

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 2nd May, 2001

The House met at 9.00 a.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

NOTICES OF MOTIONS

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

LEAVE TO INTRODUCE ASAL EMERGENCY FUND BILL

THAT, this House do grant leave to introduce the Arid and Semi-Arid Lands Emergency Fund (ASALEF) Bill.

LEAVE TO INTRODUCE KENYA LIVESTOCK DEVELOPMENT AUTHORITY BILL

THAT, this House do grant leave to introduce the Kenya Livestock Development Authority Bill.

ORAL ANSWERS TO QUESTIONS

Question No.145

EXPENDITURE OF RELIEF SUPPLIES

Mr. Deputy Speaker: Mr. Kiunjuri is not here. We will leave his Question until the end. Let us move on to the next Question by Eng. Muriuki!

Question No.068

LIST OF STUDENTS ADMITTED TO NATIONAL SCHOOLS

Eng. Muriuki asked the Minister for Education:-

- (a) whether he could table a list of all the students who were admitted to national schools in Form One in the year 2001, their index numbers and KCPE scores for each student;
- (b) how many are from public schools and private schools; and,

(c) what the criteria was for admission to the national schools.

The Assistant Minister for Education, Science and Technology (Dr. Wamukoya): Mr. Deputy Speaker, Sir, I beg to reply.

(a) The list was tabled last week.

(b) A total of 1,723 students are from public schools and 689 from private schools.

(c) The criteria for selection is based on the students merit in the district, national school choice and the district quota allocation in the national schools.

Eng. Muriuki: Mr. Deputy Speaker, Sir, I have now had a chance to look through that large document and what has come out of it is that the quota system which we have for education selection into Form One is heavily biased towards the private primary schools. I have no quarrel with private primary schools, but they are very expensive. Most of them charge between Kshs20,000 to Kshs30,000 fees per term and most of the wananchi cannot afford them. The result is that you find in schools like Mang'u, the selection from 14 districts are 100 per cent from private schools. A school like Alliance Girls---

Mr. Deputy Speaker: Why do you not ask your question?

Eng. Muriuki: Mr. Deputy Speaker, Sir, it was a long paper and there is one factor that I want to sort out.

Mr. Deputy Speaker: I mean, the purpose of that paper was not for you to analyse it so that you may now give us a speech.

Eng. Muriuki: Mr. Deputy Speaker, Sir, the point is that a large number of Form One students admitted into national schools all come from the very expensive private primary schools. Is the Assistant Minister satisfied that this is in order, that we should have the selection into national schools from some of the districts like Kajiado, where the selection is 100 per cent from private primary schools? Other districts and, as you say, I cannot read all of them, but very many districts---

Mr. Deputy Speaker: Eng. Muriuki, what is your question?

Eng. Muriuki: Mr. Deputy Speaker, Sir, is the Assistant Minister satisfied that it is in order that we should have selection into national schools only from private primary schools so that we do not have an allocation quota for public primary schools so that wananchi can also have a chance of sending their children to the good national schools?

Dr. Wamukoya: Mr. Deputy Speaker, Sir, in order to deal with the situation of a large number of students, we must have a certain criteria. This criteria is what I have said in part "c" of my reply whereby there is a quota system per district considering the merit of performance of the students and also considering the national schools that a student has applied for. Therefore, it is fixed that way and it is not true to say that we select only from private schools. We have more students, as I have read in part "b" of my reply, who came from public primary schools and only 688 came from private primary schools. As I said, this is dictated by criteria.

Eng. Muriuki: Mr. Deputy Speaker, Sir, I am not suggesting that all the selection is from private primary schools. I am saying that in districts like Nyandarua, Kajiado, Embu and Meru Central where there is a heavy presence of private schools, 100 per cent of secondary school selections come from the private primary schools. So, could the Assistant Minister consider having a quota system so that the public schools are also considered so that the poor wananchi can also have a chance of sending their pupils to the national schools?

Dr. Wamukoya: Mr. Deputy Speaker, Sir, when Eng. Muriuki says "all", I do not know whether he understands what I am saying. You may find students doing poorly in a district, for example, West Pokot or Turkana and yet being admitted to the national schools and yet those who are doing very well like Nyandarua District, you find that they take fewer students according to the quota there because they have performed highly but their quota does not allow them to be admitted according to the marks. This is because the marks are high and you find some students with 610 marks in Nyandarua not being admitted and maybe a student with 500 plus marks in another district being taken because of the quota system.

Mr. Waithaka: Mr. Deputy Speaker, Sir, our main worry and what the Assistant Minister should explain is: During the last ranking of performance in this examination, they ranked public schools and private schools together. If that ranking has any rationale, it should also be used in admissions to these national schools. That means they should give a certain quota to those coming from the public schools and another quota to those coming from the private schools because the ranking is not the same. Could that be done?

Dr. Wamukoya: Mr. Deputy Speaker, Sir, I think we admit students according to the marks they get whether they are from public or private schools.

Mr. Obwocha: Mr. Deputy Speaker, Sir, could

the Assistant Minister confirm or deny that the five places are normally left for the Provincial Director of Education (PDE) in every province and that is the reason why the Principal of Mang'u High School, Mr. Otula, was victimised for rejecting the PDEs selection of students who had very low marks?

Dr. Wamukoya: Mr. Deputy Speaker, Sir, I deny that. Maybe this is being confused with the intake from the Ministry in questions of replacement of students who have not taken their positions. This is done but not positions being left for PDEs.

Mr. Shidiye: Mr. Deputy Speaker, Sir, national schools are normally role models for other schools. North Eastern Province happens to be the only province with no national schools. Why is it so? Could the Assistant Minister consider having one national school in that place, at least, to uplift the standards of education?

Dr. Wamukoya: Mr. Deputy Speaker, Sir, that is a genuine request and I will take it back to the Ministry for consideration. We consider the fact that national schools are wholly run by the Government. They are expensive, but I think that can be considered.

Eng. Muriuki: Mr. Deputy Speaker, Sir, could the Assistant Minister consider upgrading a quarter of the private schools to national schools? This will greatly assist districts like Nyandarua, where there is a heavy presence of private schools. The ranking the Assistant Minister is talking about will not help much because those schools remain private institutions and they do not cater for the common mwananchi.

Dr. Wamukoya: Mr. Deputy Speaker, Sir, I think the Ministry's policies can be reviewed. It is also possible to look at the question my colleague is asking. But I do not know how quickly it will take place. I think Eng. Muriuki has a specific question. I think he should have asked about his son which he has not.

Mr. Deputy Speaker: Next Question, Mr. Kimeto.

Question No.148

PAYMENT OF DEATH GRATUITY
TO MR. CHERUIYOT'S FAMILY

Mr. Deputy Speaker: Mr. Kimeto is not here. We will leave the Question until the end.

Question No.117

RETRENCHMENT OF KENYA RAILWAYS ENGINEERS

Eng. Toro asked the Minister for Information, Transport and Communications why Messrs M.O. Ndeda, Chief Mechanical Engineer,

J.K. Kamau, Chief Civil Engineer and L.D. Achieng, Chief Traffic Manager, were retrenched by the Management of Kenya Railways Corporations.

The Assistant Minister for Information, Transport and Communications (Mr. Lengees): Mr. Deputy Speaker, Sir, I beg to reply.

The officers were retrenched, among others, from the services of the Corporation as part of the on-going staff reduction programme which has been in place since 1994. This particular category of staff were retrenched following the creation of a leaner and flatter structure of the Corporation which led to the reduction of the number of departments from the initial 20 to 12. This involved merging some of the departments which resulted in excess staff, thus requiring some to leave. Among these were the Deputy Managing Director, the General Manager, Finance, the General Manager, Human Resources, and the Assistant Chief Mechanical Engineer.

Eng. Toro: Mr. Deputy Speaker, Sir, I seek the indulgence of the Chair in this case. This is because the Assistant Minister has given a totally misleading answer to this Question. He is talking about some departments that have been merged with others. I have looked at the list of the staff who have been retrenched. I know these engineers and senior staff because they were my colleagues at one time. I know them as competent officers. The departments they were heading are still intact. Therefore, the Assistant Minister is misleading the House on the merging of those departments. The departments of Mechanical Engineering and Civil Engineering are still intact.

Mr. Deputy Speaker: Order! Eng. Toro, do not ask a Question whose answer you already know. You are now spending time explaining to the House. Could you ask a supplementary question?

Eng. Toro: Mr. Deputy Speaker, Sir, the House does not know about those departments because the Assistant Minister is misleading the House.

Mr. Deputy Speaker: Order! The Standing Orders of this House say that a Member shall not ask a Question whose answer he already knows.

Eng. Toro: Mr. Deputy Speaker, Sir, I do not know the answer. I want to know why those officers were retrenched.

Mr. Deputy Speaker: Eng. Toro, will you ask a supplementary question now?

Eng. Toro: Mr. Deputy Speaker, Sir, is the Assistant Minister in order to mislead this House by saying that these departments were merged with others when they still exist? Could he tell us why these senior staff were retrenched because what he is telling the House is not the truth?

Mr. Lengees: Mr. Deputy Speaker, Sir, I was not misleading the House. I was reading the reply given to me by my officers. However, this merging of departments is a long process; it will not take a short time. We are in the

process of merging them from 20 to 12. The decision to retrench these officers was reached by the Board of Directors and representatives of the Kenya Railways Workers Union. I believe there are some other people who are more qualified to take over those positions.

Mr. Muchiri: Mr. Deputy Speaker, Sir, looking at the Question and the reply given, it would appear that the Corporation is closing down. However, the Assistant Minister is telling this House that they are reducing the number of departments by way of merging some departments. Could he lay on the Table of this House the names of junior officers serving under those officers who were retrenched?

Mr. Lengees: Mr. Deputy Speaker, Sir, the targeted figure for retrenchment in 1994 was 4,500 employees. The total number of the employees of the Corporation was 15,000. The Corporation will not close down, but it is reducing the number of employees from 15,000 to 8,500 in order to be more efficient.

Mr. Michuki: Mr. Deputy Speaker, Sir, given the kind of investment that has been made to train both mechanical and civil engineers, and taking into account the condition and state of the railway lines in this country, particularly between Nairobi and Nanyuki, could the Assistant Minister tell us whether we have surplus engineers who must be given priority in retrenchment?

Mr. Lengees: Mr. Deputy Speaker, Sir, the Ministry and the railway experts have seen it is prudent to retrench some members of staff in order to have a small body that will be more effective in the management of the railways network in this country.

Mr. Otula: Mr. Deputy Speaker, Sir, could the Assistant Minister tell this House the relationship between the three departments which will be merged and headed by one person? I know Civil Engineering is different from Mechanical Engineering. What will be the designation of this particular officer heading all these three departments?

Mr. Lengees: Mr. Deputy Speaker, Sir, I am not able to tell the designation of this person, but I am sure once the departments are merged, of course, the most qualified officer will head that

[**Mr. Lengees**]

department and he will be assisted by those who have experience in different sections under one department.

Eng. Toro: Mr. Deputy Speaker, Sir, I am not satisfied with the answer given by the Assistant Minister. He is evading my question. I am totally unsatisfied. You heard him say that these departments can be merged. They cannot be merged because they are operating departments of Kenya Railways Corporation. These are the chief officers of those three departments and they were all retrenched at the same time. Those departments are still intact. The Assistant Minister has not answered my Question. He

is addressing himself to other matters that are not related to this Question.

Mr. Deputy Speaker: Could you put your question again?

Eng. Toro: Mr. Temporary Deputy Speaker, Sir, these chief officers were retired on instructions from the Ministry. There was an accident at Athi River Railway Station where some people lost their lives. The person who was sent to investigate the accident was Eng. Harris(?), a former General Manager of Kenya Railways. There was interference. There were instructions given by the Ministry to sack these chief officers. Could the Assistant Minister tell us which instructions were these? This is because the Board of Directors never sat down to consider their case. These officers were not unionisable and, therefore, the union cannot assist them. Instructions were given by the Ministry to sack these officers. Could you tell us why they were sacked? The board of directors did not make the decision to sack them.

Mr. Lengees: Mr. Deputy Speaker, Sir, I think I said, at the outset that there are 20 departments which will be reduced to 12. Secondly, I cannot tell the House why the instructions were given from the Ministry to sack these engineers as these might be internal issues as per what happened at that particular time.

Mr. Deputy Speaker: Mr. Assistant Minister, what stops these departments from being merged when these officers are still in office?

Mr. Lengees: I beg your pardon, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: I am just wondering why these departments cannot be merged with these officers still in the employment of the Kenya Railways Corporation.

Mr. Lengees: Thank you, Mr. Deputy Speaker, Sir. I think, as I said here, the Board of Directors of the Kenya Railways Corporation and the representatives of the Union sat together to find out who were the most suitable people to run the new departments after merging. That is why the three engineers were sacked.

Eng. Toro: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order not to answer your question? You asked him a specific question, but he is not answering it. He is talking about Board of Directors and the Union. Why could these chief officers not be there when the merging was done?

Mr. Lengees: It is the decision of the Kenya Railways Corporation to retrench them as they are having more qualified persons to run the Corporation.

Mr. Munyao: On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister is misleading the House. First, Mr. Otula asked him the question: "Since they were merged, what are their new designations?" and he replied: I am not aware." How will they retrench staff when they do not know what they are forming out of that retrenchment? Could the Assistant Minister tell us what their new designations are?

Mr. Lengees: First of all, Mr. Deputy Speaker, Sir, the Members should know that the officers in question were not the only ones retrenched. They were retrenched among others who were also qualified to that level.

Mr. Deputy Speaker: Mr. Assistant Minister, you may have retrenched the entire staff of the Kenya Railways Corporation, but they are asking about these three officers. Nobody is disputing the rights of the Kenya Railways Corporation to retire or retrench its staff. They are asking you: "What was the reason?"

Mr. Lengees: Mr. Deputy Speaker, Sir, I beg for the indulgence of the House to get more time to know the reasons why they were sacked.

Mr. Deputy Speaker: Order! Order! I will defer this Question to Tuesday, next week.

(Question deferred)

Next Question, Mr. Sifuna!

Question No.142

COMPLETION OF MALABA-KOCHOLIA WATER PROJECT

Mr. Sifuna asked the Minister for Water Development:-

(a) whether he is aware that Malaba-Kocholia Water Project which started 17 years ago to serve the people of West Bukusu, Kimaeti Location in Bungoma and Teso Districts has stalled; and,

(b) when this water project will be completed.

The Assistant Minister for Environment and Natural Resources (Mr. Kofa): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am aware that Malaba-Kocholia Water Project which has been under construction has taken long time to complete. This is partly due to inadequate funding, but mainly due to the community's refusal to allow the construction at the treatment works to continue unless their demand for land compensation was met. This delay has contractual implications.

(b) The project is currently being rehabilitated under the *El Nino* Emergency Programme. The contractor is on site and the project is expected to be completed by the end of October, 2001.

Mr. Sifuna: Mr. Deputy Speaker, Sir, arising from the Assistant Minister's reply, it is not true that the contractor is on site. There is totally no one there. Could he be honest and tell us why it has taken the project such a long period to complete? Could he also tell us how much money was set aside for the project, how much

has been spent and the balance to be spent?

Mr. Kofa: Mr. Deputy Speaker, Sir, the Ministry is aware of the problems in Bungoma. First, this project has taken slightly more than 20 years. From 1981, when the project started until 1990, there was this constituency called Amagoro which is currently Teso District, which was politically managed from the Busia but the District Water Officer, Bungoma, was running the project. The Ministry, then, spent Kshs24 million.

Dr. Ochuodho: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to imply that a constituency was turned into a district?

Mr. Deputy Speaker: Order! Dr. Ochuodho, you know very well that is not a point of order. That is a question. One more time and I will take action. Hon. Members, let this be the last time I am advising you that when you stand on a point of order, it had better be a point of order. It has to be on the conduct of a Member or on the procedure being employed by that Member and not any other way.

Proceed!

Mr. Kofa: As I was saying, at that time, the Ministry spent Kshs24 million. From 1990 to 1996, the Ministry spent Kshs13 million on the project when Amagoro then became---

Mr. Deputy Speaker: Order! Order! Mr. Shitanda, look at that door!

Hon. Members: Rudi nyuma!

(Mr. Shitanda bowed to the Chair)

Mr. Kofa: When Amagoro then became a district known as Teso, the Ministry spent Kshs4 million. Currently, under the *El Nino* Emergency Programme, Kshs45 million is being spent on that project. But to complete the entire project, it needs Kshs150 million.

Mr. Sifuna: Mr. Deputy Speaker, Sir, the Assistant Minister has told this House that millions of shillings was spent on the project when there was no work being done on the ground. For what purpose was this money being spent when there was no work going on?

Mr. Kofa: Mr. Deputy Speaker, Sir, I said that from 1981 to 1990, the Ministry spent Kshs24 million---

Mr. Angwenyi: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to mislead this House that the money was spent on the project when the Questioner has said there is no work which has been done?

Mr. Deputy Speaker: Order! Order! Mr. Angwenyi, you are intervening before the Assistant Minister has not even finished responding to the question. You are not rising on a point of order, you are asking a question.

Proceed!

Mr. Kofa: Again, as I was saying, from 1981 to 1990, the Ministry spent Kshs24 million on the project. From 1990 to 1996, the Ministry spent about Kshs13 million. From 1996 to 2000, the Ministry spent about Kshs4 million. The work done during that period was laying of

pipelines, of 230 kilometres, treatment works, building of a ware dam, chemical administration building, distribution chambers, low and highrise pump house, storage tanks and excavation, flocculation and segmentation chambers.

Mr. Deputy Speaker, Sir, the problem is that the treatment, in-take and main reservoir works as well as rising mains are in Bungoma District, whereas the pumps and most of the distribution lines are in Teso District. So, the problem here is that Teso District is gaining more from the Ministry than Bungoma District.

Dr. Kulundu: Mr. Deputy Speaker, Sir, the Assistant Minister has given a rather contradictory answer. In part (a) of his written reply, he said that the delay was mainly due to community resistance, whatever that means. Then, in part (b) of his answer, he says that funding from the *El Nino* Emergency Fund will enable the project to be completed by October, this year. But he has talked about pipes being laid over a stretch of 230 kilometres. Anybody who knows the geography of Western Province knows that it is impossible to do that over a distance of 230 kilometres in the sense that it would cover the whole of Western Province, from Mt. Elgon to Suba District in Nyanza Province. Are you satisfied that, that information is correct?

Mr. Kofa: Mr. Deputy Speaker, Sir, I was trying to answer the Question as asked by the hon. [Mr. Kofa]

Member. He asked what would happen if money was spent, and how it would be used. That is what I was trying to explain. Two, he asked why it took so long to complete the works. Partly, the community had agreed-- I was reading the details of my written reply.

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

Mr. Deputy Speaker: Order! Let him finish.

Mr. Kofa: Mr. Deputy Speaker, Sir, the hon. Member also asked why it took so long to complete the project. The Ministry and the community had agreed on land compensation which the community had earlier on accepted, but later on, they refused. They said that, that was too little; that the Kshs600,000 was very little. So, they hired their own private valuer who, at the moment, has not submitted a report to the Ministry. That is why it took long.

Mr. Nooru: Mr. Deputy Speaker, Sir, I think the Assistant Minister is confused about the whole issue because, in the first instance, what is the cost of the project? Despite the fact that he gave the history of the project, he was told that the entire Western Province does not cover 230 kilometres, and he is also talking of completing the project by October, 2001. At the same time, he is talking of the project requiring Kshs150 million. Where are we? From where does he intend to raise Kshs150 million to complete the project by October, 2001? This is because he is taking the House

for a ride.

Mr. Kofa: Mr. Deputy Speaker, Sir, the estimated cost of that water project was Kshs150 million, but from 1980 to date, that project has been constructed in bits - from 1981 to 1990; from 1990 to 1996 and from 1996 to the present time. I am not confused as such.

Mr. Angwenyi: Mr. Deputy Speaker, Sir, could the Assistant Minister categorically tell this House how much money was set aside for that project? In total, how much money has been spent and how much money is set aside to complete that project by October, this year? If he answers those questions, it will be clearer and perfect.

Mr. Kofa: Mr. Deputy Speaker, Sir, I said that since 1981, about Kshs42 million was spent through the *El Nino* Emergency Fund. Presently, the contractor is on site and Kshs45,131,720 was allocated for that project. In order to complete the project, it will take Kshs150 million. The Ministry does not have an allocation as of now.

Mr. Sifuna: Mr. Deputy Speaker, Sir, maybe, the whole problem is that the Assistant Minister is not sure of what he is answering. First of all, regarding the question of 230 kilometres, you know very well that even the distance from Mt. Elgon past Kisumu is not more than 230 kilometres. The Assistant Minister is telling this House that the pipe lines have been laid down for that distance, which is impossible; it is like squeezing water from a stone. Is the Assistant Minister in order, or is he not misleading this House that the pipes have been laid down on 230 kilometres when totally there is nothing on the ground? Could the Assistant Minister be given more time to go to the scene? I am willing to go with him so that he can prove to me that the pipes were laid down on a distance of 230 kilometres. I can assure you that we shall pass Kisumu and the distance covered is not even nearer to that. Can he tell us whether the Malakisi and Kimaiti locations have been covered in that water project?

Mr. Kofa: Mr. Deputy Speaker, Sir, it is as though the pipes were laid on one straight line - like from Mombasa to Nairobi - but there are distribution centres and, therefore, that is not a straight line. Others will move from point A to point C; others from point A to B on different lines. That is what we mean by 230 kilometres of pipeline.

Mr. Deputy Speaker: Order, Mr. Kofa! But he asked you whether certain locations within that area have been served. Mr. Sifuna, can you repeat your question?

Mr. Sifuna: Mr. Deputy Speaker, Sir, can the Assistant Minister confirm to this House whether Kimaiti and West Bukusu locations are covered in that particular water project as was asked in my Question?

Mr. Kofa: Mr. Deputy Speaker, Sir, in my answer to part (a) of the Question, we said that it is a rural water supply, and its intake is in Malakisi River and the project covers parts of Bungoma; that is Kimaiti, West Bukusu and Teso District.

Question No.031

TARMACKING OF BUMULA-PORT VICTORIA ROAD

Mr. Deputy Speaker: Is Mr. Wanjala not here? We will come to the Question later.

Question No.147

REHABILITATION OF KIPANDINI-TALA ROAD

Mr. Katuku asked the Minister for Roads and Public Works when Kipandini-Kitunini-Mbiuni-Katheka-Tala Road, which is virtually impassable, will be repaired.

The Assistant Minister for Roads and Public Works (Eng. Rotich): Mr. Deputy Speaker, Sir, I beg to reply.

(a) The road in question, which is

[The Assistant Minister for Roads and Public Works]

Kipandini-Kitunini-Mbiuni-Katheka-Tala Road will be repaired before the end of this financial year.

Mr. Katuku: Mr. Deputy Speaker, Sir, the answer is very short; the road will be repaired before the end of this year. I will be forced to draw your attention to the fact that I asked the same Question during the last Session about the same time and the answer was as simple and precise as it is now. It was supposed to be repaired before the end of last financial year. I would want to know from the Assistant Minister what happened then, and he has now said that it will be repaired by the end of this year. How much money has he set aside because the road is impassable? Bridges along that road were washed away during the *El Nino* rains. Could he tell us how much money has been set aside, and why was it not done last year?

Eng. Rotich: Mr. Deputy Speaker, Sir, the road in question falls under the District Roads Board (DRB) and, I think, the hon. Member is aware that the quotations have been floated for repair of that road. That road is under the DRB.

Mr. Mwenda: Mr. Deputy Speaker, Sir, I think the Assistant Minister is not serious! This financial year ends in the next two months and he says quotations for the tender are being floated now. In his reply, he said the road will be done before the end of this financial year. When will the work commence? Is it possible to have that road repaired in the next two months?

Eng. Rotich: Mr. Deputy Speaker, Sir, according to the District Roads Engineer, the quotations are now being analyzed by the District Tender Board and in the next two weeks, they will be given out.

Mr. Kaindi: Mr. Deputy Speaker, Sir, under the District Roads Committee (DRC), Mwala Constituency was given Kshs1 million. Could the Assistant Minister explain to us how much money he

anticipates to spend on this road? Is he satisfied that this amount is sufficient to cater for the section we are talking about?

Eng. Rotich: Mr. Deputy Speaker, Sir, the money allocated to every constituency is Kshs5 million. This is covered by the District Roads Committees. This money is stipulated under the Kenya Roads Board Act.

Mr. Michuki: Mr. Deputy Speaker, Sir, in his reply, the Assistant Minister said this road falls under the auspices of the District Roads Committee. Could he confirm or deny that he is responsible for all roads in Kenya, whether we have DRCs in this country or not?

Eng. Rotich: Mr. Deputy Speaker, Sir, at the end of the day, the Minister for Roads and Public Works is responsible for all the roads in this country, through various agencies like the DRCs. The DRCs are in existence except for the fact that the court ruled that Members of Parliament should not be officials.

Mr. Katuku: Mr. Deputy Speaker, Sir, I think we enacted a very dangerous law in this House. The DRCs have now become an excuse for Ministers not to answer our Questions! Instead of telling this House how much money will be spent on this road, he has now shifted that responsibility to the DRC. It is the duty of the Assistant Minister to tell us how much money will be spent on this road. This House resolved that each constituency in this country should be given Kshs5 million and yet he has given only Kshs1 million to my constituency. How does he expect this road to be repaired at the cost of Kshs1 million? In fact, the construction of a bridge on that road will cost more than Kshs1 million! How does he expect that road to be repaired?

Eng. Rotich: Mr. Deputy Speaker, Sir, the total figure of Kshs5 million will be issued before the end of the financial year. In fact, the second issue of Kshs1 million should be in place before the end of this week.

Mr. Deputy Speaker: Next Question! Mr. Kiunjuri's Question for the second time! Eastern Province and enable Kenyans to get food without begging. Could the Minister tell this House whether the Government has decided to impoverish Kenyans, instead of giving them water to run the agricultural industry? Could he explain why the Government is opting to feed Kenyans?

(Loud consultations)

Mr. Deputy Speaker: Order, hon. Members! There seems to be a lot of loud consultations in the "Murang'a Corner"!

Mr. Nassir: Mr. Deputy Speaker, Sir, I would like to repeat that we spent Kshs14 billion on the purchase and distribution of relief food. Presently, the Government is still supplying relief food to Ukambani districts and so, I cannot provide those details right now. The Government is trying to find ways and means of supplying water to the people of Kitui, Machakos, Makueni, Mbeere, Mwingi and Tharaka districts.

Mr. Kiunjuri: Mr. Deputy Speaker, Sir, I apologise for coming late. However, I beg to ask the Question.

Question No.145

EXPENDITURE ON RELIEF SUPPLIES

Mr. Kiunjuri asked the Minister of State, Office of the President, how much money the Government has spent on relief food for the last one year.

The Minister of State, Office of the President (Mr. Nassir): Mr. Deputy Speaker, Sir, I beg to reply.

During the 2000/2001 Financial Year, the Government has spent Kshs3.7 billion on the purchase and distribution of relief food. We have also spent Kshs9 billion, from various donors, through the World Food Programme. Through the Sister-Emergency Response Committee and the food committees, we have received food worth Kshs20 million and Kshs10 million respectively which has been distributed to the drought stricken districts. The estimated amount spent on relief food supplies between 1999 and 2001 is Kshs14.21 billion.

Mr. Kiunjuri: Mr. Deputy Speaker, Sir, I have got a very brief answer here with me, indicating that the Government spent only Kshs1.3 billion. But the answer which the Minister has given to the House indicates that the Government spent Kshs3.7 billion and another Kshs9 billion which amounts to Kshs14.21 billion. The money spent on the purchase and distribution of relief food in this country is enough to irrigate most parts of North [**Mr. Kiunjuri**]

Dr. Ochuodho: Mr. Deputy Speaker, Sir, obviously you will agree with me that by looking at the expressions on the faces of those on the Front Bench on the Government side, this answer is an embarrassment to the Government. The question asked by hon. Kiunjuri has not been answered. However, I hope he will try to answer mine. Since the Government seems not to be prepared to deal with disasters--- Year in, year out, there are food shortages in this country. How much money is the Government setting aside to deal with food shortages in the coming year?

Mr. Nassir: Mr. Deputy Speaker, Sir, we will spend as much as we can to ensure that nobody dies in that area.

Mr. Kihoro: Mr. Deputy Speaker, Sir, hon. Members have been trying to listen very carefully to the answer being given by the Minister but, unfortunately, very little information is coming out. As per the Budget of this year Kshs1.5 billion was supposed to be spend by

the Government on relief supplies but the Minister has now given a figure of Kshs3.7 billion. Where did the Kshs1.7 billion, which was not voted by this Parliament, come from?

Mr. Nassir: Mr. Deputy Speaker, Sir, there is no doubt we are running the Government. Up to date, we still have a balance of Kshs3,736,240,599.70 for emergencies.

Mr. Anyona: Mr. Deputy Speaker, Sir, we are really talking in parables and yet we are supposed to be talking about relief food. Nobody is telling us where the relief food comes from or where the money to procure that food comes from. I think the questions Parliament should be concerned with are: What is our food production capacity? What is our food reserve? Then how much money was voted for the exercise locally and how much money has come from donor agencies to purchase either that food from the food reserve or from whichever place food may be available? Quite frankly, the Minister is not addressing this issue at all. I do not know whether he can respond to that.

Mr. Nassir: Mr. Deputy Speaker, Sir, I better give the answer in figures. That is the number of bags. The balance of uncommitted stock on 30th was 1,136,361 bags of maize and 41,253 bags of beans.

Mr. Deputy Speaker: Order! Mr. Nassir, you seem to have document which you really did not supply to Mr. Kiunjuri. May I ask that you lay that document on the Table.

Mr. Nassir: Mr. Deputy Speaker, Sir, I think if he has asking another Question, the Floor is open to him to put it.

Mr. Deputy Speaker: Order! It is not a matter of asking another Question! You have already given out that information. So, to enable hon. Members to appreciate what you have said, lay on the Table a copy containing that information.

(Question dropped)

Mr. Deputy Speaker: Mr. Wanjala's Question for the second time!

Dr. Kulundu: Mr. Deputy Speaker, Sir, I have a written request from Mr. Wanjala to ask this Question.

Mr. Deputy Speaker: When did you get that written request from?

Dr. Kulundu: Mr. Deputy Speaker, Sir, Mr. Khamasi has just come with it from the reception.

Mr. Deputy Speaker: Let me have a look at it!

(Mr. Obwocha took a piece of paper to Mr. Deputy Speaker)

Mr. Deputy Speaker: Proceed, Dr. Kulundu!

Question No.031

TARMACKING OF BUMALA-PORT VICTORIA ROAD

Dr. Kulundu, on behalf of **Mr.**

Mr. Nassir: Mr. Deputy Speaker, Sir, I have to check from my file. But usually, it is for my office---

Mr. Deputy Speaker: Order! If that is the only copy you have, just undertake to lay a copy on the Table in the afternoon.

Mr. Nassir: Thank you, Mr. Deputy Speaker, Sir.

Mr. Kiunjuri: Mr. Deputy Speaker, Sir, it is quite unfortunate that the Government can continue to retain this kind of a Minister. It is a shame to the Cabinet when the Minister tells us that the Government spent Kshs14 billion, while the are always begging. The President is always in London begging for donor funds, for provision of food. Could the Minister explain to this House which immediate action the Government is going take to ensure that this kind of a situation will not recur?

Mr. Nassir: Mr. Deputy Speaker, Sir, I am Minister, hon. Shariff Nassir.

Hon. Members: So what?

Mr. Nassir: Mr. Deputy Speaker, Sir, I have done my best. I have told the hon. Member to go and check whether he has any other problems so that we can assist him. It is not through arguments that we can assist our people, but working together.

Mr. Deputy Speaker: Mr. Kimeto's Question for the second time!

Question No.148

PAYMENT OF DEATH GRATUITY
TO MR. CHERUIYOT'S FAMILY

Mr. Deputy Speaker: Mr. Kimeto is not in! His Question is dropped!

Wanjala, asked the Minister for Roads and Public Works:-

(a) whether he is aware that Busia District Development Committee (DDC) prioritized Bumala-Funyula-Sio Port-Port Victoria Road for tarmacking in the development plan for the period 1997 to 2000;

(b) whether he is further aware that this is a major road in the district, since it used to transport fish from Lake Victoria; and,

(c) what plans he has put in place to have the road tarmacked in order to facilitate marketing of fish.

The Assistant Minister for Roads and Public Works (Eng. Rotich): Mr. Deputy Speaker, Sir, I beg to reply.

(a) Yes, I am aware that Busia DDC prioritized Bumala-Funyula-Sio Port-Port Victoria Road for tarmacking in the development plan for the period 1997 to 2000.

(b) I am also aware that the road is used to transport fish from Lake Victoria.

(c) The Ministry has no immediate plans to tarmack the road, but has undertaken and ensured that the road is accessible and in good condition through spot patching and gravelling.

Dr. Kulundu: Mr. Deputy Speaker, Sir, this road is the lifeline of Busia District in terms of its major export which is fish. It looks like it is has been a deliberate policy of this Government since 1978 not to tarmac any road in Western Province. Is the Assistant Minister satisfied that this answer goes hand in hand with the Government's policy on food export or fish marketing in this country? Is he satisfied that the fish from this part of Lake Victoria would reach markets if this road is not tarmacked?

Eng. Rotich: Mr. Deputy Speaker, Sir, I said that I am not satisfied that the road is in good condition, but we intend to make it passable. It is also true that there is a lot of fish from that area. I could even table the figures from the Fisheries Department, that in 1995 the income from that road was Kshs274 million and in 1998 it was Kshs400 million. This is the revenue from fish from that area.

At the moment, we are discussing with Treasury and the Japanese Government to see the possibility of tarmacking the road, which is about 44 kilometres long. But we have not reached any agreement yet.

Mr. Sifuna: Mr. Deputy Speaker, Sir, hon. Members have been raising Questions in this House regarding development projects in their respective constituencies, and time and again Ministers have been telling us to go back to our DDCs so that they can prioritize those projects. For the last five years, the Busia DDC has prioritized this road for tarmacking, why has the Government not provided the funds?

Eng. Rotich: Mr. Deputy Speaker, Sir, I agree that, that road was prioritized, but the problem is that, we do not have the funds to tarmack the road. I also said that we are discussing with Treasury to see how we can deal with the problem.

Mr. Angwenyi: Mr. Deputy Speaker, Sir, this is an important road and the Government is going to do patching work to make it an all-weather road, while they are discussing with the Ministry of Finance and Planning and the Japanese Government on the possibility of getting funds for tarmacking it. Could the Assistant Minister tell this House how much money has been set aside to make this road an all-weather road and passable?

Eng. Rotich: Mr. Deputy Speaker, Sir, I did not say "an all-weather road"; I said "to make it passable". I do not have the figures now, but I can bring them tomorrow afternoon.

Mr. Orengo: Mr. Deputy Speaker, Sir, part of the road in question passes through my constituency. I can remember on several occasions former Members of Parliament from the area; Mr. Osogo, who was a Minister in this Government a Deputy Leader of Government Business

and Mr. Okondo, who was very well known, raised questions about this road. Is the Government trying to demonstrate that it is not even worthy being a Cabinet Member in this Government? Two senior Ministers coming from that particular district have raised this issue in this House in my presence and [Mr. Orengo] now Mr. Wanjala is asking the same Question and the Assistant Minister is saying that there is no money, yet we are being told that the Government earns about Kshs200 million from fishing activities in that particular area. Why does the Government not use part of that money which goes to the Treasury from the export of fish to make sure that road is tarmacked in order to serve the people of that area well?

Eng. Rotich: Mr. Deputy Speaker, Sir, I want to confirm that we are trying to solve this problem. The problem is due to lack of money. Indeed, a sum of Kshs274 million goes to the people who supply fish for export and the Government pays them. We do not get Kshs274 million at the Treasury, it is a percentage of that amount which goes to the Treasury. The fact of the matter is that we do not have money at moment. We hope to get the money as soon as possible.

Dr. Kulundu: Mr. Deputy Speaker, Sir, the fish industry earns this Government nearly Kshs7 billion. I have commented on the fact that the Nyayo Government has not tarmacked a single road in Western Province! Could the Assistant Minister confirm or deny that it is the policy of this Government not to tarmack any road in Western Province, including very important parts in of Western and Nyanza Provinces?

Eng. Rotich: Mr. Deputy Speaker, Sir, that is not true. There are certain projects that are being undertaken in Western Province. The remarks Dr. Kulundu is making are not true and, therefore, I deny.

QUESTIONS BY PRIVATE NOTICE

TERMS OF EMPLOYMENT OF THE GOVERNOR/DEPUTY GOVERNOR OF CBK

Mr. Kaindi: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Finance the following Question by Private Notice.

Could the Minister table the contract documents and the terms and conditions of employment of the Governor and the Deputy Governor of the Central Bank of Kenya?

The Assistant Minister for Finance and Planning (Mr. Arap-Kirui): Mr. Deputy Speaker, Sir, the answer to this Question is not ready and we had requested that we answer it by Thursday next week.

Mr. Deputy Speaker: Order! Order, Mr. Assistant Minister! This is a Question by Private Notice and must be answered within two sitting days of this Parliament! So, you have to answer it tomorrow

afternoon.

Mr. Kaindi, your Question will be answered tomorrow afternoon.

Mr. Kaindi: Mr. Deputy Speaker, Sir, when I asked this Question, Mr. Cheserem was still the Governor of Central Bank of Kenya. Now, they have fired Dr. Kibua and they are still saying they are not yet ready three weeks later. This is a Question by Private Notice. When are they going to answer this Question?

Mr. Deputy Speaker: I have just ruled that they must answer this Question tomorrow afternoon.

Mr. Michuki: On a point of order, Mr. Deputy Speaker, Sir. Each of the individuals who holds these positions is already working in the bank. Is the Assistant Minister in order to give the impression to this House that there can be people working in the Government without their terms and conditions of service being known?

Mr. Deputy Speaker: Order! Order, Mr. Michuki! I have already ruled that this Question will be answered tomorrow. So, we shall know about that tomorrow afternoon.

(Question deferred)

Next Question!

NON-APPROVAL OF MP'S VISIT TO KAMITI PRISON

Mr. Muiruri: Mr. Deputy Speaker, Sir, I beg to ask the following Question by Private Notice.

(a) Could the Minister explain why the Member for Gatundu North was denied permission to visit Mr. Stephen Mwangi Gitau, a prisoner at Kamiti Maximum Prison, on 30th and 31st March, 2001?

(b) Could the Minister ensure that Members of Parliament are not barred from visiting their constituents in jail?

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs, Heritage and Sports (Mr. arap Choge): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am aware that the hon. Member for Gatundu North was denied permission to visit Mr. Stephen Mwangi Gitau, a prisoner at Kamiti Maximum Prison on 30th and 31st of March this year.

Under the Preservation of Public Security Act, Chapter 57 of the Laws of Kenya, prisons are restricted areas and it is for this reason that Members' visits to prisons are guided by the Prisons Standing Orders, Chapter 61 Section 22, which requires that they must seek prior approval from the Minister responsible for prisons---

Mr. Anyona: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister not misleading House? The prisons are managed under the Prisons Act. The provision of the Preservation of Public Security Act was actually repealed by this [Mr. Anyona]

House and especially the section which the Assistant Minister is referring to. So, is he in order to answer a Question that falls under the Prisons Act, using a totally different Act, which has no relevance or application to this Question?

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs, Heritage and Sports (Mr. arap Choge): Mr. Deputy Speaker, Sir, that is another question which is in form of a supplementary.

Mr. Deputy Speaker: Order! Mr. Assistant Minister, he has not asked you a question! He raised a point of order which is very pertinent that you are quoting a section of the law which does not exist.

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs, Heritage and Sports (Mr. arap Choge): Mr. Deputy Speaker, Sir, if the Act was passed by this House, and the Attorney-General has not brought it into this House to be amended, then it is still existing.

Mr. Deputy Speaker: Anyway, answer the Question. You have not answered part "b" of the Question yet.

Mr. Orengo: On a point of order, Mr. Deputy Speaker, Sir. I am rising on a point of order because the other day the Attorney-General said he has powers to make laws. We should find out whether, probably the Attorney-General has made a law without passing through this House. If he accepts that we should clap for him. The Assistant Minister could be right.

Mr. Deputy Speaker: Mr. Assistant Minister, answer part "b" of the Question.

The Assistant Minister, Office of the Vice-President and Ministry of Home Affairs Heritage and Sports (Mr. Choge): Mr. Deputy Speaker, Sir, the Government has no intention of preventing hon. Members from visiting their constituents in prison. However, it is in the interest and convenience of hon. Members, who wish to make such visits, to notify the officers in charge of prisons their intention so that their visits can be organised and arranged to avoid any inconvenience that may arise.

Mr. Muite: Mr. Deputy Speaker, Sir, on several occasions, some of us who are both Members of Parliament and lawyers have been stopped from seeing our clients in prison when we have gone there in our capacity as lawyers, not as Members of Parliament. Could the Assistant Minister undertake before this House to issue the necessary notices that when a Member of Parliament is going to see his client in prison, he has the right as a lawyer to see the client without obstruction?

Mr. arap Choge: Mr. Deputy Speaker, Sir, the Question is about Members of Parliament. I want to assure the hon. Member that if he notifies the officer in charge of the prison, he will be given permission to see

his client.

Mr. Anyona: On point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: The Floor is yours, Mr. Kihoro!

Mr. Anyona: Mr. Deputy Speaker, Sir, it is not a question!

Mr. Deputy Speaker: I will come to you.

Mr. Anyona: I want to help him! We are helping him!

Mr. Deputy Speaker: Order! Proceed, Mr. Kihoro!

Mr. Kihoro: The Assistant Minister failed to quote any section of the Prisons Act which would prevent a Member of Parliament from visiting his or her constituent in prison. If there is any section which exists, I know the Assistant Minister would have been very ready to quote such section. Could he, therefore, admit that there is no section in the Prisons Act which would prevent a Member of Parliament from visiting his or her constituent in prison? Secondly, the section that the Assistant Minister has quoted from the Preservation of Public Security Act, does not exist and the Act itself does not also apply in a situation where there is no state of emergency.

Mr. arap Choge: Mr. Deputy Speaker, Sir, if I may again repeat, I think I was in the process of trying to mention some sections here, but Mr. Anyona---

Mr. Anyona: On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister has said that he wants to repeat. Is he not infringing the Standing Orders?

Mr. arap Choge: Mr. Deputy Speaker, Sir, it was the hon. Member who cut me short when he put another question---

Mr. Deputy Speaker: Mr. Assistant Minister, answer the Question!

Mr. arap Choge: Mr. Deputy Speaker, Sir, under the Preservation of Public Security Act, Chapter 57 of the Laws of Kenya, prisons are a restricted area. It is for this reason that hon. Members' visits to prisons are guided by the Prisons Standing Orders, Chapter 61, Section 22 which require that they must seek prior approval from the Minister responsible for prisons to conduct such visits.

The hon. Member for Gatundu North had not sought such permission. He cut me short!

Mr. Muite: Mr. Deputy Speaker, Sir, here, we have the Preservation of Public Security Act. Could the Assistant Minister show this House the section in this Act, which says that Members of Parliament must get permission from the Minister [Mr. Muite] responsible for prisons before they visit anybody? Here is the Act; show us that section!

Mr. arap Choge: Mr. Deputy Speaker, Sir, the hon. Member is very conversant with the Acts in this book, and I have also quoted what is in that Act. There is no school here to come and teach!

(Laughter)

Mr. Deputy Speaker: Order! Mr. Assistant Minister, if you have quoted a section of the law, and hon. Members require you to read it or point it out to them, they are perfectly in order to do so. Please, proceed!

Mr. arap Choge: Mr. Deputy Speaker, Sir, I have already quoted the section for him to read.

Mr. Deputy Speaker: Order! Order, Mr. Assistant Minister! What does the section you have quoted say?

Mr. arap Choge: Mr. Deputy Speaker, Sir, the Preservation of Public Security Act, Chapter 57 of the Laws of Kenya prohibits any individual from visiting the prison anyhow. They must seek permission before they do this.

Mr. Deputy Speaker: Order! Order, Mr. Assistant Minister! I do not know the number of sections the Preservation of Public Security Act, Chapter 57 has. Please, refer us to the relevant section that prohibits hon. Members from visiting prisons.

Mr. arap Choge: Mr. Deputy Speaker, Sir, the Prison's Standing Orders, Chapter 61, Section 22.

Mr. Deputy Speaker: Mr. Assistant Minister, why do we not help each other? In your answer here, you have said that "under the Preservation of Public Security Act, Chapter 57 of the Laws of Kenya"---- So, they are asking you the section of the law you are taking your authority from.

Mr. arap Choge: Mr. Deputy Speaker, Sir, Chapter 57 regulates movement to prisons. Therefore, Prisons Standing Orders Chapter 61, Section 22 regulates the movement of persons to prisons.

Mr. Deputy Speaker: Order, Mr. Assistant Minister! Really, you have to answer this Question better than that. This Question is deferred to tomorrow afternoon.

(Applause)

Mr. Muiruri: On a point of order, Mr. Deputy Speaker, Sir. This Question came up on Thursday, last week, and the Minister gave an answer which is the same as today's. How sure are we that tomorrow afternoon, he will not bring the same answer? We have two answers here which are identical.

Mr. Deputy Speaker: Order! Order! I think it is the mood of the House that, that Question be addressed more effectively than it has been done today. So, the Chair has ruled the Question will be answered afresh tomorrow. Do not anticipate the answer the Assistant Minister will give tomorrow because you are not one and the same thing.

(Question deferred)

LEGAL BASIS FOR RETRENCHMENT
IN THE JUDICIARY

Mr. Anyona: Mr. Deputy Speaker, Sir, I have not received a copy of the written answer. However, I beg to ask the Attorney-General the following Question by Private Notice.

In view of the fact that all appointments in the Judiciary, the Civil Service and State Corporations are constitutional and legal mandates and responsibilities of the Judicial Service Commission, the Public Service Commission and the Management of State Corporations, respectively, will the Attorney-General:-

(a) make a comprehensive statement on the constitutional and legal basis for the retrenchment exercise in the Judiciary, the Civil Service and the State Corporations?

(b) advise the Government to revoke all retrenchment cases until the matter is properly determined in accordance with the Constitution and the Laws of Kenya?

Mr. Deputy Speaker: Is the Attorney-General not here? Who is the Leader of Government Business?

The Minister for Information, Transport and Communications (Mr. Mudavadi): Mr. Deputy Speaker, Sir, the Attorney-General is not available; he is out of the country. So, I will seek the indulgence of the House to have this Question deferred.

Mr. Anyona: Mr. Deputy Speaker, Sir, I think that is a fair thing to say. In actual fact, I think it is the fault of the Clerk's office. The agreement was that this Question will be on the Order Paper tomorrow afternoon, when it was expected that the Attorney-General will be back in the country. I was also very surprised this morning when I found it on the Order Paper.

Mr. Deputy Speaker: Well, the Question is deferred until tomorrow, afternoon.

(Question deferred)

Dr. Ochuodho: On a point of order, Mr. Deputy Speaker, Sir. I think the Chair heard the hon. Member for Kitutu Masaba say that there was an **[Dr. Ochuodho]** agreement that this Question will be on the Order Paper tomorrow afternoon. Do you mean that there are some hon. Members of this House who are privileged to fix Questions with the Clerk?

Mr. Deputy Speaker: Order! The Chair is in a fairly good mood this morning, but the fact of the matter is that if the Minister, in this case the Attorney-General, and he is the only Minister from that office, will not be there, it is perfectly in order for an agreement to be reached between him and an hon. Member to ask the Question when he is available in the House or in the country.

Mr. Anyona: On a point of order, Mr. Deputy Speaker, Sir. I want to put the record straight!

Mr. Deputy Speaker: Order! I have already ruled that you are perfectly in order to have reached that agreement.

Let us move on to Mr. Sambu's Question!

NUMBER OF CASES INVESTIGATED BY KACA

Mr. Sambu: Mr. Deputy Speaker, Sir, I beg to ask the Attorney-General the following Question by Private Notice.

(a) How many cases had the Kenya Anti-Corruption Authority investigated before its dissolution?

(b) How many of these cases had reached prosecution stage and could the Attorney-General table the list of those charged and the crimes committed?

(c) How many had been concluded and how many are pending investigation?

Mr. Deputy Speaker: Since the Minister responsible is one and the same Attorney-General, the Question is deferred to tomorrow afternoon and I hope he will be here to answer those two Questions!

(Question deferred)

POINT OF ORDER

MISREPORTING BY THE PRESS

Mr. Poghiso: On a point of order, Mr. Deputy Speaker, Sir. I rise under Standing Order No.170 to seek the indulgence of the House on a matter of misreporting by the Press. On Thursday, 26th April, this year, I was in the Chair in the afternoon and, on Friday, the *East African Standard* report from this House breached, in my opinion, Standing Order No.170 which says:

"Any newspaper whose representative infringes these Standing Orders or any rules made by Mr. Speaker for the regulation of the admittance of strangers or persistently misreports the proceedings of the House, or neglects or refuses on request from the Clerk to correct any wrong report thereof to the satisfaction of Mr. Speaker, may be excluded from representation in the Press gallery for such term as the House shall direct."

I would like to draw the attention of the Chair to the fact that this is not the first time that the *East African Standard* newspaper has been cautioned by the Chair. I would like to quote a section of that report. It says:

"Mr. Poghiso, who virtually lost control of the House bowed to the

pressure from the Opposition and asked Dr. Anangwe to withdraw and apologise to Mr. Karume."

Mr. Deputy Speaker, Sir, I do not believe that it is the work of reporters who report from this House to make judgement and castigate the Chair. I was firmly in control and, eventually, adjourned the House at the proper time. I would like to inform this House that we did not adjourn the House early, and I did not bow to pressure to make any decision. So, I would like to ask the Chair to make a ruling on this matter and see if the Press will keep to the rules of this House. That is my plea.

Mr. Deputy Speaker: Members of the Press, are strictly speaking, strangers and are here on sufferance from this House. They must not express an opinion. The Chair never loses control. If there is disorder in the House, the Chair is the final person to say whether the House goes into an adjournment or continues. So, I would like to warn members of the Press that this is the second time in two weeks that they have been mentioned adversely for their manner of reporting. I would like to stress what has been said before, and what Mr. Speaker himself has said before, about Parliamentary reporting. It must be factual and if reporters are in doubt, they should go and verify the facts with the Clerk of the National Assembly or from the HANSARD. What members of the Press reported could not have been recorded in the HANSARD because nobody spoke about the Chair's inability to control the House. That is an opinion and reporters should not express an opinion when reporting issues of this House.

Mr. Poghiso: On a point of order, Mr. Deputy Speaker, Sir. Just to add to that, the Chair can actually ask the concerned reporters to make a correction of what they reported.

Mr. Deputy Speaker: Yes, they will have to make that correction or further action will be taken against them.

MOTION

LEAVE TO INTRODUCE PROMOTION OF NATIONAL UNITY/RECONCILIATION BILL

THAT, this House do grant leave to introduce a Bill for an Act of Parliament entitled the Promotion of National Unity and Reconciliation Bill to establish a Truth and Reconciliation Commission to investigate the causes and effects of political and ethnic violence and gross violation of human rights in Kenya since 1966 and to recommend just and permanent solutions that will promote and enhance peace, national unity and national reconciliation and to provide for matters connected therewith and incidental thereto.

(Mr. Oloo-Aringo on 25.4.2001)

(Resumption of debate interrupted on 25.4.2001)

Mr. Oloo-Aringo: Mr. Deputy Speaker, Sir, I had concluded my contribution to this very important Motion, but you have allowed me to proceed and ask my Seconder to second the Motion.

Mr. Deputy Speaker: Had you moved the Motion?

Mr. Oloo-Aringo: Mr. Deputy Speaker, Sir, I had not moved the Motion.

May I, therefore, start by beginning to move:- THAT, this House do grant leave to introduce a Bill for an Act of Parliament entitled---

Mr. Deputy Speaker: Order! At the end of your contribution, did you move the Motion?

Mr. Oloo-Aringo: Mr. Deputy Speaker, Sir, I had not moved the Motion, but I thought you would allow me to make a few remarks before I move the Motion.

Mr. Deputy Speaker: Do it for only one minute.

Mr. Oloo-Aringo: Thank you, Mr. Deputy Speaker, Sir, for that one minute.

I want to say that tribal clashes are recurring, even as I speak here today, between the people of Gusii and Trans Mara Districts. There is war of attrition which is continuing. Similarly, in North Western Kenya, the Pokots and the Marakwets are continuing the war of attrition. Our country cannot be at peace when we continue with this warfare. It is the duty of this Parliament to provide leadership. I mentioned last time that there is a distinction between setting up a commission of inquiry by the Executive under the Commission of Inquiries Act, because the agenda of such a commission is set by the President and the Executive, and they are perfectly in order either to release the commission's report or not to release it.

With those few remarks, I beg to move.

Mr. Kihoro: Thank you, Mr. Deputy Speaker, Sir. I also thank Mr. Oloo-Aringo for asking me to second this very important Motion about what has happened in this country from the time we attained Independence in 1963 up to the present, and show the relevance of the Motion before the House.

Last week, when the Mover spoke in this House, he gave us a very good update on what has happened, especially in respect of all the ethnic clashes that have taken place in this country. The first ethnic clashes took place in 1981 in Nandi District and they have continued unabated for a period of 20 years. There have been certain periods of relative peace, but the ethnic clashes have been turned on and off by the

merchants of violence and domination in this country who, from time to time, have found it necessary to take control of the situation. They ensure that, violence continues among our people whom you find, especially in Nairobi, living in a lot of peace and harmony. It is only when you find that there are certain people in political trouble in Nairobi turning on ethnic violence, for example, in Laikipia District and the North Eastern Province. It is only Central and Nairobi Provinces which have been free of such violence.

Therefore, it is important for us to set up this Commission. There was no enmity in 1963 when this country became Independent. In 1964, before this country became a Republic, there was peace and people were acting in political concert. But from 1965, we had the first incident when political violence was used against people who thought differently about the direction the Government was taking at that point in time.

On 12th December, 1964 when this country became Independent, the late Mzee Kenyatta issued an ultimatum to the Mau Mau members to surrender. From that day onwards, when the Mau Mau members did not surrender, the Kenya Army was used against them. So many of them were killed, including Gen. Baimunge in Mt. Kenya, Gen. Chui, and Gen. Kiugu and scores of the Mau Mau members. From that time, you will find that violence has been used on and off by whoever has occupied the Office of the President to fight patriotic Kenyans who have been full of goodwill for this country, and who have tried to make sure that the country takes the right direction.

[Mr. Kihoro]

[Mr. Deputy Speaker left the Chair]

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

Mr. Temporary Deputy Speaker, Sir, there shall be no forgiveness unless those who have committed crimes seek forgiveness. Until you do your penance, and do it to the full, there is no way you can be forgiven for crimes that we do not know of. It is very important that a full confession be done by everybody from the Front Benchers to the Back Benchers and the Truth and Reconciliation Commission will give an opportunity for doing that. It will give an opportunity for people to confess the crimes they have committed.

You will remember, for instance, that in February, 1965, Pio Gama Pinto was assassinated in this country and up to today, a Mr. Mutua has been serving a life sentence for 35 years because he is alleged to have killed Mr. Pio Gama Pinto. Mr. Mutua has pleaded innocence for the last 35 years but he has not been released from prison. He is actually saying that he should be freed from prison. Thirty five years of his life have been wasted. He should be given an opportunity to lead a decent life out of prison. He has been denied his freedom because some political powerbrokers

somewhere found it convenient to victimise him.

Mr. Temporary Deputy Speaker, Sir, down the line from 1966, we know that, there were disagreements between the late Mzee Kenyatta and the late Jaramogi Oginga Odinga. We know that, that led to a political split in this country that has continued to have repercussions up to this day. When I find my very good friend, Mr. Raila, associating with KANU, I find it abominable because I thought what his father and he stood for does not allow him to indulge in that kind of an association. We are looking for an opportunity for people to be tried and allowed to seek forgiveness through this Commission. This is a Commission that will be set up to investigate and give our people an opportunity to confess their crimes and seek forgiveness.

As we go into this era, there is possibility of an agreement about having a new Constitution for this country. We are going into a period where we will write a new Constitution for this country and our people will be given, for the first time, an opportunity to write a Constitution for themselves. The United States of America wrote a Constitution, maybe 230 years ago, but our people have not had that opportunity. If you will remember what happened in Lancaster House in 1962, a Constitution was written for this country and for the last 38 years of Independence, a lot of crimes and political opportunism have been put in place and this has not helped our people. So, as we go into the new period of writing the new Constitution, we would also like to cleanse our society, to give opportunity for people to confess and be forgiven, so that we can be at peace with ourselves. There will be no peace - there might be physical peace and lack of physical violence out there - but in our hearts, until you have a Truth and Reconciliation Commission, there will be no peace. That will be a very important opportunity to leave the last century where it belongs; to relegate that bad history and mis-governance into history, and start on a new chapter, in a new Millennium with a new Constitution and new people. That will be very important. Until that happens, it will be doubtful whether the new Constitution will do its job properly. The people will be applying the new Constitution in the framework that we are living in today. It will be very important to have an opportunity to open a new chapter in our history, where we will be applying new law and ethics in our community in a way that will have reconciled ourselves with the past.

Mr. Temporary Deputy Speaker, Sir, the Preservation of the Public Security Act has been quoted this morning as one of those laws in this country that might be of value. But, I must say this: In 1966, when Chapter 57 that is the Preservation of the Public Security Act was enacted, it was never meant to be applied in peace time. It was a piece of legislation to be applied

when the country was at war or in a state of emergency. But, since 1966, a lot of violence and misapplication of that statute has been put in place.

Last year, I came up with a Motion on the question of compensation for all those people who have been detained under that Act. It is true that, that Act has been misapplied from 1966 up to 1991. People, who should not have been detained, were detained. I give myself as an example. Being patriotic is not a crime. It is important to agree that the Preservation of Public Security Act has never had any opportunity of being applied in this country because, as far as we have been told, it has been at "peace", for the last 38 years. If we have been at peace, there would be no basis on which the Preservation of Public Security Act would have been applied.

Therefore, the only good purpose that Act has served in this country is preserving the powers that be. When we disagree politically, which is a very healthy thing to have, we end up knowing the truth and direction, some people have however suffered for this! They have been detained under that Act, and that is improper.

Mr. Temporary Deputy Speaker, Sir, you remember all the violence surrounding the general elections. We remember what happened in 1969. What I am saying is this: Until we give our people [Mr. Kihoro] an opportunity to confess crimes - which can't be dealt with by the courts - political crimes and ethnic violence, we will not go forward. Mr. J.M. Kariuki was killed in 1975 and nobody has ever been taken to court and punished for such a crime. There is no reason why a country that has got law and order; with institutions that enforce the law, can allow that to happen! We want to know who killed J.M. Kariuki and the reason for it. That is why we need a Truth and Reconciliation Commission.

With those few remarks, I beg to second this important Motion.

Thank you.

(Question proposed)

Mr. Muite: Mr. Temporary Deputy Speaker, Sir, I can see there is very heavy turnout on the Government side. I hope they have come to support this Motion, rather than to vote against it. If leave is given, it is actually in the interest of some people from that side of the House. I want to say this: Reconciliation is a process that we need to go through, if we are going to have reconciliation in this society. That is something that I feel very passionately about, and I appeal to hon. Members on the other side of the House to support this Motion. We should grant leave so that we can start the process of healing and reconciliation. Why do I say that it is a process? I say it is a process because it has got several essential ingredients. For example, it is premature to talk about amnesty. You cannot talk about amnesty in isolation to reconciliation and justice. You cannot have reconciliation without justice. You cannot have amnesty

without justice. In fact, you would be doing an injustice to the people you were nailing before, to beg them to accept amnesty, because you would be concluding that they are guilty. The process has to start with the establishment of facts. If you want the process of reconciling the nation to succeed, the starting point is the establishment of the facts.

If it is the genocide that took place in the Rift Valley Province in 1991/92 and in Likoni in 1997, you must have a tribunal to establish the facts. Probably, we are doing an injustice in pointing fingers and suspecting individuals who may not have been involved! It is only a hearing that will establish the facts. Who were the perpetrators of the genocide? Were they acting on their own or were they acting at the behest of somebody? Who sent them? Those are facts that must be established. When the facts are established, then we will have to establish the motive as to why they were sent. What were those who were sending them seeking to achieve? Then, the next stage is acceptance of responsibility and guilt.

Those who sent the perpetrators of those heinous crimes, including the perpetrators, would have to accept responsibility and say: "We apologise and we are sorry! I carried out the genocide but I was innocent! I was being paid! I was sent by so and so!" That so and so would also have to accept responsibility. When that is done, then we have to talk about reparation and compensation for the victims. Then, we can talk about amnesty.

That is how to go about reconciliation. It is not fair to ask the relatives and children of the late Mr. J.M. Kariuki and Robert Ouko to forgive the perpetrators or those who murdered their parents. Until they know who it was, who had sent them and what was the motive, it will not be fair to ask them to forgive. It will not be fair to ask me to forgive the murderers of my wife and children, when I do not even know who they are! Once I see them and the facts are laid on the table; once we exorcise the hatred by laying the facts on the table, we shall be in a position to start forgiveness. This is such an important issue.

We are in the middle of negotiating a new constitutional order. If we are going to build a nation, the starting point is to have reconciliation. So, let us establish the Commission being sought and give it authority to find out the facts about the political and ethnic violence that occurred in the past, its perpetrators, those who directed the perpetrators of that violence, including those who were tortured for no reason. Mr. Matiba is a case in point. He was denied drugs to control a mild case of high blood pressure, which he had when he was being detained. He was denied drugs between July and October, 1990. When he was finally permitted-

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The Assistant Minister for Labour and

Human Resource Development (Mr. Maizis): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for Mr. Muite to claim that a Kenyan was denied his right to medical care when he cannot lay on the Table, evidence to that effect? Could he lay on the Table evidence to that effect?

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Maizis, you are totally out of order.

Mr. Kathangu: On a point of information, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Muite, would you like to be informed by hon. Kathangu?

Mr. Muite: Yes, Mr. Temporary Deputy Speaker, Sir.

Mr. Kathangu: Mr. Temporary Deputy Speaker, Sir, I was in prison during the same period when Mr. Matiba was detained. Mr. Muite was our lawyer. I was personally hospitalised for more than nine months, but I was not given a single tablet of [Mr. Kathangu] drugs. The same hospital was the one that was administering Mr. Matiba's medical---

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Kathangu, could you give your information?

Mr. Muite: Mr. Temporary Deputy Speaker, Sir, Mr. Kathangu is informing me about matters that are within my knowledge. I was the first person to see Mr. Matiba in detention. His personal doctor was Dr. Nesbitt. On several occasions, Dr. Nesbitt attempted to hand over drugs to Mr. Matiba, but was stopped from doing so by the Government doctor and security agents. They told him that the Government would buy the required drugs. However, the Government did not buy or give Mr. Matiba any drugs between July and October, 1990. Finally, the Government gave Mr. Matiba drugs which used to be in use ten years before then. Those drugs were totally ineffective. These are painful facts. In November, 1990, I found Dr. Nesbitt waiting for me in my office after he had been to see Mr. Matiba. He told me then: "Unless something is done, Mr. Matiba is going to die or, at best, suffer a stroke." Within a month, Mr. Matiba suffered a stroke.

Mr. Temporary Deputy Speaker, Sir, for five days after Mr. Matiba suffered a stroke, the Government doctor gave him pain killers as the Attorney-General argued that Mr. Matiba would be taken to the Forces Memorial Hospital for treatment. The Government was saying that we were not able to treat even our own cases of stroke. It took the Government five days before Mr. Matiba could be treated.

So, I am saying that even Mr. Matiba will be willing to forgive his torturers, but some facts need to be established. Why was he detained in the first place? Was he detained for calling for the re-introduction of multipartyism? If we are going to start the process of healing and forgiveness, we must establish the Truth and Reconciliation Commission being sought. We want to know those who were tortured, who tortured them, and who

authorised their torture.

I am aware that you also suffered in detention. We would like to know who the torturers were, who authorised them to torture the victims and the prospects of compensating them, then we can begin the process of forgiveness. We cannot, today, start talking about amnesty. Why should we beg people who believe that they are not guilty and so need not accept an amnesty? Nobody should be given amnesty unless we accept the process of establishing the facts. There are some people I personally suspect to have been behind the genocide that happened in this country, whom I would like investigated. I would be very happy to know that they were, in fact, not involved in that crime. I cannot know that unless public hearings are conducted, so that anybody who has evidence can give it, and so that the truth can be known.

Mr. Temporary Deputy Speaker, Sir, without, first of all, establishing the truth, compensating the victims of that crime and having those behind it confess, we cannot talk about giving them amnesty and forgiving them. Those who will not accept responsibility for their heinous acts and ask for forgiveness will have to be punished. You cannot force somebody to accept amnesty. What some of us are saying is not only premature, but is also wrong. I would, therefore, appeal to those talking about giving some people amnesty at this point in time to stop doing so and support the process of establishing the truth, having the perpetrators of the crime plead guilty and compensating their victims, before we can talk about reconciliation and amnesty.

I do not harbour any animosity against anybody or hatred for anybody. If that is the impression I give, I would like to confirm that, that is not true. I would like to see a nation that is reconciled. However, I would not like us to pretend that there is reconciliation when there is none, or when the clashes are still going on and when those who are guilty of economic crimes continue committing those crimes. We must also think about the future of this nation. We must not beg people to accept amnesty. Otherwise, we will end up encouraging those going to take over national leadership from the incumbents to indulge in similar crimes. We should only give amnesty to those who will ask for it after the facts have been established, and not before.

If the incumbents want to agree to a peaceful transition and relinquish power peacefully, and the facts are established, I will, of course, be the first one to propose and argue for amnesty for them, after we go through this process. So, let us support this Motion. I can see that the KANU Secretary-General is also here; I hope that he is going to support the Motion.

With those remarks, I support.

The Minister for Tourism, Trade and Industry (Mr. Biwott): Thank you, Mr. Temporary

Deputy Speaker, Sir, for giving me the opportunity to contribute to this Motion.

I am the first person to say that we would like justice done for everybody. I would like us to uphold the principle of not doing to others what we would not like done to us. We should take ourselves as a measure before we act. I am also the first one to say that I would not wish to see anybody arrested or incarcerated; it is terrible to be locked in a police cell for even one minute. I, therefore, support the idea of doing justice for all; that, there should be no more human rights abuses, and that all human beings [**The Minister for Tourism, Trade and Industry**] should be allowed to enjoy their lives as much as possible. In the case of one committing crimes, the law, of course, provides for the action to be taken against him. Why should we ask for the establishment of a Truth and Reconciliation Commission?

Mr. Temporary Deputy Speaker, Sir, Kenya is a well-established country, with the necessary machinery to effect justice immediately, and not through a process that is best suited for countries emerging from conflicts. There is no doubt that the idea of establishing the commission being sought was borrowed from South Africa. South Africa embarked on the process of reconciliation because of the atrocities committed by the former apartheid regime and the African National Congress (ANC) members, against each other. I lived in Uasin Gishu for many years during the colonial days, and I know exactly what the *kaburus* were doing to Africans. So, I understand how difficult things were for the South Africans. We even know who was responsible for what in that country. Kenya has been independent for 38 years now. Why do we now want to do what we should have done in 1963, when this country gained Independence? The crimes we are seeking to address through the establishment of the proposed commission are purported to have been committed since 1966. What about the Pio Gama Pinto murder, which occurred in 1965, Mr. Tom Mboya's case, and others that are being left out? Personally, I would like to know because I have suffered and gone to court to say that if anybody has evidence that I killed him, I would like him to produce it so that I can be prosecuted. I should not go scot-free.

I have suffered the most harm by this injustice than anybody else. I support action now. I support the call that if anybody knows of anyone who has committed any crime, they should come up with evidence now and we can go to court. A person like that should be prosecuted.

Mr. Muite: (Inaudible).

The Minister for Tourism, Trade and Industry

(Mr. Biwott): You are a lawyer!

The Temporary Deputy Speaker (Mr.

Imanyara): Order, Mr. Biwott. Address the Chair.

The Minister for Tourism, Trade and Industry

(Mr. Biwott): Mr. Temporary Deputy Speaker, Sir, I am surprised to see that a learned gentleman in this House - we are not supposed to be learned although we are also

graduates of universities - does not know his own outfit. He has no faith in it. Why should he act as a lawyer? If you have any better judgement than the one made on the Yaya Centre case, you can go and give it to them. If there is anything that concerns me, it is supposed to come out in the open where everybody can see it. It should not be in the closet.

This Motion has got the right intention; the establishment of justice and truth, but it is misplaced because the place to seek that justice is in a law court. We have an existing machinery today which the lawyers who are moving and supporting this Motion can institute for the good of all of us. The parents of the students in our universities have spent millions of shillings to educate them so that they can defend the rights of Kenyans. Let them do so in the institutions which we have established rather than hide behind a politically organised system by way of a Truth and Reconciliation Commission. That does not help. What helps is to get to the perpetrator and deal with that person immediately so as to stop that thing from going on.

Today, we still have the same provocation even from the *Mageuzi* Movement. Instead of promoting peace and stability, they are likely to instigate some violence. Why do they not just influence the people without talking about a revolution? I do not know how true this is, but the other day an hon. Member of this House is supposed to have called for the shooting of the President. If, indeed, those are the sort of things that are done by the Members of the Opposition, then what credibility do they have to come here and tell us about reconciliation? Let us deal with that mental attitude now so that people are led properly.

Mr. Obwocha: On a point of order, Mr. Temporary Deputy Speaker, Sir. Are you satisfied that this Minister is not perpetrating rumours here? This is a very serious matter---

(Mr. Biwott stood up in his place)

Mr. Obwocha: Hold your horses!

The Temporary Deputy Speaker (Mr. Imanyara): Raise the point of order.

Mr. Obwocha: Can he substantiate that claim that a Member of Parliament said that the President should be shot because that is a very serious matter? The President is not a name to joke around with! Can he substantiate?

The Minister for Trade, Tourism and Industry (Mr. Biwott): Mr. Temporary Deputy Speaker, Sir, it is a very serious issue. It is so serious that I was able to talk about it now because it is in the newspapers. The hon. Member is a number one Chartered Accountant who is educated and he can read the newspapers. He can also understand English. I said: "If that story is true". I am not saying that it is true, and

the HANSARD will bear me witness. You can check that information. If it is true, then I think there is a more serious problem which we should be dealing with now rather than seeking forums which will perpetrate the kind of rumour he is talking about.

Mr. Obwocha: Mr. Temporary Deputy Speaker, Sir, are you satisfied that the Minister can quote a newspaper story as an authority? This House does not depend on newspaper stories.

The Minister for Trade, Tourism and Industry (Mr. Biwott): Mr. Temporary Deputy Speaker, Sir, I pity the clients whose accounts he audits, if he cannot understand a simple fact. I have said that I am not relying on the newspaper stories. I hope that it is not a true story. Should it prove to be true, then I think we are in a very serious situation. This is a mental attitude which is sick and must be solved now because it can lead to genocide and other problems like the ones we have seen in Rwanda, Congo, Liberia and everywhere else. I am in full agreement with the spirit of this Motion, of wanting justice. However, I find it difficult to support a process which is flawed and irrelevant at this particular point in time. It does not give us the immediate satisfaction which our people, as a civilised society, should be enjoying.

There are other points which were mentioned by the previous speaker, whom I know helps in desperate cases even though he gets into trouble from time to time with Mr. Pattni and all the others. I am, therefore, saying that there is an adequate existing machinery in the country today to redress all those injustices. There is also a flaw in timing. If we intend to look at the whole process, we should have started from the beginning up to now. Most of it will be history because those who might have been involved might not be around. There is a constitutional review process which is going on at the moment, which for some strange reason - I do agree with hon. Muite for once - there are some flaws that exist in the draft as it is at the moment. I did not get the time to contribute to it. We should not copy another country for the sake of copying, because it sounds good. We should all embark more and more on good governance. The Members of the Opposition who are perpetrating the *Muungano wa Mageuzi* Movement should stop it.

Mr. Temporary Deputy Speaker, Sir, I beg to oppose.

Mr. Donde: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me the opportunity to contribute on this Motion which I believe is very crucial to this country. Our colleagues from the other side are losing a wonderful opportunity to settle a matter which will be protracted for many years to come. I would have thought that they would take advantage of their numerical number this time, to make sure that this matter is sorted out once and for all. Even if we do not go through today, this matter will come up in the Ninth Parliament. It may come up when we are not in a position to do it like today.

comfort communities and other individuals who might have

I would have thought that this matter of reconciliation is very important to this nation. According to the Motion, the Commission is to investigate the causes and effects of political and ethnic violence and the gross violation of human rights in Kenya since 1966, and to recommend just and permanent solutions that will promote and enhance peace, national unity and national reconciliation. I do not think there is anything in this Motion to show that the matter is to go to court. There are very many anxious minds in this country which need to be comforted since after independence. For example, there are anxious people who want to know why Tom Mboya, J.M. Kariuki, Ronald Ngala and Argwings Kodhek were killed, and why the tribal clashes occurred. In order to bring comfort to these minds, it is important that we have this Truth and Reconciliation Commission until such a time as these matters can be attended to.

We know that a lot of attempts have been made to resolve this question of clashes and so on. We know of the Akiwumi Commission which was established to try and sort out this matter, and nothing has happened. We know of the Ouko Commission which was disbanded before it finished its work. A lot of people are still anxious to know what is going to happen. We know of a Commission on Devil Worship, to understand why this country is behaving like this and its findings have never been made public. So, there are a lot of anxious minds in this country which want to know why these things have happened in this country and what could be a permanent solution to these problems, and this has never happened.

So, I would have thought that we take this opportunity to create this Truth and Reconciliation Commission in order for us to hammer out all these small things and many conflicts which we have had in the past. This is so that a lot of people can feel that even if the matter has not gone to court and no action has been taken, they can have comfort that this matter has been discussed and the truth behind these things is known and we get a permanent solution on how we can live as a nation together without feeling that certain things have happened and nothing has been done.

Mr. Temporary Deputy Speaker, Sir, I know this Motion has come out of anxiety of what has not happened. If, for example, the Akiwumi Commission Report had been tabled in this House; the Ouko Commission had finished its work and we knew the findings of the Devil Worship Commission, I do not think this Motion would have been brought. However, it has been brought because there are a lot of unanswered questions and each time a commission is created to try and resolve those questions, those things are just left hanging. So, I think this is an opportunity for this nation to try and [Mr. Donde]

suffered and not known exactly why they suffered.

Therefore, I would have thought that our colleagues on the other side of the House would have taken this opportunity when they are in Government and have a numerical superiority as of now, to sort out this matter once and for all, rather than wait for the Ninth Parliament which they do not know who is going to be in charge of this country, and they might even get a worse hearing than now.

So, the way I understand this Motion is that it will not take anybody to court. It does not want anybody to be accused of anything. It is a matter of giving comfort to the nation and the people of this country who have suffered a lot of injustices, and it is just fair that they know and understand that this Parliament matters. They should know that this Parliament cares and we want to listen to what exactly happened.

So, it is very unfortunate, indeed, to hear the previous speaker, hon. Biwott, who I would have thought would be the first one to try and get this Commission working, because he is complaining that a lot has been said about him and has faced injustice about that. I would have thought he would be the first Member of Parliament to really support this Commission so that we, as Kenyans, can sit around the table and discuss all these issues as a nation and come up with a solution. This is not necessarily to take somebody to jail or to ruin somebody, but for the purpose of making sure that Kenyans do understand that we, as Members of Parliament, do understand the problems they have suffered and the unanswered questions that other families have had in their mind. This is so that we can afterwards live as a nation, knowing that we have discussed all those problems and known what happened and we can forgive but not forget.

Mr. Temporary Deputy Speaker, Sir, but if we want to oppose this particular Motion at this time, I think it is going to be even more difficult for us in the future to try and sort this matter out. This is because I know in the minds of many people, and especially Members of this Parliament, this question will come again and again. I would have thought this is the best time to sort it out. So, I feel that if the situation is the way it is, we should agree as a House that we make public most of the findings of these commissions which have been formed, especially the Akiwumi Commission. We should make sure we table the findings of the Devil Worship Commission. We should make sure we answer a lot of unanswered questions, just for the sake of making this country feel like united and we can live together.

So, I would appeal to Members of Parliament to support any move to reconcile this nation so that we can live as one. It is not difficult for us to sit down as Members of Parliament or as a Select Committee and discuss all these things and say "bygones be bygones" and we carry on with Temporary Deputy Speaker, Sir, we know that South Africa immediately after it attained its independence, did embark on the establishment of a Truth and Reconciliation Commission. Now, one must understand clearly why the South Africans started it. South Africa had gone through a

life. So, until that one is done and we agree that we can discuss our problem as a nation and get a permanent solution as this Motion states, these things will keep on coming again and again.

So, I would like to say that we, as Members of Parliament, I think, if we oppose this Motion, will be losing a wonderful opportunity that this House has ever got to be able to hammer out our problems once and for all. I do not mind that we just discuss it and carry on and forgive each other as a nation. This has happened in many countries, like South Africa and some European countries. This Motion is not bad for this country. So, I would urge Members of Parliament to really support this Truth and Reconciliation Commission. If you look at the Motion very carefully, it is one that just wants to create a talking and reconciliatory atmosphere for Kenyans, and I think we should support this. If I were on the other side of this House, I would have urged my colleagues to get this Motion sail through so that we can quickly and speedily, within the course of this Eighth Parliament, get to know the problems of ethnic clashes and violence and put them behind us once and for all. I would urge that we really look into this issue and support it.

With those few remarks, I beg to support.

The Vice-President (Prof. Saitoti): Thank you very much, Mr. Temporary Deputy Speaker, Sir. The elements of this Motion are not those that we would in any way be opposed to. In fact, these elements, mainly national unity, peace and reconciliation, are extremely fundamental. Many of us agree with them for the very simple reason that, indeed, the best way that this country can move forward is if there is unity among all of us because it does foster peace and stability. That one, therefore, will then create the necessary enabling environment for us to be able to deal with the fundamental problems which are facing this country.

Mr. Temporary Deputy Speaker, Sir, the only issue here is not whether we do agree with the fundamentals embodied in this Motion, but the question is: Is it appropriate now? Is it the way of achieving it?

(Loud consultations)

The Temporary Deputy Speaker (Mr. Imanyara): Order! There are too much loud consultations, particularly in that corner. The Leader of Government Business is on the Floor and you are not even giving him a hearing. Please, consult in low tones. Proceed, Vice President!

The Vice-President (Prof. Saitoti): Mr. completely different historical experience than the one we had. South Africa was really not one nation during the time of apartheid. It was actually two nations. It divided races. The Africans who were the majority in South Africa did not have any stake whatsoever in South

Africa, and the whites condemned them to live a completely different life. It was a different society, whereas the supremacy of the racists ensured that the whites were protected. They lived as a privileged group. They went to decent schools, worked in decent places and lived in decent places. Here was a divided society. However, apart from that, there was war within South Africa, pitting one race against the other. As a result of that, people were totally segregated. There were two societies in South Africa. The main challenge of South Africa, immediately after independence was to try to form one society, one people and one South Africa, because there was no identity in the country. You could only be in a position to create that sort of scenario by trying to bring all those people to live together. Their children were not going to the same schools and, therefore, they hardly knew each other. South Africans themselves hardly knew each other. There were schools for the white and black children. The hospitals, means of transport and the armed forces were all segregated. Therefore, a mechanism had to be formulated in order to bring hope and future in that society. That is why the Truth and Reconciliation Commission was appropriate for South Africa. There were obviously those in South Africa who saw other human beings as if they were not fellow human beings. They treated them as animals. There were major ethical problems. That commission was important to give them the opportunity to bridge their differences.

Do we really need that sort of thing? I do not believe so. Our history is completely different from that of South Africa. We have never had two societies. It is true that we were colonised, but the war of colonialism was waged by citizens of this country. But since 1963, when we became an independent country, we have lived in one nation. Our children go to the same schools, we go to the same hospitals, and live in the same place. We also work together. Indeed, we have forged a national unity in this country.

How come that in 1992 there were tribal clashes in this country? I do not know whether the Truth and Reconciliation Commission will answer that question. Let us be honest about the problem we are facing now. I think it started with multipartyism in this country. Because of the nature of our political evolution, multiparty democracy was misunderstood in the initial stages. Our people misunderstood multiparty politics. Some thought it was a licence to abuse, tell lies, vilify individuals and tribes. The advent of multipartyism created tension among our people. A number of political parties were formed on the basis of tribes. So, a number of them became tribal political parties. We have to understand all this. I am not amused by hon. Oloo-Aringo's smiling because he joined a tribal political party. These parties created tension and friction among our people.

Mr. Deputy Speaker, Sir, what was the cause of clashes in Kenya, or what is the cause of civil strife in African countries? It is tribal hatred. It is ethnic hostility.

Hon. Members: Tribalism!

The Vice-President (Prof. Saitoti): Yes, but who created it? It is not the ordinary mwananchi. The mwananchi in the streets is not interested in tribalism. He wants peace to be able to move around. If we are serious that we want peace and stability in this country, then I think we must begin the reconciliation right here in this House before we go outside there. I will say it openly and clearly here, that tribalists are not ordinary wananchi, but it is us, leaders, who promote tribalism in this country because of our own greed for leadership and power. We are the ones who go out and incite our people. We are the ones who are doing that. That will not be solved by a commission. We must be honest to the oath that we took. It is inscribed on that wall of this House: "For the welfare of the society and just Government of people". I would like to underline the phrase "the welfare of society." When leaders go out and incite people to hate others of a different ethnic group, are we promoting that welfare of the society? That is contrary to the oath of the office that we all took. Our efforts undermine peace and stability. Therefore, I believe it is really the challenge of each one of us to check our own conscience. That conscience cannot be legislated. It is our own mentality and way of looking at our lives. I do believe that if we want to live in one nation and a peaceful one, we should go out there and preach the same to wananchi. Let us not go there and preach something contrary to what we say here. While here, we want to give the impression that we do not encourage tribalism and that we are for peace and unity, yet, a number of us, once we go out there and talk to our people, we preach hostility. We must change our attitudes. We do not believe we need a commission.

Mr. Deputy Speaker, even if a legal mechanism is required, I believe it has to be done within the framework of the Constitution. We are now in the process of embarking on a very

[The Vice-President]

fundamental undertaking of the review of the Constitution. Wananchi will be involved. Let them come forward and tell us how we can maintain peace and stability in this country because politicians have let down the people. We incite them, make them fight and hate each other. We should all be ashamed of ourselves. We have elevated tribalism to a level of respectability. This is something that we must be ashamed of. Leaders go out and speak of tribalism as if it is something to be proud of. That is the biggest problem in this country. I would like to urge hon. Members, not just because of the terms of this Motion---

Mr. Deputy Speaker, Sir, with those few words, I beg to oppose this Motion.

Mr. Munyao: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to also contribute to this Motion. I will be very brief, so

that I give other Members a chance to contribute. I hope we have all come to vote consciously and not because of a message we got from somewhere. What we do here at one time later on comes to haunt us. Earlier on, when one of the Assistant Ministers, Mr. arap Choge, was replying to a Question here as to why Members of Parliament are not allowed to visit their own constituents when they are in jail, I remembered that at one time he was in jail and he needed to see, at least, the picture of his Member of Parliament. When he was there---As he was standing to speak, I saw him getting confused and he was saying: "Why did I at that time not allow this? If it were me, what would I have thought? Let the same conscience guide us when we come to vote.

Mr. Temporary Deputy Speaker, Sir, I do thank the Mover of this Motion, Mr. Oloo-Aringo, because of his vision and love for this country. This Motion is very well thought-out and I am pleased to say that the hon. Members I have seen here, including the Vice-President, Mr. Biwott and everybody else, have difficulties in knowing how best one can block this Motion. This Motion is very clear and it is calling for a genuine action. This country is not the first to call for the establishment of a Truth and Reconciliation Commission. We are asking for this Commission because it is usually good for a country later to know what caused some of the incidents that have left people shocked. There are incidents which happened in the past and which this country would want to know why they happened.

Kenya is a country of love and peace. This country is going for general elections in one-and-half-years' time, and we have got some issues which we would like to be tackled, if this Commission is formed now. I am saying so because in the past, this country has witnessed a lot of violence, particularly during elections and by-elections, for instance, in Makueni, Kisii and other areas. In one-and-half-years' time, this country will go through the process of a general election and we could like it to be recorded as the most peaceful country when conducting those general elections. If this country will accept a commission of this nature to be formed, so that, at least, we may know what causes violence and enmity during by-elections, that can prevent what is likely to happen in the year 2002. Unless there is another reason why anybody would not like this to be discussed, we would like to prevent such things from happening. For a while, I would suggest that in the event that our Army, the police, Special Branch and all the other arms of Government are unable to control violence in this country by the time we go to the general election, it will be befitting for us to get assistance from the UN, OAU or EAC. We are confident that our country can manage some of these things. This country has been sending troops to curb violence in other countries in the world, including Africa, and it may be our turn next year, if we are unable to contain violence, to ask the UN or the OAU to help us. We have got the Legislature and Judiciary, but we might ask the EAC to have an additional arm of security which can be used by other countries within the region. I am saying this because

of our past experiences which I have cited.

It is worrying to even understand from the Mover that as we talk, violence has erupted between Trans Mara and Kisii Districts. The Akiwumi Commission Report received evidence on tribal clashes which happened several years ago. There is even the Kiliku Commission Report which made its recommendations. This country would like to see the Akiwumi Commission Report published. We would also like to see the Devil Worship Commission Report published. I understand when the report of the Devil Worship Commission was out, an individual looked at it and then said: "Weka hiyo. Ni sawa sawa inatosha." This country would like to see it so that we can judge for ourselves.

The Minister of State, Office of the President (Mr. ole Sunkuli): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it not in order that you remind Mr. Munyao that the Devil Worship Report was tabled in this House and it is a matter of public record?

Mr. Munyao: Mr. Temporary Deputy Speaker, Sir, I have got a very good memory and as far as I can remember, there was not much in that report.

The Akiwumi Commission spent a lot of taxpayers' money receiving evidence but to date, the Report has not been published. This is one of the reasons why the Mover is seeking the establishment of a Truth and Reconciliation Commission. But if it is not formed, the reaction will be retrospective. **[Mr. Munyao]**

Kenya is a peaceful country and we would like to see Kenyans live peacefully. There is only one way; that is, to allow the Truth and Reconciliation Commission to be established. They are ready to work and have the report ready in one year.

Mr. Temporary Deputy Speaker, Sir, as I said at the beginning, I would like to give a chance to many more Members to contribute to this Motion. I hope this opposite side, including the Minister for Foreign Affairs and International Co-operation, will support the Motion and vote from their own conscience and not on instructions from elsewhere. I have seen in the past somebody regretting. The laws we make here will affect us at one time. The former Attorney-General, Mr. Charles Njonjo, voted on one of the laws because he had been directed from the Office of the President, but later, that same law came to affect him. Today, he regrets why he did not vote at that time when he was in position. I am appealing to the Front Bench to vote wisely because in one-and-half-years' time, they are not going to be there. I will be sitting there with my colleagues. At that time, you will be sitting here and some of you will be asking yourselves why you did not vote consciously, but instead, because of what you had been told before you left your office.

With those few remarks, I do support this Motion. I ask the other Members to support it.

The Minister for Foreign Affairs and International Co-operation (Dr. Godana): Thank you very much, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to contribute to the debate on this most unfortunate Motion.

The goal of national unity or social cohesion, or peace and harmony is one which we all aspire to. In that regard, we support the spirit which is included in the opening words of the drafted Motion, but we cannot support the Motion. I stand to oppose it in so far as it seeks to create the so-called the Truth and Reconciliation Commission. There is a tendency in this continent, especially in Sub-Saharan Africa, for leaders and in particular, Opposition politicians at that, to readily ape mechanisms and institutions used in foreign lands without thinking seriously as to the propriety of those institutional mechanisms being grafted on the local conditions.

The institution of a Truth and Reconciliation Commission in modern times was born in Allende's Chile, and was borrowed from there after the Junta in Argentina. It was brought into this continent in the case of Apartheid South Africa. Obviously, whatever grievances individuals may have - whatever grievances Opposition Members may have for being in the Opposition - there is nothing remotely comparable in those situations to what we have here. We have laws and institutions and laid-down procedures which are quite capable of dealing with some of the shortcomings in the governance situation, if people think that there are shortcomings. We have courts of law, an independent media and the rule of law.

The challenge for us, if people feel aggrieved, is to strengthen the institutions and procedures that we already have and not to rush to borrow examples from abroad which can ill apply here. That kind of tendency to borrow what is not applicable here, in particular the proposal to have a Truth and Reconciliation Commission, can be very counter-productive because you are exaggerating the sense of grievance that you have. You could be setting into motion, the process by which, in fact, communities regard each other as real enemies or by which groups begin to justify hostile positions or positions of exclusions from their neighbours. I think that is an insult to the integrity of Kenyans. I must say that tendency to do that kind of thing to magnify small problems is an affront to the dignity of this Parliament. I must say that the hon. Mover should think seriously about it because I think it tends to erode or debase his own integrity.

Hon. Members have spoken here to give reasons why the call for reconciliation is proper, but the term "national reconciliation" is used in those contexts that I have referred to; in situations where violent and civil war have put communities and different regions of the country on a permanent warpath of each other. It would be applicable in a situation such as Somalia and the Democratic Republic of Congo. Kenya is not the DRC, Somalia, Sierra Leone,

Liberia or Apartheid South Africa. Why should hon. Members think of using those examples as a way of dealing with situations here? There is a saying in my community that when you express wishful thinking for certain situations, at a certain point it turns out into a prayer and you could have it. I hope hon. Members are not praying that we should end up in situations as in those countries.

With those few remarks, I beg to oppose.

(A number of hon. Members stood up in their places)

The Temporary Deputy Speaker (Mr. Imanyara): Order, hon. Members! It is time for the official Government Responder.

The Minister of State, Office of the President (Mr. ole Sunkuli): Mr. Temporary Deputy Speaker, Sir, I beg to reply on behalf of the Government. The hon. Seconder of the Motion--

Mr. Angwenyi: On a point of order, Mr. Temporary Deputy Speaker, Sir. This Motion is very important for this country and you have not extended a chance to Back-benchers on the KANU side in [**Mr. Angwenyi**

order for them to contribute to the Motion. So, I thought you should give us enough time so that, at least, one or two hon. Members from the KANU Back Bench can contribute to the Motion.

(Applause)

Mr. Temporary Deputy Speaker, Sir, you cannot deny us our right.

The Temporary Deputy Speaker (Mr. Imanyara): Order, Mr. Angwenyi! Give me the Standing Order that enables me to do that, and I will do it. If you cannot do that, do not stand up on a point of order.

Mr. Angwenyi: Mr. Temporary Deputy Speaker, Sir, the rules of natural justice; the rules that have elected me to this House! Those rules allow me to contribute to an important Motion. Any Member of this House is entitled to an opportunity to contribute to this important Motion.

The Temporary Deputy Speaker (Mr. Imanyara): Order, Mr. Angwenyi! If you have a point to make, make it in accordance with the Standing Orders of this House. Rules of natural justice are incorporated in the Standing Orders. If you do not cite a particular Standing Order, and you are standing on a point of order, I will take action against you if your intention is simply to disrupt the business of the House.

Continue, Mr. ole Sunkuli!

The Minister of State, Office of the President (Mr. ole Sunkuli): Mr. Temporary Deputy Speaker, Sir, the hon. Seconder of this Motion said that

the only areas that have not had clashes in the country---

Mr. Gatabaki: On a point of order, Mr. Temporary Deputy Speaker, Sir. I am still on the same point raised by Mr. Angwenyi. No hon. Member from the Social Democratic Party (SDP), which I represent here, has contributed on this weighty issue, which may send so many others to the gallows. We are asking the indulgence of the Chair so that the time for the Motion is extended, so that, at least, the Back-benchers and a party like mine can contribute to the Motion!

The Temporary Deputy Speaker (Mr. Imanyara): Order, Mr. Gatabaki! We have two hours allocated to the Motion, and out of that time, there is a certain time set for the official response from the Government, and the time set for the Mover to reply. I am following the Standing Orders, and, please, do not take the time of the Minister who is responding on behalf of the Government.

Proceed, Mr. ole Sunkuli!

The Minister of State, Office of the President (Mr. ole Sunkuli): Mr. Temporary Deputy Speaker, Sir, as I was saying, the hon. Seconder said that the only areas not affected were Central Province and Nairobi. The hon. Seconder himself, of course, comes from the Central Province of Kenya, and I could perhaps excuse him for not understanding what goes on. But Mr. Oloo-Aringo has been an eminent Member of this country's Cabinet and comes from Western Kenya, and I do know that he does understand very well the nature of Kenya. It is not a small matter. I think the matter of tribal clashes should be considered a very crucial matter because if we do not go to the root cause of that problem, we can easily find ourselves behaving like armchair researchers who look at newspapers and a few opinions from the people and quickly conclude that they have an answer.

Tribal clashes, as the hon. Mover said, still go on in my own Trans Mara District, and also in Kisii and Gucha districts. In those districts, there are on-going clashes as we stand here. Trans Mara District shares a border of 35 kilometres with the Kisii people. When clashes arise along the 35 kilometres, it is not a mean act. For instance, it is very crucial that Members do use that example to understand that, first, clashes are not a matter of the past; secondly, they are not caused by simplistic reasons, and, thirdly, in fact, we need to understand why clashes are going on. This is because sitting down and blaming one another does not augur well for the future of this country.

Leaders from Kisii - Messrs. Nyang'wara, Obure and Ongeru - have met and we have all tried as much as possible to reconcile the people because they understand that, in fact, peaceful co-existence is important not just for their very livelihood, but, in fact, for the economic purpose.

Mr. Omingo: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Minister in order to only mention leaders from Kisii who are in the KANU Front Bench and ignoring the Opposition Members who are crucial in terms

of solving that matter?

The Minister of State, Office of the President (Mr. ole Sunkuli): Mr. Temporary Deputy Speaker, Sir, I was coming to Mr. Omingo because he does not know that we had a talk with him. In fact, I asked him to go to my constituency too and talk to the people there, together with those of his constituency. This is because it takes a lot of efforts to understand why the clashes have, in fact, occurred. There is absolutely no reason why we should throw stones at each other. South Mugirango Constituency, which Mr. Omingo represents, does border my constituency, and the people there are very friendly. Up to now, clashes have not occurred between the constituency of Mr. Omingo and my constituency. I think the solution to that problem is not to look too much into the rear mirror because we might end up crashing our own car.

[The Minister of State, Office of the President]

We want people to understand that the Kenya we had a long time ago is, by and large, the one we still have. The communities in Kenya do still require to be told and to be taught to live in peace together. It should not be simplified into an exercise where some people are asking for pardon and others are giving them amnesty. That is a very simplistic way of looking at it. That is running away from reality and living in an armchair position, that my colleague, the Seconder of this Motion, does in fact, live in. For him, clashes are hypothetical things that happen out there. Those of us who live in those areas do know that we need to employ a more serious attitude towards---

Mr. Gatabaki: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. Minister to mislead this House and the nation that tribal clashes are so simplistic, when he knows that they are systematic, well-organised and conceived by the KANU Government for political purposes?

The Temporary Deputy Speaker (Mr. Imanyara): Order, Mr. Gatabaki! Proceed, Mr. ole Sunkuli.

The Minister of State, Office of the President (Mr. ole Sunkuli): Mr. Temporary Deputy Speaker, Sir, the hon. Gatabaki has got a good car. If he could just take a drive to go and see what happens, it might help him to understand what these things are all about.

But I would like to urge the hon. Mover of this Motion - because he is an eloquent speaker and an original thinker - to revert back to his original thinking and leave South Africa alone. As Mr. Biwott said, justice and reconciliation are good things but put together, they form a South African concept, which simply reads that the situation of the past does constitute such a magnitude; that they must be heaped together and be applied to one treatment called amnesty. How far in the history of Kenya do we actually want to go? We

have been independent for all this time. Nobody ever asked the British, for instance, to institute a truth and reconciliation committee in this country. We, in Maasailand; lost a lot of land; most of it has been inherited by other people. Were we not entitled to talk about it at that particular time? When people give litanies of people who were killed in the 1960s, they always forget to mention the name of Tom Mboya!

An hon. Member: Even J.M. Kariuki!

The Minister of State, Office of the President

(Mr. ole Sunkuli): That may be so, but are our people happy?

The Temporary Deputy Speaker (Mr.

Imanyara): Order, Mr. ole Sunkuli! Do not be drawn into a conversation with other hon. Members. Address the Chair!

The Minister of State, Office of the President

(Mr. ole Sunkuli): Mr. Temporary Deputy Speaker, Sir, I am addressing my own mind.

(Laughter)

Mr. Temporary Deputy Speaker, Sir, I would like to urge hon. Members to consider another view here. What have Commissions set up by this House done for this country? What contributions have they made? We have had Commissions which, once instituted, have been used by people with political agenda to hit at their political enemies. A case in point is the Kiliku Report which collected rumours from everywhere and brought them here. It was not for nothing that this august House did throw that report to the dustbin. People made conclusions out of evidence that was not subjected to cross-examination and started blaming others. They do not even say who mentioned who. They just say: "So-and-so is mentioned." We also had the Committee which was set up to go and investigate the issue of corruption. They went and brought up phantom issues of people whom they claimed were corrupt, and people who are known to be *prima facie* corrupt in this country were left out! This is what Commissions have done in this country!

Mr. Oloo-Aringo: What about the Akiwumi Report?

The Minister of State, Office of the President

(Mr. ole Sunkuli): Mr. Temporary Deputy Speaker, Sir, the Government is studying the Akiwumi Report and will soon make it public. I do recall one English Judge, called Lord Eldon, who used to give his judgements in seven years. When he resigned, his deputy used to give judgements in a month and somebody said, "I prefer the slow justice of Lord Eldon to the quick injustice of his deputy."

(Applause)

Mr. Temporary Deputy Speaker, Sir, let justice come in ten or 20 years, but let it come. There are people in this House who consider themselves to be depositories or owners of justice and they do not understand that even those they call "the Government" are citizens who enjoy rights under the Constitution of Kenya and they are also entitled to

justice!

(Applause)

If you asked me to name two institutions in Kenya today, that have done us injustice, I would name the Press and the church. They ought to be the conscience of society but they have lent themselves into tribalism.

Mr. Gatabaki: On a point of order, Mr. Temporary Deputy Speaker. Considering the amount of reconciliation done by the churches and the Press in Kenya today, is this Minister not misleading the House and the nation to that effect?

The Minister of State, Office of the President (Mr. ole Sunkuli): Mr. Temporary Deputy Speaker, Sir, Mr. Gatabaki knows what I mean. I have had occasion to say, and I will never tire of saying, that some sections of the church, like the National Council of Churches of Kenya (NCCCK) are fully-owned subsidiaries of the Opposition parties. They give the voice of the Opposition parties!

(Applause)

Mr. Wamae: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. Minister to insinuate that NCCCK is a subsidiary of the Opposition parties, when NCCCK includes churches from all parts of Kenya?

The Minister of State, Office of the President (Mr. ole Sunkuli): Mr. Temporary Deputy Speaker, Sir, in fact, I am being corrected. The Opposition in this country owns 80 per cent shares in the NCCCK and the remaining 20 per cent is owned by foreigners.

(Applause)

They have subjected themselves to tribalism and every time, they have a list of people called "wrong-doers". That is why truth and reconciliation is not going to succeed. You have already made judgement. You are not going to look for the truth. You are going to the mountains and valleys of Kenya to look for evidence to pin down your usual enemies. That is why it is not going to work! Yet, the number of ills that---

Mr. Gatabaki: On a point of order, Mr. Temporary Deputy Speaker, Sir. Considering the seriousness of the allegation by the hon. Minister, that NCCCK is 80 per cent owned by the Opposition and 20 per cent by foreigners, could he substantiate?

The Temporary Deputy Speaker (Mr. Imanyara): Order, Mr. Gatabaki! If a church is in the Opposition, what is wrong with that?

The Minister of State, Office of the

President (Mr. ole Sunkuli): Mr. Temporary Deputy Speaker, Sir, I doubt whether the SDP has any shares there. But let us get serious and understand that we belong to one country which we must all build. We must construct Kenya so that one day, our children will be proud of the heritage that we will beget them. But to continue on this road, where some people are telling others to apologise for living in Kenya---What wrong have we done?

Doing wrongs, of course, is not what I am negating. But this is a situation where a group of politicians who have always wanted to become the rulers of Kenya want to use practically every excuse to do so. That is something that we feel very strongly about. I think we must all understand that some of us, actually, have even just come to the political scene. Some people sometimes throw stones at KANU; I was very glad when I looked at KBC the other day, and saw that sometimes they were actually diehard hon. Members of KANU; that, they, in fact, said in their own voices that they will only die in KANU. That can only mean that they are soon coming back.

Mr. Temporary Deputy Speaker, Sir, the Vice-President has said that tribalism is being perpetrated by leaders. I was very happy that the Leader of the Official Opposition did not go to the meeting in Meru, and it was said that he did not go there because he is not a tribal leader. That obviously, meant that, that was a meeting attended by tribal leaders. That kind of balkanization; that group of tribal leaders who exempted their leader from coming there, because he is not tribal, must understand that the foundations of Kenya should not be based on that type of rock. I was very disappointed because I thought---

Mr. Gatabaki: On a point of order, Mr. Temporary Deputy Speaker, Sir. Here we have a Minister abusing a whole community. Is the Minister in order to insinuate that when leaders representing 70 per cent of Kenyans meet, they are tribal leaders?

The Minister of State, Office of the President (Mr. Sunkuli): Mr. Temporary Deputy Speaker, Sir, Mr. Gatabaki does not know that if it was a DP meeting, Mr. Parpai would have been there. But he was excluded because it was a tribal meeting. All hon. Members of the other parties, including my very good friend, Mr. Nyanja, actually attended, although he is not a Member of the DP. These are the foundations of tribalism.

Mr. Nyanja: On a point of order, Mr. Temporary Deputy Speaker, Sir. It is true that we met as community leaders. We were there as community leaders. Is it in order for Mr. Sunkuli---

The Minister of State, Office of the President (Mr. Sunkuli): Mr. Temporary Deputy Speaker, Sir, at least, Mr. Nyanja is very honest. He has confirmed what I have been trying to say.

Mr. Nyanja: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the Minister to speak negatively about a community leaders' meeting in their own land, when other communities have been meeting, whether

they are Kamba or Luos, we do not care? Why is everybody concerned when Kikuyu or GEMA leaders meet? Why are you worried?

The Minister of State, Office of the President (Mr. Sunkuli): Mr. Temporary Deputy Speaker, Sir, that, in fact, is a good confirmation of what I have been trying to say. I just want to urge that there is no need for this Truth and Reconciliation Commission.

Mr. Githiomi: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the Minister to continue castigating a community by giving an example of Mr. Parpai who is also a Maasai like him as having not attended the meeting? He is actually telling us that he is tribal. Has he concluded his rape case?

The Minister of State, Office of the President (Mr. Sunkuli): Mr. Temporary Deputy Speaker, Sir, for Mr. Githiomi's information, even Mr. Maitha did not attend and he is a Member of the DP. So, there is absolutely nothing necessitating this Commission. It will only be used for politics, to witch-hunt as usual, and it can be addressed very well in the Constitution review process.

I beg to oppose.

Mr. Oloo-Aringo: Mr. Temporary Deputy Speaker, Sir, because of the importance of this Motion, I will give my first three minutes to Mr. Kathangu, the next three minutes to Dr. Omamo and two minutes to Mr. Orenge.

Mr. Kathangu: Thank you, Mr. Temporary Deputy Speaker, Sir, and through you, Mr. Oloo-Aringo. I will, first of all, start by saying that merry-making in this House is very rare and I can see lots of merriment on the KANU side. I would like to congratulate them because every time a group or an individual is happy, life is extended.

Mr. Temporary Deputy Speaker, Sir, I would like to congratulate Mr. Oloo-Aringo for coming up with this Motion, which is a concern about the peaceful future of this nation. Secondly, I would like to reflect on what I am seeing this morning, and say that my sincere prayer is that the Opposition loses this Motion so that this country may appreciate the position that the Government and KANU for that matter has taken as regards peace and reconciliation, and the evils that have been perpetrated in this country for all these years. If the Opposition side loses this Motion, it will be another confirmation that the merriment we see today is a reflection of the devil's world. The patronising politics that has seized this country is, today, again reflected in the merry-making of one, Mr. Sunkuli, who is slaughtering Kisiis in Trans Mara-Kilgoris area.

The Minister of State, Office of the President (Mr. Sunkuli): On a point of order, Mr. Temporary Deputy Speaker, Sir. I know you were consulting with the other hon. Member, but Mr.

Kathangu has just said that I am slaughtering Kisiis. Could he substantiate or withdraw and apologise?

Mr. Kathangu: Mr. Temporary Deputy Speaker, Sir, it is from the statements that my brother, a young lawyer in this country, and a Minister in the Kenya Government, has been uttering in the Republic. I am surprised that Mr. Sunkuli would stand anywhere in Kenya to blame the same communities fighting and he does not tell the nation why they are fighting, yet he represents them.

The Assistant Minister for Agriculture, Livestock and Rural Development (Mr. Sumbeiywo): On a point of order, Mr. Temporary Deputy Speaker, Sir. The Standing Orders of the House state that when an hon. Member of the House is mentioned, there must be substantiation. Could you ask him to withdraw or substantiate?

Mr. Kathangu: Mr. Temporary Deputy Speaker, Sir, I would like to say---

The Minister for Tourism, Trade and Industry (Mr. Biwott): On a point of order, Mr. Temporary Deputy Speaker, Sir. I think this House ought to be a House of integrity and our Standing Orders ought to be adhered to. Our Standing Orders state that if you say something definite, as he has said, you must substantiate or withdraw.

An hon. Member: He has withdrawn!

The Minister for Tourism, Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Speaker, Sir, he has not withdrawn. He said that Sunkuli has killed Kisiis. Could he substantiate or withdraw, because it is a factual thing. It was a statement of fact.

An hon. Member: You are also killing Marakwets!

Mr. Kathangu: Mr. Temporary Deputy Speaker, Sir, I agree with Mr. Nicholas Biwott who is a Catholic like me and a brother who has said many times in this House that he did not participate in killing Dr. Robert Ouko, and I have never challenged him. He has always said that. I have never got an opportunity in my life to tell him that he was associated with the murder of Dr. Ouko. He has always said that he was not involved. Why would Mr. Biwott and Mr. Sunkuli talk about non-involvement in actions---

The Minister for Tourism, Trade and Industry (Mr. Biwott): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member in order to stray into extraneous issues? Dr. Robert Ouko's case featured in court many times and the hon. Member should have been there to state his position, but he has never done so. The issue at moment here is on his own definite statement that Mr. Julius Sunkuli has killed Kisiis. Can he substantiate his allegation? This is because this House should not be used to peddle untruths.

The Temporary Deputy Speaker (Mr. Imanyara): Order! Order! We are taking Mr. Oloo-[**The Temporary Deputy Speaker**]

Aringo's time. We have only five minutes remaining.

Mr. Kathangu, did you actually say that Mr.

Sunkuli is slaughtering---

Mr. Kathangu: Mr. Temporary Deputy Speaker, Sir, I did not say that. I want to say this---

The Temporary Deputy Speaker (Mr. Imanyara): Let us save time. The HANSARD will show us. Let us not take Mr. Oloo-Aringo's time. If you do not have anything to say, give him back his time.

Mr. Kathangu: Mr. Temporary Deputy Speaker, forgiveness is a process started by the person or persons wronged. The Mover of this Motion represents communities or societies in this country that have been wronged. We must appreciate that the people who have been wronged and who are seeking forgiveness, have to be heard. For that reason, I would like to say that we must seek forgiveness in this nation. We want to forgive and forget the past and at the same time, reconcile and leave peace in this country.

Thank you.

Mr. Oloo-Aringo: Mr. Temporary Deputy Speaker, Sir, may I request Dr. Omamo to take only two minutes.

Dr. Omamo: Mr. Temporary Deputy Speaker, Sir, it is true that this Motion is about one's own conscience. I would like to thank my friend, Mr. Oloo-Aringo, for bringing it. The sentiments expressed are excellent. If the Motion is lost, at least, be assured that he who fights and runs away lives long to fight another day.

(Applause)

Mr. Temporary Deputy Speaker, Sir, in my opinion, it is very difficult to have this Commission formed and the results implemented. I am saying so through experience. This kind of Commission will bring up things that may spoil Kenya more than it will make Kenya because it will generate hatred. At the moment, most of our Kenyans are inward-looking. It reminds us of Prophet Haggai who, during his time, noticed that his people were losing all the time and even the little that was in their hands was being blown away. Why was it happening so? This was because his people were inward-looking. Prophet Haggai advised his community to be outward-looking and think of the other fellows and neighbours. Have we come to that stage?

Thank you.

Mr. Oloo-Aringo: Mr. Temporary Deputy Speaker, Sir, since I promised Mr. Orengo two minutes, let me donate the two minutes to him.

The Temporary Deputy Speaker (Mr. Imanyara): That is what is remaining!

Mr. Orengo: Mr. Temporary Deputy Speaker, Sir, this is a very short time to make a response to what has been said in the last ten minutes. But what I really wanted to put forward at this stage is what many people have spoken, and that is really a matter of conscience.

We should examine our consciences and think of where Kenya is going. If you look at the history of this country, there is a feeling that has been there for the last 15 years and which has been born out of the fear by very specific people in this country, who do not desire reconciliation. This is because all that this Motion is asking for is reconciliation.

Mr. Temporary Deputy Speaker, Sir, at every moment in the history of this country when we have desired to have some reconciliation--- This Motion is not dealing with matters about taking away the Attorney-General's powers to prosecute; it is not transforming it into a criminal court; it is merely to seeking a mechanism for bringing about reconciliation. I know that we would not have reconciliation if the mafia that was against the Kiliku Report is still in this House. We will never have that type of reconciliation. We would not have reconciliation if a Government which is in power, and one of its Ministers is murdered, does not require reconciliation and resolution of that murder. I would like to tell them that time will catch up with them. Right now, the general trend of international jurisprudence is that nobody can get away with crime. I would like to inform this House that now, even the Japanese have to answer for the crimes which were committed in the Second World War.

Hon. Members: Tell them!

Mr. Orengo: Mr. Temporary Deputy Speaker, Sir, there were Japanese soldiers who kept women from the war front in comfort shelters to go and "enjoy" them. I would like to say that Japan is answering for that crime 30 or 40 years later. We want to seek reconciliation now, and not 40 years later.

I would like to say that the Rift Valley mafia is against this Motion, but Kenyans want reconciliation.

Mr. Oloo-Aringo: Mr. Temporary Deputy Speaker, Sir, I beg to move.

(Applause)

(Questions put and negatived)

Hon. Members: Division! Division!

The Temporary Deputy Speaker (Mr. Imanyara): Order! There are enough Members standing to warrant a division. Therefore, ring the Division Bell.

(The Division Bell was rung)

The Temporary Deputy Speaker (Mr. Imanyara): Order, hon. Members! The Standing Orders require the doors to be locked now and the Bar drawn. The Tellers for the Ayes are hon. Kajembe and hon. Dr. Kulundu and the Tellers for the Noes are hon. Sajjad and hon. Njakwe Maina. I shall now put the Question once again and the Ayes shall proceed to the Lobby on my right and the Noes shall proceed to the Lobby on my left.

DIVISION

(Question put and the House divided)

(Question defeated by 69 votes to 34)

AYES: Messrs. Oloo-Aringo, Donde, Gatabaki, Imanyara, Jirongo, Thirikwa, Kathangu, Katuku, Khamasi, Kihara, Kihoro, Kiunjuri, Kombo; Dr. Kulundu, Messrs. Omingo, Njakwe, Muchiri, Mrs. Mugo, Messrs. Muite, Munyao, Githiomi, Mwangi P.K., Ndwiga, Mrs. Ngilu, Nyagah N., Nyanja; Dr. Omamo, Mr. Orengo, Otula; Messrs. Parpai, Shitanda, Sifuna, Eng. Toro and Mr. Wamae.

Tellers of the Ayes: Dr. Kulundu and Mr. Kajembe.

NOES: Messrs. Affey, Amin, Dr. Anangwe, Messrs. Biwott, Chanzu, Choge, Ekirapa, Dr. Galgalo,

Dr. Godana; Messrs. Gumo, Haji, Kajembe, Kalulu, Kalweo, Kamotho, Karauri, Khaniri, Kimkung, Arap-Kirui, Kitur, Kofa, Kosgey, Tarar, Lengees, Maj. Madoka; Messrs. Maizs, Marrirmoi, Dr. Masakhalia, Messrs. Mbela, Mkalla, Mohamed H.M., Mohamud M.A., Morogo, Muchilwa, Mudavadi, Mugalla, Mukangu, Musyoka, Nassir, Ndambuki, Ndilinge, Ngala, Ng'eny, Ntimama, Ntutu, Capt. Ntwiga, Messrs. Nyagah J., Nyenze, Obure, Okemo, Prof. Ongeru, Messrs. Osundwa, Sajjad, Rotich, Ruto; Prof. Saitoti, Messrs. Hashim, Sang, Sasura, Shaaban, Shambaro,

Shidiye, Sirma, Sumbeiywo, Sunkuli, Dr. Wako, Dr. Wamukoya, Messrs. Werah and Moroto.

Tellers of the Noes: Messrs. Sajjad and Njakwe.

ABSTENTIONS: Messrs. Mwakalu and Nyang'wara.

ADJOURNMENT

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

The House rose at 12.30 p.m.