoyo Midiwo, rose on a point of order to seek the Chair's clarification concerning Members of Parliament travel abroad on official duties.

The Tenth Parliament, perhaps, unlike other Parliaments, returned about 70 per cent new Members of Parliament who were elected to the House for the first time. Coupled with this is the fact that the new Members of Parliament and, indeed, the re-elected Members of Parliament, took time to settle down due to the state of affairs in the country brought about by the disputed Presidential Election results.

Under the circumstances, sensitisation of Members of Parliament that is normally held between the months of January and March could not materialise until the month of May, this year. The events witnessed early in the year also placed Parliament at the centre-stage in peace seeking and the reconciliation process thus making Parliament to face new challenges, which necessitated hon. Members to acquire requisite capacity to handle the emerging constitutional and legislative matters.

In order to address these challenges, Parliament engaged several development partners and other world bodies in seeking assistance to develop programmes to facilitate reconciliation and to legislate on laws and institutional reforms as envisaged in the National Peace Accord. Parliament received favourable responses from development partners, which organised exposure tours for Members of Parliament.

As hon. Members are aware, the Kenya National Assembly is affiliated to several international parliamentary bodies such as the Commonwealth Parliamentary Association (CPA), CPA-Africa Region, Inter-Parliamentary Union (IPU), Commonwealth Speakers and Presiding Officers' Association (COSPOA), Pan-African Parliament (PAP), African-Caribbean-Pacific and European Joint Parliamentary Assembly, IGAD-IPU, Whips Conference, African Parliamentarians' Network Against Corruption, Amani Forum, Society of Clerks-at-the Table and the Commonwealth Association of Secretary-General's of Parliaments of the IPU, Commonwealth Hansard Editors' Association (CHEA), African Parliamentary Union (APU) and other regional bodies and specialised parliamentary meetings, just to mention a few.

Our Parliament is an active member of these bodies and, therefore, our participation in these international meetings is of paramount importance, not only to the Assembly, but also to the country at large. The dates of these meetings are usually pre-determined and happen to fall between the months of July and November each year hence the trend of expenditure on the Item of Foreign Travel is reflective of this during this part of the financial year.

I will allow the two hon. Members out there to come in.

*(Ms. Mbarire and Mr. Kipkorir  
entered the Chamber)*

Hon. Members, at these functions, Members of Parliament have had the opportunity to meet and interact with delegations from other parliamentary jurisdictions. Indeed, the Kenyan

Parliament has played its reciprocal role in these international bodies by playing host to a number of delegations in the recent past, inclusive of delegations from the United Kingdom, the United States of America, Germany and China.

It was on this basis that Kenya, during the 53rd CPA Conference held in Malaysia in August, 2008, was honoured to host the CPA Annual Conference in the year 2010.

*(Applause)*

Hon. Members, let me now turn to the Committees. Committees are an integral part of the Parliamentary system of

**[Mr. Speaker]**

Government. Since the Eighth Parliament, Committees have played crucial roles in providing a base for oversight of Parliament and also in strengthening the legislative process. About 80 per cent of parliamentary work is conducted through Committees.

In the US Congress and the British House of Commons, substantial resources are set aside to build capacity for hon. Members as most of the business is executed in the Committees. Thus Committees cannot be active in their roles unless they are tuned in the necessary skills, which includes exposure on the running of Committees in other countries, especially in the Commonwealth countries.

Hon. Members, given the mandate of Committees, there has been need to expose hon. Members through the working of Committees in other countries, particularly within the Commonwealth and other parliaments that operate effective parliamentary Committee systems. For instance, the US Congress, the *Bundestag* of Germany, House of Commons of Canada, House of Commons of UK and India. This is to enable hon. Members of Committees discharge their duties effectively. Indeed, as hon. Members are aware, we are in the process of increasing Committees in the proposed new Standing Orders and will include, among others, new Committees that will be designated: Budget Committee, Committee on Delegated Legislation; Committee on Equal Opportunity; Implementation Committee; and House Broadcasting Committee.

Subsequently, Committees have been facilitated to undertake study tours abroad in order to sharpen their skills and enhance their knowledge on Parliamentary Committees. Similarly, the Committees have been encouraged to undertake inspection of local projects.

For us to work effectively, we have engaged development partners such as the State University of New York (SUNY), USAID, Canadian Parliamentary Centre, Westminster Foundation for Democracy, House Democracy Assistance Commission of the US Congress, Friedrich Eibert Foundation, Swedish International Development Agency, Department of Finance for International Development of the UK and the Association of Western Parliamentarians for Africa (AWEPA) to help strengthen Parliament.

Invariably, most trips that have been undertaken by Members of Parliament and staff in the recent past have been co-sponsored between Parliament and these organisations to ensure capacity building. We have also established close working relationships with a number of Parliaments that has resulted in the creation of friendship groups such the Kenya-Japan, Kenya-Korea, Kenya-Kuwait, Kenya-UK and Kenya-China. These groups have extended reciprocal invitation to our hon. Members and Committees to visit their countries. We have also received invitations to attend seminars on Parliamentary democracy, management of Parliament and promotion of human rights. This was the case with the recent Parliamentary delegations to China, Cuba, Sweden, Bulgaria, Switzerland and Greece. These seminars and exposures have come in handy as hon. Members have had first-hand experience with issues touching on promotion of human rights and the working of truth, justice and reconciliation commissions where they have been set up.

Hon. Members may wish to note that we are shortly to deliberate on adoption of the proposed new Standing Orders and that we have embarked on reviewing the structural organisation of Parliament which has led to the establishment of new directorates and key departments such as Parliamentary Broadcasting Unit; Legal Department; Research, Information and Technology Department; and, Budget Office. The Parliamentary Service Commission has approved a strategic plan for Parliament for the year 2008 to 2018. One of the core aspects of this strategic plan is to facilitate hon. Members in their work through capacity building. These changes will inevitably necessitate sensitisation of Members of Parliament on the proposed new Standing Orders and capacity building for staff in specialised areas. There will be exchange programmes and reciprocal study tours for both Members of Parliament and staff. More exposure and training will be required to attune Members of Parliament to their new role in the interrogation of the national Budget process as proposed in the new Standing Orders.

Hon. Members, cognisant of the fact that most Members of Parliament are serving their first term in Parliament and would, therefore, require familiarisation and orientation tours to other Parliaments so as to gain experience and exposure, the Parliamentary Service Commission made provisions in the fiscal year 2008/2009 to cater for foreign travel and subsistence and other transportation costs. A further amount has been budgeted to cover contributions to international organisations such as IPU, CPA, Pan-African Parliament, and the East African Legislative Assembly. May I assure the House and the country as a whole that stringent financial controls are in place and that examination of the trend of expenditure of the Kenya National Assembly Budget indicate that about 32 per cent of the gross estimates as, indeed, approved by this House on behalf of the country has been spent, which is relatively satisfactory as that covers five months of the financial year. Further, I wish to inform you that the Kenya National Assembly is implementing its budget through the Integrated Financial Management Information System (IFMIS) which is based on quarterly ceilings.

Hon. Members, I wish, however, to underscore that Parliament is alive to the current economic difficulties being experienced in the country and the world in general. Parliament will ensure that money voted for the legislature will be used in the most prudent, accountable, and transparent manner and that expenditure levels will be monitored and contained by exercising austerity measures.

Hon. Members, from the foregoing, it is noted that statements appearing in the Press, in the recent past, insinuating that Members of Parliament and Committees are undertaking trips which allegedly are not useful, are baseless and far-fetched. It does not help for a person or a media house to blow issues out of proportion without appreciating the core functions of Parliament. The legislature has undertaken an unprecedented step to champion reforms in this country and has been credited for spearheading the peace negotiations that were held at the Serena Hotel, which resulted in the signing of the peace accord. Only last week, Parliament took a decisive step to show the way forward on the implementation of the two Reports of the Krigeler and Waki Commissions of Inquiry into Post-Election Violence. If Parliament has to remain as a beacon of hope for the expected constitutional and institutional reforms, then Members of Parliament must be fully prepared to handle the challenges through effective capacity building. We shall not shy away from implementation programmes that will make the Legislature an effective and efficient institution. However, I do advise as follows:

1. Travel by Committees and Members of Parliament when the House is in session be minimised to absolutely essential meetings such as attendance of CPA, IPU, Pan-African Parliament, ACP-EU Joint Parliamentary Session whose events are predetermined.

2. Committees whose Bills are pending before the House will be required to submit their reports before requests for travel are considered, which should be aligned with the Committees



workplan and budget.

3. Committee workplans and programmes be synchronized with the budgetary provisions, in particular, the quarterly ceilings as set by the Treasury.

Thank you.

### COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

*[Mr. Speaker left the Chair]*

#### IN THE COMMITTEE

*[The Temporary Deputy Chairman  
(Mr. Ethuro) took the Chair]*

#### THE APPROPRIATION BILL

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, hon, Members! We are in the Committee Stage of the whole House and we will begin with the Appropriation Bill, (Bill No.12).

*(Clause 2 agreed to)*

*(Clause 3 agreed to)*

**The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Trade** (Mr. Omingo): On a point of order, Mr. Temporary Deputy Chairman, Sir. This is for the record, for purposes of posterity. If I heard the Chair right, the heading of what we are discussing now is the Appropriation Bill (Bill No. 21). But you read it as Bill No. 12, if I heard you correctly.

**The Temporary Deputy Chairman** (Mr. Ethuro): Hon. Omingo, you are right. I read it as Bill No. 12, but I meant No. 21 as per the Order Paper. So, the record should reflect, Appropriation Bill, (Bill No. 21).

*(Schedule agreed)*

*(Title agreed to)*

*(Clause 1 agreed to)*

**The Minister for Environment and Mineral Resources** (Mr. Michuki): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of the Appropriation Bill (Bill No. 21) and its approval thereof without amendments.

*(Question proposed)*

*(Question put and agreed to)*

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, hon. Members. We will move

on to the next Bill and the Minister will come later once we are through with the two Bills.

Hon. Members, this is the National Ethnic and Race Relations Commission Bill, (Bill No.9).

THE NATIONAL ETHNIC AND RACE  
RELATIONS COMMISSION BILL

*Clause 2*

**Mrs. Odhiambo-Mabona-Mabona:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT Clause 2 of the Bill be amended -

(a) in the definition of "Commission" by deleting the words "Ethnic and Race Relations Commission" and substituting therefor the words "Cohesion and Integration";

(b) by inserting the following new definitions in their proper alphabetical sequence-  
"discrimination" means discrimination as defined under sections 3 and 4 of this Act;

"employment" means a situation where an employee does his work wholly or partly in Kenya (for a fee or not), for the employer; or where the employee does work for the employer outside Kenya and the employee is ordinarily resident in Kenya, either at the time he applies for the job or at any time during the course of the employment and includes a situation where the employer is working through a representative, assign or where he has sub-contracted the employment;

"establishment" means a place of employment including aboard a ship or aeroplane registered in Kenya but operating internationally;

"ethnic grounds" means any of the following grounds, namely colour, race, religion, nationality or ethnic or national origins;

"ethnic group" means a group of persons defined by references to colour, race, religion or ethnic or national origins, and references to a person's ethnic group refers to any ethnic group to which the person belongs.

*(Question of the amendment proposed)*

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua):  
Mr. Temporary Deputy Chairman, Sir, I support the amendment.

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Question, that the words to be inserted  
in place thereof be inserted,  
put and agreed to)*

*(Clause 2 as amended agreed to)*

*(Clauses 3 and 4 agreed to)*

*Clause 5*

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua):

Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 5 of the Bill be amended by inserting the following new subclause immediately after Subclause (3)-

"(4) In appointing members to the Commission, the principle of gender equity shall apply.

This is to apply the principle of gender equity in the appointment of the Commission.

*(Question of the amendment proposed)*

*(Question, that the words to be inserted  
be inserted, put and agreed to)*

*(Clause 5 as amended agreed to)*

*(Clauses 6, 7, 8, 9, 10, 11  
and 12 agreed to)*

*Clause 13*

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua):

Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 13 of the Bill be amended -

(a) in Subclause (1) by inserting the words "and racial" immediately after the word "ethnic" appearing in the fifth line;

(b) in Subclause (2) by-

(i) Inserting the words "or race" immediately after the word "ethnicity" appearing in paragraph (a);

(ii) inserting the words "or race" immediately after the word "ethnicity" appearing in paragraph (b);

(iii) inserting the words "and racial groups" immediately after the words "communities" appearing in paragraph (d);

(iv) inserting the words "and racial groups" immediately after the word "communities" appearing in paragraph (f);

(v) inserting the words "and racial" immediately after before the word "harmony" appearing in paragraph (g)

(vi) inserting the words "and racial" immediately after the word "ethnic" appearing in paragraph (i);

(vii) inserting the words "or race" immediately after the word "ethnicity" appearing in paragraph (l);

(viii) inserting the words "or race" immediately after the word "ethnic" appearing in paragraph (m);

(ix) inserting the words "or race" immediately after the word "ethnic" appearing in paragraph (n);

(x) inserting the following new paragraph immediately after paragraph (r) -

"(s) issue notices directing persons or institutions involved in actions or conduct

amounting to violation of human rights on the basis of ethnicity or race to stop such actions or conduct within a given period,"

(x) Renumbering the existing paragraph (s) as paragraph (t).

This is mainly to include the word "racial" so that discrimination is outlawed on both ethnic and racial grounds.

*(Question of the amendment proposed)*

**Mrs. Odhiambo-Mabona-Mabona:** Mr. Temporary Deputy Chairman, Sir, whereas I agree with the Minister, if you actually look at the definition, the word "ethnic" is taken to construe racial and other forms of discrimination; therefore, even though the specificity that is given by the Minister is important, it is actually superfluous.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, it had better be superfluous but clear.

*(Question, that the words to be inserted be inserted, put and agreed to)*

*(Clause 13 as amended, put and agreed to)*

#### *Clause 14*

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 14 be amended in Subclause (2) by-

(a) Inserting the following new paragraph immediately after paragraph (a)-

"(b) shall publish the names of persons or institutions whose words or conduct may undermine or have undermined or contributed towards undermining good ethnic relations, or who are involved in ethnic discrimination or the propaganda of ethnic hate;

(b) renumbering the existing paragraphs (b), (c), (d), and (e) as paragraphs (c), (d), (e) and (f) respectively.

Mr. Temporary Deputy Speaker, Sir, this is to enable the Commission to publish names of persons or institutions whose words or conduct may undermine, or have undermined or contributed to undermining, the good ethnic relations and who are involved in discrimination and/or propagating ethnic hatred.

*(Question of the amendment proposed)*

*(Question, that the words to be inserted be inserted, put and agreed to)*

*(Clause 14 as amended agreed to)*

*(Clauses 15, 16, 17, 18, 19, 20, 21,  
22, 23, 24, 25, 26, 27, 28,  
29 and 30 agreed to)*

*Clause 31*

**Mrs. Odhiambo-Mabona-Mabona:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT the Bill be amended by deleting Clause 31 and substituting therefor the following-

Regulations The Minister may, in consultation with the Commission, make regulations for or with respect to-

- (a) prescribing matters in connection with the exercise of powers by the Commission or the Commission Secretary;
- (b) prescribing forms for the purposes of this Act;
- (c) prescribing penalties, not exceeding a fine of fifty thousand shillings or imprisonment for a term of six months, for breaches of the regulations; or
- (d) generally prescribing any matters or things required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

Mr. Temporary Deputy Chairman, Sir, this is because as currently drafted, Clause 31 is limiting in scope, but this new Clause seeks to give the Minister a larger scope in making regulations.

**The Minister for Justice, National Cohesion and Constitutional Affairs (Ms. Karua):** Mr. Temporary Deputy Chairman, Sir, I support the amendment.

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 31 as amended agreed to)*

*(Clause 32 agree to)*

*New Part 1(A)*

**Mrs. Odhiambo-Mabona-Mabona:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting the following new Part 1(A) immediately after Part 1-

**PART 1A - DISCRIMINATION TO WHICH ACT APPLIES  
NEW CLAUSES**

*New Clause 2A*

THAT, the Bill be amended by inserting the following new clauses under New Part

1(a):-

- Ethnic Discrimination 2A (1) For purposes of this Act, a person discriminates against another if-
- (a) on ethnic grounds he treats that other less favourably than he treats or would treat other persons; or
  - (b) he applies to that other a requirement or condition which he applies or would apply equally to persons not of the same ethnic group as that other but-
    - (i) which is such that the proportion of persons of the same ethnic group as that other who can comply with it is considerably smaller than the proportion of persons not of that ethnic group who can comply with it; and,
    - (ii) which he cannot show to be justifiable irrespective of colour, race, nationality or ethnic or national origins of the person to whom it is applied; and,
    - (iii) which is to the detriment of that other because he cannot comply with it.
- (2) A person also discriminates against another if, in any circumstances relevant for the purposes of any provision referred to in sub-section 1(b), he applies to that other a provision, criterion or practice which he applies or would apply equally to persons not of the same race or ethnic or national origins as that other, but-
- (i) which put or would put persons of the same race or ethnic or national origins as that other at a particular disadvantage when compared with other persons,
  - (ii) which puts that other at that disadvantage; and,
  - (iii) which he cannot show to be a proportionate means of achieving a legitimate aim.
- (3) For the purposes of this Act, segregating a person from other persons on ethnic grounds is treating him less favourably than they are treated.
- (4) Sub-section (1) does not apply to treatment of a person by reason of any allegation made by him if it is proven in a court of law that the allegation was false and not made in good faith.

Mr. Temporary Deputy Chairman, Sir, the reason that we are introducing this new Clause is that as per the contributions of hon. Members during the debate, they felt that the Bill needed to be given more substance because as originally crafted, the Bill was only establishing a Commission without giving substance to the law. So, this part basically seeks to give substance to the law, by defining what ethnic discrimination is and by outlawing different segments of ethnic discrimination.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be read a Second Time, proposed)*

*(Question, that the new clause be read a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that the new be added to the Bill, put and agreed to)*

*New Clause 2B*

**Mrs. Odhiambo-Mabona-Mabona:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting new Clause 2B-

Discrimination by way of  
victimization 2B. A person discriminates against

another person by way of victimization in any circumstances relevant for the purposes of this Act if he does any act that is injurious to the well-being and esteem of the person by treating the person victimized less favourably than in those circumstances he treats or would treat other persons, and does so by reason that the person victimized has-

- (a) brought proceedings against the discriminator or any other person under this Act; or
- (b) otherwise done anything under or by reference to this Act in relation to the discriminator or any other person; or
- (c) given evidence or information in connection with proceedings brought by any person against the discriminator or any other person under this Act; or
- (d) alleged that the discriminator or any other person has committed an act which (whether or not the allegation so states) would amount to a contravention of this Act, or by reason that the discriminator knows that the person victimized intends to do any of those things, or suspects that the person victimized has done, or intends to do, any of them.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be read a Second Time, proposed)*

*(Question, that the new clause be read a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that the new clause be added to the Bill, put and agreed to)*

*New Clause 2C*

**Mrs. Odhiambo-Mabona-Mabona:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting new Clause 2C-  
2C. A comparison of the case of a person of a particular ethnic group with that of a person not of that group under Sections 2A and 2B must be such that the relevant circumstances in the one case are the same, or not materially different, in another.

Mr. Temporary Deputy Chairman, Sir, again the purpose is to add substance to the law by outlawing comparison of persons of different ethnic groups.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be read a Second Time, proposed)*

*(Question, that the new clause be read a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that the new clause be added to the Bill, put and agreed to)*

*New Clause 2D*

**Mrs. Odhiambo-Mabona-Mabona:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting the following New Clause under New Part 1(a):-

Harassment on the basis of ethnicity **2D** (1) A person subjects another to harassment on the basis of ethnicity for the purposes of any provision referred to in Section 2B (d) where, on ethnic grounds, he engages in unwanted conduct which has the purpose or effect of-

- (a) violating the other person's dignity, or
  - (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for him.
- (2) Conduct shall be regarded as having the effect specified in paragraph (a) or (b) of subsection (1) only if, having regard to all the circumstances, including in particular the perception of that other



person, it should reasonably be considered as having that effect.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be read a Second Time, proposed)*

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I support the proposal.

*(Question, that the new clause be read a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that the new clause be added to the Bill, put and agreed to)*

*New Part 1B*

## **PART 1 - ACTS, CONDITIONS AND CIRCUMSTANCES DEEMED DISCRIMINATORY**

*New Clause 2E*

**Mrs. Odhiambo-Mabona-Mabona:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the following new clause be inserted under Part 1(B):-

Discrimination in **2E** (1) All establishments shall seek to employment represent the diversity of the people of Kenya in the employment of staff.

(2) No establishment shall have more than one third of its staff from the same ethnic community.

(3) It is unlawful for a person, his representatives or assigns, in relation to employment by him at an establishment, to discriminate against another-

(a) in the arrangements he makes for the purpose of determining who should be offered that employment; or

(b) in the terms he offers him that employment; or

(c) by refusing or deliberately omitting to offer him that employment.

(4) It is unlawful for a person, in the case of a person employed by him at an establishment to discriminate against that employee-

(a) in the terms of employment in which he affords him; or

(b) in the way he affords him access to opportunities for promotion, transfer or training or to any benefits, facilities or services, or by refusing or deliberately omitting to afford him access to them; or

(c) by dismissing him, or subjecting him to any other detriment.

(5) It is unlawful for an employer, his representative or assigns, in

relation to employment by him at an establishment, to subject to harassment a person whom he employs or who has applied to him for employment.

- (6) Except in relation to discrimination falling within Section 2B or discrimination on ethnic grounds subsections (4) and (5) do not apply to employment for the purposes of a private household.
- (7) In this section, reference to the dismissal of a person from employment includes, where the discrimination is on ethnic grounds, reference to-
- (a) the termination of that person's employment by the expiration of any period (including a period expiring by reference to an event or circumstances), not being a termination immediately after which the employment is renewed on the same terms; and
- (b) the termination of that person's employment by an act of his (including the giving of notice) in circumstances such that he is entitled to terminate it without notice by reason of the conduct of the employer.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause  
be read a Second Time, proposed)*

**The Minister for Environment and Mineral Resources** (Mr. Michuki): Mr. Temporary Deputy Chairman, Sir, could the proposer of this amendment explain further because, to say that there is unwanted conduct, you would have to prove that it is unwanted. At the same time, if that unwanted conduct leads to violating that other person's dignity, then in any serious court of law - I am not a lawyer - then he would have to show what dignity that person has. He will have to prove the existence of dignity. Again, that is a very serious matter that is difficult to prove. Could the hon. Member explain to us what it is all about because how do we get to define these words?

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, Mr. Michuki! Where are you reading the words "unwanted"?

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, he is on another clause.

**The Temporary Deputy Chairman** (Mr. Ethuro): Mr. Michuki, we are on New Clause 2E.

**The Minister for Environment and Mineral Resources** (Mr. Michuki): Mr. Temporary Deputy Chairman, Sir, I thought we were on New Clause B.

**The Temporary Deputy Chairman** (Mr. Ethuro): That was determined. Madam Minister, proceed with New Clause 2E!

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I support New Clause 2E but with an amendment. It is important that while seeking to uphold the rights of others, we balance. You cannot force a private establishment to hire as though it were a public enterprise. We are talking of the freedom of individuals who invest to utilise their capital in the way they find fit. There

may also be practical difficulties. You can imagine a farming enterprise in one corner of the country being told that it has to hire people from all ethnic communities even those not living around it. I am therefore supporting this particular clause but with an amendment to indicate that it is all public establishments as opposed to private establishments and also to restrict it to establishments that are funded by the public.

So, I propose that we add the word "public" after the word "or" so that it reads "all

**[The Minister for Justice, National Cohesion and Constitutional Affairs]**

public establishments shall seek to represent the diversity of the people of Kenya".

On Clause 2---

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, Minister! Just to facilitate something. It is just a small procedure. We accept the amendment on the Order Paper first and then we come to your amendment.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua): Okay, Mr. Temporary Deputy Chairman, Sir. I support limited to that alteration.

*(Question, that the new clause be read  
a second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that the new clause be added to  
the Bill, put and agreed to)*

*New Clause 2E(1)*

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I propose an amendment to the New Clause 2E(1) by seeking to insert the word "public" immediately after the word "or" so that it reads "all public establishments shall seek to represent" and in Clause 2E(2) introducing the word "public" immediately after the word "no"; so that it reads "no public establishment".

I would want to persuade my colleague that it is not constitutionally tenable to force private enterprises or individuals to recruit people on the basis of ethnicity. That should be left to public enterprises and I gave an example of impracticability of enforcement. Imagine a tea estate in Kericho being told that it has to have a mix from all over the country whereas that enterprise which maybe a private firm owned by a person is in a location where the labour is only available locally.

I beg to move that amendment.

*(Question of the amendment proposed)*

**Mrs. Odhiambo-Mabona-Mabona:** Mr. Temporary Deputy Chairman, Sir, whereas I have no objection to the proposed amendment, I would just wish to draw our attention to Clause 6 which is on page 472 that states:-

"Except in relation to discrimination falling within Section 2B or discrimination on ethnic grounds, subsections (4) and (5) do not apply to employment for the purposes of a private household".

So, my suggestion is that it would be more appropriate to amend this part and replace

"household" with "enterprise".

I would also wish to draw our attention to Section 2F that provides for exceptions to discriminations in the employment field. That talks about what the hon. Minister is saying; that, therefore, we would not expect a person, from Limuru for instance, to have

farm hands from Suba because it is actually not practicable. So, those exceptions are already catered for in 2F. I do not know if that is acceptable to the Minister.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I would like to persuade the House that it is better we restrict this law to public enterprises and we leave the rest to the market. It would bring complications in application. If we were to require public enterprises to go that way, in any event as the Commission being introduced gets to work, should we find a suitable mode of applying that, these are amendments that can come in later but for now it seems to be transgressing on private constitutional rights.

**Mr. Ruto:** Mr. Temporary Deputy Chairman, Sir, we have noted the concerns of the Minister as the Departmental Committee on Justice and Legal Affairs. We have no objection to her amendment.

**Mrs. Odhiambo-Mabona-Mabona:** On a point of order, Mr. Temporary Deputy Chairman, Sir. I think we are saying the same thing but for the purposes of neatness, either we amend Clause 6 or delete it all together because it is repetitive.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, we have already passed it.

**Mrs. Odhiambo-Mabona-Mabona:** Sorry. Mr. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman** (Mr. Ethuro): Madam Minister, I actually thought that you would make reference to that issue when responding because subclause (6) is part of Clause 2E which she is talking about as shown on page 472 of the Order Paper. The question she is asking is whether the amendments to Clause 2E(1) and (2) do not render subclause (6) irrelevant.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, this would make sense but then we should change it from "private household" to "private enterprise". May I, therefore, propose that we drop the two earlier amendments and amend Clause 2E(6) to read:-

THAT, Clause 2B and Subsections (4) and (5) do not apply to employment for purposes of a private enterprise.

**The Assistant Minister for Medical Services** (Mr. Mungatana): Mr. Temporary Deputy Chairman, Sir, I am of the opinion that, like Mr. Ruto put it, they have no objection on that side. To me, when reading this whole new section, it brings in the concept immediately without having to wait for a lawyer to interpret for you. It is clear that it is public. This other one will have to wait for an advocate to interpret it for you. So, let us leave the earlier amendment as accepted and then make the same correction with this one with regard to saying it is private enterprise.

**The Temporary Deputy Chairman** (Mr. Ethuro): So, just to recap, in Clause 2E(1), we are inserting the word "public" immediately after "all". In Clause 2E(2), we are inserting the word "public" after the word "no" and before the word "establishment" and then in Clause 2E(6), we are deleting the word "household" and substituting it with the word "enterprise".

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua): That is correct, Mr. Temporary Deputy Chairman, Sir.

*(Question, that the words to be left out be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

*(New clause 2E(1) as amended agreed to)*

**The Temporary Deputy Chairman** (Mr. Ethuro): Madam Minister, it will help that every time you have an amendment to an amendment, you do not have to give notice but it is good to give us a small note just by hand.

*New Clause 2F*

**Mrs. Odhiambo-Mabona-Mabona:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

Exceptions to discrimination in the employment as follows:-

THAT, the Bill be amended by inserting immediately after Clause 2E a new clause

field 2F (1) It shall not be deemed discriminatory under this Part where, having regard to the nature of the employment or the context in which it is carried out-

- (a) being of a particular race or particular ethnic or national origin is a genuine and determining occupational requirement;
- (b) it is appropriate to apply that requirement in the particular case and the person to whom that requirement is applied does not meet it;
- (c) being of a particular ethnic group is a genuine occupational qualification and ground for discrimination for a job only where-
  - (i) the job involves cultural establishment in a capacity for which a person of that ethnic groups required for reasons of authenticity; or,
  - (ii) the job involves a work of art, visual image or sequence of visual images for which a person of that ethnic group is required for reasons of authenticity; or,
  - (iii) the holder of the job provides person of that ethnic group with personal services promoting their welfare, and those services can most effectively be provided by a person of that ethnic group.

(2) The provisions of paragraph (c) of subsection (1) do not apply in relation to the filling of a vacancy at a time when the employer already has employees of the ethnic group in question-

- (a) who are capable of carrying out the duties falling within that paragraph; and,
- (b) whom it would be reasonable to employ on those duties; and,
- (c) whose numbers are sufficient to meet the employer's likely requirements in respect of those duties

without undue inconvenience.

Mr. Temporary Deputy Chairman, Sir, basically, this gives exceptions to discrimination in the employment field and talks about the situations the Minister was referring to by enabling private enterprises to employ as expedient.

*(Question of the new clause proposed)*

*(Question, that the new clause be read a Second Time, proposed)*

*(Question, that the new clause be read*

*a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that the new clause be added to the Bill, put and agreed to)*

*New Clause 2G*

**Mrs. Odhiambo-Mabona-Mabona:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting immediately after Clause 2F a new clause as follows:-

Discrimination in membership of organizations	2G(1) It is unlawful for an organization to which this section applies, in case of a person who is not a member of the organization, to discriminate against him-
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- (a) in the terms in which it is prepared to admit him to membership; or,
- (b) by refusing or deliberately omitting to accept his application for membership.

- (2) It is unlawful for an organization to which this section applies, in the case of a person who is a member of the organization, to discriminate against him-

- (a) in the way it affords him access to any benefits, facilities or services, or by refusing or deliberately omitting to afford him access to them; or
- (b) by depriving him of membership, or varying the terms on which he is a member; or
- (c) by subjecting him to any other detriment.

- (3) It is unlawful for an organization to which this section applies, in relation to a person's membership or application for membership of that organization, to subject him to harassment.

- (4) Subsection (1) shall not apply to cases where membership is limited to a given religious persuasion or

profession.

Mr. Temporary Deputy Chairman, Sir, the main purpose of this amendment is to extend the outlawing of discrimination in membership of organization. Again, speaking about the same issues, we have a proviso, especially to professional organisations. However, it outlaws discrimination in membership in general organization.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be read a Second Time, proposed)*

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I do not have any objection to this. However, I would urge hon. Members to consider the many private clubs which are not for public but certain category of

membership and whether this section would in any way offend that. Otherwise, in my view, it is not a harmful clause.

*(Question, that new clause be read  
a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that the new clause be added to  
the Bill, put and agreed to)*

### *Clause 2H*

**Mrs. Odhiambo-Mabona-Mabona:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting immediately after Clause 2G a new clause as follows:-

Discrimination by other agencies 2H(1) Unless as provided under subsection (2), it is unlawful for a qualifying body, licensing authority, planning authority, public authority, employment agency, educational establishment or body offering training, to discriminate against prospective and current clients in the provision of services.

(2) Subsection (1) shall not apply-

(a) where it is proven that the alleged discriminatory act is necessary requirement in the nature of business transaction and there is no alternative way of realizing this goal;

(b) in the case of public authorities-

(i) in relation to any judicial act (whether done by a court of law, tribunal or other person); or

(ii) any act done on the instructions, or on behalf of a person acting in a judicial capacity; or,

(iii) an action undertaken by the Minister for Immigration, under the Immigration Act, in relation to cases relating to immigration and nationality.

Mr. Temporary Deputy Chairman, Sir, basically, this outlaws discrimination by other public agencies.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be  
read a Second Time, proposed)*

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, it is largely intended for public bodies and is quite suitable. I support.

**The Temporary Deputy Chairman** (Mr. Ethuro): Madam Minister, if there is nothing to



add, you can just say it from where you are seated. I will appreciate it. You should do that so that we can faster but you know you always have the right to intervene.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua):  
Okay.

*(Question, that new clause be read  
a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that the new clause be added to  
the Bill, put and agreed to)*

*New Clause 2I*

**Mrs. Odhiambo-Mabona-Mabona:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting immediately after Clause 2H a new clause as follows:-

Discrimination in access to and distribution of public resources	2I(1) Public resources shall be distributed equitably geographically to take into account Kenya's diversity.
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(2) It shall be unlawful for any public officer, while in charge of public resources and without justification, to distribute resources in an ethnically inequitable manner.

(3) Resources shall be deemed to have been distributed in an ethnically inequitable manner when-

(a) the officer fails to use the criteria established under this Act or any other law in allocating resources by regions;

(b) specific regions consistently receive more resources than other regions and there is no clear justification for it;

(c) more resources are allocated to regions that require remedial resources than to areas that require start up resources.

This clause outlaws discrimination in access to and distribution of public resources by making provision for equitable distribution of resources to take into account Kenya's diversity.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be  
read a second Time, proposed)*

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua):  
Mr. Temporary Deputy Chairman, Sir, I wish to oppose this clause and plead with my colleagues to let it be deleted all together.

Mr. Temporary Deputy Chairman, Sir, the reason for this is that, first, I think it is constitutionally untenable. Allocation of resources is a policy decision which is made every year by Parliament on the basis of proposals by the Executive. Whereas it is in good tone because it is looking at equitable distribution of resources, if we bring it down to legislation, we tie the hands of the Executive. If it is a road that is being built on one constituency and there is no similar road in the next because we cannot afford, then we shall be stopped. We would then begin a kilometre of road in every other area, which is not tenable.

Mr. Temporary Deputy Chairman, Sir, like now, when there is famine, if the Government wants to mop up resources for a natural disaster, its hands are tied. The principle of equity in allocation of resources should be a constitutional issue in the Constitution but the statutes should not limit application of policy by the Government.

I beg to oppose.

**The Assistant Minister for Medical Services** (Mr. Mungatana): Mr. Temporary Deputy Chairman, Sir, we have just set up a new Ministry that deals with places in northern Kenya, which include part of my constituency in Garsen. When I am looking at this Clause, in case we have to put up huge projects, that will mean taking some resources from the rest of the country so that we can practise affirmative action or positive discrimination to let us catch up. If someone goes to court and files a case against the Minister for Finance using this Clause, they will get their orders and this will, definitely, make even the Ministry irrelevant! That is because that Ministry is basically supposed to address some of those issues of negative discriminations that we have experienced in the past.

**The Temporary Deputy Chairman** (Mr. Ethuro): You have made your point, Mr. Mungatana!

**The Assistant Minister for Medical Services** (Mr. Mungatana): Thank you, Mr. Temporary Deputy Chairman, Sir.

**Mr. Midiwo:** Mr. Temporary Deputy Chairman, Sir, I wish to support this Clause and plead with my colleagues, Ms. Karua and Mr. Mungatana, to understand this Clause separately or differently, because all it says--- It does not mean that if you are doing a road in Gem, for example, you must similarly do a road in Turkana North! All it is saying is that, as you do roads in Turkana North, please, kindly do some water in Gichugu, for example. But the case which this Clause is meant to cure is the scenario where, years after years, in this country, as we do the Budget, one region gets everything and the rest do not get anything! That is what I think needs to be legislated. I know that in many parts of this world, because of such histories, legislations have been made.

**The Temporary Deputy Chairman** (Mr. Ethuro): Hon. Midiwo, you have made your point! We are at the Committee Stage. So, once you make a statement like that, it is understood by the Chair.

**Mr. Abdikadir:** Mr. Temporary Deputy Chairman, Sir, I beg your indulgence so that we could read through the sections so that hon. Members understand. The clause says: Discrimination in access to and distribution of public resources.

"2I(1) Public resources shall be distributed equitably and geographically, to take into account Kenya's diversity.

(2) It shall be unlawful for any public officer, while in charge of public resources and without justification---

That is very crucial, Mr. Temporary Deputy Chairman, Sir!

---to distribute resources in an ethnically inequitable manner."

In other words, ethnically inequitable and without justification. So, there is already a qualification about justification. And then, Clause 3(a) says:-

"If the officer fails to use the criteria---

Clause 3(b) says:-

"Specific regions consistently receive more resources than other regions and there is no clear justification for it."

In other words, there is justification, including passing the Budget. If there is no justification, yet the distribution is ethnically inequitable, that is the mischief that this particular section is looking at.

Thank you, Mr. Temporary Deputy Chairman, Sir.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I am actually partly persuaded. But then, I wish to support it and propose words to clarify, so that the Executive's hands are not tied in the instances I was indicating.

Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 2I(1) be amended by inserting the words "as far as is practicable" immediately after the word "equitably" and then immediately after the word "diversity", instead of fullstop, add the words "population and poverty index".

So, the whole Clause would read:

"2I(1) Public resources shall be distributed equitably as far as is practicable geographically taking into account Kenya's diversity, population and poverty index."

Those are the indices we are using currently. It would now clarify and give a person the right to agitate before a court, if they had reason to believe that they were being marginalised.

**Mr. Abdikadir:** Could you kindly read the new Clause again?

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua): With the permission of the Chair, I can read it once again.

**The Temporary Deputy Chairman** (Mr. Ethuro): Madam Minister, you will have an opportunity to move that amendment where you can read it again. For now, let us accept the amendment and then you can bring it, since in principle, you are agreeable.

Madam Minister, make your amendment to the amendment!

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua): Thank you, Mr. Temporary Deputy Chairman, Sir. I propose an amendment to the amendment to the new clause 2I(1):-

THAT, Clause 2I(1) be amended by inserting immediately after the word "equitably" the words "as far as is practicable" and immediately after the word "diversity", remove the fullstop and add the additional words "population and poverty index".

So, the whole Clause will read:-

"2I(1) Public resources shall be distributed equitably as far as is practicable geographically to take into account Kenya's diversity, population and poverty index".

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Mr. Ethuro): Mrs. Shabesh, is it acceptable to the Committee?

**Mrs. Shabesh:** Mr. Temporary Deputy Chairman, Sir, the new clause now sits a little awkward. Other measures have been introduced.

**The Temporary Deputy Chairman** (Mr. Ethuro): I guess you can leave that to the drafters. I think the point is made.

*(Question, that the words to be inserted be inserted, put and agreed to)*

*(Question, that the new clause be read a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that the new clause as amended be added to the Bill, put and agreed to)*

*New Clause 2J*

**Mrs. Shebesh:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT the Bill be amended by inserting the following Clause 2J that outlaws discrimination in property ownership, management and disposal:-

"2J(1) It is unlawful for a person, in relation to property in Kenya of which he has power to manage, lease, let or dispose, to discriminate against another-

(a) in the terms in which he offers, lets, manages or disposes to him the property;  
(b) by unjustifiably refusing his proposal for sale or engagement in the person's business, where the same conditions do not apply to others who are not of the same ethnic group as the person;  
(c) in his treatment of him in relation to any list of person in need of property of that description.

(2) It is unlawful for a person, in relation to property managed by him, to discriminate against a person occupying the premises-

(a) in the way he affords him access to any benefits of facilities, or by refusing or deliberately omitting to afford him access to them; or  
(b) by evicting him or subjecting him to any other detriment.

(3) It is unlawful for a person, in relation to such premises as are referred to Subsection (1) or (2), to subject to harassment a person who applies for or, as the case may be, occupies such premises.

Mr. Temporary Deputy Chairman, Sir, the main reason of this clause is basically to enhance integration and cohesion in the country.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be read a Second Time, proposed)*

**The Temporary Deputy Chairman (Mr. Ethuro):** Madam Minister?

*(Ms. Karua approached the Dispatch Box from the Back Benches)*

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I wish--

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, hon. Members! Ministers, you may wish to create space between Dr. Otuoma and Mr. Michuki for Ms. Karua. That does not mean that Mr. Kutuny must leave. Just create space!

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I support this addition, but I would like to suggest that we make it applicable only to public premises, so that we leave private enterprises for the reasons I had given earlier. This is to safeguard the constitutional right of individual private investors.

**The Temporary Deputy Chairman** (Mr. Ethuro): Mr. Mungatana? Except hon. Members should realize that, especially those coming from the Government side, if it is in support, there should be no problem.

**The Assistant Minister for Medical Services** (Mr. Mungatana): No, no, Mr. Temporary Deputy Chairman, Sir! I am raising another issue.

**The Temporary Deputy Chairman** (Mr. Ethuro): What is it, Mr. Mungatana?

**The Assistant Minister for Medical Services** (Mr. Mungatana): Mr. Temporary Deputy Chairman, Sir, it is a good proposal. But, I am wondering, if we want to restrict, especially on the question of property ownership, to citizens alone, so that we do not, again, open too much--- I do not know whether the Chairman of the Departmental Committee on Administration of Justice and Legal Affairs took that into consideration. We are opening it up to everyone. I think something needs to be done there.

**Mr. Abdikadir**: Mr. Temporary Deputy Chairman, Sir, we did not look at this proposal. This is not one of the biggest problems we face in terms of discrimination when certain ethnic, or racial groups, tend to congregate towards certain areas and would wish to prevent any other member of the public from getting tenancy, or lettable space, in those areas. So, essentially the mischief is if you create an estate and you wish to have only members of your ethnic group in that estate, it will be discriminatory and, therefore, unlawful; if somebody else were to seek to be given lettable space and the only reason that person is not getting the lettable space is because they belong to a certain ethnic or racial group--- That is the mischief!

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, that can be cured by qualifying, so that it is not only public property but property meant for the public. If it is an estate, then it is meant for the public. So, at the appropriate stage, I will seek to move that amendment.

**The Temporary Deputy Chairman** (Mr. Ethuro): Very well! If you are in agreement, there will be another stage for that amendment.

**Mrs. Odhiambo-Mabona**: Mr. Temporary Deputy Chairman, Sir, I wish to indicate that we actually did not consider the proposal that Mr. Mungatana has raised, as a Committee. It would be okay with us if he could propose an amendment.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I beg to move an amendment to the New Clause 2J(1) thus:-

**2J(1)** It is unlawful for a person, in relation to public property, or property wholly meant for the public in Kenya, of which he has power to manage, lease, let or dispose, to discriminate against a citizen.

This would restrict this application to citizens only.

As to Clause 2J(2) I beg to move:-

(2) It is unlawful for a person, in relation to public property or property wholly meant for the public managed by him to discriminate against a citizen occupying

premises.

We are restricting this to citizens only.

*(Question of the amendment proposed)*

**Mrs. Odhiambo-Mabona-Mabona:** Mr. Temporary Deputy Chairman, Sir, even though I have no objection in relation to 2J(1), in relation to 2J(2), I think the amendment may not be applicable because then it would mean that if you have a foreigner occupying premises, then you may be allowed to discriminate against them in the manner they access the premises and the benefit, which would be against international law to which Kenya is a party.

**The Temporary Deputy Chairman** (Mr. Ethuro): Madam Minister, do you have any response to Mrs. Odhiambo-Mabona's concern?

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I am willing to drop the word "citizen" and restore the word "person" instead. In this particular one, we are now saying you do not deny access. It could be a hotel--

**The Temporary Deputy Chairman** (Mr. Ethuro): We have heard you, but it is the words for our approval that we are looking for.

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Question, that words to be inserted in place  
thereof be inserted, put and agreed to)*

*(Question, that the new clause be read  
a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that the new clause as amended be  
added to the Bill, put and agreed to)*

*New Clause 2K*

**Mrs. Odhiambo-Mabona-Mabona:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting immediately after clause 2J a new clause as follows:-

Hate Speech 2K(1) A person who-

- (a) uses threatening, abusive or insulting words or behaviour, or displays any written material;
- (b) publishes or distributes written material;
- (c) presents or directs the public performance of a play;
- (d) distributes, shows or plays a recording of visual images; or
- (e) provides, produces or directs a programme which is threatening, abusive, insulting or involves the use of threatening, abusive or insulting words or behaviour commits an offence if such a person intends

thereby to stir up ethnic hatred, or having regard to all the circumstances, ethnic hatred is likely to be stirred up;

(4) Any person who commits an offence under this Section shall be liable to a fine not exceeding Kshs1 million shillings or to imprisonment to a term not exceeding three years or to both such fine and imprisonment.

(4) In this Section, 'ethnic hatred' means hatred against a group of persons defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins.

The reason, of course, is obvious. We saw what hate speech could or can do to a country and it, therefore, seeks to outlaw and punish hate speech.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be read a Second Time, proposed)*

*(Question, that the new clause be read a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that the new clause be added to the Bill, put and agreed to)*

#### *New Clause 2L*

**Mrs Odhiambo-Mabona:** Mr. Temporary Chairman, Sir, I beg to move:-  
THAT, the Bill be amended by inserting immediately after Clause 2K a new clause as follows:-

Exceptions to Part 2L(1) Nothing contained in this Part shall render unlawful any act done-

- (a) in affording persons of a particular ethnic group access to facilities or services to meet the special needs or persons of that group in regard to their education, training or welfare, or any ancillary benefits;
  - (b) by a person on grounds other than race or ethnic or national origins for the benefit of persons who are not Kenyan in affording them access to facilities for education or training or any ancillary benefits, where it appears to him that the persons in question do not intend to remain in Kenya after the period of education and training there.
- (2) Nothing in Part IB shall render unlawful any act done in relation to particular work by a person in or in accordance with-
- (a) affording only persons of a particular racial group access to facilities for training which would help to fit them for that work; or
  - (b) encouraging only persons of a particular ethnic group to take advantage of opportunities for doing that work, where it reasonably appears to

that person that any time within the 12 months immediately preceding the doing of the act-

- (i) there were no persons of that group among those doing that work in Kenya; or
  - (ii) the proportion of persons of that group among those doing that work in Kenya was small in comparison with the proportion of persons of that group among the population of Kenya.
- (3) Where in relation to particular work it reasonably appears to any person that although the condition for the operation of subsection (2) is not met for the whole of Kenya it is met for an area within Kenya, nothing in this Part shall render unlawful any act done by that person in or in connection with-
- (a) affording persons who are of the ethnic group in question, and who appear likely to take up that work in that area, access to facilities for training which could help to fit them for that work; or
  - (b) encouraging persons of that group to take advantage of opportunities in the area for doing that work.
- (4) Subsections (2) and (3) shall not apply to any discrimination which is rendered unlawful by Part 1A.

This seeks exceptions to the discrimination under Part I and basically allows discrimination in certain instances. For instance, if you have a community that has not had access to education, discrimination may be allowed to enable them access education. In other words, there are instances where we can have affirmative action and similar initiatives.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be read a Second Time, proposed)*

*(Question, that the new clause be read a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that the new clause be added to the Bill, put and agreed to)*

*New Clause*

**The Minister for Justice, National Cohesion and Constitutional Affairs (Ms. Karua):**

Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the following new clause be inserted immediately after Clause 31-

Offence of 31A. (1) Any person who utters words intended  
ethnic or racial or calculated to incite feelings of contempt,  
contempt, hatred, hostility, violence or discrimination against any person, group or community on the  
basis of ethnicity or race, commits an offence and shall be liable on



conviction to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding five years, or both.

- (2) A newspaper, radio station or media enterprise that publishes the utterances referred to in subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding one million shillings.

Mr. Temporary Deputy Chairman, Sir, this is to create the offence of ethnic or racial contempt.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be read a Second Time, proposed)*

*(Question, that the new clause be read a Second Time, put and agreed to)*

*(Question, that the new clause be added to the Bill, put and agreed to)*

*New Part*

**Mrs. Odhiambo-Mabona-Mabona:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting the following new Part immediately after Part IV-

#### **PART V - ENFORCEMENT**

*Complaints and compliance procedure*

#### **NEW CLAUSES**

THAT, the following new clauses be inserted under new Part V:-

Complaints33. (1) Any person who claims that another person has contravened a provision of Part IB of this Act in relation to that person may complain to the Commission.

(2) Two or more persons may complain jointly.

(3) A complaint may be made by or against an individual as well as a body of persons whether corporate or unincorporated.

(4) In order to complain to the Commission under this section, it is not necessary for the alleged contravention to relate exclusively to the complainant.Lodging a34(1)

A person shall complain to the Commission

complainby lodging a written complaint to the Commission by hand, facsimile or other electronic transmission or post, setting out the alleged contravention.

(4) The Commission shall notify the respondent in writing of the complaint as soon as practicable after receiving it.

Commission may35(1) If the Commission considers that a

decline to entertain complaint-

some complaints (a) is frivolous, vexatious, misconceived or lacking in substance; or

(b) involves subject matter that would be more appropriately dealt with by a court; or

(c) involves subject matter that has been adequately dealt with by a court; or

(d) relates to an alleged contravention of the Act that took place more than twelve months before the complaint was lodged, the Commission may decline to entertain the complaint by notifying the complainant and the respondent in writing within sixty days after the day the complaint was lodged.

(2) Before declining to entertain a complaint, the Commission may, by written notice, invite any person to-

(a) attend before the Commission, or a member or member of staff of the Commission, for the purpose of discussing the subject matter of the complaint; or

(b) produce any documents specified in the notice.

Application to 36(1) A respondent may apply in writing to the

Commission to have a complaint or any part of it

struck out on the grounds that it is frivolous, vexatious, misconceived or lacking in substance.

(2) An application under sub-section (1) may be made at any time-

(a) before the respondent has been given a notice to attend under section 42

(a) or has otherwise been notified by the Commission or the Commission Secretary of a date for conciliation; or

(b) after the conciliation has been completed but before the complaint is set down for hearing.

(3) The Commission shall begin to hear the application within fourteen days after reconciliation has failed and shall determine it as expeditiously as possible.

Commission may 37(1) The Commission may dismiss a complaint, and

dismiss a complaint shall notify the complainant accordingly, if

the Commission has had no substantive response from the complainant in the period of twelve months following a request by the Commission for a response in relation to the complaint.

(2) A complainant may take no further action under this Act in relation to the subject matter of a complaint under this section.

Minister may 38(1) If the Minister considers that any matter

raises an issue of important public policy, the

Minister may refer the matter to the Commission whether or not a complaint has been lodged or the Commission has considered the complaint or the complaint is in the process of being conciliated.

(2) The Minister shall not be a party to a proceeding in a matter referred to the Commission under sub-section (1) unless joined by the Commission.

Mr. Temporary Deputy Chairman, Sir, the reason is basically to set up a complaints and compliance procedure which is absent in the current Bill.

I will explain as we go clause by clause.

**The Temporary Deputy Chairman** (Mr. Ethuro): So, you are proposing Clauses 33, 34,

35, 36, 37 and 38? If there is an issue you can raise and then we can intervene.

**Mrs. Odhiambo-Mabona:** Mr. Temporary Deputy Chairman, Sir, I just wish to draw your attention to the fact that it is "complaints and compliance procedure" and not "complaints and complaint procedure," as it appears on the Order Paper.

**The Temporary Deputy Chairman** (Mr. Ethuro): Where is it?

**Mrs. Odhiambo-Mabona:** Mr. Temporary Deputy Chairman, Sir, it is on page 478, under "New Part: Part V - Enforcement." Below there, it is written "complaints and complaint procedure." It should be "complaint and compliance procedure."

**The Temporary Deputy Chairman** (Mr. Ethuro): That is noted.

*(Question of the new clauses 33,  
34, 35, 36, 37 and 38 proposed)*

*(New clauses 33, 34, 35, 36,  
37 and 38 read the First Time)*

*(Question, that the new clauses 33,  
34, 35, 36, 37 and 38 be  
read a Second Time, proposed)*

*(Question, that the new clauses 33,  
34, 35, 36, 37 and 38 be read a  
Second Time, put and agreed to)*

*(The new clauses 33, 34, 35, 36, 37  
and 38 were read a Second Time)*

*(Question, that the new clauses 33,  
34, 35, 36, 37 and 38 be added  
to the Bill, put and agreed to)*

#### *New Clause 39*

**Mrs. Odhiambo-Mabona-Mabona:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting the following new clause-

Commission to	39(1) If the Commission considers it reasonably
refer complaints	possible that a complaint may be conciliated
for conciliation	successfully, the Commission shall refer the complaint to the
	Commission Secretary.

(2) Sub-section (1) does not apply to a complaint-

- (a) that the Commission has declined to entertain under section 36 or dismissed under section 37;
- (b) that the Minister has referred to the Commission under section 38; or
- (c) if an application to the Commission by a respondent under section 36 is pending.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be read a Second Time, proposed)*

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I support the clause, but with a slight amendment.

You will note that Clause 39 says:-

"If the Commission considers it reasonably possible that a complaint may be conciliated successfully, the Commission shall refer the complaint to the Commission Secretary".

The power in this Act is to the Commission and the Secretary is an employee of the Commission. So, all I am suggesting that, it should read:-

"The Commission shall refer the complaint--"

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, Madam Minister! That is fair. Once you have made the formulation, we will come to it.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua): It should be to "a Commissioner" and not "the Secretary".

**The Temporary Deputy Chairman** (Mr. Ethuro): Minister, now you can formulate the appropriate words.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Speaker, Sir, I beg to move an amendment to the new Clause 39(1) by deleting it and replacing it with the following new Clause 39(1):-

"If the Commission considers it reasonably possible that a complaint may be conciliated successfully, the Commission shall designate one of its Commissioners to conciliate."

*(Question of the amendment proposed)*

**Mr. Musyimi:** Mr. Temporary Deputy Chairman, Sir, I was just wondering whether we should not talk of "one or more" to give it the liberty that may be required.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I welcome that clarity.

**Mr. Abdikadir:** Mr. Temporary Deputy Chairman, Sir, is the good Minister aware that the Secretary is designated as that officer throughout the following several other amendments? Has she looked at that to see if it is possible?

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I will be proposing similar amendments to Clauses 41, 42 and 43 by deleting the words "Commission Secretary" and replacing with "Commissioner," and it can be one or more Commissioners.

*(Question, that the words to be left out be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

*(Question, that the new clause be read  
a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that the new clause as amended  
be added to the Bill, put and agreed to)*

### *New Clauses*

**Mrs. Odhiambo-Mabona-Mabona:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the following new clauses be inserted under new Part V:-

Where conciliation is inappropriate.40(1) If the Commission does not consider it reasonably possible that a complaint may be conciliated successfully it shall notify the complainant and the respondent in writing.

- (2) Within sixty days after receiving the Commission's notice under Subsection (1), the complainant, by written notice, may require the Commission to set the complaint down for hearing and the Commission shall comply with such notice.
- (3) If the complainant does not notify the Commission under Subsection (2), the Commission may dismiss the complaint and the complainant may take no further action under this Act in relation to the subject matter of the complaint.

Conciliation by the Commission Secretary shall make all reasonable endeavour to conciliate a complaint referred to him or her under section 39 and may, by written notice, require any person to-

- (a) attend before him or her for the purpose of discussing the subject matter of the complaint; or
- (b) produce any documents specified in the notice.

Conciliation Agreement42. If, following conciliation, the parties to the complaint reach agreement with respect to the subject matter of the complaint, the Commission Secretary shall record the agreement and the parties shall be bound to comply with such agreement as if it were an order of the Commission.

Where Commission Secretary fails to conciliate.43(1) If the Commission Secretary does not consider it reasonably possible that a complaint may be conciliated successfully; or has attempted unsuccessfully to conciliate the complaint, he or she shall notify the complainant and the respondent in writing and the Commission.

- (2) Within sixty days after receiving a notice under sub-section (1), the complainant, by written notice, may require the Commission to set down the complaint for hearing.
- (3) If the complainant does not notify the Commission under sub-section (2), the Commission may dismiss the complaint and the

complainant may take no further action under this Act in relation to the subject matter of the complaint.

Special references.44. (1) The Commission shall, in exercising its powers, pay particular attention to and expedite the disposal of special references.

(2) A special reference is-

(a) a matter that has been referred to the Commission by the Minister under section 38; or

(b) a complaint the resolution of which may have significant social, economic or financial effects on the community or a section of the community; or

(c) a complaint the subject matter of which involves issues of a particular complexity and the resolution of which may establish important precedents in the interpretation or application of this Act.

(3) The question of whether or not a matter is a special reference shall be determined by the chairperson.

**The Temporary Deputy Chairman** (Mr. Ethuro): Hon. Members, I just wanted you to be sure that what we are saying is that the amendment in Clause 41 is applicable in all those. If it is different, then we will have to deal with it per clause. So, just confirm that.

**Mr. Abdikadir:** Mr. Temporary Deputy Chairman, Sir, it is important to see exactly how it will apply. So, I propose that we go clause by clause.

**The Assistant Minister for Medical Services** (Mr. Mungatana): Mr. Temporary Deputy Chairman, Sir, the change is just removing the words "Commission Secretary", where we feel that it should be two or more Commissioners, so that we do not have to belabour the same point over and over again.

I was of the opinion that you were correctly leading us.

**Mr. Abdikadir:** Mr. Temporary Deputy Chairman, Sir, the Commission Secretary is one person. The Commissioners are many. So, if you look at, for example, New Clause 41, if you were to replace the "Commission Secretary" with the "Commissioner", "The Commissioner shall make all reasonable endeavour to conciliate---" Which Commissioner? So, it would properly state "the Commissioner referred to in Clause 39 above".

**The Temporary Deputy Chairman** (Mr. Ethuro): Hon. Members, Mr. Abdikadir has a fundamental point. Is that the only exception to what we are saying? So, we deal with it in that way.

Madam Minister, I would suggest you propose the replacement of the words "Commission Secretary" with these other wording, where applicable, but that would have an exception to New Clause 41.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, we would be able to do it specifically. For instance, in New Clause 41, the new words should be "A Commission or Commissioner shall make all reasonable endeavour to conciliate---"

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, hon. Members! For the sake of parliamentary procedure, let us just dispose of New Clause 40 and then we will proceed to the rest.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause*

*be read a Second Time, proposed)*

*(Question, that the word to be left out be left out, put and agreed to)*

*(Question, that the word to be inserted in place thereof be inserted, put and agreed to)*

*(Question, that the new clause be read a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that new clause as amended be added to the Bill, put and agreed to)*

*New Clause 41*

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I would like to amend New Clause 41. I have just benefitted from the advice of the Attorney-General that we just delete the word "Secretary" and leave it to read "The Commission shall---", because the Commission can regulate its own procedure and act through either one or two of its own Commissioners. Therefore, the language will have to change. After the word "referred", we would delete the words "to him or her".

**The Temporary Deputy Chairman** (Mr. Ethuro): Read the whole New Clause 41, considering the changes you have proposed.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, it would read as follows:-

41. The Commission shall make all reasonable endeavour to conciliate a complaint referred to under Section 39 and may, by written notice, require any person to-
- (a) attend before the Commission for the purpose of discussing the subject matter of the complaint; or
  - (b) produce any documents specified in the notice.

**The Temporary Deputy Chairman** (Mr. Ethuro): Very well!

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be read a Second Time proposed)*

*(Question of the amendment proposed)*

*(Question, that the word to be left out be left out, put and agreed to)*

*(Question, that the word to be inserted in place thereof be inserted, put and agreed to)*

*(Question that the new clause be read a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that the new clause as amended be amended be added to the Bill, put and agreed to)*

**Mrs. Odhiambo-Mabona-Mabona:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting immediately after Clause 40 thereof the following New Clause 41:-

Conciliation by  
the Commission

Secretary 41. The Commission shall make all reasonable endeavour to conciliate a complaint referred to under Section 39 and may, by written notice, require any person to-

- (a) attend before the Commission for the purpose of discussing the subject matter of the complaint; or
- (b) produce any documents specified in the notice.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be read a Second Time, proposed)*

*(Question, that the new clause be read a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that new clause be added to the Bill, put and agreed to)*

*New Clause 42*

**Mrs. Odhiambo-Mabona-Mabona:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting immediately after Clause 41 thereof the following New Clause 42:-

Conciliation  
agreements

42. If, following conciliation, the parties to the complaint reach



agreement with respect to the subject matter of the complaint the Commission Secretary shall record the agreement and the parties shall be bound to comply with such agreement as if it were an order of the Commission.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be read a Second Time, proposed)*

**Mr. Abdikadir:** Mr. Temporary Deputy Chairman, Sir, we deleted the word "Secretary" in the earlier clause. The word "Secretary" appears in New Clause 42 as well. How do we go about it?

**The Minister for Justice, National Cohesion and Constitutional Affairs (Ms. Karua):** Mr. Temporary Deputy Chairman, Sir, in the case of New Clause 42, it is only a matter of recording, which is normally done by the Secretaries of such bodies.

*(Question, that the new clause be read a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that new clause be added to the Bill, put and agreed to)*

#### *New Clause 43*

**Mrs. Odhiambo-Mabona-Mabona:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting immediately after Clause 42 thereof the following New Clause 43:-

Where Commission Secretary fails

to conciliate

43. (1) If the Commission Secretary does not consider it reasonably possible that a complaint may be conciliated successfully; or has attempted unsuccessfully to conciliate the complaint, he or she shall notify the complainant and the respondent in writing and the Commission.

(2) Within sixty days after receiving a notice under sub-section (1), the complainant, by written notice, may require the Commission to set down the complaint for hearing.

(3) If the complaint does not notify the Commission under sub-section (2), the Commission may dismiss the complaint and the complainant may take no further action under this Act in relation to the subject matter of the complaint.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause  
be read a Second Time, proposed)*

*(Question, that the new clause be read  
a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that new clause be added  
to the Bill, put and agreed to)*

**The Temporary Deputy Chairman** (Mr. Ethuro): Do you have an amendment, Madam Minister?

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua):  
Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, New Clause 43 be amended by deleting-

- (i) the word "Secretary" appearing immediately after the word "Commission" on line one;
- (ii) the words "he or she" appearing on line three, immediately after the word "complaint", and substituting therefor the word "it".
- (ii) the words "and the Commission" appearing at the end.

To be clear, my proposal will read as follows:-

43. (1) If the Commission does not consider it reasonably possible that a complaint may be conciliated successfully; or has attempted unsuccessfully to conciliate the complaint, it shall notify the complainant and the respondent in writing.

*(Question of the amendment proposed)*

*(Question, that the words to be left  
out be left out, put and agreed to)*

*(Question, that the word to be  
inserted in place thereof be  
inserted, put and agreed to)*

*(New clause as amended agreed to)*

*New Clause 44*

**Mrs. Odhiambo-Mabona-Mabona:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting immediately after Clause 43 thereof the following New Clause 44:-

Special  
references

44.(1) The Commission shall, in exercising its powers, pay

particular attention to and expedite the disposal of special references.

- (2) A special reference is-
- (a) a matter that has been referred to the Commission by the Minister under Section 38; or
  - (b) a complaint the resolution of which may have significant social, economic or financial effects on the community or a section of the community; or
  - (c) a complaint the subject matter of which involves issues of a particular complexity and the resolution of which may establish important precedents in the interpretation or application of this Act.
- (3) The question of whether or not a matter is a special reference shall be determined by the chairperson.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause  
be read a Second Time, proposed)*

*(Question, that the new clause be read  
a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that new clause be added  
to the Bill, put and agreed to)*

#### *New Clause 45*

**Mrs. Odhiambo-Mabona-Mabona:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting immediately after Clause 44 thereof the following New Clause 45:-

Parties to a

Proceeding

45.(1) The complainant and the respondent are parties to a proceeding in respect of a complaint referred to in Section 33.

- (2) The Minister shall not be a party to a proceeding in respect of a complaint referred to the Commission unless it has been joined as a party to the proceedings by the Commission

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause  
be read a Second Time, proposed)*

*(Question, that the new clause be read  
a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that new clause be added  
to the Bill, put and agreed to)*

*New Clause 46*

**Mrs. Odhiambo-Mabona-Mabona:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting immediately after Clause 45

thereof the following New Clause 46:-

Decisions of

the Commission

46. After hearing the evidence and representations that the parties to a complaint desire to adduce or make, the Commission may-

- (a) find the complaint or any part of it proven and issue a compliance notice in the manner provided for under Section 47;
- (b) find the complaint or any part of it proven but decline to take any further action in the matter; or
- (c) find the complaint or any part of it not proven and make an order that the complaint or part of it be dismissed.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be  
read a Second Time, proposed)*

*(Question, that the new clause be read  
a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that new clause be added  
to the Bill, put and agreed to)*

*New Clause 47*

**Mrs. Odhiambo-Mabona-Mabona:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting immediately after Clause 46 thereof the following New Clause 47:-

Compliance

- notices 47.(1) A compliance notice issued under Section 46 shall require the person concerned to-
- (a) comply with the duty concerned; and
  - (b) inform the Commission, within thirty days of the date on which the notice is served, of the steps that the person has taken, or is taking, to comply with the duty.
- (2) A compliance notice may also require the person concerned to furnish the Commission with such other written information as may be reasonably required by the notice in order to verify that the duty has been complied with.
- (3) The notice may specify-
- (a) the time (no later than three months from the date on which the notice is served) at which any information is to be furnished to the Commission;
  - (b) the manner and form in which any such information is to be so furnished.
- (4) A compliance notice shall not require a person to furnish information which the person could not be compelled to furnish in evidence in civil proceedings before the High Court.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be read a Second Time, proposed)*

*(Question, that the new clause be read a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that new clause be added to the Bill, put and agreed to)*

#### *New Clause 48*

**Mrs. Odhiambo-Mabona:** Mr. Temporary Deputy Chairman, Sir, I beg to move:- THAT, the Bill be amended by inserting immediately after Clause 47 thereof the following New Clause 48:-

Enforcement of compliance

- notice 48.(1) The Commission may apply to a Magistrates Court for an order requiring a person to furnish any information required by a compliance notice if-
- (a) the person fails to furnish the information to the Commission in accordance with the notice; or
  - (b) the Commission has reasonable cause to believe that the person does not intend to furnish the information.

- (2) If the Commission considers that a person has not, within three months of the date on which a compliance notice was served on that person, complied with any requirement of the notice for that person to comply with a duty imposed by an order under Section 46, the Commission may apply to a Magistrates Court for an order requiring the person to comply with the requirement of the notice.
- (3) If the court is satisfied that the application is well-founded, it may grant the order in the terms applied for or in more limited terms.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause  
be read a Second Time, proposed)*

*(Question, that the new clause be read  
a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that new clause be added  
to the Bill, put and agreed to)*

*New Clause 49*

**Mrs. Odhiambo-Mabona:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, the Bill be amended by inserting immediately after Clause 48 thereof the following New Clause 49:-

Investigations  
by the  
Commission

- 49.(1) If the Commission becomes aware of circumstances where a contravention of Part 1B of this Act may have occurred (other than an alleged contravention that is the subject of proceedings before the Commission), the Commission may initiate investigation.
- (2) If, in the course of performing its function under Section 13, the Commission becomes aware of circumstances where a contravention of Part 1B of this Act may have occurred, the Commission may, with the consent of the Minister, investigate the matter.
- (3) If, in the course of dealing with a complaint or investigating a matter under sub-section (1) or (2), the Commission becomes aware of circumstances where a contravention of Part 1B of this Act may have occurred (other than the contravention alleged in the complaint or the contravention being investigated),

the Commission may investigate those circumstances.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be read a Second Time, proposed)*

*(Question, that the new clause be read a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that new clause be added to the Bill, put and agreed to)*

#### *New Clause 50*

**Mrs. Odhiambo-Mabona:** Mr. Temporary Deputy Chairman, Sir, I beg to move:- THAT, the Bill be amended by inserting immediately after Clause 49 thereof the following New Clause 50:-

Matters that may

be investigated 50.(1) A matter may be investigated under Section 49(1) or (2) only if-

- (a) it is of such a serious nature that it warrants the investigation; and
  - (b) it concerns a possible contravention in relation to a class or group of persons; and
  - (c) the circumstances are such that the lodging of a complaint by one person only would not be appropriate.
- (2) Any matter may be investigated under Section 49(3).

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be read a Second Time, proposed)*

*(Question, that the new clause be read a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that new clause be added to the Bill, put and agreed to)*

*New Clause 51*

**Mrs. Odhiambo-Mabona:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, the Bill be amended by inserting immediately after Clause 50 thereof the following New Clause 51:-

Conduct of  
investigations

51.(1) The Commission shall conduct an investigation under this Part in the same manner, as nearly as practicable, as if it were a complaint.

(2) If the Commission, after investigation, is satisfied that a person has contravened a provision of Part 1B, the Commission shall make all reasonable endeavour to conciliate the matter.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause  
be read a Second Time, proposed)*

*(Question, that the new clause be read  
a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that new clause be added  
to the Bill, put and agreed to)*

**NEW PART**

**Mrs. Odhiambo-Mabona:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, the Bill be amended by inserting the following new part after the proposed Part (v)

**PART VI-MISCELLANEOUS**

*(Question, that the new part be added  
to the Bill be added, put and agreed to)*

**NEW CLAUSES***New Clause 52*

**Mrs. Odhiambo-Mabona:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, the following new clauses be inserted under the new Part (vi)

52. A person who-

(a) subjects or threatens to subject another person to any detriment because the



other person, or a person associated with the other person-

- (i) has made a complaint against any person;
- (ii) has brought any other proceedings under this Act against any person;
- (iii) has given evidence or information, or produced a document, in connection with any proceedings under this Act;
- (v) has otherwise done anything in accordance with this Act in relation to any person;
- (vi) any person has contravened a provision of Part IB, unless the allegation is false and was not made in good faith; or
- (vii) has refused to do anything that would contravene a provision of Part IB; or

(b) fails to comply with a notice by the Commission Secretary under Section 42;

(c) hinders or obstructs a Commissioner or member of staff of the Commission or the Commission Secretary in the exercise of powers or the performance of functions under this Act;

(d) uses insulting language towards a commissioner or member of staff of the Commission or the Commission Secretary when the member or Commission Secretary is exercising powers or performing functions under this Act; or

(e) gives any information or makes any statement to the Commission, the Commission Secretary or a person acting on behalf of the Commission or the Commission Secretary in the exercise of powers or the performance of functions under this Act which the person knows is false or misleading in any material particular commits an offence and is liable to a fine of two hundred thousand shillings or to imprisonment for a term of twelve months or to both.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be read a Second Time, proposed)*

*(Question, that the new clause be read a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that the new clause be added to the Bill, put and agreed to)*

*New Clause 53(1)*

Secrecy of certain information

53(1) No person shall, either directly or indirectly, make a record of, disclose or communicate to any person any information to which this section applies unless it is necessary to do so for the purposes of, or

in connection with, the performance of a function or duty or the exercise of a power under this Act or any other law.

- (2) Subsection (1) applies to every person who is or has been-
- (a) a member of the Commission;
  - (b) the Commission Secretary;
  - (c) a member of staff of the Commission; and,
  - (d) any other person acting under the authority of the Commission
- (3) This section applies to information concerning the affairs of any person that is or has been obtained by a person to whom this section applies-
- (a) in the course of performing functions or duties or exercising powers under this Act; or
  - (b) as a result of another person performing functions or duties exercising powers under this Act.
- (4) A person who contravenes Subsection (1) commits an offence and is liable to a fine of one hundred thousand shillings or to imprisonment for a term of six months or to both.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be read a Second Time, proposed)*

*(Question, that the new clause be read a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that the new clause be added to the Bill, put and agreed to)*

*New Clause 54(1)*

Protection from personal liability applies 54(1) A person to whom this section is not personally liable for anything done or omitted to be done in good faith in the performance of a function or duty, or the exercise of a power under this Act; or in the reasonable belief that the thing done or omitted to be done was in the performance of a function or duty, or the exercise of a power, under this Act.

- (ii) This section applies to every person who is or has been-
- (a) a member of the Commission;
  - (b) the Commission Secretary;
  - (c) a member of staff of the Commission; and,

(d) any other person acting under the authority of the Commission.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be read a Second Time, proposed)*

*(Question, that the new clause be read a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that the new clause be added to the Bill, put and agreed to)*

#### *New Clause 55*

Effect of vacancy or defect in appointment 55. An act or decision by the Commission is not valid only because of a vacancy ni it in its membership; or a defect or irregularity in the appointment of any member.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be read a Second Time, proposed)*

*(Question, that the new clause be read a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that the new clause be added to the Bill, put and agreed to)*

#### *New Clause 56*

Offences by body of persons

56. In the case of an offence under this Act committed by a body of persons-

- (a) where the body of persons is a body corporate, every director and officer of that body corporate shall also be deemed to be guilty of that offence; and

- (b) where the body of persons is a firm, every partner of that firm shall also be deemed to be guilty of that offence; Provided that no such person shall be deemed to be guilty of an offence under this Act, if the person proves that the offence was committed without the person's knowledge or that the person exercised all due diligence to prevent the commission of the offence.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be read a Second Time, proposed)*

*(Question, that the new clause be read a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that the new clause be added to the Bill, put and agreed to)*

#### *New Clause 57*

<p>Contravention of Act not to create civil criminal liability</p>	<p>57. A contravention of this Act does not create any civil liability liability except to the extent expressly provided by this Act.</p>
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*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be read a Second Time, proposed)*

*(Question, that the new clause be read a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that the new clause be added to the Bill, put and agreed to)*

#### *New Clause 58*

<p>Protection of persons giving evidence and</p>	<p>58. If-</p>
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- information (a) a complaint has been lodge; or  
(b) a document or any information or evidence has been produced or given the Commission or the Commission Secretary under this Act-  
a person is not personally liable for any loss, damage or injury suffered by another person by reason only of the lodging of the complaint or the production or giving of the document, information or evidence.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question that the new clause be read a Second Time, proposed)*

*(Question, that the new clause be read a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that the new clause be added to the Bill, put and agreed to)*

#### *New Clause 59*

Act binds  
Government 59. This Act binds the Government.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be read a Second Time, proposed)*

*(Question, that the new clause be read a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that the new clause be added to the Bill, put and agreed to)*

*(First Schedule agreed to)*

*(Second Schedule agreed to)*

*(Third Schedule agreed to)*

*Title*

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua):  
Mr. Temporary Deputy Chairman, Sir, I wish to withdraw my amendment and support the one proposed by the Committee.

*(Minister's proposed amendment withdrawn)*

*Long Title*

**Mrs. Odhiambo-Mabona:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, the Long Title of the Bill be deleted and replaced with the following-  
A Bill for an Act of Parliament to encourage national cohesion and integration by outlawing discrimination on ethnic grounds; to provide for the establishment, powers and functions of the National Cohesion and Integration Commission, and for connected purposes.

*(Question of the amendment proposed)*

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Question, that the words to be  
inserted in place thereof be  
inserted, put and agreed to)*

*(Long Title as amended agreed to)*

*Clause 1*

**Mrs. Odhiambo-Mabona:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT Clause 1 of the Bill be amended by deleting the words, "Ethnic and Race Relations Commission" and substituting therefor the words "National Cohesion and Integration."

Mr. Temporary Deputy Chairman, Sir, the reason for this is that in human psychology, negative words tend to have more effect. Therefore, instead of using words that have more negative connotation like 'ethnicity', it is better that we have more positive words, that is, "National Cohesion and Integration". That speaks about what the country actually seeks to do.

*(Question of the amendment proposed)*

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua):  
Mr. Temporary Deputy Chairman, Sir, may I welcome that very well-thought-out amendment and, generally, congratulate the Committee. They have done very good work.

I fully support this amendment.

*(Applause)*

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Question, that the words to be  
inserted in place thereof be  
inserted, put and agreed to)*

*(Clause 1 as amended agreed to)*

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of the National Cohesion and Integration Bill and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

## **REPORTS, CONSIDERATION OF REPORTS AND THIRD READINGS**

### **THE APPROPRIATION BILL**

**Mr. Ethuro:** Mr. Temporary Deputy Speaker, Sir, I beg to report that the Committee of the whole House has considered The Appropriation Bill and has approved the same without amendment.

**The Minister for Environment and Mineral Resources** (Mr. Michuki): Mr. Temporary Deputy Speaker, Sir, on behalf of the Ministry of Finance, I beg to move that the House doth agree with Committee in the said Report.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua) seconded.

*(Question proposed)*

*(Question put and agreed to)*

**The Minister for Environment and Mineral Resources** (Mr. Michuki): Mr. Temporary Deputy Speaker, Sir, on behalf of the Ministry of Finance, I beg to move that the Appropriation Bill be now read the Third Time.

**The Minister for Forestry and Wildlife** (Dr. Wekesa) seconded.

*(Question proposed)*

*(Question put and agreed to)*

*(The Bill was accordingly read  
the Third Time and passed)*

THE NATIONAL ETHNIC AND RACE  
RELATIONS COMMISSION BILL

**Mr. Ethuro:** Mr. Temporary Deputy Speaker, Sir, I beg to report that the Committee of the whole House has considered the National Ethnic and Race Relations Commission Bill and approved the same with amendments.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

**The Minister for Forestry and Wildlife** (Dr. Wekesa): seconded.

*(Question proposed)*

*(Question put and agreed to)*

THE NATIONAL COHESION AND  
INTEGRATION BILL

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Speaker, Sir, I beg to move that the National Cohesion and Integration Bill be now read a Third Time.

**The Minister for Forestry and Wildlife** (Dr. Wekesa): seconded.

*(Question proposed)*

**Mr. Ethuro:** Mr. Temporary Deputy Speaker, Sir, I am not contributing as the Chair of the Committee of the whole House. I now speak as a Member of the House and congratulate the Minister and the Committee of the whole House for a job well done. They have tried to examine this very important Bill, especially considering the kind of issues that arose as a result of the elections. I think, given the amended title, that Commission will serve the intended purpose.

Thank you.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua): Thank you, Mr. Temporary Deputy Speaker, Sir. I want to, once again, record my appreciation of the sterling work done by the Committee and to also say that, now that we are using the old title and the amended title interchangeably, for the avoidance of doubt, the new title to the Bill is: The National Cohesion and Integration Bill.

I wish to appreciate the support the House has given to this process.

*(Question put and agreed to)*

*(The Bill was accordingly read  
the Third Time and passed)*



**BILL***Second Reading*

## THE BIOSAFETY BILL

*(The Minister for Higher Education,  
Science and Technology on 25.11.2008)*

*(Resumption of Debate interrupted  
on 25.11.2008)*

**The Assistant Minister for Medical Services** (Mr. Mungatana): Mr. Temporary Deputy Speaker, Sir, I beg to support the Biosafety Bill, 2008. As I said the day before yesterday, there have been some concerns about this Bill by some members of Non-Governmental Organizations (NGOs), raising fears amongst Kenyans that there could be a problem with some of the seeds.

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

**The Temporary Deputy Speaker** (Prof. Kaloki): What is it, Mr. Mututho?

*(Mr. Mututho consulted the Chair)*

**The Assistant Minister for Medical Services** (Mr. Mungatana): Mr. Temporary Deputy Speaker, Sir, I was saying that those NGOs need to learn from other NGOs which are bringing similar issues. They did the same when we were moving the Industrialization Bill in this House. What happened then was that they came to the Minister and to the relevant Departmental Committee and all the matters they raised, the hon. Minister for Industrialization, Mr. Kosgey, took into account. They also came to our Ministry of Medical Services because the issue then in the Industrialization Bill was that the ARVs were going to be made expensive and difficult for the ordinary mwananchi to access. When they came to us, we discussed the matters and raised them with the Minister. They also saw the Minister and he was able to put their concerns into the Bill and the whole issue was sorted out. There is no need for us to worry about this issue. I believe that worrying about issues like those is of no use; they can be sorted out by the same people approaching the Minister and the Committee, because this Bill will go to the relevant Committee of the House, which will be able to discuss it. This is our country and we are building it, not for ourselves but for the future. In the same spirit, we want to urge that the Government and this House to listen. There is need for us to support this modern Bill that will help us move forward from where we are. We need to have this Biosafety Bill. One of the things that we need to agree on as a country is that whenever we have disasters like the current food shortages we always look to our international friends, development partners and other countries which produce excess food.

In fact, recently, the Minister for Agriculture made it clear that grain reserves in this country were not sufficient to sustain the situation that we are in. Our consumption, as we speak today, surpasses what we have in the strategic reserves of this country. The obvious thing that is going to happen is that we are going to import food. We will be looking to countries which are already developed. What those countries have been doing is that they have grown a lot of food in their countries, because they have developed laws such as this one. This law has enabled their researchers to come up with seeds that are able to produce enough food and have, therefore, overtaken us in terms of food production. Now we have to go to them, yet we could have done the same thing in this country.

Mr. Temporary Deputy Speaker, Sir, we have other countries like India, which is now a huge economy. If you look at the clothes we wear you will find that they have a blend of cotton with other products to make them better. The only reason a country like India is able to produce more cotton than we can in this country, or we are able to produce--- It is a tropical country like Kenya, with almost the same climatic conditions like ours. But it has been able to lay down a law such as this one that allows their scientists to develop seeds through research and come out with things that can grow within their tropicalised conditions. So, they have been able to produce more cotton than we can. This is because we are still using the old kind of seeds. We need to agree that time has come for us to embrace technology. For us to embrace this technology, we need to lay a basis, which is this law that we want to pass.

Mr. Temporary Deputy Speaker, Sir, some people have argued that it is very risky to allow food research in this country. If you look at aeroplanes, or auto mobiles, there are very beautiful shapes coming into the country. We have very nice aeroplanes, like the Boeings and others. The research work that is going on in the automotive and aeronautics industries is more risky than that for food area. What I am saying here is that you are more likely to die from a road accident by your beautiful car or a nice aeroplane than you are likely to die from research oriented foods that are coming into this country. We need to set up a basis for food research and the risk is absolutely minimal.

Mr. Temporary Deputy Speaker, Sir, regarding research, I have read in the Press that a very respected group of our own lecturers has come together and issued a statement pleading with this House to pass this law, so that they can have a basis for continuation of the research work that they are doing. I believe, with all my heart, that time has come for us, as a Parliament, to accept that change is with us. Technology is with us and we need to accept that in order for us to function appropriately and feed our population that is growing everyday, we need to embrace new forms of technology that will enable us feed our population. Our country should be the first to embrace this technology, because without it we will not be able to feed the population that we have. Even the people who are worried, I am sure, are not worried about whether or not we should feed the population. As the leaders of this country, we need to agree that without technology we cannot feed the population that we have. Therefore, it is my humble plea that we support the Minister with all our hearts. This House should vote for new and modern technology. We should vote for our researchers to have a basis to increase our food productivity in this country. We should vote for our children and our grandchildren to have a basis to do better research than that which is done outside this country.

Mr. Temporary Deputy Speaker, Sir, having said all those things, I would like us to look at some of the clauses proposed in this Bill. First of all, I congratulate the Minister because for the first time now, there will be an authority to be established under Clause 5 that will be regulating all manner of things that have to do with biosafety in this country. Right now there is no law that regulates biosafety. So, the benefits for such a law are obvious for all of us to see.

Having said that, I would request the Minister to further consider Clause 6, under which he actually proposes to set up a board. We have very many Ministries that will be represented on that board. There will be Permanent Secretaries in those Ministries. Those Permanent Secretaries will, obviously, not be able to sit on this board.

I have always wondered if there is not a way in which we can appoint specific people who will be available for purposes of continuity and functioning of an authority like the property. We have sat in many boards in the past, and has been actually impossible to conduct business with people who come today and tomorrow they are not there. When they travel abroad and come back, they appear at the board and then take everybody else backwards. I believe that the Minister should look into this again. Let him just appoint someone from the Ministry who will be directly

responsible. Some of the Permanent Secretaries will definitely not be available, and it will make the board waste time.

I also want to ask the Minister to be aware that it has now become a tradition of this House, that whenever we are creating boards or authorities, we try to incorporate the principle of gender in the appointments of people to those boards or authorities. Today, we are very happy that the Minister in charge is a lady, but next time it could be someone who will be completely unpersuaded about the question of gender, and the law will allow him to lock out the female gender, which is totally unrepresented in some boards. I would ask that the Minister provides that at least one third of appointees to this authority will be members of either gender.

Mr. Temporary Deputy Speaker, Sir, I like the provision that makes it clear that the proposed authority shall promote awareness and education amongst the general public in matters relating to biosafety.

Mr. Temporary Deputy Speaker, Sir, this is contained in the same Clause 7. I believe this is one the most central issues and things that this Authority must undertake because it is a new law. We would like the Minister to give direction in that area.

Mr. Temporary Deputy Speaker, Sir, I support the fines and penalties that are contained generally in this law. However, in the next Clause 19, there should be heavier penalties. Without tiring Members, because they need to contribute to this Bill, I was going to propose that any fine that will have anything to do with this Authority should be more than Kshs1 million. It should not be less than Kshs1 million because genetically modified organisms can do something that we cannot even imagine of. So, we want a lot of punitive measures that will be taken against people that will go contrary to the provisions of this Act.

We want Kenyans to be very well protected. Maybe we should enhance the fine to be beyond Kshs1 million and there should be provisions for these people to be jailed so that any scientist who tries to operate outside the licensing and legal provisions of the Authority and the clearly well regulated research regime in this country, should be punished heavily.

Mr. Temporary Deputy Speaker, Sir, we have watched in movies countries engaging in genetic wars against each other and some of these things may happen. We used to watch a lot of movies about a black president in the United States of America (USA) and it has come to happen. So, even these wars that have something to do with genetics and genetic organisms, need to be watched very carefully and we must be prepared against them.

So, I propose very heavy penalties. I am sure just like the Departmental Committee on Legal Affairs and Administration did a good job, once this Bill is passed to the Committee, I am sure it will bring better amendments than the ones we are discussing here.

I beg to support.

Thank you.

**The Assistant Minister for Higher Education, Science and Technology (Dr. Mwiria):** Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me an opportunity to support this very important Bill. I want to begin by saying that it should be very clear to those who are opposing it that there is nobody who is saying that you must use bio-technology products or Genetically Modified Organisms (GMOs). The exact point is that we want to prevent usage by putting in place the right regulatory framework. So, really, if you care so much about the damage that technology is likely to bring, then you should be the first one to support any law that would regulate usage of such products. I think that is how we should be looking at it.

*(Applause)*

Mr. Temporary Deputy Speaker, Sir, I would also like to point out that it is unfortunate that

it has taken us so long, for a country that is among the very first to embrace technology, to be in fact, one of those lagging behind in this continent. It is unfortunate because discussions started as early as 1995; even before we got to regimes where we are changing so many things in this country, including the way we do business and how we use science and other reforms to improve the state of our economy, educational institutions, agriculture and all sectors of the society.

Mr. Temporary Deputy Speaker, Sir, as we talk about this, I think we also need to realise that time is not waiting for us. If there are benefits to be reaped, and these are benefits we can also export out of this country, Kenya is so well located in this continent and so strategic in so many other ways, that if we adopt this technology the best way possible and maximize its advantages, we also stand to gain in terms of being able to export to other countries depending on what kind of products we embark on. Egypt and India are already doing that. South Africa is already doing a great deal of that and it is high time Kenya enjoyed this.

Mr. Temporary Deputy Speaker, Sir, it has already been said that we can afford to be luxurious because we are okay. We eat enough. In fact, we eat more than we need. However, there are people who are dying because they cannot get one meal a day. The other day, we were just talking about the crisis of maize flour. Many Kenyans are dying. I saw on television that the UN Habitat was constructing latrines in Kibera. This woman was saying, "why should we have latrines when we do not have food to eat so that we can use the latrine?"

Mr. Temporary Deputy Speaker, Sir, for those people who do not have basics, even the irrelevant concerns about the possibility of health problems related to biotechnology and so on, are completely secondary. There are people who want something to eat before you can even begin to tell them what type of food they should eat. That is beside the point because it is being taken care of by the regulatory programme that will be put in place. We need to think of all sorts of ways. We need to exploit all our potential to ensure that we have left no stone unturned in terms of coming up with policies and programmes that will help us alleviate poverty in this country. There is no doubt that biotechnology has proved that when it comes to the foods that are genetically modified, there is great potential in terms of multiplying the food resources that would be available to our population.

Mr. Temporary Deputy Speaker, Sir, we realise that there are obstacles and we are confronting some of them even in this Parliament. For instance, Members of Parliament want to stop debate. The Non-Government Organizations (NGOs) are also making a lot of noise about these issues. Quite often, this happens without adequate evidence on the point they want to make. Sometimes, it is just done to draw attention and prevent a good idea from being implemented just because you have not been part of it.

There are also issues of donor organizations and politicians---

**Mr. Mututho:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member implying that those hon. Members who are opposing the Bill are doing it because they want to join the noisemakers of the civil society and other places?

**The Assistant Minister for Higher Education, Science and Technology (Dr. Mwiria):** Mr. Temporary Deputy Speaker, Sir, of course, I would never imply that. I am implying that some of those who are opposing the Bill and not everybody. Some people are opposing the Bill genuinely and they have very good grounds for doing so. However, there are others who are just noisemakers. Those are few. I am just saying that we should also caution ourselves against the influence of those kinds of people. As you realise, in this country, it is often the very noisy few who can derail programmes and good initiatives. I am just saying we should be watchful but there are others who give constructive criticism. We welcome that because this can only help us enact a Bill that would satisfy many of the concerns raised.

Mr. Temporary Deputy Speaker, Sir, of course, there is politics in all this. We also need to

look at the divide between the developed countries, which are self-sufficient and developing countries like those in Africa that have to continually be dependent on some countries. One way of fighting that dependence on food from other countries is to ensure that we also embrace technology that will make it possible for us to be independent in terms of being able to carter for our own population, just as we are trying to be independent with regard to other technologies.

Mr. Temporary Deputy Speaker, Sir, we should also be worried about suspicions. There are some of us who are against this Bill just because they are suspicious. Often, we tend to be paranoid. If we are asked to justify the reasons for that paranoia, it is not easy to quantify or for people to come up with evidence to prove that they are indeed making a genuine case. Some of this paranoia has its basis in a number of areas. There are those who complain that this is a business; that the companies that are promoting this idea have business interests to promote. If they are products we are going to embrace, then we are going to buy them.

In fact, they argue that once you buy those products, then you are in a catch-22 kind of a situation. They are such that you cannot multiply. That, up to a certain point, it will be of no use. In this way, countries that would be the first ones - with companies like Monsanto and others - to introduce the product will, therefore, be in a position to ensure that they control how we develop that technology and how even self sufficient we become in the long run.

Mr. Temporary Deputy Speaker, Sir, there are also those who are afraid that, that is a way of reducing Africa's population; that when you use that product, there is something about birth control that is laced in them and that they have serious dangers! Actually, I do not have a problem with that. If it is one of the ways that we can reduce our population because our numbers have become a problem, that is okay! But the only problem I have is that, that is not true! That is not the case! But it is one of the myths that are being used to discourage people from wanting to embrace that technology. That is why, for example, when we were facing famine in 1984, yellow maize from the USA was not acceptable because of the stories that people were told. They did not have the courage to eat yellow maize. They thought there was something sinister about those kind of products. So, that is played a lot in the ears of many people who do not know any better and who can easily be confused by people who are against a good idea.

Mr. Temporary Deputy Speaker, Sir, in the same connection, there are also those who say that those products are detrimental to our health; that if we are not very careful, many of those products will come with all sorts of ailments that will be a burden to our health sector and a burden to the capability of families to support their offsprings. That, essentially, they will weaken our populations not to be able to be independent and productive members of society. Once again, there is no evidence to those claims. Those countries that have embraced that technology and have those products being consumed in those populations, there is no real evidence that you can try to prove that, in fact, people are more susceptible to ill health than those who are attracted to other kinds of foods!

Again, Mr. Temporary Deputy Speaker, Sir, we need to be careful. What is it that you will eat? I mean, how many of us---

**Mr. Mututho:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I would hate to interrupt you---

**The Temporary Deputy Speaker** (Prof. Kaloki): Order, Mr. Mututho! Let the Assistant Minister complete his contribution!

**The Assistant Minister for Higher Education, Science and Technology** (Dr. Mwiria): Thank you, Mr. Temporary Deputy Speaker, Sir. My friend Mututho knows that he will have more of his time-- He will have more than enough time to make his commentary. So, I wonder why you are getting excited about wanting to make those comments well in advance.

**The Temporary Deputy Speaker** (Prof. Kaloki): Order, Dr. Mwiria! Proceed!

**The Assistant Minister for Higher Education, Science and Technology** (Dr. Mwiria): Sorry, Mr. Temporary Deputy Speaker, Sir, I will proceed.

Mr. Temporary Deputy Speaker, Sir, yes, there will be literature, like the literature hon. Mututho is showing, that there is evidence that there will be problems related to health! But I can pick any product or food that we eat and show you evidence of certain types of sicknesses that emanate from that product! So, it is not like this kind of problem is going to be a monopoly of Genetically Modified Organisms (GMOs)! This is a problem of any type of product that we have to consume! Those are risks that go with many of the technologies that we have to be prepared to address!

*(Applause)*

So, Mr. Temporary Deputy Speaker, Sir, we need to be very careful that we do not administer accusations selectively. That we should identify what is most dramatic and what looks more negative and use that to discredit a technology that has even the potential to defeat even some of that evidence that is being presented by detractors.

Mr. Temporary Deputy Speaker, Sir, it is unfortunate that we have taken so long and, up to now, more than ten years after, we still have not enacted this very important Bill! Unfortunately, it is not for lack of sensitisation or, rather, it is not for lack of the fact that the Ministry has made every effort. I know that Dr. Wekesa did his best when he was the Minister for Science and Technology in terms of calling hon. Members for seminars! As a matter of fact, when it used to be one Ministry - the Ministry of Education, Science and Technology, I remember, in 2003, it was one of my first missions to talk about biotechnology while closing a seminar, again, for hon. Members! So, even for hon. Members, a great deal has been done! Only one week ago, there was a seminar. It was a major attempt! In addition to those kinds of meetings, there is literature that has been published. There is even literature that has been done in simple, non-technical language - literature in Kiswahili to summarise the messages so that those who are afraid of the consequences can see it very clearly, because there is nothing to hide. We need to reach those who are not likely to be reached by the more complicated literature that we have access to.

**The Temporary Deputy Speaker** (Dr. Mwiria): Mr. Assistant Minister, you have a balance of 20 minutes.

#### ADJOURNMENT

**The Temporary Deputy Speaker** (Prof. Kaloki): Order, hon. Members! It is now 6.30 p.m., and is time for the interruption of business. The House is, therefore, adjourned until next Tuesday, 2nd December, 2008, at 2.30 p.m.

The House rose at 6.30 p.m.