

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 31st July, 2008

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

PRAYERS

### PAPER LAID

The following Paper was laid on the Table:-

Report of the Departmental Committee on Administration of Justice and Legal Affairs on a regional seminar in Sierra Leone on the role of Parliamentarians in national reconciliation processes in English-speaking Africa.

*(By Mr. Baiya)*

### NOTICE OF MOTION

ADOPTION OF COMMITTEE REPORT ON  
ROLE OF PARLIAMENTARIANS IN  
NATIONAL RECONCILIATION

**Mr. Baiya:** Mr. Speaker, Sir, I beg to give notice of the following Motion:-  
THAT, this House adopts the Report of the Departmental Committee on Administration of Justice and Legal Affairs on the visit to Sierra Leone to attend a seminar on the role of Parliamentarians in national reconciliation processes in English-speaking Africa, laid on the Table of the House on Thursday, 31st, July, 2008.

### QUESTIONS BY PRIVATE NOTICE

ABDUCTION OF PUPIL FROM  
GATHAITHI PRIMARY SCHOOL

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

(a) Is the Minister aware that the constitutional rights of a 14 year old female student at Gathaiti Primary School in Githunguri were grossly violated following her abduction on 27th July, 2007, and illegal confinement until her release on 17th April, 2008, after concerted and sustained protests from the area residents?

(b) Is he also aware that the abduction of the girl was reported at Githunguri Police Station

but no action was taken as the illegal action was perpetrated by known Government officials?

(c) Is the Minister further aware that the above incident is connected to a syndicate involved in trafficking Kenyan children, mainly girls, to countries such as Ireland and the UK?

(d) What immediate steps is the Minister taking to eradicate the syndicate, bring the culprits to book and assist the student in question to return to school?

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

(a) I am not aware.

(b) I am not aware.

(c) I am not aware.

(d) Abduction and trafficking cases involving children are mainly handled by the police in the normal manner. But this issue concerns a case of an innocent girl who was being harassed by the mother and has no connection to abduction and trafficking as it is being claimed. The Government came in to rescue the girl.

**Mr. Baiya:** On a point of order, Mr. Speaker, Sir. I have not received a written answer from the Assistant Minister. However, he has said that he is not aware. Is it not true that this abduction was reported at Githunguri Police Station? The case has even been commented on publicly. This child has even been released on the intervention of the area residents.

**Mr. Lesrima:** Mr. Speaker, Sir, there is a report which reached the Provincial Administration during a leaders' meeting which was also attended by the District Education Boards. In that meeting, a letter was delivered by somebody indicating that this child was in deep trouble to the extent that she was threatening to commit suicide because of harassment from her mother. It was decided to rescue this child through the Provincial Administration after consultations with the Rift Valley Provincial Director of Education. He is aware where such girls are taken to when they have problems with their parents.

The child was taken to the AIC Rescue Centre in Kajiado, which is famous for rescuing girls who are forced into difficult situations such as circumcision and forced marriages. The girl was taken there and she sat for her examinations. After the examinations, the child obtained an opportunity for further education in a school called Bislil Secondary School. She was sponsored by a good samaritan. The mother discovered where her child was and the child was taken back to her grandmother.

**Mr. Imanyara:** Mr. Speaker, Sir, rights abuses, molestation and torture of children are on the increase. As I speak, the Kenya Television Network (KTN) is running a story on a child who is in hospital, threatened with amputation. This is a shame because I believe the Assistant Minister and many Members in this House have received that information through an SMS as I have. Why is the Assistant Minister not intervening to have this child's rights protected? Why is the Minister that is in charge of children affairs allowing this child to suffer such agony and the whole nation is with her at this moment? What steps is the Assistant Minister taking on that issue?

**Mr. Lesrima:** Mr. Speaker, Sir, I am not aware of the case Mr. Imanyara is referring to. But, indeed, we have the Children's Act, 2001, which is supposed to be implemented by the Ministry of Gender, Children and Social Development. Our main role is to assist that Ministry through the Children Advisory Committees in the districts and the locations. We use the chiefs to enforce the law.

**Mr. Baiya:** Mr. Speaker, Sir, the Assistant Minister has accepted that this child was rescued by the Provincial Administration and taken to a school in Kajiado. Was it by the consent of the child or the parents or guardian? Was the due process followed? Was there an order to allow that to be done? There are allegations that this child was mistreated. The rescue was just a cover-up for the violation of her constitutional rights.

**Mr. Lesrima:** Mr. Speaker, Sir, I am aware of the constitutional provisions with regard to the protection of the rights of Kenyans. However, Section 72(1)(f) states that:-

"No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases-

(f) in the case of a person who has not attained the age of 18 years for the purposes of his education or welfare".

Mr. Speaker, Sir, Section 4(2) of the Children's Act, 2001, deals with the survival or the best interest of the child. It says that:-

"All forms and all actions concerning children, whether undertaken by public or private social welfare institutions, by cause of law by administrative authorities such as the Provincial Administration or legislative bodies, the best interest of the child shall be a primary consideration".

Mr. Speaker, Sir, the due process, to some extent, was followed in this case. If this child cannot be accepted back at Bislil Secondary School, we will be very happy since she is not in our hands any more. I would like to advise the hon. Member to get a good school for her nearer home and offer her a scholarship.

The information I have is that the mother of the girl, who is a widow, is not in a position, at the moment, to take care of the child.

OUTBREAK OF *PESTE DES PETITS*  
RUMINANTS IN WAMBA DIVISION

**Mr. Letimalo:** Mr. Speaker, Sir, I beg to ask the Minister for Livestock Development the following Question by Private Notice.

(a) Is the Minister aware of the outbreak of a mysterious disease suspected to be PPR which has killed hundreds of goats at Nkutuk Elmuget area of Lodungokwe Location in Wamba Division?

(b) Could the Minister confirm the number of livestock that have died so far and explain why the livestock officers have failed to respond to the outbreak?

(c) Could the Minister further confirm to the House that he has sufficient vaccines to protect all goats and sheep?

(d) What other urgent measures is the Minister taking to contain the situation and stop further livestock deaths?

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

(a) Yes, I am aware that there is an outbreak of a disease killing sheep and goats in Nkutuk Elmuget area of Lodungokwe Location in Wamba Division and in actual fact, in most of the North Rift districts.

I would like to clarify that the disease is not mysterious. It has been tested in the laboratory and it is a viral disease called Peste Des Petits Ruminants (PPR). It is a viral disease of sheep and goats, which is characterised by high fever and nasal discharge. It is highly contagious through contact and has a high mortality rate. As this House may recall, I had earlier issued a Ministerial Statement on this same disease in this House.

(b) It is estimated that 41,600 goats and sheep have died in Wamba in Samburu East as a result of that disease since its outbreak in June, 2006.

It is important for the House to note that my Ministry has not failed to respond to the outbreak of PPR. In fact, veterinary officers are still trying their best on the ground and they are vaccinating animals with the little doses that are availed to the Ministry through resources not only from the Government, but also non-governmental organisations. Vaccination has taken place in

Lengede, Ngilai, Lodungukwe, Nkaroni and Resin locations of Wamba Division. Vaccination is also happening in other parts of the country where the disease has been detected.

(c) My Ministry does not have sufficient vaccines for all the goats and sheep in the affected regions. As I stated in my Ministerial Statement, 15 million doses are required. I had even indicated the amount in this same House. However, in an attempt to contain the spread of that disease, my Ministry, jointly with FAO-Kenya, recently procured 2.46 million doses for Garissa, Wajir, Moyale, Samburu, Mandera, Turkana, West Pokot, Marakwet, Laikipia, Isiolo, Marsabit, Baringo and East Pokot. That is still a very small amount compared to the 15 million doses that are required.

My Ministry has also set aside Kshs32.5 million to procure another 130,000 doses of vaccines. Further, the United Nations Development Programme (UNDP) has pledged a support of Kshs21 million which will be used to control the disease in Samburu Central, Samburu East, Samburu North, Laikipia East, Laikipia West, Laikipia North and Isiolo. The idea is to create a buffer zone so that the disease, which has started from the northern districts of Turkana and Pokot, does not continue further south. We are doing that with the few doses that we are able to acquire from whatever source that we get.

My Ministry has presented a Memorandum to the Cabinet in order to get an additional funding of Ksh557 million to implement the emergency phase immediately, and another Kshs376 million annually for the next four years in order to eradicate that disease.

(d) My Ministry has declared a quarantine in the affected districts in order to curb further spread of that disease. In addition, 23 veterinary officers have since been posted around the country. Those are the few that we were able to hire initially. We are in the process of hiring more. We are posting technicians and veterinary doctors to areas that did not have.

As I have indicated in my earlier speeches in this House, the Ministry has not employed staff since 1987. We are now hiring doctors to fill the gap that has been created by the long period of non-employment.

**Mr. Letimalo:** Mr. Speaker, Sir, I do appreciate the answer that has been given by the Minister and the actions that he has taken. I would like him to confirm whether any vaccination was done at Nkutuk Elmuget. I, personally, went there and the report I got is that they have not been visited by a veterinary officer. Now that the Minister has admitted that the Ministry does not have sufficient vaccines to contain the disease, and considering that those are pastoralists who live a nomadic life and animals are their livelihood, what mode of surveillance is the Minister putting in place to monitor the possible spread and recurrence of that disease, apart from quarantine?

**Dr. Kuti:** Mr. Speaker, Sir, I have dates and the number of animals that were vaccinated in the hon. Member's area of Nengede, Ngilai, Lodungukwe, Nkaroni and Resin. It was done on 17th, 18th, 19th, 20th and 24th. A total of 16,105 goats, 8,847 sheep were vaccinated in the hon. Member's area. We also did vaccinations in areas like Loruko and Kirisia divisions. With the few staff that we have, we were able to create as much awareness about that disease as possible, and quarantine is the most effective way of preventing the spread of that disease. That is because it is spread through contact. It is 100 percent contagious when a non-infected animal is in contact with an infected animal. Mortality is up to 60 percent after infection. Quarantine is the most effective way, although it has become very difficult because people have to sell their animals. There is a lot of hue and cry from those areas because of the quarantine, but that is the most effective method of prevention as we continue to vaccinate the animals.

**Mr. Abdirahman:** Mr. Speaker, Sir, at least, Dr. Kuti is one of the few Ministers who honestly admit that there exists a problem in some areas. While I appreciate the long term plans with regard to the eradication of the diseases that occur, I would like to know from the Minister what he intends to do--- Those disease outbreaks are very common. When they occur, district and

provincial offices do not have the capacity to deal with the problem. In terms of building their capacity and giving them contingency funds, what plans does the Minister have? People cannot wait for money from the headquarters only.

**Dr. Kuti:** Mr. Speaker, Sir, you will appreciate that increased services will require more resources, be it in terms of personnel, vehicles or tools to work with like vaccines. I had indicated through a Ministerial Statement here that we need 15 million doses in order to create a buffer zone. That disease was discovered in 2006 in Lodwar and Turkana and it has been coming down south. The best way to control it is through vaccination and creation of a buffer zone. That will prevent the spread of the disease southwards. That requires resources. When we had our sector Ministers' meeting in Naivasha where five Ministries came together, I presented that disease as a major emergency. All the sector Ministers accepted that it should be declared an emergency. Unfortunately, at that time, there were changes at the ministerial level in the Ministry of Finance and that made us not move as fast as we had anticipated. We are now discussing and putting our heads together to contain that disease, which is actually a food security issue. As you know, sheep and goats to the pastoralists is like cash in the pockets, while cows are like savings accounts and camels fixed deposit. So, we are losing the cash at hand and that is why we are trying our best.

**Mr. Chachu:** Mr. Speaker, Sir, the Minister has clearly stated that the Ministry is putting more emphasis in quarantine, which is basically restricting the movement of animals and containing them within their own grazing areas. The Ministry is adopting a cheap and, maybe, cost-inefficient strategy to deal with that problem, rather than investing in vaccines which could clearly enable the Ministry to deal with the problem of PPR which is a common problem in northern Kenya. Could the Minister assure this House that he will invest enough funds to vaccinate the animals not only in Samburu, but in the whole of northern Kenya where the mobility of those animals could easily lead to the spread of the disease?

**Dr. Kuti:** Mr. Speaker, Sir, I appreciate the hon. Member's appeal for urgency in this matter. I think I had indicated the urgency of curbing that disease through my Ministerial Statement. I had also indicated that vaccination is the sole way of containing that disease. It is a viral disease and has no treatment. It is also highly contagious with very high mortality. Since 2006 to date, we have lost 2.7 million goats and sheep in this country. That figure does not seem to raise an alarm. It is not raising an alarm because it is only when diseases like Rift Valley Fever kill human beings that we start running up and down. I think we are trying to raise the red flag through the media. We have raised a red flag in form of a Ministerial Statement in this House. The sector Ministries have also raised a red flag. We will ensure that we get enough vaccines. Vaccination is the sole method of containing that disease.

As of now, because we have not got those resources, quarantine is the only way available to us to avoid contact with those animals. That is the only way available to us, as we continue to get as many vaccines as possible. I would like to assure the hon. Member that I will present a Cabinet Memo in the next Cabinet Meeting.

**Mr. Letimalo:** Thank you, Mr. Speaker, Sir. In view of the high number of goats and sheep that have died as a result of this disease and considering that this is the lifeline of the pastoralists--- I really appreciate the concerns the Minister has given to the affected pastoralists. Could the Minister consider compensating the affected families for purposes of restocking?

**Dr. Kuti:** Mr. Speaker, Sir, we are pursuing that avenue. We have put proposals for an emergency because as I had said this is a food security issue. We are presenting it so that some form of restocking could be done because sheep and goats are very important to the people. They are the ones that you can immediately slaughter or sell so as to attend to the home needs, be it food, or be it health issues, or be it school fees or a few needs within the home. It is a very critical issue and we are considering that very much.

Thank you, Mr. Speaker.

### ORAL ANSWERS TO QUESTIONS

#### *Question No.150*

#### CLASSIFICATION OF LOCATIONS IN LOWER NDARAGWA AS ASALS

**Mr. Kioni:** Thank you, Mr. Speaker, Sir. Before I ask Question No.150, I would like to seek the guidance of the Speaker. I have a letter from the Office of the Prime Minister directing that this Question is best answered by the Ministry of Agriculture. The Question on the Order Paper is still directed to the Minister of State for Development of Northern Kenya and Other Arid Lands.

**Mr. Speaker:** Shall we then order that the Question be answered by the appropriate Minister as advised by the Office of the Prime Minister?

So, the Question is deferred until Thursday next week.

*(Question deferred)*

Who is noting this on behalf of the Government?

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua):  
Mr. Speaker, Sir, we will make sure that it is communicated.

**Mr. Speaker:** Next Question, Mr. Yinda!

#### *Question No.243*

#### COMPENSATION FOR PEOPLE AFFECTED BY NEW PORT DEVELOPMENT

**Mr. Yinda** asked the Minister for Transport:-

(a) whether he could disclose when Kenya Ports Authority (KPA) will compensate squatters, land owners and businesses that will be affected and displaced by encroachment of the New Port Development to be funded using the loan advanced by Japan Bank for International Development, stating the total amount of compensation;

(b) whether he could also disclose the amount of money the KPA will spend to acquire land to be used for establishment of the new port through the loan; and,

(c) whether he could confirm to the House what he intends to do to ensure the country does not incur unnecessary expenditure on the project.

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

(a) The Kenya Ports Authority is in the process of completing the necessary legal and other processes to enable the Authority to compensate land owners who will be affected and displaced by the construction of a new access road which will serve the New Port Container Terminal Project to be funded by a Japanese loan. The total compensation package inclusive of administrative costs and contingencies is Kshs500 million. The KPA intends to complete the compensation processes within the next six months.

(b) The New Container Terminal Project will be built on 100 hectares of land to be

reclaimed from the sea pocket west of the existing Kipevu Oil Jetty. No land will, therefore, be acquired for the New Container Terminal.

(c) I can confirm to the House that the Ministry of Transport will monitor the implementation of the project through an Inter-Ministerial Committee comprising the Ministries of Transport, Finance, State Law Office and KPA to ensure that the project is implemented strictly in accordance with the guidelines issued by the Japanese Bank for International Co-operation who are the lenders, and also as provided by the Procurement Act, 2005. This process will ensure that the country does not incur unnecessary expenditure on the project.

**Mr. Yinda:** I wish to thank the Assistant Minister for the answer he has given so far. But my main concern is in the decision to build the second terminal at the site where it is proposed. The reason is that at the moment, the biggest one single problem we have is the off-take of cargo from Mombasa to upcountry. If the second terminal is built exactly at the site where it is proposed, has the Assistant Minister checked and confirmed that the second terminal will be able to handle cargo from that terminal to upcountry with the railway system that is not performing at all?

**Mr. Mwau:** Thank you, Mr. Speaker, Sir. With due respect, that looks like a follow-up question. It is not part of Mr. Yinda's Question "a", "b" or "c". However, I would want to confirm that the location where the new terminal is being build is the most appropriate area because connectivity and free movement of cargo from the current port or terminal will be most effective and the railway line will be able to carry the cargo without hinderance.

**Mr. Mung'aro:** Mr. Speaker, Sir, could the Assistant Minister confirm that, indeed, reclamation is the most economical way of acquiring land while Kenya requires another port along the coast where there is ample land and suitable site, including Lamu?

**Mr. Mwau:** Thank you, Mr. Speaker, Sir. I would like to confirm that land at the Coast is a very precious commodity. The land required for the purpose of construction of a port usually is not readily available. So, the process that has been followed by the Ministry and the KPA for this project is most appropriate.

**Mr. Konchella:** Mr. Speaker, Sir, this is a very important issue to this country. There is congestion of cargo at the Port of Kilindini and the railway is unable to move the cargo. This is depriving the economy of Uganda, Rwanda and Burundi of the goods and services that they are supposed to be provided by this Port. Now, we want to put another equal size of berths within the same area, yet we are not able to move the cargo which is already there. Some years back at the opposite side of Kilindini, Dongo Kundu Project was done and it is complete and it contains three berths which were going to take care of the addition to the Port of Mombasa. On top of that, it was also to create a bypass of Mombasa. This House should not guarantee this loan of Kshs16 billion from the Japan Bank for International Co-operation because it will be used to cause congestion at the port. Could he consider scrapping what they are trying to do and move to Dongo Kundu which was prepared for creating a berth so that the same project can undertake the bypass of Mombasa, thus creating jobs for Kenyans and allow people to put more industry in the place and allow investments to go on?

**Mr. Speaker:** Order, Member for Kilgoris! I know you used to answer Questions and you may be finding it difficult to turn round. Could you ask your question?

*(Laughter)*

**Mr. Konchella:** Mr. Speaker, Sir, could the Assistant Minister consider moving the project to the site that has already been planned and is ready for development?

**Mr. Mwau:** Thank you, Mr. Speaker, Sir. I would like to confirm to the House that currently, the Ministry is creating a new project and is looking into how to develop a new port at

Lamu which will serve Ethiopia and Southern Sudan. Also, the project for Dongo Kundu is in the process. The current situation is that this is the most appropriate place that we must develop so that we can be able to maximise the use of this particular part of the port. We cannot move the berths into any other area.

**Mr. Yinda:** Mr. Speaker, Sir, as much as I would like to thank the Assistant Minister for the answer, my concern still stand. Could he tell the House what immediate plans the Ministry has in ensuring that cargo discharged from the new terminal will be handled efficiently for the destination up-country because, as I speak now, the railway and road systems cannot handle what is being discharged from the existing terminal?

**Mr. Mwau:** Mr. Speaker, Sir, it is a common fact that the Kenyan Government and the Ugandan Government did concession our railway line. That is because we were not moving cargo at the speed that was required. However, that process has not gone very well. The current position is that the Ministry is in the process of setting up a committee that will improve our railway line, so that it can handle the cargo that will be discharged from the current Port. However, it is important for the hon. Member to take cognizance of the fact that the growth of the economy of Kenya, Uganda, Rwanda and Burundi has increased tremendously. So, the process will continue until we are able to transport the cargo that is collected from the Port with expediency.

**Mr. Speaker:** Next Question by Ms. A. Abdalla! Is Ms. A. Abdalla not here? The Questions is dropped.

*Question No.175*

JUSTIFICATION FOR ENTITLEMENT OF  
WIDOWERS TO PENSION FOR LIFE

*(Question dropped)*

*Question No.227*

MEASURES TO CONTROL FLOODING  
BY MALABA AND MALAKISI RIVERS

**Mrs. Odhiambo-Mabona** asked the Minister for Water and Irrigation:-

- (a) whether he is aware that flooding by Malaba and Malakisi rivers has displaced thousands of people in Teso District; and,
- (b) what measures the Ministry is taking to control the flooding and alleviate the suffering of the people displaced by floods during the rainy seasons.

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

First of all, I wish to inform the hon. Member that there is no river called Malaba. However, there is a river called Malakisi. That river actually does not flood the Teso area. It pours its water just before it gets into Uganda.

Therefore, this Question needs to be looked into again because there are no floods in that area.

**Mrs. Odhiambo-Mabona:** Mr. Speaker, Sir, first of all, I want to indicate that I did Geography, and I am very well versed with the geography of this country. River Malaba almost divides Kenya from Uganda. I know that our Minister is one of the most hard working Ministers. I think she is not very well versed with Geography because she was in the Ministry of Health. But now that she is in the Ministry of Water and Irrigation---



**Mr. Speaker:** Order, Mrs. Odhiambo-Mabona! You do not take advantage of Question Time to make a speech or, for that matter, make class against your colleagues. Ask your question!

**Mrs. Odhiambo-Mabona:** Mr. Speaker, Sir, I actually have a written answer that is different from what the Minister has presented before the House. Perhaps, you could guide me especially because I am new.

**Mr. Speaker:** Yes, indeed! I ruled on this matter on Tuesday this week; that answers must be the same all the time.

**Mrs. Ngilu:** Mr. Speaker, Sir, but if you get an answer and it is not right, it is the Minister, really, to give the right answer. I am now giving the right answer; that first and foremost---

**Mr. Speaker:** Order, Madam Minister! On Tuesday this week, the Chair did rule that Ministers are under duty to ensure that the answers they read in the House are the same answers as they will have given to Members who are questioning any matter. If you have a different answer, therefore, Mr. Minister, then you are in breach of that ruling. I will, therefore, have to defer this Question to Tuesday next week for you to bring an answer that will be the same as that, that you will have supplied to the hon. Member!

*(Question deferred)*

**Mr. K. Kilonzo:** On a point of order, Mr. Speaker, Sir. Time and again, Ministers have been coming here with two answers. You have been making that ruling. Yet, they have continued to do that in total disregard of the Chair's ruling. You have always said that your sword of justice is going to be firm and it will cut both sides without fear or favour. My request to you is this: Could you use your sword now to cut the Government side properly?

*(Laughter)*

**Mr. Speaker:** Order, hon. K. Kilonzo! The ruling that I have alluded to was not made in those clear terms and unequivocally until Tuesday this week. Since then, I did emphasize that all Ministers must comply. The Minister for Water and Irrigation was not in the House and she may not have acquainted herself with the record as it is in the HANSARD. So, her circumstances are understandable and I am sure that she will comply, come Tuesday next week.

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

**Mr. Speaker:** No! That matter rests! Mr. Affey!

*Question No.077*

DISAPPEARANCE OF CHIEF

INSPECTOR A.H. ABIKAR

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

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

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

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

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Speaker, Sir, this Question had already been answered, but the Chair ordered me to bring the agreement signed by the officers who were going for peacekeeping.

I was able to get a handbook giving the details of compensation for those who die on duty or those who have disability. I wish to lay on the Table the handbook manual for my friend, Mr. Affey, to peruse. It is titled: Death and Disability Claims Processing for Military and Police Personnel in United Nations Peace Keeping Operations.

Mr. Speaker, Sir, when I go through this booklet, it only talks about death and disability. It does not compensate those who disappear. For death and disability, there is a compensation of up to US\$50,000 based on the American Medical Association Guide to evaluation of permanent impairment. I wish to table the manual here for my friend to peruse.

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

**Mr. Speaker:** Very well. Mr. Affey, do you have any issues?

**Mr. Affey:** Mr. Speaker, Sir, first of all, it is not true that the Question was answered to the satisfaction of the House. Indeed, when the Assistant Minister came to answer this Question, he was not able to satisfy the House and the Chair ruled that he should go back and come with a satisfactory answer.

But be that as it may, we are very concerned about the fate of our officers who go out of this country to perform patriotic duties. That particular police officer, like many others, had given up his life to go out of this country in order to provide peace for our neighbours in this Continent. As you will realise, the hon. Member has not confirmed---

Mr. Speaker, Sir, as you will realise, the hon. Assistant Minister has not confirmed---

**Mr. Speaker:** Order, Mr. Affey! Ask your question! Do not take this opportunity to make a speech!

**Mr. Affey:** Mr. Speaker, Sir, as you realise the hon. Assistant Minister has not confirmed whether Mr. Bikari is dead or alive. That is the first point that we wanted to know.

**Mr. Speaker:** Mr. Assistant Minister, can you answer that question? Confirm whether or not that man is dead.

**Mr. Ojode:** Mr. Speaker, Sir, I think we have to be honest with one another. This Question was answered satisfactorily. The only issue that was remaining was the fact that I did not have the agreement signed by those who are leaving for peace keeping missions.

Mr. Speaker, Sir, I was ordered by the Chair to go and check if there is any agreement which talked about compensation.

**Mr. Speaker:** Order, Mr. Assistant Minister! Are you able to answer Mr. Affey's question, whether or not that Kenyan is dead?

**Mr. Ojode:** Mr. Speaker, Sir, I cannot declare this fellow as dead because he disappeared and our team is investigating where he disappeared to. I can only declare him dead after seven years. That is what the law states.

**Mr. Speaker:** Very well! That is a sensible answer and that is what you should have said.

**Mr. Abdirahman:** On a point of order, Mr. Speaker, Sir. The Assistant Minister is providing the list of those who died and were compensated instead of giving a substantive answer to explain the whereabouts of this gentleman who has been missing for the last three years. Is the Assistant Minister in order?

**Mr. Speaker:** Order, Mr. Abdirahman! The Assistant Minister has given clarification and answer which in my view and in accordance with the law, is clear. If a person disappears, you do not raise the matter by way of a court inquiry until after the seventh year when that person, in law,

will be presumed as having died. That is the legal position.

Mr. Abdirahman, the matter must rest there! That is the law.

**Mr. Imanyara:** Mr. Speaker, Sir, what you have given is the law of Kenya, could the Assistant Minister assure us that the United Nations law is the same as the law of Kenya?

*(Laughter)*

Mr. Speaker, Sir, I am aware that the period that lapses before the United Nations personnel assumes the death of a person is less than seven years. Could the Assistant Minister tell us the United Nations time limit?

**Mr. Ojode:** Mr. Speaker, Sir, I thought I am being guided by the laws of Kenya. I am in Kenya and I am guided by the laws of Kenya. I will only declare this person dead after seven years.

That notwithstanding, on humanitarian grounds, I have directed that the family of this gentleman must continue staying in a house in the police compound. That is the only thing I can do. My hands are tied!

Mr. Speaker, Sir, the hon. Members can bring an amendment to the law to change the time frame from seven years to one year, six months or four months. But so far, my hands are tied!

*(Laughter)*

**Mr. Speaker:** Mr. Imanyara, in my view, that really must rest the matter. That is a reasonable answer.

Last question, Mr. Affey!

**Mr. Affey:** Mr. Speaker, Sir, you will agree with me that this is a very desperate case. This is a case of a Kenyan who went out on a patriotic duty for this country. The Assistant Minister said this Kenyan "deserted" duty. Desertion is an act of indiscipline---

**Mr. Speaker:** Order, Mr. Affey! The Assistant Minister did not say he has "deserted", he said he has "disappeared". That is what I heard.

**Mr. Affey:** Mr. Speaker, Sir, the written answer I have says "desertion" not "disappearance". This is the answer. Desertion is an act of indiscipline. This Kenyan has gone out to work for this country. How can he disappear in Liberia? It is not sensible!

**Mr. Speaker:** Mr. Assistant Minister, in that case, then that Question and concern is valid.

**Mr. Ojode:** Mr. Speaker, Sir, in ordinary circumstances even when an hon. Member does not report to duty in this august House for seven consecutive days, that hon. Member is a deserter and you will declare his seat vacant. So, for the time being, this person has disappeared. He has deserted duty. He is not working. We cannot continue paying him his salary because he is not working. He is a deserter!

*(Laughter)*

**Mr. Speaker:** Very well! That should rest the matter.  
Next Question, Mr. Mwathi!

*Question No. 201*

PLANS TO RECARPET NDUOTA  
-LIMURU ROAD

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

(a) whether he is aware that Nduota-Limuru road has not been carpeted for a long time and is in a serious state of disrepair;

(b) how much money the Ministry has allocated for the recarpeting of this road in the 2008/2009 financial year; and,

(c) what plans he has this financial year to ensure this important road linking Kiambu West and Kiambu East districts, and serving one of the main hospitals is repaired and re-tarmacked.

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

(a) I am aware that Nduota-Limuru Road D406, E427 and D409 has not been resurfaced for along time.

(b) My Ministry has allocated funds for the resurfacing of the roads in the current financial year as follows:

(i) A total sum of Kshs280 million under the development budget for the contract for the rehabilitation and resurfacing of Ndumberi-Cianda-Limuru Road (D409), which covers the first 0.8 kilometres and 2.7 kilometre section of the Nduota-Limuru Road.

(ii) The Ministry will undertake both resealing of Kawaida-Limuru section (E427) this financial year.

(c) My Ministry is rehabilitating 3.5 kilometres of the road under the on-going contract for the rehabilitation of Ndumberi-Limuru Road (D409) and Wota-Kigwaru Road (D406) and E1518. Detailed design for rehabilitation of Ngorongo-Githunguri Road (D403) and access to Nazareth Hospital (E427) will be carried out during this financial year.

Patching and spot resealing of the 14 kilometre not covered under the above contract will be carried out this financial year using sub-contracts.

**Mr. Mwathi:** Mr. Speaker, Sir, I want to thank the Assistant Minister for that good attempt. However, I would like him to tell us why he has not considered tarmacking and doing anew, the 14 kilometres which is going to remain. He is only going to tarmac 3.5 kilometres. Therefore, the 14 kilometres which leads to the hospital which serves both Kiambu East and Kiambu West is going to be left as a patched up road and therefore, not in a good state.

**Mr. Kinyanjui:** Mr. Speaker, Sir, it is the Ministry's wish that all the roads are tarmacked and upgraded to bitumen standards. However, as we are all aware, we have a budgetary constraint and, therefore, we may not be able to do that. The Ministry has done the best it can with the given funds. Indeed, Kiambu East and Kiambu West districts have received sufficient funds to enable the repair and resurfacing of the works.

Mr. Speaker, Sir, further, I wish to note that most of the roads that fall within this larger contract are within class D. As you are aware, under the Kenya Roads Board Act, Class D roads are actually under the District Roads Committees (DRCs). The problem we have been having is that when a class D road is tarmacked, the funds available under the DRCs are not sufficient for repairs.

So, we are in the process of looking for a formula where we would take care of class D roads that are paved. Most of the time these roads have tender to be orphans. The Ministry does not take care of them and the DRCs also do not take care of them. However, for this particular case, we have taken up the road and we shall ensure that it is done.

**Mr. Mbadi:** Mr. Speaker, Sir, I have to appreciate the answer given by the Assistant Minister because he has detailed the amount of money that has been allocated for this road.

**Mr. Speaker:** Mr. Mbadi, can you ask your question?

**Mr. Mbadi:** Mr. Speaker, Sir, given that Kiambu East and Kiambu West have got such a huge allocation of funds, could the Assistant Minister assure this House that other regions with Class D Roads will get the same treatment? Or is it that there is a bias in the allocation of

resources?

**Mr. Kinyanjui:** Mr. Speaker, Sir, I wish to remind the hon. Member that part (a) of the Question was seeking to know why we had not repaired that section of the road for a long time. Indeed, no funds had been set aside for this section of the road for many years. So, we are doing it for the first time in nearly ten years. However, we are considering other roads, especially Class D Roads and others. We will consider them on a case by case basis. In this particular case, the road serves very important areas in terms of productivity. There is also a hospital that serves the whole region along that road. So, we considered that. Even though, we are looking at all roads which fall under Class D and a proper mechanism will, indeed, be sought.

**Mr. Mwathi:** Mr. Speaker, Sir, I want to appreciate the fact that the Assistant Minister has informed this House that the detailed designing for the rehabilitation of Ngorongo-Githunguri Road and an access road to Nazareth Hospital is under way. I would like the Assistant Minister to confirm to this House that after the detailed design, those works will be undertaken within the next financial year.

**Mr. Kinyanjui:** Mr. Speaker, Sir, indeed, I would love to make that commitment, but as you may be aware, commitment to funds is, indeed, a long-term thing and it requires proper consultations. However, once the designs are done, we are in the process of ensuring that immediate works commence. This is because we have had situations where design work on a road is done and it stays for ten years, in which case, some details may actually change. So, we will try to do that as soon as possible, when funds are availed.

*Question No. 220*

REHABILITATION OF TAMBACH  
SUB-DISTRICT HOSPITAL

**Mr. Chepkitony** asked the Minister for Medical Services:-

(a) whether he is aware that buildings at Tambach Sub-District Hospital are in deplorable conditions due to old age and require rehabilitation;

(b) whether he is further aware that the hospital has neither an x-ray machine nor a functioning operation theatre; and,

(c) what plans the Government has to rehabilitate the buildings, provide an x-ray machine, construct an operation theatre and improve the quality of health services offered in this hospital.

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

(a) Yes, I am aware that most of the buildings in Tambach Sub-District Hospital are dilapidated and require either rehabilitation or reconstruction.

(b) Yes, I am further aware that the hospital has neither an x-ray machine nor a functional operation theatre.

(c) In the current financial year 2008/2009, my Ministry will construct and equip an operating theatre at the hospital at the cost of Kshs5 million. This will enable the medical officer recently deployed in the hospital to handle basic surgical needs of the patients. Due to shortage of funds, this is the only intervention that my Ministry will implement in the current financial year. However, rehabilitation of buildings will be undertaken in the next financial year, subject to availability of funds.

**Mr. Chepkitony:** Mr. Speaker, Sir, this is a very important hospital which serves a big area of Kerio Valley. The hospital has been neglected for a very long time. The Minister has not said

anything about an X-Ray machine which is very necessary. When is he going to supply the X-Ray machine to this hospital?

**Mr. Mungatana:** Mr. Speaker, Sir, I have said that we will equip the operation theatre at a cost of Kshs5 million. In terms of priorities, that is, equipment for hospitals, I was going to seek the indulgence of the hon. Member to allow us to go as per the regulations of the Ministry because when we start with the operation theatre, then the other things can follow. I have promised the House that we will provide the other equipment in the next financial year.

**Mr. Chanzu:** Mr. Speaker, Sir, I was sitting next to the Questioner and I looked at the last paragraph of the answer given and which the Assistant Minister did not read out. However, I would like to find out the development partners whom the Ministry is consulting with, to support the financing of this project.

**Mr. Mungatana:** Mr. Speaker, Sir, we are talking to the Korean International Development Agency, the Turkish International Development Agency, Kuwait Fund for African Development and the Chinese Government. We always run short when we present our Budget to the Treasury because we are not given the full allocation. So, we engage development partners particularly on important points where we have a high turnover of patients just like the one the hon. Member has raised. We are sure that, through the help of some of our partners, we will be able to assist and rectify the situation.

**Mr. Chepkitony:** Mr. Speaker, Sir, this is an old hospital which was built in the late 1920s. In fact, it used to be the district hospital. The mortuary is also not in use, but the Assistant Minister has not touched on it as one of the important facilities that are missing in the hospital. Could he also consider the mortuary as an urgent project to be undertaken by the Ministry?

**Mr. Mungatana:** Mr. Speaker, Sir, in fact, right now, we are looking at a proposal that will make the technology of preserving bodies in hospital to be much cheaper. It is being currently applied at the New Nyanza Provincial General Hospital. It saves a lot and we will spend less, if we adopt it. I am sure that when we roll it out, Tambach Sub-District Hospital will be one of the important points that will get this technology applied. It will be much cheaper to use this technology.

The hon. Member could be aware that, being a very important place, we actually allocated the area a new ambulance in 2007. We are doing what we can, given the circumstances that we are operating in. We could even visit the hospital later.

*Question No. 248*

RESETTLEMENT OF CHIEFS AND ASSISTANT  
CHIEFS IN KONAIN DIVISION

**Dr. Kones** asked the Minister of State for Provincial Administration and Internal Security:-

(a) whether he is aware that there are chiefs and assistant chiefs in Konoin Division whose houses were burnt during the post-election violence, but who are yet to be compensated or resettled alongside other IDPs in the ongoing resettlement programme;

(b) what steps he has taken to ensure that they are compensated; and,

(c) what budgetary provisions he has made for the construction of Konoin DO's office that was also burnt during the post-election violence.

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Speaker, Sir, this Question was brought to our office, but we transferred

it to the Ministry of State for Special Programmes. The Minister is ready to answer it.

**The Minister of State for Special Programmes** (Dr. Shaban): Mr. Speaker, Sir, I beg to reply.

(a) I am not aware that there are chiefs and assistant chiefs in Konoin Division whose houses were burnt during the post-election violence. However, I am aware that many people, including some chiefs and assistant chiefs, lost their houses during the post-election violence. Data on the number of burnt down houses is being verified. The affected chiefs will be resettled alongside other IDPs.

(b) The Ministry has set aside Kshs25,000 for each family whose house was destroyed during the post-election violence. This will be given in material form or otherwise cash vouchers. The same will be disbursed to those people whose houses were burnt once the relevant data is approved in consultation with the Humanitarian Advisory Board. Meanwhile, the Government is disbursing Kshs10,000 for each internally displaced family.

(c) The Government has just concluded a countrywide profiling exercise in all areas that experienced post-election violence. Data from the profiling exercise will help the Government determine the number of damaged buildings and the cost of repair or reconstruction. The exercise of reconstruction of destroyed public institutions is now on going.

**Dr. Kones:** Mr. Speaker, Sir, the answer given by the Minister is a general statement. It is not specific to the area I am talking about. Also, there is a contradiction. At first, she said she was not aware. Then she said she was aware that there are some people, including chiefs, whose houses were burnt. Could she be very specific to the area I am talking about, which is Konoin Division?

**Mr. Speaker:** Madam Minister, could you be more specific?

**Dr. Shaban:** Mr. Speaker, Sir, I have said that I am not specifically aware about Konoin. I have a list of Internally Displaced Persons (IDPs) and I have been informed that some of them are chiefs. However, I do not know which areas the chiefs come from. I am considering all IDPs equally, irrespective of whether they are chiefs or DOs or whatever. They are all IDPs.

**Mr. Speaker:** Last question, Dr. Kones!

**Dr. Kones:** Mr. Speaker, Sir, I am seeking your guidance. This Question was supposed to go to the Ministry of State for Provincial Administration and Internal Security. The Ministry is the one which deals with matters related to chiefs.

**Mr. Speaker:** Dr. Kones, you have an answer. If you are not satisfied with the answer, can you interrogate it to get the satisfactory answer that you desire? The Minister has said that she is not aware. Are you able to make her aware?

**Dr. Kones:** Mr. Speaker, Sir, I have already told her that---

**Mr. Speaker:** No, that is not good enough! It will be your word against the Minister's word!

**Dr. Kones:** Mr. Speaker, Sir, many chiefs' houses were burnt in Konoin Division. That is a statement of fact.

**Mr. Speaker:** It is not, Dr. Kones! You are also not being specific! Which chiefs? What are their names?

**Dr. Kones:** Mr. Speaker, Sir, they are the chiefs, Koitoo, Lokoichep and Makwakwaset locations. The three chiefs' houses were burnt.

**Mr. Speaker:** Madam Minister, with that information, now, are you able to respond any better?

**Dr. Shaban:** Mr. Speaker, Sir, the hon. Member is so keen to have his chiefs re-settled, but he has forgotten the other IDPs. There are other people who are IDPs. I will be dealing with those chiefs when I deal with all the IDPs in that area. Is that so difficult for him to understand?

**Mr. Speaker:** Very well! That brings it to an end.  
Next Question, Prof. Kamar!

*Question No.251*

STATUS OF WOMEN'S ENTERPRISE  
DEVELOPMENT FUND/UNIFEM

**Prof. Kamar** asked the Minister for Gender, Children and Social Development:-

(a) whether she could inform the House on the status of the Women's Enterprise Development Fund (including the UNIFEM Fund) in the year 2007;

(b) how much of the funds stated above were channelled through banking and financial institutions and at what interest rate was each institution supposed to lend the funds to the women;

(c) how much of these funds were disbursed to women in Uasin-Gishu District; and,

(d) considering that most financial institutions have high interest rates, what plans she has in disbursement of future funds to ensure that the women have maximum benefit from the fund.

**The Minister for Gender, Children and Social Development** (Ms. Mathenge): Mr. Speaker, Sir, I beg to reply.

(a) In the 2007/2008 Financial Year, the Government of Kenya set aside Kshs1 billion for the Women Enterprise Development Fund, which is a revolving fund. It should be noted that the Ministry received the first half Exchequer release of Kshs500 million from Treasury only in December, 2007. Out of this amount, Kshs317 million was disbursed through micro-finance institutions, and Kshs41,329,100 through the Constituency Women Enterprise Scheme. In the 2008/2009 Financial Year, the Government has allocated Kshs315 million to the Fund. A balance of Kshs806,670,900 is now available for disbursement. The Ministry is not aware of any UNIFEM contribution to the Fund.

(b) An amount of Kshs317 million was channelled through micro-finance institutions. Each institution was supposed to lend the funds to women at an interest rate of 8 per cent per annum on a reducing balance.

(c) An amount of Kshs2,199,000 was disbursed to women in Uasin-Gishu District.

(d) In order to ensure that women get maximum benefits from the Women Enterprise Development Fund, the Ministry is considering various options which include, channelling most of the funds through the Constituency Women Enterprise Scheme rather than through financial institutions; involving more micro-finance institutions that have a wider coverage and less stringent conditions; and, reviewing the existing guidelines to accessing the Women Enterprise Development Fund.

Thank you.

**Prof. Kamar:** Mr. Speaker, Sir, I am only satisfied with the answer to part (d) of the Question. I am really dissatisfied with the answers to the other three parts of the Question. The matter of UNIFEM funds was announced by the former Minister responsible for gender issues himself.

He said then, that Kshs2 billion was allocated to Equity Bank for distribution to women. So, either the officers in the Minister are not helping the Minister or there is a problem. I was one of the persons who were invited to visit the Minister then, as the Rift Valley Province *Maendeleo*



ya *Wanawake Organisation*, and we were told that the fund was there.

Regarding her response to part (b) of the Question, I would like her to clarify which institution actually released the money at an interest rate of 8 per cent per annum because, when went to source the money at Equity Bank, it was being lent out at an interest rate of 24 per cent per annum.

**Mr. Speaker:** Order, Prof. Kamar! Reluctantly, I want to remind you that this is Question Time. You have many opportunities to debate. Please, ask one question.

**Prof. Kamar:** Thank you, Mr. Speaker, Sir. May I ask the Minister to tell us which institutions released the funds at an interest rate of 8 per cent per annum?

**Ms. Mathenge:** Mr. Speaker, Sir, we identified 12 micro financial institutions which gave out money at a rate of 8 per cent per annum. They are the Kenya Industrial Estates (KIE), Pamoja Women Development Programme, Wakenya Pamoja SACCO, Taifa SACCO, Co-operative Bank, K-Rep Bank, Business Initiative Management Assistance, Family Bank, Kujitegemea Credit, Small and Micro-Enterprises Finance Corporation, Mathira Farmers and Kenya Women Finance Trust.

I am not aware that these institutions are lending the money at different rates of interest. If that is the case, I would like to have evidence, so that I can pursue the matter.

**Mr. Ngugi:** Mr. Speaker, Sir, all the financial institutions that have been disbursing this money have different conditions. Could the Minister consider giving to the banks uniform rules, so that women groups can access this money wherever they are in this country?

**Ms. Mathenge:** Mr. Speaker, Sir, as I have said, we are reviewing the Women Enterprise Development Fund because we have found that it is not very comfortable for most of the women. One of the things we are doing is restructuring and giving conditions to these banks. However, when you give money to a bank, it is responsible to pay it back. So, occasionally, you find that they have conditions they cannot do away with. That is all we are saying. Most of the money should be channelled through the Constituency Women Enterprise Fund because it will be easy for all the women to access the money.

**Mr. Mwathi:** Mr. Speaker, Sir, being aware that not all women are in women groups so that they can access the money, and not all of them are doing business, what plans does the Minister have to ensure that women without entrepreneurial skills access this money?

**Ms. Mathenge:** Mr. Speaker, Sir, this money is meant for entrepreneurs, so that women can use it for income generating projects. So, if you are not engaged in entrepreneurship, I do not know why you would want to borrow this money, as you cannot qualify. The 12 micro-finance institutions I have mentioned give between Kshs50,000 and Kshs500,000 to individuals depending on the project or programme one would want to undertake.

**Mr. J.M. Kamau:** Mr. Speaker, Sir, I would like to find out from the Minister the criteria used to determine which micro-finance institution is chosen through which to channel the money.

**Mr. Speaker:** Madam Minister, did you get the question?

**Ms. Mathenge:** Mr. Speaker, Sir, when this Fund was introduced, the micro-financiers were identified in a hurried manner. So, a few things were not taken into account. We are reviewing all the micro-financiers who are going to handle this money, and one of the criterion that we are using is that the micro-finance should be friendly to women. We are also looking at micro-finance institutions found in most parts of the country and those which reach grassroots women. We are also looking at their capability to handle big money, because we do not want to give them money and then it is not disbursed to our women. So, it must have been in the business for at least five years before it qualifies to be a micro-financier.

**Mr. Speaker:** Last question, Prof. Kamar!

**Prof. Kamar:** Mr. Speaker, Sir, could the Minister actually confirm if the Kenya Women Finance Trust released any money at 8 per cent in Nakuru, Eldoret and Kitale?

**Ms. Mathenge:** Mr. Speaker, Sir, the information that I have is that the money is available at 8 per cent. If you have contrary information, please, give it to me so that I can investigate. The hon. Member has given me contrary information but I need actual evidence. I need to know who was given how much money and at what interest rate, so that I can follow it up. I need to know the groups that were given at higher than 8 per cent, so that I can follow it up.

**Mr. Speaker:** That brings us to the end of Question Time.

### POINTS OF ORDER

#### STATE OF BABY ROSE MWAKA'S MANAGEMENT AT COAST GENERAL HOSPITAL

**Mr. Imanyara:** On a point of order Mr. Speaker, Sir. Thank you for this opportunity, and I am glad that I gave notice to the Assistant Minister for Medical Services in view of the urgency of the matter.

I am requesting a Ministerial Statement from the Ministry of Medical Services on the plight of the girl whom we have been seeing in the news for the last few days. She is lying in hospital and her condition is deteriorating daily.

**The Assistant Minister for Medical Services** (Mr. Mungatana): Mr. Speaker, Sir, I undertake to issue a Ministerial Statement on Tuesday next week.

#### RESHUFFLING OF BOARD MEMBERS IN STATE CORPORATIONS

**Mr. Kioni:** Mr. Speaker, Sir, I rise to seek a Ministerial Statement from the Minister of Water and Irrigation on why and how she has interfered and changed the board members, the Chief Executive Officers (CEOs) and the management of several of the State Corporations under her Ministry, whose services have been terminated and why. She should also give the expertise of those who have been brought on board.

**Mr. Speaker:** Madam Minister, when will you issue that Ministerial Statement?

**The Minister for Water and Irrigation** (Mrs. Ngilu): Mr. Speaker, Sir, In fact, I could issue it now but let me issue it on Tuesday.

**Mr. Speaker:** Very well, Madam Minister, Tuesday next week.

Mr. Letulo!

#### SALE OF TURKWEL POWER PROJECT

**Mr. Litole:** On a point of order, Mr. Speaker, Sir. My name is Mr. Litole, Mr. Speaker, Sir. I am seeking a Ministerial Statement from the Minister for Regional Development Authorities with respect to the sale of Turkwel Power Project. In the Ministerial Statement, I would like the Minister to clarify the following.

- (a) How was KenGen, a private company, identified to be the buyer of the project.
- (b) What was the purchase price and how it was arrived at.
- (c) How have the local people, the Pokots, benefited especially after losing their grazing land and gold-mining areas along the 40 kilometre-stretch dam.

**Mr. Speaker:** Who is the Minister, hon. Member?

**Mr. Litole:** The Minister for Regional Development Authorities, Mr. Speaker, Sir. The

Leader of Government Business is here.

**Mr. Speaker:** Is the Minister for Regional Development Authorities there?

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua):  
Mr. Speaker, Sir, I seek your indulgence that the Minister issues the Ministerial Statement next week on Wednesday.

### COMMUNICATIONS FROM THE CHAIR

#### OPERATIONALIZATION OF THE PRIVATIZATION ACT

**Mr. Speaker:** Hon. Members, I am aware that the hon. Member for Nambale had requested a Ministerial Statement on the operationalization of the Privatisation Act in respect of a particular matter. The Minister for Finance has requested the indulgence of the House until the 6th August, 2008. So, that Ministerial Statement will be issued on the 6th August, 2008.

#### CARRYING OUT DEBATE OUTSIDE PARLIAMENT AGAINST STANDING ORDERS

Hon. Members, on Tuesday, 29th July, 2008, the hon. Member of Parliament for Gem, Mr. Midiwo, rose on a point of order and alleged that the hon. Member for Kipipiri, Mr. Kimunya, had on Sunday, 27th July, 2008 talked on matters touching on the Grand Regency Hotel, which matters are currently being investigated by the Departmental Committee on Finance, Planning and Trade, in a public rally during a thanksgiving ceremony organized by the hon. Member for Kinangop, Mr. David Mwaniki Ngugi. The hon. Member for Gem also sought to know from the Speaker whether he had given any assurances to Mr. Kimunya that the Motion censuring him, and which was debated on 2nd July, 2008, had not been properly before the House.

I wish to confirm to the House that, indeed, I attended the aforesaid thanksgiving function following an invitation by Mr. Ngugi. The hon. Member for Kinangop is one of my long-time friends, whom I knew even before he was elected to this august House, both of us having worked in the private sector for many years, and more so in the Mombasa station. For the record, I have on different occasions attended other prayer and thanksgiving ceremonies on invitation by Members of Parliament whenever time has allowed me to do so. Indeed, I have also attended my own thanksgiving and prayer ceremony, to which hon. Members were invited and a sizeable number kindly graced the occasion.

From the outset, I want to assure the House that the Motion of censure moved by the hon. Member for Ikolomani, Dr. Khalwale, on 2nd July, 2008 on the then Minister for Finance was properly processed and brought to the House. Dr. Khalwale delivered a copy of the proposed Motion in writing to the Clerk of the National Assembly, who then submitted the same to the Chair and the Chair approved it pursuant to the provisions of Standing Order No.40. Subsequently, the Motion was presented to the House Business Committee, which allocated time for debate. The House may wish to note that Mr. Kimunya was, and still is, a Member of the House Business Committee while the Chair is not.

As Members may recall, on 8th July, 2008, I directed the Departmental Committee on Finance, Planning and Trade which had been investigating the Grand Regency Hotel saga, to conclude its work within two weeks and I urged hon. Members to refrain from revisiting the matter, whether inside or outside the House, until the Committee presents its report to the House. The full text of my ruling as is relevant was as follows, and I quote:-

"As we move to close this matter for the moment, I want to take this opportunity to appeal to, and urge hon. Members that, in the light of the ruling which has been made by the Chair, that the Departmental Committee on Finance, Planning and Trade should continue its investigations into this matter, complete and compile a report for debate and adoption by the House. Hon. Members should restrain themselves from commenting on this matter outside Parliament. I will, therefore, expect that comments which have been made in the recent past, at funerals and homecoming parties will cease forthwith. Otherwise, the Chair will deal with that matter appropriately in the light of our Standing Orders and Powers and Privileges Act. Please note."

I have obtained and listened to the tape recording which contains the statement attributed to the Member for Kipipiri and other speeches made during the said function in order to ascertain the content of exactly what Mr. Kimunya said. For the benefit of the House, let me quote extracts from his speech which he gave in Kiswahili:-

*"Ningetaka kusema asante kwa Spika kwa sababu hii maneno yote ilipotokea huko Bungeni, wengine walijaribu wakatafuta wakati Spika yuko ng'ambo, wakijua kama yeye angekuwa kwa hiyo kiti, hangekubalia upuzi kama huo".*

Judging from the statement made by the hon. Member, there is no doubt that he took the debate outside the House and imputed improper motives on the Chair.

*(Applause)*

Previously, the Chair has asked Members not to take debate outside the House and to desist from dragging the Chair into any debate even within the House.

Hon. Members, on the 18th April, 1995, the immediate former Speaker, hon. Francis ole Kaparo, made the following ruling on the matter, and I quote:

"Hon. Members, I seek the indulgence of the House to delve into the issue in greater length than usual. In parliamentary parlance, the procedure of Parliament encompasses far more than the codified rules. Indeed, its most indelible part is practice, which practice comprises tradition, convention, etiquette, decorum, standards, rulings of the Chair and so on. This understanding of parliamentary procedure has been universally acknowledged especially within the Commonwealth jurisdictions. Thus, whereas the quantified parts of procedure are specific and predictable, in situations unforeseen and thus not already provided for, Parliament reverts to the application of the uncodified part of procedure, that is, practice. In parliamentary traditions, such matters are resolved having regard to precedent. As regards specific request for guidance on the comments made outside this Chamber, I will state as follows: "On the 17th October, 1969, the National Assembly made a specific decision in a resolution to bar any continuation by Members of debates on matters before the House. However, prior to this resolution, the issue had been raised on 12th August, 1969 to which Mr. Speaker Slade in part responded as follows and I quote Mr. Slade:

"As stated in my communication of 29th May, 1969 and the 24th June, 1969, it is definitely improper and contemptuous of this House for Members to carry on debates outside this House or to answer in the press or publicly elsewhere anything that has been said by hon. Members in this House. What I said about carrying debates outside applies only to debates on substantive Motions which result in a definite resolution. The subject matter of such debates, indeed, must not be

discussed by hon. Members publicly outside the House while the debate is pending nor should there be any subsequent public comment by hon. Members outside the House which challenges the ultimate resolution of the House. Whatever the nature of the proceedings, things said by hon. Members in this House may only be answered by other Members in this House".

As I continue to quote my predecessor:

"As, it can be done from the foregoing and given that, careful scrutiny of the journals of this House reveal that the rulings of this subject matter have neither been varied nor rescinded, I do rule with fear of possible contradictions that our present procedure and practice bar hon. Members from referring to, commenting or continuing debate outside this Chamber on substantive matters not yet disposed off by this House".

I hasten to add that in debarring references, comments and debates outside the Chamber on substantive matters under debate here, it is similarly referring to matters of a Select Committee before the Committee tables its report as precluded by the provisions of Standing Order No.70 which prohibits anticipating discussion of substantive Motions already seized of this House."

Hon. Members, taking debate outside the House no doubt lowers its dignity and brings into disrepute its proceedings. It behoves all of us to individually and collectively uphold the dignity of this House.

Secondly, by alleging that if the substantive Speaker was in the Chair, the Motion would not have been allowed, Mr. Kimunya cast aspersions on the integrity, capacity and independence of the Chair. Indeed, a Member would not be able to prejudge what the Chair will rule on a matter as the Chair considers many explanatory variables and consults widely before making a decision.

For a Member to allege that a person presiding over sittings of the House will make a decision that would be different if another Member was presiding is far fetched, speculative and unacceptable. The Chair as lawfully constituted executes its mandate in absolute solidity, cohesion and unwavering collectivity and vows to continue to do so without fear or favour and yet fairly and firmly.

Arising from the above, it will be observed that Mr. Kimunya conducted himself in a most disgraceful and unsatisfactory manner, to wit:

- (i) Taking debate outside the House contrary to the Chair's ruling.
- (ii) Casting aspersions on the Chair.
- (iii) Being contemptuous of the House by revisiting matters that the House had made a resolution on, to proceed in a particular manner.
- (iv) Using language unbecoming of an honourable Member and calling to question the conduct of the House.

Hon. Members, in view of the foregoing, the conduct, actions and unwarranted utterances by Mr. Kimunya amount to gross misconduct within the meaning of Standing Order No.88, and the Chair strongly takes great exception to them. I, therefore, without any reservation, severely reprimand the hon. Member for Kipipiri for gross misconduct in the manner he has handled himself in this matter.

*(Applause)*

I believe the Committee has availed Mr. Kimunya the opportunity to state his position and, indeed, when the Committee tables its report in the House, the Chair will avail the hon. Member yet another opportunity to respond. Dragging the Chair into the matter under inquiry and debate

was most unfortunate and deplorable. Using derogatory language in reference to this august House in terms such as "*upuzi*" is beyond any acceptable standard of conduct of any hon. Member.

Whereas I wish to have this matter come to an end, may it serve as a serious caution to the hon. Member that the Chair shall not, under any circumstances, tolerate such conduct. In the same vein, I would like to refer hon. Members to previous rulings by the Chair on continuation of debate outside the House contrary to laid down parliamentary conventions. Hon. Members will recall that, yesterday, hon. Shabesh, hon. Linturi and hon. Jirongo did raise issues with Ministers who, of late, have been responding to matters that have been brought to the fore in the House in fora elsewhere. I, therefore, appeal to Ministers not to discuss matters raised in this House, outside the House, as the Chair will always give Ministers time to respond to them in the House.

I would like to appeal to all hon. Members to maintain the dignity of this House individually and collectively, both in the House and outside. This nation looks upon you for leadership and guidance. The nation and Kenyans, at large, desire to be led by men and women of integrity that will help, *inter alia* to actualize Vision 2030 and to make this country eternally the best to belong to and live in.

I thank you.

*(Applause)*

Next Order!

## BILLS

### *First Readings*

#### THE BIOSAFETY BILL THE ANTI-COUNTERFEIT BILL

*(Orders for First Readings read - Read the First Time and - ordered to be referred to the relevant Departmental Committees)*

### *Second Reading*

#### THE TRUTH, JUSTICE AND RECONCILIATION COMMISSION BILL

*(The Minister for Justice, National Cohesion and Constitutional Affairs on 24.7.2008)*

*(Resumption of Debate interrupted on 24.7.2008)*

**Mr. Speaker:** Who was on the Floor?

**The Assistant Minister for Medical Services** (Mr. Mungatana): I was on the Floor, Mr. Speaker, Sir.

**Mr. Speaker:** What is the balance of hon. Mungatana's time?  
You have 15 minutes, Mr. Mungatana!

**The Assistant Minister for Medical Services** (Mr. Mungatana): I am much obliged, Mr. Speaker, Sir.

*[Mr. Speaker left the Chair]*

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

Mr. Temporary Deputy Speaker, Sir, on 24th July, just before the House adjourned, I had said that in the Memorandum of Objects and Reasons for this Bill, the Minister for Justice, National Cohesion and Constitutional Affairs said that the main reason for having this law is to promote peace, justice, national unity, healing and reconciliation among the people of Kenya.

Mr. Temporary Deputy Speaker, Sir, I went into great lengths to explain that the category of the people who must be chosen as Commissioners in that Commission must not just be people who are from respected professions, clergy or whatever we respect in this country. But they must be people who, despite being in those professions - for example, the legal profession - they must also be people who have had a record of promoting peace, justice, national unity, healing and reconciliation among the people of Kenya.

Mr. Temporary Deputy Speaker, Sir, I argued that in those professions, there are people who have no record, whatsoever, of promoting peace, justice and reconciliation among the people of Kenya.

Mr. Temporary Deputy Speaker, Sir, today, I want to debate the question of the confidentiality clause, which is Clause No.25 in this Bill. The proposed Clause No.25 of the Truth, Justice and Reconciliation Commission Bill, 2008, proposes that the hearings of the Commission shall be open to the public.

Mr. Temporary Deputy Speaker, Sir, in the proposed Sub-rule 2, it goes on to give the exceptions where someone will not wish to proceed in the public, in private or in camera. It appears to me that this law proposes that everything should be in the open. All the proceedings showing the injustices of this country covering the period from 1963 to date, mentioning leaders, ordinary people, relatives and communities, should be done in the open. Only in exceptional circumstances should the proceedings go in camera. I want this House to seriously examine the clause relating to confidentiality. Why do I say that? I have two instances or examples that I would wish to bring to the attention of the House. In El Salvador, when they had the Truth, Justice and Reconciliation Commission, they highly publicised everything they did. As a result of that, they had an immediate problem of containing the confidentiality of witnesses. How will they protect the witnesses who appear before the Commission? The experience in El Salvador was that many people who went to give evidence disappeared because the Commission was unable to secure and guarantee the safety of the witnesses who came there. There were some results. But is it the result that we want for this country? That is the question that we need to look at. The second example was the Haiti National, Truth and Justice Commission. In this second instance, it was set up in December, 1994. Unlike us, it was through an executive order. In the Haitian case, things were confidential, unlike the El Salvador Truth, Justice and Reconciliation Commission. For this one, things were completely confidential. But what was the result? Within a period of just eight weeks, they received 7,000 complaints. Ordinary people appeared before the Commission even though the meetings were not publicised, the Commission received thousands of complaints just within a period of eight weeks. When somebody knows that when he will say this and mention a political leader either a retired or a current one, as an organiser of gangsters activities that affected this country, that person will not give that evidence. If a perpetrator of an injustice knows that he was

involved in organising gangster to raze homes, kill people, rape women and abduct little children; but he wishes to confess or give information and say: "Actually, I was sent by so-and-so," let us not lose the thinking that it is since 1963.

Mr. Temporary Deputy Speaker, Sir, in this country, there has been major political assassinations. When a perpetrator is willing to give evidence; he is being haunted by the blood of the innocent people he killed and wants to confess. But is he going to give it in the open or he has to follow a special procedure so that he can give that information? This person will be deterred. He will not be motivated to give that information because he knows he can be hunted down. True healing and reconciliation will not take place in the open. I believe that we need to look at this clause relating to confidentiality once again. We have had serious ethnic tensions in this country. This law is meant to create an avenue for forgiveness, reconciliation, peace, national unity and healing. We have seen it right now. When you hear a politician being mentioned, and I am at liberty to mention Mr. ole Ntimama because he came out publicly and said: "The people who mentioned me in the Waki Commission have been sent by people". Are we really going to get information? This is because people are going to be mentioned and tensions are going to come up again. The real purpose of this Truth, Justice and Reconciliation Commission Bill will not be achieved.

Mr. Temporary Deputy Speaker, Sir, I argue very strongly that we should go the Haitian way where it was the rule to observe confidentiality of the witnesses to enable them give the information and evidence. If it is a confession, you confess that I was sent by so-and-so to do all these things. After the Commission has finished taking evidence, prosecutions will begin where some people who have been mentioned are not ready to ask for forgiveness or reconciliation or to give compensation. When they are collecting that evidence, there should be a clause which is missing here, in my opinion, that creates the standards of evidence that are to be utilised. On the basis of these standards of evidence to be utilised, then those people who refuse to accept and offer to unify or reconcile with the people they offended can be prosecuted. I propose that there should be the ordinary standards of evidence. This is not going to be covered in the Evidence Act because these are not there in the Evidence Act. We should say: "The ordinary standard of evidence is where more facts are for than against that person who is being accused of having committed that kind of offence". That is standard number one.

The second standard should be overwhelming evidence of evidential background where we say: "If the evidence adduced removes any possibility of a contradictory finding, then that is standard evidence number two, which is more heavier than the first evidential standard that I have put". The third standard that I suggest should be the substantial evidence standard where the evidence adduced is so strongly supported that there could be no other explanation other than the one that has been given. If, for example, Mr. Mungatana has been mentioned, and the evidential standard adduced it under standard number three, it is so substantial that there is no other explanation, then these the people who should be immediately contacted irrespective of their status in life. They should be brought forward and asked whether they organised those gangsters or whether they participated in economic crimes against certain communities, and so on. I then offer that, "yes, I did that, but I am sorry. I have been haunted by this and I am asking for forgiveness from these people or community that I offended". That person should be forgiven. If given the evidential standard number three and he is not there, straight way, they should be prosecuted. If we follow this kind of procedure, I believe with all my heart that we should have taken a step forward toward reconciling the people of Kenya. If some has been found and there is evidence; it is so strong that there is no other explanation, there is no other thing except that-- if you have 20 people confessing that you were paid by so-and-so to do this and this, that person should be prosecuted. If he is not willing to offer compensation and apology to the people, then that person should be



prosecuted.

In that way, justice will be achieved. National unity will also be achieved in the sense that the people who will be compensated will see that something has been done.

Mr. Temporary Deputy Speaker, Sir, I feel that a stronger procedure should be given emphasis in terms of allowing the perpetrators to admit the wrongs they have carried against the people of Kenya. I feel that the Act is not---

Mr. Temporary Deputy Speaker, Sir, since my time is up, I beg to support with those amendments.

**Dr. Eseli:** Thank you, Mr. Temporary Deputy Speaker, Sir, for allowing me to contribute to this very important Bill and, in the course of contributing, to strongly support it.

From the outset, I would like to say that I strongly support this Bill. That is because many things have happened in this country since Independence in 1963. Many people, in the course of time, have lost their livelihood and all their property at various stages since Independence. Indeed, in my constituency, I am a host to very many who have been displaced from all over, including Mt. Elgon, since 1963. It is a good Bill because I believe that those people will be able to bring out what they have gone through and, maybe, find some form of reconciliation. Maybe, some justice will also be found in the course of that period.

However, there are a few things that may require to be looked into more carefully, when the Bill will be fine-tuned. I do not know whether it is right to try to make a law that will work retrospectively. While this is not exactly a law, we are going to be working retrospectively. So, we might need to look at that very carefully, so that we do not seem to be doing things--- Actually, universally, it is accepted that laws should not act retrospectively.

When you look at page 589, Item "J", one of the actions will be inquiring into the causes of ethnic tensions and making recommendations of the promotion of healing, reconciliation and co-existence among the ethnic communities. It is, indeed, very sad that we have to have such a Commission for us to face the truth. That is because, many times, we, Kenyans, like burying our heads in the sand, so that simple things like how we have entrenched ethnicity and discrimination in our population; starting from the school system that essentially allows a child to grow up in Kakamega, and goes to nursery school, primary school, high school and university in the same place. We expect that person not to have any ethnic entrenchment in him. It is the same kind of mentality that makes us now put up a group to go around investigating why we are having violent strikes in high schools and yet, those children are just responding to what we did after the last general elections. Those children were watching what we did after the last general elections. They know that people committed crimes and got away with it. They think that, that is the way of life. In fact, many of them facing court cases are now wondering: Why them! There are other people who participated in worse things after the elections and they went scot-free in this country. It is very sad that we have to have a Commission such as this, for us to actually face the truth.

Again, when we go on to page 598, it is said that nine people will be nominated to the Commission, three of whom will be from the Panel of Eminent African Personalities and four will be Kenyans. Then, we go on to say that we should have regard to the principle of gender equity and regional balance. I do not know how four people who are Kenyans are going to ensure regional balance. I think that, that number is too small. We might not be able to ensure regional balance, unless we want to face the truth ourselves. Our country has been divided into blocks and regions based on tribes and issues like those. So, if we really want to bring in regional balance, we need to look at that number very carefully. I know that, probably, the person who drafted this Bill was, maybe, remembering that we do not want to make a Committee of too many people because, then, it will be the people who manufactured the camel. But all the same, if we are to take care of the regional balance issue, maybe that number might be too small.

On page 605, Clause 20(1), the Commission shall be inaugurated within 21 days of the appointment of its members and shall operate for two years. Healing and reconciliation is not a shot-gun affair. I do not think that healing and reconciliation is something that we can peg on two years. I fear that, that period given might be too short for that Commission to achieve the mission that we want it to achieve. Maybe, we might need to look at that duration again, so that we give it ample time to actually give the right emphasis.

On page 607, Clause 25(3) a victim, perpetrator or witness may apply to the Commission for proceedings to be held in camera. I think, as the previous speaker said, the issues of confidentiality have to be taken very seriously. Knowing the tensions in the country, anybody giving evidence to that Commission, actually, might be risking his or her own life and so on. Probably, we should not leave it to the person giving the evidence to decide whether he or she wants to be in camera or not. Probably, we might have to require some sort of preliminary hearing so that we can decide whether that person needs the privacy or not, so that we do not open them to further abuse after they have given their evidence.

On page 611, Clause 34 Part III, the commission shall not grant or recommend amnesty if the act, omission or offence to which the application relates is an act, omission or offence that constitutes crimes against humanity or genocide within the meaning of international human rights law. This is dynamite! How will it be received by the people who could potentially come out to give that evidence? If we say that the Commission shall not grant or recommend amnesty, if the act--- I think we need to be very careful there. That is because we would like as many as we would wish to give evidence in that Commission to come forward. Although there has been an attempt to, sort of, cover that problem on page 613, item 6, which says:- "Notwithstanding the provisions of Section 34---"

But then that, again, introduces the issue of contradiction. I think we should not have any ambiguity in this Bill. It should be very clear. In fact, the number of Kenyans who are lawyers are a very minute percentage. If we allow that sort of thing and yet, the people coming to give evidence are not necessarily all lawyers---

On page 614, Clause 9(c), the confession or admission shall not be used in any court proceedings against the applicant, whether or not amnesty is granted. Where amnesty is not granted, that confession should be used as evidence against that person. When amnesty is granted then, maybe, that evidence cannot be used. But I do not think that they should get away with everything so clearly. What about the issue of quorum? We have said that quorum of the Commission shall be four people. But then we have also said that if there is a tie, the Chairman, will be the one to resolve the issue. If the quorum is four members, then we have given it a very high chance of there being a tie. Maybe we might need to revise that bit on quorum.

Mr. Temporary Deputy Speaker, Sir, on the part of winding up, on page 625, we are saying that:-

"Before the Commission is dissolved, the Commissioners shall, among the final administrative activities of the Commission organise the disposal of the remaining property of the Commission".

Yet section 43(5) on page 620 suggests that the assets will revert to the Consolidated Fund. So, if the assets revert to the Consolidated Fund, what are these people doing disposing of assets? Which assets are these they are disposing of?

Mr. Temporary Deputy Speaker, Sir, I think it is a good thing apart from quite a number of things that need to be looked at, so that every Kenyan feels that they will actually benefit from this and that they will not be threatened by this. I think this is a Bill that we should pass for the betterment of this country.

I beg to support.

**Mrs. Noor:** Thank you Mr. Temporary Deputy Speaker, Sir, for giving me this chance to contribute to this very important Bill. The Truth, Justice and Reconciliation Commission Bill is very important to my life. Coming from the background I come from and the injustices that I grew up in, it means a lot to me.

Although history has it that many commissions have been formed in this country, there has never been any commission that has had an impact on the affairs of this country. I pray that, this will be a different commission that will yield results and bring Kenyans together. I hope it will be a result-based commission.

Mr. Temporary Deputy Speaker, Sir, women are acknowledged as constituting the majority of victims of war and conflict. These agreements often ignore women's role in political and economical reconstruction of any country. Nevertheless, women remain a vital resource for peace making and peace keeping. Other truth and reconciliation processes such as was the case in Sierra Leone, have been criticised for not involving various groups in the peace process.

It is important that women be involved at all levels from policy level to the grassroots level. The process of appointing and removing Commissioners from office needs to be reviewed to guarantee the independence of the Commission. I propose that a Parliamentary Select Committee with equal representation of men and women of this House should be established to oversee the implementation of this particular legislation.

Mr. Temporary Deputy Speaker, Sir, I also wish to propose that the membership of this Commission, for the first time in the history of this country, should be only women. This country has made history in this continent by signing the peace accord. Today, this country is taken as a role model in the whole of this continent. For the history that this country has made, I am requesting hon. Members of this House to make another history by nominating women.

There is an English saying that goes: "Behind every successful man, there is a woman". Behind every successful man in this august House there has been a woman supporting him and women supporting them. I am pleading with Members of this House to make history and nominate only women Commissioners.

Mr. Temporary Deputy Speaker, Sir, there have been many commissions in which women have completely been excluded. If I could mention one among the many, we have the Waki Commission. It is a three-man commission. There is no reason that we can give for this. We have women who have the capacity, ability and knowledge to sit, negotiate, mediate and conduct peace initiatives in this country.

All those concerned including civil society organisations, victims, human rights defenders and people belonging to minority central groups should be fully involved in discussing the mandate and power of the Commission and selection of its members.

Mr. Temporary Deputy Speaker, Sir, to ensure the protection of victims and witnesses who may be at risk or may be victimised as a result of their participation in the process, the Commission should establish a comprehensive, long term and effective victim-witness protection programmes. The experience of other truth commissions around the world shows that victims and witnesses, especially women, fear participating in the process because it may put them at risk.

The ownership of the Commission at both community and grassroots level is key and very important. At the grassroots is where there are conflicts and many other problems. Those are the people that we really want to reconcile. Let this Commission not be considered elitist by the people. We should involve our people and ensure that the process is people-driven.

Mr. Temporary Deputy Speaker, Sir, the Commission should be empowered in order for it to reach out to many Kenyans. Just like the Constitutional Review Commission when it went out to collect information and sensitize Kenyans all over the country. They educated people on their mandate, role and specifically what they were looking for. As a result of that, Kenyans came out in

large numbers. Kenyans contributed to the Review Commission. Kenyans debated and told the Commission what they wanted.

On the same breath, I wish to request that the Bill looks into the issue of educating the people. The Commissioners should be empowered and given the capacity to go round this country to educate the communities on their role, responsibility and mandate.

I beg to support.

**Mr. Kioni:** Thank you Mr. Temporary Deputy Speaker, Sir. I want to say a few things about this very important Bill that is before this House. Of course, I am still amazed by Members of this House. This is a very important Bill, but I think we like discussing things that are more controversial than things that may help us move into the future.

Having said that, this intended legislation is very important. This House cannot fail to recognise the amount of effort, time and thought that was put by the key persons who sat at Serena Hotel and negotiated. Even for the work that was put in place by the Panel of Eminent African Persons, I would like to go on record for having congratulated them for the work they did.

Mr. Temporary Deputy Speaker, Sir, as I support this Bill, there are some things that I would like to point out. First, with regard to Clause 5 of the Bill which is about a cut-off date of between 12th December, 1963 and 28th February, 2008. There is a bit of qualification under Sub-clause (i). However, there are many things that happened way back from 1895. If we do not pay attention to the atrocities that were meted out to other communities from way back in 1895, then we will not be able to interrogate all the historical injustices that have befallen the people of this country. I would, therefore, strongly urge that the cut-off date be moved back to the time the colonialists came to this country, if not before.

The other thing I would like to point out is under Clause 5(ii) and (iii). It is important that care be taken so that we do not have people being schooled to come and say things before this Commission. We have seen it happen in other Commissions some of which are still going on. It is important that we provide for penalties for persons who may want to take others through some tutorage so that they can distort the truth that would otherwise have come out. In this particular clause, there is still the element of 1885.

Mr. Temporary Deputy Speaker, Sir, I am particularly happy with the provisions of Clause 5(h)(i) because it is important to pay attention to the possibility of a premeditated position before the violence so that we do not forget that there might be--- Even many human rights organizations have said that there was premeditation of the violence that was meted upon Kenyans. After the elections, if there is evidence that there are things that were planned before the elections, then it should come out clearly. It is important to pay attention to this particular clause.

Under Clause 5(m), which is about facilitating the granting of conditional amnesty, this maybe used as a loophole. It is important that we make sure that this provision is not used as a loophole to grant amnesty to those people who otherwise should answer to crimes against humanity getting their way out. Again, under Clause 6, there is the issue of the cut-off date. I still insist that the cut-off date be taken way back to 1895, if not before then.

Clause 6(i) talks about educating and engaging the public and giving publicity to the Commission's works. As I said earlier on, this is an area whose provisions could be used to school people and tutor them. We need to be careful so that this exercise does not end up being a source of work for groups or a way of money getting into the country. Such money could be used for other reasons other than what this good Bill is intended to achieve.

Mr. Temporary Deputy Speaker, Sir, Clause 6(k)(i) talks about reparation to victims. Last week, we were told in this House that each internally displaced person was paid Kshs10,000. This is very little money. If this is the kind of reparation that victims have to receive, then it is inadequate. Certainly, it does not meet the needs of those people. There are people who had

actually taken loans to engage in business. So, if they are given Kshs10,000 only, they cannot really make ends meet with that kind of money. It is, therefore, important that attention is paid to the amount of money or reparation that is accorded to the victims.

With regard to Clause 9, we have the selection of those who will sit in the panel. What criteria was used to arrive at these institutions? There are other professional institutions that have been left out. It is, therefore, important that the list of these institutions be reconsidered. For example, we have the AAK, IFK and so on. These institutions and many others have not featured in this Bill. It is important that a criteria for recruiting institutions be established. Perhaps, most important is the question: What criteria is used by these institutions in selecting, appointing or sending representatives to the panel that we are talking about?

Over time, we have seen the same faces appearing in every other commission or committee that has been appointed. It is important to interrogate these institutions so that we do not end up with the same persons who have now seen employment opportunities in everything that Parliament enacts. It is also important to hear new ideas. It will be wrong to see the same faces that were there during the Constitution of Kenya Review Commission appearing in this Truth, Justice and Reconciliation Commission. They are the same ones who are seated in the Kriegler Commission, the Waki Commission and so on. It is important that we try not to recycle the same mind.

Clause 10 of the Bill states thus:

"The Commission shall consist of seven commissioners".

I have a problem with Clause 10(1)(a) which states that three of the Commissioners shall be non-citizens and selected by a panel of eminent African personalities. I wonder whether our having to rely on this panel of eminent African personalities does not make us feel like we have not matured. Is it something that we cannot do alone? Must we keep going back every other time to the panel of eminent African personalities and yet we are a sovereign State? When we now provide for their interfering with our day-to-day running of this nation, I do not think it augurs very well with our sovereignty. We appreciate what they have done so far. We know that they can still be consulted in future, but to provide that they become part and parcel of everything that we are going to do in the coming couple of years may not augur well with what we need to achieve. It is like we cannot move on any more on our own without the support of others. The same matter has been addressed in the third paragraph of the Third Schedule. It says:-

"The quorum of the Commission shall be four Commissioners at least one of whom shall be a Commissioner appointed under Clause 10(1)(a)".

We, therefore, see that because of the quorum issue, these eminent persons will be involved on a day-to-day basis because this Commission will not move if one of those eminent personalities is not present. I think that needs to be reviewed so that we can determine our own destiny.

Again, under Clause 10(3), there is that aspect that was raised by other hon. Members, that is, the issue of regional balance. While it is important to continue balancing issues, it is also important to pay attention to how some of these quarrels and violence erupted. We may be saying that we need to balance regions and yet it was, perhaps, a case of a number of specific regions rising up against one region. When you talk about balancing regions, if there is an issue that requires objectivity, it will certainly be lost because the same bloc of thinking will still be against that which they were originally against. That way, we will not make any progress. We will end up in a position that will not help us heal.

Mr. Temporary Deputy Speaker, Sir, with regard to Clause 10(5)(d), again, these individuals are required to be impartial. They need not have been involved with any political grouping. However, it is not possible that a person who has been involved in some political activism, all of a sudden be able to become objective without having the influence of where one has come from. So, it is important that we look into this Clause, because it may be very difficult for

somebody who has been very actively involved in party politics to have his mind freed from the position he has always held.

The issue of eminent personality is again repeated under Clause 17. I do not want to talk about it. It is the same thing. It is also under Clause 18.

Clause 27 provides as follows:-

"The Commission may establish special units to deal with specific issues."

The four units that are there are women, children, persons with disabilities and other vulnerable groups. I do not know where men fall. I do not know whether men are not also a unit that needs to be looked at. Are men left to be seen as the ones who have caused all the mayhem or do they also need specific attention?

Mr. Temporary Deputy Speaker, Sir, another clause that is important is Clause 49, which states:-

"The Minister shall report to the National Assembly within three months of receipt of the report of the Commission and twice a year thereafter."

This clause talks of the Minister reporting to National Assembly twice a year thereafter. For how long? Is it going to be forever? Again, the provision under paragraph (2) of Clause 49 is such that a Minister can remain there without doing anything, but may encourage some bit of fence-sitting.

Mr. Temporary Deputy Speaker, Sir, Clause 51 states:-

"The Minister may make regulations generally to the better carrying into effect of any provisions of this Act."

Whereas we have said that the Commission will move under the direction of nobody else other than its membership, Clause 51, again, comes to say that "the Minister may make regulations, generally, for the better carrying into effect of any of the provisions of this Act." This is a loophole. Any Minister with good or bad intentions, can easily get involved and influence the outcome of the Commission.

The Third Schedule says that the Commission shall meet not less than four times every financial year. The life of the Commission is two years. So, if we say it shall meet not less than four times every financial year, it is important not to leave them that loose, because they may meet eight times in within the two years the Commission is supposed to be in place. That may not be adequate. So, it is important to ask the Commission to meet as often as possible. They may need to meet every day.

Mr. Temporary Deputy Speaker, Sir, it might have been necessary to capture the issue of the speeches that may have incited violence amongst the people, and the things that keep waking up ill feelings towards one another. I do not know how this Bill could capture that, but it would be very important to do so.

Some penalties could be specified for people who may want to take us back through use of Short Text Messaging (SMS), and other means, to, again, arouse bad feelings amongst communities. We should provide for ways of dealing with such people, having given ourselves an opportunity to heal through this legislation.

With those many remarks, I support the Bill.

**The Assistant Minister for Co-operative Development and Marketing (Mrs. Kilimo):** Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me the opportunity to contribute to this Bill. I stand to support the Bill. As I do so, I would like to give a few recommendations which I would like adopted.

First, I wish Clause 9(3) could be amended to be gender-friendly, so that it can apply to both men and women. We should amend its wording to read "chairperson" and "vice-chairperson" shall be "persons" of the opposite gender."

Clause 10(3) should be amended by deleting the words "gender equity" and replace them with the words "gender equality". I say so because, if we do not specify matters, women will be left out, as they have been left out many times. As we know, whenever there is conflict, many atrocities are visited on women.

Clause 11(1)(b) should also be amended to read as follows:-

"The chairperson and vice-chairperson shall be persons of the opposite gender."

Mr. Temporary Deputy Speaker, Sir, I say so because of the experiences we have gone through since the beginning of this year. Many commissions have been formed but because they were not specific with regard to their composition, women have been left out. We acknowledge the fact that women constitute the majority of victims of war and conflict. However, the role of women is ignored when it comes to negotiating for peace agreements, as well as in the political and economic reconstruction of the country. This is because, when we pass laws here, we are never specific on what should be included.

In order to ensure that the process in Kenya is all-inclusive for all sections of society, women should be involved right from the policy-making level to community peace building efforts. The overall language of the Bill should be reviewed to ensure gender neutrality and non-discrimination. Towards this end, I would suggest that Clause 27(1) be amended by deleting the word "may" and replacing it with the word "shall", so that it becomes mandatory that it will be gender sensitive.

Mr. Temporary Deputy Speaker, Sir, Clause 30 should be amended by adding immediately after the word "Act", the proviso "provided that such staff appointment shall ensure equal representation of men and women." The word "shall" will ensure that whoever will sit in the Commission will see that there is what we could call the "zebra model", which will ensure a one man, one woman ratio representation. This Bill is, indeed, good, because it will ensure that women in this country have justice.

Clause 34 should be amended by adding immediately after the words "human rights law" the expression "other gross human rights violations such as extra-judicial executions, enforced disappearances, sexual assault, rape and torture."

Mr. Temporary Deputy Speaker, Sir, this Bill lacks a lot in terms of ensuring women representation. As much as the amendments I have suggested may be made, unless we have women sitting in the Commission to ensure that justice is done, or ensure that the word "shall" is used, I feel that women in this country will still be short-changed, as has happened in the past years.

Mr. Temporary Deputy Speaker, Sir, to ensure that there is gender balance, I would request that of the seven, for once, we want the majority to be women. We know that in all the conflicts that take place, women are targeted. They are the victims. In fact, the person who knows the pain of a child is a mother, who happens to be a woman. Many times we are told that it would be a third or 30 per cent. Even if this Bill will provide for a third, in most cases women are put in the marginalised groups or disadvantaged persons. In this case, I am referring to people with disabilities. We want to be separated from people with disabilities. We are not disabled. In fact, God created a man and saw that he was not happy and told him that he would give him a helper, who was supposed to be stronger than the man. But in most cases the strongest of them in our country is always marginalised. This Bill should provided for representation of people with disabilities and women. Since they are the majority of the victims in any case, all the seven positions should be for women. If this Bill should fall short of that, then the Chairperson of this Commission should be a woman, who will ensure the word "shall" will be there.

Mr. Temporary Deputy Speaker, Sir, when I look at this Bill, it also does not show how we are going to protect the illiterate people, or how justice will reach them. These are people who do not know their rights. This Bill should include visiting people in their districts, just the way the

review of the Constitution was done. People went to the districts. The Commissioners who will be appointed should go and sit in district and get the views of the people. Before the people bring their views, how will somebody, who has not read any paper and who does not know that there is a place where you are supposed to go and report and fight for your rights, know what to do or say.

I am thinking of paralegal officers who should be included in this Bill to teach those who are illiterate in the society that there is a place where they can access justice. Most people who do not know their rights in this country have no access to justice, because they do not know about it. When we have problems, they are not only in towns but are everywhere. Where should people go and have their problem addressed? They do not even know how to do it. They should be taught what to do. Otherwise, if we leave our communities to go and look for lawyers, they do not have the fee. The Government should be able to ensure that there is justice for those who do not know that they need to be protected. This Bill is good but we should have a woman as the Chairperson.

Clause 4 states that the Commission may hold its sittings at any place in Kenya. That should be amended to require the Commission to hold its sittings not in every province, but in every district. Most women, who are the victims, fear facing people, especially those who have been raped. There should be a clause for witness protection. This is something good, and I hope that this Bill will be able to provide for it, so that women in this country can access justice.

With those few remarks, I beg to support.

**The Assistant Minister for Information and Communications** (Mr. Khaniri): Mr. Temporary Deputy Speaker, Sir, thank you for giving me an opportunity to make my remarks on this Bill. Let me begin by adding my voice to the voices of those who spoke earlier in congratulating the Minister for Justice, National Cohesion and Constitutional Affairs for the very able way in which she presented this Bill to this august House. From the outset, I want to state that I fully support the idea of the establishment of a Truth, Justice and Reconciliation Commission, and, therefore, I support this Bill.

This Bill is not just necessitated by the post-election violence that rocked our country in the earlier part of this year, but is also necessitated by the tribal clashes that we experienced in 1992, 1997 and the massive public looting that the country has been going through. The fact that we should appreciate is that, from 1963 to 1992, Kenyans lived together in harmony and very peacefully. There were no scandals in this country, but soon after we adopted the multiparty system, we started experiencing tribal clashes. This is the issue that I want this Commission, once established, to look into. Is it that a group of people are still trying to prove to Kenyans that multiparty is not good for this country? If we look back to the first 30 years after Independence, we never experienced tribal clashes and scandals that we are talking about, and that we want this Commission to look into. As we establish this Commission, that is a very critical issue that I would want it to look into.

Mr. Temporary Deputy Speaker, Sir, coming back to the Bill, I have a few observations that I want to make, and I hope that the Minister will take note of them, so that when we go to the Committee stage, some amendments may be moved. I want to draw your attention to Part I, article 2, subsection (j). This is to do with the definition. It says:-

"Genocide means any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious groups as such, causing serious bodily or mental harm to members of the group."

My understanding of genocide is killing of members of a particular race, clan or a group of people. If we include "causing serious bodily or mental harm to members of a group" then that ceases to be genocide, in my opinion. It continues like this:-

"Deliberately inflicting on the group conditions of life calculated to bring about physical destruction in whole or in part."



That cannot be genocide. It continues:-

"Imposing measures intended to prevent births within the group."

That cannot be classified as genocide. It continues:-

"Forcibly transferring children of the group from one place to another."

This also cannot be genocide. I think that we should only remain with part (a) which refers to "killing members of the group"; parts "b","c","d" and "e" should be put under "gross human rights violations" and not under genocide.

Mr. Temporary Deputy Speaker, Sir, my second observation is on Part II, that is the establishment, powers and functions of the Commission. That is Section 5(e) and that will be found on page 588 of the Bill. It starts on page 587 and it states:-

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

(e) inquiring into the irregular and illegal acquisition of public land and making recommendations on the repossession of such land or the determination of cases relating thereto".

Mr. Temporary Deputy Speaker, Sir, we all know that matters pertaining to land are very sensitive in our country and if not properly handled, they can be very explosive. So, we want to say that we are giving a lot of powers to this Commission and we hope they are not going to use this particular Section to witch-hunt people.

I again want to draw your attention to Part II, Article 7(1) on page 593 which states:-

"The Commission shall have all powers necessary for the execution of its functions under this Act, and shall not be subject to the direction or control of any other person or authority".

Are we not creating a monster here? We also need checks and balances and I think Parliament should be given powers to play that role of providing checks and balances to this Commission.

Mr. Temporary Deputy Speaker, Sir, I would also want to draw your attention to Part II, Article 9(3) which is on page 598. It states:-

"Members of the selection panel shall elect a chairperson and vice-chairperson of the selection panel from amongst their number."

There is no provision for a secretary to the panel that will be given the responsibility of picking the Commissioners. So, I think that provision should be made so that the panel is given a secretary.

Mr. Temporary Deputy Speaker, Sir, still on Part II, Article 15(1) on page 602 states:-

"The salaries and allowances payable to, and other terms and conditions of service of the chairperson and the Commissioners shall be such as may be determined by the Minister in consultation with the Minister for the time being responsible for finance."

It is not right to put the fate of these Commissioners in the hands of the Minister for Finance and the Minister for Justice, National Cohesion and Constitutional Affairs. I think the issue of their salaries and allowances should be brought to the House so that it is passed here and we determine how much we think these Commissioners should be paid.

Mr. Temporary Deputy Speaker, Sir, lastly, my last observation on the Bill is on the same Part II, Article 18(1) on page 604 which states:-

"Where a vacancy occurs in the membership of the Commission under Section 16, the President shall appoint a replacement-

(a) where the vacancy is in respect of a citizen of Kenya, from among the short-listed persons considered by the selection panel in accordance with the First

Schedule, giving due consideration to the rankings and comments of the selection panel, if any."

Mr. Temporary Deputy Speaker, Sir, my suggestion is that whenever there is a vacancy in the Commission, I think it would be fair for the Minister to advertise for the position so that people can re-apply afresh instead of going to the previous applicants, who with time, may have lost interest in the job or may have found other jobs to do. Therefore, I want to suggest to the Minister that should there be a vacancy in the Commission, she should do fresh advertisements for people with proper qualifications to apply.

Otherwise, I support the establishment of the Commission. Thank you.

**Mr. Imanyara:** Thank you, Mr. Temporary Deputy Speaker, Sir, for this opportunity also to make some observations regarding this very important Bill which I wholly support, although I feel certain improvements could be made on it.

In many ways, this is the most important piece of legislation that is coming before this House and I join those who are congratulating the Minister for preparing this very important Bill.

Mr. Temporary Deputy Speaker, Sir, for a long time, we have been talking about abuses of human rights in this country. Politicians and political parties have been making many promises regarding what they will do once they get to office and this is the first time that specific concrete measures are being taken to address these issues.

Most of the contributions I would have liked to make have been made by the previous contributors including the Minister herself and all I would want to do is plead for recognition of certain aspects that need specific recognition.

Mr. Temporary Deputy Speaker, Sir, we cannot in this country talk about a Truth, Justice and Reconciliation Commission without acknowledging the contributions of individuals, many of whom have died while bringing this country to democracy. In many ways, the Truth, Justice and Reconciliation Commissions are for this purpose. Therefore, I would have liked to see certain clauses in this Act that require the Commission also to make specific recommendations to honour those who have made it possible for this country to reach a situation where we can, in fact, set up a Truth, Justice and Reconciliation Commission. These are the great heroes of this country's liberation wars and struggle and acknowledging their contributions to this country's political evolution should be one of the core objectives and functions of a Truth, Justice and reconciliation Commission. Acknowledging them in specific terms rather as nameless persons should take priority.

In this regard, I am mindful also of the many women who have borne the brunt of the struggle for this country's liberation. Many times we talk about people who have been put in detention and prison forgetting that the people left behind sometimes suffer a lot more than those who are in detention or prison who occupy people's attention, forgetting the many mothers who remain with big burdens back home and make contributions to protect their families and provide education not only to their own children but to many children of others.

Mr. Temporary Deputy Speaker, Sir, I would like specific recognition for these people and I am persuaded that one of the ways in which we can pay tribute to these people is to require that all the Commissioners in this Truth, Justice and reconciliation Commission be women. I am sure that this will not go well particularly with certain Members of this House, some of whom are sitting behind me, but it is a fact of the matter that our women's contribution to this country's liberation has been far greater than those of men.

I can say as one who has been in detention in both Nyayo and Nyati houses that those women left behind sometimes suffer a great deal more. They do not get any honours and contributions such as others get. A recognition in the body of this Bill would be quite in order.

Mr. Temporary Deputy Speaker, Sir, I would also like to suggest that we should not limit

the period of investigation to 12th December onwards. There is absolutely no harm where there are living Kenyans who can recount their ordeals and the struggle that this country went through right back to the Nandi resistance. If they are alive, why should their contributions not be in the annals of Kenyan history? What would be the harm in recognising their contributions so that when the history of this country is written, we can read about them? Why do we want them to die with such a rich legacy and history? Why not make it possible for them to appear before the Commission to recount what they went through? That is because, in many ways, this country suffers because we let down those who fought for this country's Independence. It is the homeguards and those people who made no contribution to this country's struggle for Independence that benefitted most. One of the ways in which we can remember the contributions of those who fought, including many women in Central Province, whose contribution to liberation is, sometimes, minimized,--- They contributed far greater! Some of those women are alive! I would like the widow of Dedan Kimathi, for example, to appear before the Commission because she is alive! There are many others; I know Field Marshal Baimungi from my own constituency who was in the forest and he was shot dead. His widow is still very much alive and remembers what they went through! What will be the harm in giving them an opportunity to appear before this Commission? Why are we limiting? I see no sensible reason for limiting the contributions to the period after 12th December, 1963.

Mr. Temporary Deputy Speaker, Sir, we also need to remember that there are certain monuments of shame! I am talking about buildings like Nyayo House that ought to be immortalised in the records of the Truth, Justice and Reconciliation Commission, where much of the atrocities that took place in this country happened. Let there be specific references to that building where those activities took place, and let them be preserved in the records of the Commission. It is not only Nyayo House. There are many others in many parts of this country which were centres of torture.

Mr. Temporary Deputy Speaker, Sir, I would like to see an investigation with specific reference being made by that Commission with regard to the excesses of the abuse of office by certain sections within the Kenyan Police Force. The firing squad that has been responsible for so many extra-judicial killings. They must not get away! We must not allow the general investigation to suppress or hide some of the notorious facts that we know of individuals in the Police Force who have been responsible for tarnishing the name of our Police Force which have, in many instances, performed extremely well!

Mr. Temporary Deputy Speaker, Sir, I would like specific clauses within this Bill - and I will be submitting this during the Third Reading for amendments - not to take away the substance of the Bill, but to enhance its effectiveness so that, Kenyans can participate knowing fully well that it addresses specific issues. For example, the *saba saba* riots that brought in the repeal of Section 2(a). Let us name specific events that are in our living history so that Kenyan's interest in the work of the Commission can be generated, so that it does not become another commission like many others whose contents and recommendations are shelved away in some Government buildings.

Mr. Temporary Deputy Speaker, Sir, I am certain that the Minister, herself, having been a victim of many of the abuses that will be investigated, would like to be remembered as the one that made it possible for the Commission to be relevant today. We can only make it relevant by making the events of our living history be the starting point of the deliberations of the Commission. We do not wish to see former Heads of State die before they get an opportunity to appear before that Commission so that, some of us can appear before them and ask questions because we know things that took place in our own lifetime! That is one of the ways that we can deter future abuses of power by those in office.

Mr. Temporary Deputy Speaker, Sir, I could go on and on, because I would like to say very many things, but I will only be repeating those things that have been said by hon. Members in this

House. All I would like to say for the moment is that, I do wholly support this Bill, and I hope that this House will pass it and improve on it.

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

*(Applause)*

**Mr. Mututho:** Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity. I want to fully support what hon. Imanyara has just said, especially on the role of women in that Commission.

Mr. Temporary Deputy Speaker, Sir, many Kenyans can remember the events that happened outside the Norfolk Hotel. When things started and went haywire, there was a woman who stood up and said that men should forget about being men, and give their trousers to women. Subsequently, the white men who were dining at the Norfolk Hotel and the police opened fire and many people died. That was during the colonial days. If you follow the events all through to the Lari Massacre and everything else, the amount of raping, killing and maiming that has been done, you will find that women have suffered immense harm! Women have suffered immense harm to an extent that even the friendly forces like what we have - the British Forces and so forth--- You know it! Everybody knows the mess they have done to our people, to our communities and to everybody else.

So, Mr. Temporary Deputy Speaker, Sir, I would like to suggest that the composition of men to women in the Commission be 50-50, so that we can have women taking an active role. They take the Chair and also take 50 percent of the membership. I am sure it is not about whether they are men or women, but it is so that you can unveil the truth of all that happened in yester years. Jesus Christ our Lord did not have a problem with the robbers, thieves or even prostitutes. But he had a lot of problems with pretenders and hypocrites! Until we unearth some of the things that we are hiding; until we unearth that people killed others because they are Kikuyus, Kalenjins or Maasais; unless we bring that forward, then we shall not be able to heal.

In view of that, Mr. Temporary Deputy Speaker, Sir, and so that we can have a completely unbiased kind of approach, I would like to propose that we also consider hiring other people of good faith from around the world to form a significant portion of the Commission. What I am trying to say is: If you took John Mututho or any other person who belongs to this or the other tribe, there will still be some link that may hinder or cause some little bias, no matter how we look at it. So, I would like to urge the proponents of the Commission to consider having a controlling share of that Commission by having some people who are international experts in those issues.

Mr. Temporary Deputy Speaker, Sir, I want to join my colleague who said that the events of the *Ngoroko's*, the Flying Squad, Kwekwe Squad, Nyati House and even Sabaot Land Defence Forces (SDLF) and what the army did there; all those events should be documented very, very well, so that people can know what happened. Is it true they chopped off peoples' ears?

Mr. Temporary Deputy Speaker, Sir, is it true also that our own Army not only suppressed the Sabaot Land Defence Forces, but also went on a rape mission between Sabaot forces and all through to Nairobi whenever they stopped their cases? There are so many of those on their way from that place. We cannot forget all these atrocities that are still going on and we have witnessed them. I am sure that everybody agrees and I join all the other hon. Members in supporting this worthwhile Motion. I wish to say just like my friends have said, this is the best thing that ever happened, if it can be done right.

Thank you, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Prof. Kaloki): Hon. Members, I will now call on the Mover to reply.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Ms. Karua): Thank you, Mr. Temporary Deputy Speaker, Sir. May I take this opportunity to thank all the Members who have given very valuable contributions which we are going to look into with a view to bringing some amendments during the Committee Stage. I want to thank each hon. Member individually and collectively for wholeheartedly supporting this Motion.

Mr. Temporary Deputy Speaker, Sir, the reason that the cut-off date was given as 1963, it is not so that we mask what had happened there before. If you look, it is clearly indicated that the antecedents can also be included, if to shade light on what we are looking at. But we are considering that the conduct we are examining is the conduct of ourselves: How have we treated each other as sovereign nation? We attained our Independence on 12th December, 1963 and that is why that date is of significance. But information predating that period which is relevant shall be admissible. I want to agree with the Members that there is genuine concern in an exercise of this nature on the safety of witnesses who come to give evidence. I want to agree that it is, therefore, necessary to look at safeguards and various other models. It is already provided in the Bill that evidence maybe given either in the open or in camera. It may be necessary to look into that with a view to letting the Commission also decide, after examining the nature of testimony each witness is to give, as to whether they can accord that witness a closed door session to enable them to feel free; to encourage people to own up and also to encourage those who may wish to confess. I also wish to assure Members that amnesty is based on the need for people to come out and tell the truth. Amnesty can only be recommended for those who actually confess and apologise for their wrong doing.

Without repeating what hon. Members have said, I have said that we will look carefully not just at our notes but also at the HANSARD so that we do not miss any single thing said by hon. Members. I beg to move with the assurance that we will take into account all those valuable contributions, including the report of the Departmental Committee on Administration of Justice and Legal Affairs.

With those few remarks, I beg to move.

*(Question put and agreed to)*

*(The Bill was read a Second Time  
and Committed to a Committee of  
the Whole House tomorrow)*

## MOTION

ADOPTION OF POLITICAL PARTIES  
(REGISTRATION) REGULATIONS

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

THAT this House adopts the Political Parties (Registration) Regulations 2008, laid on the Table of the House on Tuesday, 8th July, 2008.

Mr. Temporary Deputy Speaker, Sir, the said rules are already before the House. They are rules that will enable the full operationalization of the Political Parties Bill. These rules were made by the Electoral Commission of Kenya (ECK). My Ministry has the obligation to lay them before the House and to move this Motion. I have looked at the rules and they are basically rules to enable the ECK and the Office of the Registrar of Political Parties to regulate political parties. They give

the basics that each party must have. They will actually provide a checklist for political parties with which each political party can measure itself as to the level of compliance during the period of 180 days that each party has to bring itself fully within this new law. The rules provide for the application of provisional registration of a political party. All our political parties are going to have a provisional registration status but on application to the Registrar of Political Parties. Within 180 days, as each party complies, the Registrar of Political Parties will either be able to grant full registration or to deregister any party that is unable to comply. So, the rules give the conditions for provisional registration and for full registration. Also, as I have said there are all the other benchmarks including the period within which each party should notify the Registrar if there is any change of office, office bearer or if, for instance, the registered head office of the party or the postal address changes; or any alteration in the names of the political party or its constitution. So, really, these are routine matters.

They also give other details that are actually extracted from the Political Parties Bill which the parties' attention need to be drawn to so that they may be able to comply. One of the requirements will be that each party has to have audited accounts every year. We know that under the Societies Act, we are required to do that. Normally, most parties do not comply. But this time, there will be the whip of the Registrar to ensure that we not only file returns but also make sure that there is audited accounts. It also provides who can sign the notice to the Registrar, the office bearer and how the Registrar will communicate with the political parties which is basically through registered postal address of the political parties concerned. The proposed Rule 15 also provides offences and penalties for breach by political parties of any of the provisions of these regulations. It means that every office bearer of the party concerned shall be guilty of an offence and is liable to the fine or a term of imprisonment provided so that we are actually making sure that we comply with the law.

The rest of the attachment are the forms through which we shall do the various things required by the law. The rules are fairly straightforward and I would like to urge the hon. Members of this House to support them.

I beg to move and request hon. Githae to second.

**The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government** (Mr. Githae): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to second this Motion on Political Parties Rules.

I have read the rules and I am sure that all the hon. Members have also read them. I think they are very clear and specific. In addition, these rules were formulated by the Electoral Commission of Kenya (ECK). Then after that, they gave people an opportunity to look at them. So far, I think all the political parties have looked at them and they are in agreement. These rules must be seen in the context of the Political Parties Act which will now start regulating the formation, regulation and management of political parties.

Mr. Temporary Deputy Speaker, Sir, it has always been a sad occasion when political parties, which are very important organs of Government, are regulated by the same Act - the Societies Act - that regulates burial and wedding committees. It is the same Act that is used to regulate political parties. But now, with the Political Parties Act, political parties now have their own legal regime, starting from registration, management and even their conduct.

Mr. Temporary Deputy Speaker, Sir, as I said, I have looked at these rules. The only rules that I had a problem with were Nos.9 and 25. Rule No.9 talks of district organizations of the party and the functions. I think this must be an error. I think the word "district" should be replaced with the word "branch" because it is up to the political party to decide whether a constituency is a branch or it wants to take into account the central Government districts. So, I think that should be left to the political parties, themselves, to decide. That is because quite a number of political parties have

now made a constituency a branch.

The same case also applies to Rule No.25, but I understand that due notice has been given for an amendment. Again, instead of the word "district" it should be "branch", so that we leave it to a political party to decide whether it wants to make a constituency a branch or the central Government branch.

Mr. Temporary Deputy Speaker, Sir, these rules are self-explanatory. They will make it very easy for political parties to govern themselves. All the requirements for registration are there. Even the forms are there. Even more, the rules give what the Articles of Association of a political party should contain. The order is given there. So, it will make it easy even when you want to compare the constitutions of all the political parties. There are certain objects that must be stated.

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

*(Question proposed)*

**The Assistant Minister for Medical Services** (Mr. Mungatana): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to make my contribution to this Political Parties (Registration) Regulations, 2008.

Mr. Temporary Deputy Speaker, Sir, first of all, may I start by congratulating the Minister for, very quickly, bringing these rules to the House, when the Political Parties Act started taking effect as from 1st July, 2008. We were informed that we have 180 days for political parties to actually comply with the rules that the Political Parties (Registration) Regulations, 2008, contain. I want to congratulate the Minister because, ordinarily, rules are normally gazetted by Ministers and, many times, they never bring them to this House. The House only has an opportunity to debate the main legislation and then after that, the Ministers just roll the rules in the Kenya Gazette. What happens is that you could have passed a very nice legislation and then, the rules are created such that they frustrate the very legislation that you have passed. So, I want to thank the Minister for Justice, National Cohesion and Constitutional Affairs for finding it wise to table these rules that are coming from the ECK to this House, for us to have a chance to debate them.

Mr. Temporary Deputy Speaker, Sir, actually, out of the tabling of those rules, I had a chance to look at them and give a notice to move certain amendments, so that we can improve on them and make it easier for political parties to operate. I have special interest in political parties because I hold a position in NARC(K), as the National Organizing Secretary. I know the problems that exist in political parties. It is important for us to look at some of the rules that have been proposed here in a way that will help political parties operate, and not make life difficult for them. So, I have given notice in writing and I will move several amendments to these rules.

The first amendment is on Rule No.5. I propose that in the second-last line, instead of the words "within 14 days send notice thereof to the Registrar" it should read "within 30 days." That is an important provision because if there is an election and then there is a change of office bearers, this Rule is proposing that within 14 days, that must be done. The Registrar of Political Parties must be informed. Let us add the days to 30, so that political parties can get a chance to get organized and send the necessary returns, but not in such a hurry.

Mr. Temporary Deputy Speaker, Sir, the second rule that will make it easier for political parties to operate is Rule No.6. That is the second amendment that I am proposing. I propose that the second-last line should read: "Within 30 days of such change", instead of "within 14 days." Again, here, this is the Rule that provides for the notice of change of location of head office or postal address. Again, for practical reasons, if you are shifting from one location to another location, you will need time to settle. Political parties, the way they have been, would need more time. So, I propose that it should be 30 days instead of the 14 days.

Mr. Temporary Deputy Speaker, Sir, I want to propose the third amendment to the proposed Rule No.7(2). There is a provision for the Registrar to refuse to register a change in the name of a registered political party, where the proposed name--- They give reasons here. It gives the Registrar of Political Parties the power to refuse a change of name. I assume that it is also the power to refuse to register a political name. Now, what I wanted to provide for is in Sub Section 2(d). At the end there should be a proviso saying:-

"That provided, if for historical reasons, the names resemble, the name shall be allowed by the Registrar of Political Parties".

Mr. Temporary Deputy Speaker, Sir, for practical reasons, there are historical reasons why there is existence today of parties like FORD, FORD(A), FORD(K), NARC, NARC(K), ODM and ODM(K). We do not want a situation where the Registrar of Political Parties can say that in exercising this power, ODM and ODM(K) resemble and, therefore, they will not be registered and yet there are historical reasons for the existence of ODM and ODM(K). There are historical reasons for the existence of FORD, FORD(A) and FORD(K), NARC and NARC(K). I think for us to make life easy for political parties, that proviso must be in the proposed amendment of the rule.

Mr. Temporary Deputy Speaker, Sir, the forth amendment I am proposing is to do with the Schedule to the rules. The First Schedule of these rules is on page six. If you look at the First Schedule, it proposes the things that must be contained in a political party. Now, this is very good. As the Minister said when moving this Motion, this provides a checklist. But, if you go to point (v) under the same rules on page seven and page eight, one of the things that a political party must have, according to these proposed rules, is the matters that must be set forth in the Constitution or rules.

On page eight, item (9) says that it has to specify the district organisations of the party and their functions. "District" here, is not defined. Like the seconder of this Motion said, in order to take care of those concerns, I would propose that instead of the words, "district organisations of the party and their functions" it should read, "the district/constituency branch organisation of the party and their functions". This is so that for political parties that wish to operate from the provincial or Government districts, they could do so. Also, for political parties that wish to operate from the electoral areas of their constituencies, they are free to do so.

Mr. Temporary Deputy Speaker, Sir, on the same breath, on item 10, instead of "disciplinary measures against district branches," I propose it reads; "disciplinary measures against district/constituency branches". The reason is the same, so that those parties that wish to go to the constituency level can do so and those that wish to remain at the districts can do so.

I will then turn to my second last proposal for amendment which is on page nine of the same rules entitled 20. Again, the rule proposes formation of district branches. I propose that it should instead read:-

"Formation of district/constituency branches".

This is based on the same reasoning so that political parties can operate as they wish. They should be given the same freedom.

### *Rule 25*

Mr. Temporary Deputy Speaker, Sir, on page 10, under Rule 25, again, I propose that the provision that refers to the districts should read, "District/Constituency branches". So, Rule 25 will read:-

"...which district/constituency branches (if any) and other organs of the party are authorised to submit or file election proposals for election to Parliament or any local authority where there are no other relevant legal provisions."



In moving those amendments, I am alive to the fact that the Electoral Commission of Kenya (ECK) has given deep thought to these rules and so did the Minister when he was moving the Motion. I am certain that if this House approves those amendments, it will enable all of us have an easier time in complying with the Political Parties Act. I would like to repeat the argument that sometimes we have passed very good main legislation and then [**The Assistant Minister for Medical Services**]

Ministers go to create subsidiary legislation, that is, regulations or rules, which have been a hindrance or a problem to even the application of the main legislation. For the Minister to have brought these rules for us to look at them and have a chance to make amendments so that it is easier for us to operate, then he should be commended. He has done a good thing and such a thing should be encouraged. It should be noted that when we pass legislation, it is the property of the House. We want such legislation to be good for the country. They should not go out there to make funny rules, gazette them and then all of us are shocked. It is good for all legislation, including subsidiary legislation to come to this House so that we can make necessary amendments.

Mr. Temporary Deputy Speaker, Sir, with those few or many words, I propose to move those amendments and ask Mr. Cheptumo to second them.

**The Assistant Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. Kipkorir): Mr. Temporary Deputy Speaker, Sir, I rise to second the amendments proposed by Mr. Mungatana. When you talk of a period of 14 days within which parties are supposed to comply, for sure, that is such a short time knowing the kind of process and procedures parties may wish to pursue or follow, especially after undertaking changes in their management. Therefore, the arguments raised for the proposed amendments are justified.

I, therefore, beg to second.

#### *Rule 5*

THAT, Rule 5 be amended by deleting the words "fourteen days" and substituting the words "thirty days" thereof.

**The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government** (Mr. Githae): Mr. Temporary Deputy Speaker, Sir, I support the amendment. It will make it easy for political parties to operate.

*(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)*

*(Rule 5 as amended agreed to)*

#### *Rule 6*

THAT, Rule 6 be amended by deleting the words "fourteen days" and substituting therefor the words "thirty days".

*(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)*

*(Rule 6 as amended agreed to)*

#### *Rule 7*

THAT, Rule 7 be amended by adding the proviso at the end of the second (d), to read as follows:-

"Provided if for historical reasons the names resemble, the name shall be allowed."

*(Question of the amendment proposed)*

**The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government** (Mr. Githae): Mr. Temporary Deputy Speaker, Sir, I support that amendment. For those hon. Members who may not have understood, all it means is that, because of historical reasons, you may find that you already have a number of political parties which exist but their names resemble each other. I think the Mover gave the example of FORD(K) and FORD(P), NARC and NARC(K), and ODM and ODM(K).

We are, therefore, adding this proviso, so that the Registrar of Political Parties does not refuse to register a political party just because its name is almost similar to that of another political party, for historical reasons. This means, that once the rules are approved, if you want to register a party with those initials, the Registrar of Political Parties may refuse to do so. If a party is already in existence, the Registrar shall register it.

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

*(Rule 7 as amended agreed to)*

*(Rules 8 and 9 agreed to)*

#### *First Schedule*

**The Temporary Deputy Speaker** (Prof. Kaloki): Hon. Members, I beg to move that the Motion be amended as follows:-

In the First Schedule, Form PP.1, Paragraph 5, under matters to be set forth in the constitution of the rules, I will propose, under that paragraph, the words "district organizations of the party and the functions" be deleted and replaced with "district or constituency branch organizations of the party and their functions."

*(Question of the amendment proposed)*

**The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government** (Mr. Githae): Mr. Temporary Deputy Speaker, Sir, just for the sake of hon. Members who might not have been here, the intention of that amendment is to make it easy for a political party to decide what amounts to a branch. Some political parties have a constituency as the branch, while others use the central Government district. So, by saying "branch or constituency" then you make it easy for a political party to decide what their branch should be.

*(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)*

#### *Rule 10*

**The Temporary Deputy Speaker** (Prof. Kaloki): Hon. Members, I beg move that the Motion be amended as follows:-

In the First Schedule, Form PP.1, Paragraph 10, the words "disciplinary measures against district branches" be deleted and replaced with the words "disciplinary measures against district/constituency branches."

*(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)*

*(Rule 10 as amended agreed to)*

*(Rules 11, 12, 13, 14, 15, 16, 17, 18 and 19 agreed to)*

#### *Rule 20*

**The Temporary Deputy Speaker** (Prof. Kaloki): Hon. Members, as I have told you on Rule 20, I will propose the Question.

THAT, Rule 20 be amended by deleting the words "formation of district branches" and substituting therefore the words "constituency branches".

*(Question of the amendment proposed)*

*(Question, that the word 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)*

*(Rule 20 as amended agreed to)*

*(Rules 21, 22, 23 and 24 agreed to)*

*Rule 25*

**The Temporary Deputy Speaker** (Prof. Kaloki): Hon. Members, on First Schedule Section 4 on Rule No.25, I will propose the Question. Instead of "district branches" it should read, "District/Constituency Branches".

*(Question of the amendment proposed)*

*(Question, that the word 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)*

*(Rule 25 as amended agreed to)*

*(Rule 26 agreed to)*

*Rule 27*

**The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government** (Mr. Githae): Mr. Temporary Deputy Speaker, Sir, while I support this amendment, I would also like to move an amendment to Rule No.27.

Again, it is on the same basis that we leave it to the party to decide whether they want a branch in their constituency or a central government and, therefore, I propose that in the last sentence the words "district branch" should read "district/constituency branch". This is so that they are all in alignment with the previous amendments.

I beg to move that amendment.

**Mr. Wamalwa:** Mr. Temporary Deputy Speaker, Sir, I beg to second that amendment so as to allow for those parties that have constituency branches. They should be allowed to form constituency branches not necessarily district branches. So, it should read "district/constituency".

*(Question of the amendment proposed)*

*(Question, that the word 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)*

*(Rule 27 as amended agreed to)*

*(Rule 28 agreed to)*

*(Question put and agreed to)*

*(Applause)*

### **ADJOURNMENT**

**The Temporary Deputy Speaker** (Prof. Kaloki): Hon. Members, it is now time to interrupt the business of the House.

The House stands adjourned until Tuesday, 5th August, 2008, at 2.30 p.m.

The House adjourned at 6.30 p.m.