

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 11th March, 2010

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

### PRAYERS

### ORAL ANSWERS TO QUESTIONS

#### *Question No.004*

#### EXECUTION OF CONTRACT BETWEEN ISIOLO COUNTY COUNCIL AND KATO

**Mr. Bahari** asked the Deputy Prime Minister and Minister for Local Government:

(a) whether he could provide copies of the contract between Isiolo County Council and the Kenya Association of Tour Operators (KATO).

(b) what the total revenue collected and remitted on behalf of Isiolo County Council is; and,

(c) what percentage of the revenue was earmarked for Bursary Fund and other community projects.

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Speaker, Sir, I beg to reply.

(a) I have attached a copy of the agreement to the answer, which I will table here.

(b) The Question did not specify how far back we should indicate the revenue collected, but I have attempted to go as far back as 1996/1997 on the revenues collected and they were as follows: 1996/1997, Kshs48.6 million, 1997/1998, Kshs22.1 million, 1998/1999, Kshs34.3 million, 1999/2000, Kshs61.8 million, 2000/2001, Kshs59.9 million, 2001/2002, Kshs41.1 million, 2002/2003, Kshs35.8 million, 2003/2004, Kshs32.6 million, 2004/2005, Kshs103.1 million, 2005/2006, Kshs97.8 million, 2006/2007, Kshs99.2 million, 2007/2008, Kshs88.6 and 2008/2009, Kshs60.4 million. So, the total collected for that period is Kshs785.3 million.

(c) There is no percentage that was being specifically earmarked for either Bursary or community projects in the contract with KATO.

**Mr. Bahari:** Thank you, Mr. Speaker, Sir. I want to thank the Minister for the elaborate answer. But a lot of the councils like, for example, Narok County Council have withdrawn from engaging KATO for this purpose. This is purely because of the opaque manner in which this organization handles council affairs. Can the Minister confirm that there is a lot of forgery of tickets by KATO to the extent that the council has lost a lot of revenue?

**Mr. Mudavadi:** Mr. Speaker, Sir, it is true that quite a number of local authorities, particularly those that have tourism as a base, had different agreements, sometimes with different organizations for revenue collection. In this particular case, the issue of inadequate support from this arrangement did come up and the Town Clerk was asked, and I believe he wrote a letter – I am still trying to look for a copy of it, which I can show to the hon. Member and even present to the House. We have advised the council that they can cancel this agreement because there are provisions for doing that by each party giving notice, and be able to initiate action by either advertising for a new process or, indeed, if they think they have the capacity, they would have to justify that they have the capacity to collect revenue on their own. That is another option.

**Mr. ole Lankas:** Mr. Speaker, Sir, what is the capacity of this council to collect its own revenue? What happens is that before they enter into these contracts with these agencies, they must have sought the advice of the Ministry. So, what is the position of the Ministry as far as this contract is concerned? In your opinion, is the council losing revenue or is it gaining?

**Mr. Mudavadi:** Mr. Speaker, Sir, first of all, let me just highlight that this agreement was signed by the council in 1995. Just for record purposes, that should be noted. I have tried to highlight the revenue projections and growth. Indeed, in the early days, one can see some substantial growth up to the year 2004/2005. Then you start seeing a downward trend of the revenue collection. So, it is true that if the councils can organize themselves, they too can also have the capacity to collect this revenue and, perhaps, increase the collection. But I must also confess the fact that in certain instances, localized intrigues in some of these councils do affect the revenue collection.

**Mr. Letimalo:** Mr. Speaker, Sir, given that KATO gets a commission of 4 per cent per entry permit, what mechanisms must the council and KATO put in place to ensure that there is no forgery to inflate the amount of commission that KATO gets?

**Mr. Mudavadi:** Mr. Speaker, Sir, in the agreement, it is clear from the outset the commission that the KATO would get. If there is any inflated figure which is being brought up, it will be captured by auditors. The agreement between that organization and the council is subject to auditing. That will be done when the auditors audit the revenue collection for that council.

**Mr. Bahari:** Mr. Speaker, Sir, when this revenue used to be collected by the council's staff, two percent of it used to go towards assisting needy students in the county. Last year, I received a complaint from the residents that money had been collected from KATO but it has not been remitted to the council. Instead, individuals pocketed the money. A complaint has already been made to the CID, Isiolo. Could the Deputy Prime Minister and Minister for Local Government confirm whether that is what happened? I think he has been misled. If he is not aware, could he take up the matter from the CID, Isiolo, so that it is conclusively handled?

**Mr. Mudavadi:** Mr. Speaker, Sir, at this point in time I was not aware that a report had been made to the CID, Isiolo. It was the Isiolo County Council which allocated the money when it collected it directly. It allocated some money to the bursary. However, it was not in the context of the KATO agreement, but the revenue it collected. The

records we have show that the council has paid Kshs8.9 million towards the bursaries from 1995 to 2009.

On the issue the hon. Member has raised, I will follow it up with the council so that we can get the details of what has been forwarded to the CID.

*Question No.072*

COMPENSATION TO MR. JORAM OCHENGA

**Mr. Chanzu** asked the Minister for Forestry and Wildlife:-

(a) what plans he has to compensate Mr. Joram Ochenga who was attacked and seriously injured by a lion at Maragoli Hills on 3<sup>rd</sup> September, 2002; and,

(b) what measures he will take to protect the residents of the area from such attacks in future.

**Mr. Speaker:** Is anyone here from the Ministry of Forestry and Wildlife ? We will return to this Question a little later.

**Mr. Letimalo:** Mr. Speaker, Sir, although I have not received a copy of the written answer, I beg to ask Question No.078.

*Question No.078*

NUMBER OF CASUAL EMPLOYEES  
AT MULTIMEDIA UNIVERSITY

**Mr. Letimalo** asked the Minister for Higher Education, Science and Technology:-

(a) whether she could inform the House how many casual employees are currently employed by the Multimedia University College of Kenya and how long each of the employees has worked as a casual; and,

(b) what plans she has to ensure that they are employed in compliance with labour laws.

**Mr. Speaker:** Is there anyone from the Ministry of Higher Education, Science and Technology? Prof. Anyang'-Nyong'o, you will hold brief for your colleague.

*(Prof. Anyang'-Nyong'o stood up in his place and bowed to the Chair)*

That is not enough, Prof. Anyang'-Nyong'o!

*(Laughter)*

**The Minister for Medical Services** (Prof. Anyang'-Nyong'o): Mr. Speaker, Sir, the Minister for Higher Education, Science and Technology is on an official trip. So, I will hold brief for her. I will notify her that this Question will be on the Order Paper on Tuesday, next week.

**Mr. Speaker:** Where is the Assistant Minister?

**The Minister for Medical Services** (Prof. Anyang'-Nyong'o): Mr. Speaker, Sir, I am not quite sure whether she has an Assistant Minister because I do not have one myself.

**An hon. Member:** She has two!

**The Minister for Medical Services** (Prof. Anyang'-Nyong'o): Mr. Speaker, Sir, if she has two Assistant Ministers, she should lend me one!

**Mr. Outa:** On a point of order, Mr. Speaker, Sir. I am just wondering where a Cabinet Minister is properly dressed. Is he in an official dress?

**Mr. Speaker:** Order! Which Cabinet Minister are you talking about?

**Mr. Outa:** Mr. Speaker, Sir, if you look in the House, you will find that there are only two Members of Parliament with the same---

**Mr. Speaker:** What is so difficult with you pointing out the Minister?

**Mr. Outa:** Mr. Speaker, Sir, it is Haji. Is he properly dressed?

**Mr. Speaker:** Order, Mr. Outa. On Mr. Haji's attire, I have made a ruling and given directions before. I am satisfied that he is properly dressed!

Hon. Members, I will defer Question No.078 until Tuesday, next week on the grounds that the Minister is away on official duty although Prof Anyang'-Nyong'o has not accounted for the absence of the Assistant Ministers. I think that is a matter that you should go and take up in the Cabinet. It is not satisfactory to the House to offer an explanation that the substantive Minister is absent and, therefore, it follows that you have put in an excuse for the Assistant Ministers as well. That is not good enough! So, please, bear that in mind!

*(Question deferred)*

*Question No.088*

SHARING OF WARD BY MALE/FEMALE  
PATIENTS IN IJARA DISTRICT HOSPITAL

**Mrs. Noor** asked the Minister for Medical Services:-

(a) why male and female adult patients are sharing a ward for medical and surgical cases in Masalani District Hospital in Ijara District; and,

(b) what the Ministry has done to construct a separate ward for women.

**The Minister for Medical Services** (Prof. Anyang'-Nyong'o): Mr. Speaker, Sir, I beg to reply.

(a) Masalani District Hospital has a twin general ward comprising a male side of eight beds and a female side of eight beds. The two sides are separated by a nursing station. Toilets and bathrooms are external to the twin ward. Both male and female patients are accommodated in the twin ward because it is the only facility available.

(b) A separate 22-bed ward for men has been completed and is awaiting supply of equipment. The ward is due to be opened by June, 2010. Once operational, this ward will accommodate the male patients presently in the twin ward, thus end the sharing.

The Ministry, with assistance from DANIDA will also construct a new female ward in the hospital by December, 2010 at a cost of Kshs14 million.

**Mrs. Noor:** Mr. Speaker, Sir, I appreciate the answer given by the Minister. He has told us that there is light at the end of the tunnel and money will come from DANIDA for the construction of a female ward. Having said that, I would like to bring to his attention the fact that the entire Ijara District has not received medical supplies since September, 2009. What efforts has he made to give medical supplies to the entire district? Since it is now raining in the district, there might be an outbreak of waterborne diseases.

**The Minister for Medical Services** (Prof. Anyang'-Nyong'o): Mr. Speaker, Sir, that is a genuine question. In the past, we have assured the House that the delays that used to occur in the tendering and acquisition of medical supplies have been addressed by the Treasury advancement of the required resources. I assure the hon. Member that by the end of this month hospitals in Ijara District will have adequate medical supplies.

Further, let me also assure the hon. Member that in the current financial year, Masalani District Hospital has been allocated funds amounting to Kshs5.6 million for the completion of a laboratory block. This is in addition to the completion of the female ward I have talked about. However, apart from the Kshs14 million that is available to this hospital, we will also get funds from DANIDA worth Kshs39.4 million. That money will address the other inadequacies in the hospital.

**Mr. Ethuro:** Mr. Speaker, Sir, I commend the Minister for paying attention to the plight of the people of Ijara. However, what the Minister has stated is what obtains in Northern Kenya where there has been one facility since Independence. What will the Minister do in Turkana East, Turkana South, Turkana North, Turkana West and Loima districts which do not have a single hospital? When will he fast-track the establishment of hospitals in these areas that have been neglected for a long time?

**Prof. Anyang'-Nyong'o:** Mr. Speaker, Sir, we are very much aware of the issue in the northern part of Kenya regarding inadequate hospitals. Indeed, as I have said in this House, one of the shortcomings that we have had in the Ministry is lack of a

Development Budget from the Treasury. For example, this year, we have allocated only Kshs2 billion for development of the whole country. Nonetheless, we have, together with the Treasury, developed a proposal to get concessional funds from Spain, through a project that specifically focuses on Northern Kenya, for building hospitals.

We know that DANIDA has been doing its best in that area, but we feel that an extra source of resources is needed to meet the needs of Northern Kenya. Again, I have said that my main aim is to ensure that every constituency has a sub-district hospital. So, it is our responsibility to look for the resources, not just from the Treasury but from development partners as well, to meet this goal. I assure the hon. Member that we will do our best to do that. It is in the interest of Turkana district as well as in the interest of the Republic of Kenya.

**Mrs. Noor:** Mr. Speaker, Sir, the staffing level for Masalani District Hospital is supposed to be 60 nurses. Unfortunately, we only have four nurses today serving the district. What is the Ministry doing? We have talked about staffing. We have been talking about support staff in Northern Kenya, but nothing is forthcoming.

**Prof. Anyang'-Nyong'o:** Mr. Speaker, Sir, let me assure the Member of Parliament that something is forthcoming. We have already recruited about 4,600 nurses, but these have to be shared nationally. So, you will find that a hospital like Masalani District Hospital, which has 44 nurses, and whose total supply should be 60 is actually doing very well compared to other areas.

**Mrs. Noor:** It does not have 44 nurses!

**Prof. Anyang'-Nyong'o:** Did you say 44 or four nurses?

**Mrs. Noor:** Four only!

**Mr. Speaker:** Order! Order, Mrs. Noor!

**Prof. Anyang'-Nyong'o:** Mr. Speaker, Sir, I thought I heard 44. If it has four nurses, definitely, that hospital deserves a lot of attention. I will work closely with the hon. Member to make sure that we do our best to supply more staff. Fortunately, in that area, with the support of DANIDA, we can afford to get nurses outside the normal budgetary allocation because, DANIDA as a development partner is focussing specifically in Northern Kenya. So, maybe, if we could work out something, we could see how to supplement those nurses, because that is definitely inadequate.

*Question No.093*

SHORTAGE OF CLASSROOMS/TEACHERS/INFRASTRUCTURE IN TURKANA SCHOOLS

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

(a) whether he could-

(i) state the number of primary school pupils who qualified but did not get chances in Form I from 1998 to 2010;

(ii) state the current shortage of teachers in primary and secondary schools;

(iii) state the number of additional secondary school classrooms for 2010;

(iv) state the number of school auditors for both primary and secondary schools; and,

(v) table a schedule of audited schools in Turkana Central District, indicating the respective dates of audit and the auditors;

(b) whether he could state the number of school-age children not attending schools and the reasons thereof; and,

(c) what urgent measures he is taking to address the serious shortfall of classrooms, teachers and the attendant infrastructure.

**The Assistant Minister for Education** (Prof. Olweny): Mr. Speaker, Sir, I beg for the indulgence of this House to allow us to bring an answer to this Question after two weeks. I have already consulted the hon. Member, Mr. Ethuro, that he allows that amount of time, because part of the information needed involves going into the archives. If you look at the last part of the Question, you will notice that it is open-ended. It may also force us to go to the colonial days for the respective audit.

**Mr. Speaker:** Member of Parliament for Turkana Central, what is your position on this one?

**Mr. Ethuro:** Mr. Speaker, Sir, the Assistant Minister was my good professor at the university. He has consulted me. He has developed a very good habit of consulting hon. Members. So, I have no problem waiting for two weeks, except just to mention that, being a professor himself, and Assistant Minister for Education, he is aware of the existence of the ICT policy and e-government. So, this information should be readily available, but I give him the benefit of the doubt. Two weeks is not too long. We will be meeting here, hopefully.

**Mr. Speaker:** It is so directed! This Question will come onto the Order Paper two weeks hence.

*(Question deferred)*

Next Question, Member of Parliament for Githunguri!

*Question No.101*

#### NON-PAYMENT OF COMPENSATION TO VICTIMS OF TORTURE

**Mr. Baiya** asked the Attorney-General:-

(a) whether he could confirm that the High Court issued a decree for compensation of Messrs. Dominic Arony Omolo, Alex Okoth Ondewe, Naftali Karanja Wandui, Joseph Gichuki Karanja, Rumba Kinuthia, Andrew Muriithi Ndirangu, Njuguna Mutahi and Margaret Wangui Gachau, all victims of torture in Kisumu HCCC 366/95, Nairobi HCCC 384/05, 385/85, 386/05, 1408/04, 1409/04, 1410/04 and 1412/04, respectively, and that no appeal was filed by the Government against the decree within the stipulated period;

(b) why the Government has acted in contempt of the Court orders by refusing to settle the decrees; and,

(c) what measures the Government has taken to settle the decrees.

**Mr. Speaker:** The hon. Attorney-General? Deputy Prime Minister and Minister for Local Government, hold brief for the Attorney-General.

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Speaker, Sir, let me apologise because I have been made to understand that the Attorney-General is out of the country.

**Mr. Speaker:** Have you checked your facts?

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Speaker, Sir, the last time I checked, this is the information I got.

**Mr. Speaker:** Order! I am aware, as the Speaker of the National Assembly, that the Attorney-General is in the country as we sit now.

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Speaker, Sir, the Chair is well informed. I will not contradict you at all. So, let me take this opportunity to apologise and make sure that I can convey the message to him that he is supposed to respond to this Question. I suggest that he can be made to respond by Tuesday next week.

**Mr. Speaker:** What is your reaction, Mr. Baiya?

**Mr. Baiya:** Mr. Speaker, Sir, given that the Attorney-General is around, and we are aware that there is an order by the President that Ministers remain in the country until the completion of the debate on the Draft Constitution, I would request that the Attorney-General be named for disregarding that Presidential directive.

**Mr. Speaker:** Order, Mr. Baiya! That would be very drastic, given that the Attorney-General was away on official duty, permitted by his boss, who is His Excellency the President, and he only returned this morning; and he was not aware that this Question needed an answer this afternoon. So, taking all the circumstances into account, I am prepared to accommodate the Attorney-General for his absence this afternoon because, among other things, he has not been able to “get up” to answer the Question. Mr. Baiya, you know what “getting up” entails. That is compounded by the fact that the Attorney-General may not be so young as to withstand jet lag after flying for that long. So, I will defer this Question to Tuesday, next week, at 2.30 p.m.

*(Question deferred)*

We will now go back to the Question by the Member of Parliament for Vihiga.

*Question No.072*

#### COMPENSATION TO MR. JORAM OCHENGA

**Mr. Chanzu** asked the Minister for Forestry and Wildlife:-

(a) what plans he has to compensate Mr. Joram Ochenga, who was attached and seriously injured by a lion at Maragoli Hills on 3<sup>rd</sup> September, 2002; and,

(b) what measures he will take to protect the residents of the area from such attacks in future.

**Mr. Speaker:** Minister for Forestry and Wildlife!

**An hon. Member:** Absent!

**Mr. Speaker:** That does not sound very interesting. Minister for Foreign Affairs, can you hold brief for your colleague?



**The Minister for Foreign Affairs** (Mr. Wetangula): Mr. Speaker, Sir, I cannot account for the whereabouts of the Minister and his Assistant Minister but, be that as it may, he could possibly have gone to Naivasha with the mistaken belief that the seminar was on. In that case, I seek your indulgence for the Question to be answered next week.

Thank you, Mr. Speaker, Sir.

**Mr. Speaker:** Mr. Yusuf Chanzu, what is your reaction to that one?

**Mr. Chanzu:** Mr. Speaker, Sir, I want you, as the Speaker of the National Assembly, to take into account the fact that the Question is about an incident that took place on 3<sup>rd</sup> September, 2002, and it has taken all this long for this matter to be attended to. So, I would like you to assist me to ensure that this answer comes.

**Mr. Speaker:** Mr. Yusuf Chanzu, from your reaction, you are intimating that you have been waiting for ten years. Surely, one more week is not too harmful but that notwithstanding---

*(Mr. Mungatana stood up in his place)*

Order! Order, Mr. Mungatana, the Member of Parliament for Garsen!

That notwithstanding, Minister for Foreign Affairs, you have intimated that the Minister and his Assistant Minister may have gone to Naivasha. Obviously, that is not acceptable to the House, because this House, as I have said previously, does not operate on presumptions. All of us who thought we should go to Naivasha or all of us who believed there was value in Naivasha ought to have been here to go through the process to ensure that the Motion of Adjournment was passed. So, that was failure on the part of those who believed that Naivasha was important.

*(Applause)*

Please, bear in mind that the House will not be taken for granted in future. This is a democratic process. Political engineering is about being present when it counts. So, note that and convey that to your colleagues, Mr. Minister for Foreign Affairs.

**The Minister for Foreign Affairs** (Mr. Wetangula): Mr. Speaker, Sir, I will do that but you also know that the Parliamentary Select Committee (PSC) on Constitutional Review was sent by your office ahead of everybody. So, we were in Naivasha and that is why we missed the vote. Otherwise, we would have voted positively.

*(Laughter)*

**Mr. Speaker:** Mr. Wetangula, are you saying that the Minister for Forestry and Wildlife is a Member of the PSC?

**The Minister for Foreign Affairs** (Mr. Wetangula): Mr. Speaker, Sir, he is not.

**Mr. Speaker:** Order! You must be relevant to the matter that is on the table. If you are not saying that the Minister for Forestry and Wildlife is a Member of the PSC obviously that is not a good account for his absence.

**The Minister for Foreign Affairs** (Mr. Wetangula): Mr. Speaker, Sir, there were two links to your direction. First, everybody ought to have been here and that we had a

duty to vote. I am saying that if you did not send some of us ahead, we would have voted positively. Many of us were already in Naivasha.

Secondly, the Assistant Minister, Mr. Nanok, was in Naivasha. I saw him last night. So, he was one of those Members who were enthusiastic about coming for the meeting and came ahead of time.

*(Laughter)*

**Mr. Speaker:** Let the matter rest there! I defer this Question to Tuesday afternoon. Make sure that the Minister is informed!

*(Question deferred)*

Hon. Members, that brings us to the end of Question Time.  
Next order!

**Mr. Speaker:** Is there any Minister who has a Ministerial Statement to deliver? There are a number of Statements which are due for today.

The Minister of State for Defence, there is a Ministerial Statement due. It is about the security situation along the Kenya/Sudan border. Are you aware of that?

**The Minister of State for Defence** (Mr. Haji): I am not aware, Mr. Speaker, Sir.

**Mr. Speaker:** Then you must be aware so that you can bring it next week. Take note of that!

## MINISTERIAL STATEMENT

### ARREST OF MS. ARUNGA FOR ALLEGEDLY MEMBERSHIP OF A RELIGIOUS CULT

**Mr. Speaker:** The Minister of State for Provincial Administration and Internal Security, you were supposed to deliver a Statement on the definition of a cult.

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Lesrima): Mr. Speaker, Sir, I seek your indulgence under Standing Order No.80(2).

Mr. Imanyara had requested for a Ministerial Statement in connection with the arrest of Ms. Arunga for belonging to an unlawful organization. Although I undertook to issue the Ministerial Statement, I notice that this matter is now *sub judice* under Standing Order No.80(2) since it is very much active. I seek your guidance as to whether there is need to proceed.

**Mr. Imanyara:** On a point of order, Mr. Speaker, Sir. I have two issues to raise. The first one relates to the Minister of State for Defence. He was in the House when I sought the Ministerial Statement on the state of the border with Sudan. First, he said it was a matter to be answered by the Minister of State for Provincial Administration and Internal Security. When I pointed out that they were Kenyan soldiers he did undertake to issue the Ministerial Statement today. I am surprised he is now saying he is not aware.

**Mr. Speaker:** Mr. Imanyara, I thought you were going to respond to the Assistant Minister, Ministry of State for Provincial Administration and Internal Security.

**Mr. Imanyara:** Mr. Speaker, Sir, I was going to respond to both of them. He has said that is not aware and yet he was seated in this House.

**Mr. Speaker:** With respect to the Minister of State for Defence, that Ministerial Statement was programmed, and communication to the Minister was that he will deliver it on the 17<sup>th</sup> of this month which will be on Wednesday, next week and the Minister has noted. So, please, move away from there!

**Mr. Imanyara:** Mr. Speaker, Sir, with regard to the other Ministerial Statement, the request was in relation to the policy and not the actual arrest. It is a matter of policy on what constitutes an unlawful organisation. It had nothing to do with the arrest of Esther Arunga. So, that bit can be answered.

**Mr. Speaker:** Mr. Imanyara and the Assistant Minister, Ministry of State for Provincial Administration and Internal Security, exercising my mind as best as I can and knowing the circumstances surrounding the Esther Arunga saga and the fact that it is now in public domain that she has been arrested and charged with being a member of an unlawful organization, I am satisfied that this matter is *sub judice*. Any answer given by the Assistant Minister pertaining to what amounts to a cult or an unlawful assembly or does not, will be prejudicial to the criminal case. I am satisfied that, that is so.

So, Mr. Assistant Minister, you need not deliver that Ministerial Statement until after the case is over!

I think that brings us to the end of delivery of Ministerial Statements. Shall we now take requests for Ministerial Statements, if there are any?

## POINTS OF ORDER

### RELEASE OF KACC INVESTIGATION REPORT ON PURCHASE OF CEMETERY LAND TO THE PRESS

**Mr. Outa:** Mr. Speaker, Sir, I rise to seek a Ministerial Statement from the Minister for Justice, National Cohesion and Constitutional Affairs. I would like the Minister to state under which legal provision the Kenya Anti-Corruption Commission (KACC) Acting Chief Executive Officer released investigation documents of the cemetery land purchased by the City Council of Nairobi to the Press before it is finalized.

Secondly, could the Minister confirm to this House if the KACC boss followed the required procedure?

Thirdly, could the Minister confirm or deny the involvement of the KACC boss with the powerful political leaders to influence the premature outcome of the case?

Lastly, could the Minister confirm the integrity of the KACC to this House and as to whether it can be trusted by Kenyans to operate without bias?

Thank you.

*[Mr. Speaker left the Chair]*

*[Mr. Deputy Speaker took the Chair]*

**Mr. Deputy Speaker:** Order hon. Members! Any Minister, in line with collective responsibility, can undertake when that Ministerial Statement will be delivered.

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Deputy Speaker, Sir, I will convey this message to hon. Mutula Kilonzo, the Minister for Justice, National Cohesion and Constitutional Affairs, so that he can deliver his statement on Thursday next week.

**Mr. Deputy Speaker:** Fair enough! Yes, hon. Imanyara!

#### STATE OF THE KENYAN EMBASSY IN TOKYO

**Mr. Imanyara:** On a point of Order, Mr. Deputy Speaker, Sir. I rise to seek a Ministerial Statement from the Minister for Foreign Affairs to tell us the state of our embassies, particularly Tokyo, which I understand was broken into, and also to follow up on a Statement he gave on the High Commission in London. Are these high commissions operational? Are they manned, and if not when do we expect envoys in these stations?

**Mr. Deputy Speaker:** The Minister for Foreign Affairs!

**Mr. Shakeel:** On a point of order, Mr. Deputy Speaker, Sir. Mr. Deputy Speaker, Sir, may have your guidance as to whether I could add to that?

**Mr. Deputy Speaker:** Hon. Shakeel you do not add to Ministerial statements. You ask for a Ministerial Statement!.

#### MINISTERIAL STATEMENT

#### STATE OF KENYAN EMBASSY IN TOKYO

**The Minister for Foreign Affairs** (Mr. Wetangula): The Embassy in Tokyo, Japan, the residence of the Ambassador caught fire at the time when the Prime Minister was on his first visit to Japan. It burnt down completely; investigations are still going on and once I get the the outcome, I will furnish it to this House. The actual chancery is safe and it is in use. I also know that the hon. Member has previously asked me why we have not sent an ambassador to Japan for about six months. I want to assure him and the House that a new ambassador has been appointed, and will take his place in the next ten days.

As to London, there is no problem. There was a High Commissioner known as Joe Muchemi, who served in London for about six years. He has since been recalled. Upon his recall, a new ambassador who was then serving in our mission in Tripoli, Libya, was appointed to take his place; he is in place as the High Commissioner in London; he is doing his job. He has a deputy, Mr. Chepkaka who was acting at the time the High Commissioner had been recalled. The Mission is fully operational and I am not aware of any difficulties whatsoever.

**Mr. Imanyara:** I thank the Minister for his diligence in giving a statement immediately after I sought it. With regard to Japan, could he tell us the identity of the High Commissioner? In London is there a claim? Is the commission facing auction over a debt? If they are not facing any eviction proceedings could he clarify that there are no debts attaching to the High Commission in London?

**The Minister for Foreign Affairs (Mr. Wetangula):** On the Japanese appointment, I will not divulge the name of the designated ambassador until the President pronounces his name formally. I am sure my colleague understands.

On London, there is no risk of attachment of our Mission property. What there was, was a fraudulent lawsuit filed against the embassy, instigated with the collusion of one of our staff, by a Kenyan residing in London who purports to be a lawyer, but he is not even a lawyer. As you know, Missions are protected from any judicial proceedings under the Geneva Convention. The country in which the mission is based has a legal duty, under international law, to protect the integrity of the Mission and that of the ambassador or High Commissioner and all its staff. The matter is being dealt with---

**Mr. Keynan:** On a point of Order, Mr. Deputy Speaker, Sir. You have heard the Minister make a very serious statement. In the first place he says an ambassador has been appointed to Tokyo; in the second statement he said he cannot divulge the name of the ambassador because the President is yet to make the pronouncement. Which one is true? What if the President decides to go for somebody else. Is the Minister in order to mislead the House that an ambassador has been appointed when, indeed, the appointing authority is the President?

**Mr. Deputy Speaker:** The hon. Minister, an ambassador is appointed when appointed and there is only one appointing authority; so, you cannot say the ambassador or the High Commissioner was appointed--- The president has got to appoint.

**The Minister for Foreign Affairs (Mr. Wetangula):** Mr. Deputy Speaker, Sir, there is a whole lot of difference between appointment and pronouncement. There has been an appointment; there has not been a pronouncement and I am not the appointing or pronouncing authority. The pronouncing authority is the appointing authority. So, it will be done in due course.

**Mr. Shakeel :** I am seeking for clarification from the Minister. I would like to ask the Minister whether the High Commissioner for Nigeria is actually staying in the property, or he is staying in an hotel and is so, why he is staying in an hotel.

**The Minister for Foreign Affairs (Mr. Wetangula):** It is not clear. The High Commissioner for Nigeria is the one who represents Nigeria in Kenya. Is that what he means?

**Mr. Shakeel:** I mean the Kenyan High Commissioner to Nigeria.

**Mr. Deputy Speaker:** Can you go on hon. Minister? I think you have got the clarification you sought.

**The Minister for Foreign Affairs** (Mr. Wetangula): In Nigeria we have a chancery in Abuja and an ambassador's residence. We also are lucky that Nigeria has given us, *gratis*, two parcels of land, one for us to build a chancery and the other for us to build a residence for the ambassador. The last time I was in Abuja, the High Commissioner was staying in a residence rented and paid for by the Government of Kenya. If, for any reason which I am not aware of, the property is under renovation, because there is a new High Commissioner who has gone, Mr. Sigei, the logical course of action is for him to move out and stay elsewhere, which is not abnormal in such circumstances. So, I can neither confirm nor deny it until I have the facts.

**Mr. Deputy Speaker:** Fair enough! Yes the hon. Gabbow.

### POINT OF ORDER

#### PRESENCE OF ETHIOPIAN TROOPS IN WAJIR NORTH

**Mr. Gabbow:** Mr. Deputy Speaker, Sir, I rise to seek a Ministerial Statement from the Ministry of Foreign Affairs and Ministry of State for Provincial Administration and Internal Security regarding why Ethiopian troops are roaming in my constituency, harassing innocent wananchi and claiming to be looking for Oromo Liberation Front (OLF) rebels. Secondly, has the Kenyan Government surrendered Wajir North District to the Ethiopian Government?

**Mr. Deputy Speaker:** Order! Mr. Gabbow, you cannot ask one Ministerial Statement from two Ministries. But I think from the look of it, you are talking about internal security. Can you direct that to the appropriate Ministry?

**Mr. Gabbow:** Mr. Deputy Speaker, Sir, fair enough. I seek a Ministerial Statement from the Ministry of State for Provincial Administration and Internal Security regarding the Ethiopian Government troops who are roaming my constituency harassing innocent wananchi claiming to be looking for OLF rebels. Has the Kenyan Government surrendered Wajir North District to the Ethiopian Government?

**Mr. Deputy Speaker:** Is the Minister of State for Provincial Administration and Internal Security here? Any Minister can make an undertaking.

**The Minister for Foreign Affairs** (Mr. Wetangula): Mr. Deputy Speaker, Sir, I undertake to inform the relevant Ministry although, if he had directed it to me, I would have answered him now.

**Mr. Deputy Speaker:** Order! That is an internal security matter.

*(Laughter)*

Do you want to answer this in the spirit of collective responsibility? Do you choose to do so?

**The Minister for Foreign Affairs** (Mr. Wetangula): Yes, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Then proceed!

### MINISTERIAL STATEMENT

## PRESENCE OF ETHIOPIAN TROOPS IN WAJIR NORTH

**The Minister for Foreign Affairs** (Mr. Wetangula): Mr. Deputy Speaker, Sir, there was an incident last week but one on the border between Kenya and Ethiopia, where an Ethiopian community called Merile pursuing some alleged Kenyan cattle rustlers entered Kenya. There was an exchange of fire and there were loses of life, including one of a police officer at a place called Todinyang'. That issue is being dealt with---

**Mr. Bahari:** On a point of order, Mr. Deputy Speaker, Sir. I understand the geography of that area very well and the Minister is misleading the House. The issue of Merile did not come anywhere near Wajir North.

**The Minister for Foreign Affairs** (Mr. Wetangula): Mr. Deputy Speaker, Sir, I was developing the answer.

*(Laughter)*

If the hon. Member was patient enough, he would have seen what I was--- That one incident occurred between Ethiopia and Kenya. We have since sent a note to the Ethiopian Government to point out the incident and protest the incursions, not by the Ethiopian Army, but by Ethiopian nationals who are as armed as some of our nationals living in pastoralist areas.

As to the question of Wajir where the hon. Member comes from, in fact, he has brought this matter to my attention informally within the precincts of this Parliament. I have taken steps. I have not only called my counterpart and spoken to him, but I have also written to him. I will avail a copy of the letter to the hon. Member. I am organizing a joint meeting between us and Ethiopia and I will invite the hon. Member to be part of my delegation, so that he can enrich our discussions. In historical perspective, I am sure the House knows that there have been serious difficulties in Southern Ethiopia with OLF roaming into Kenyan territory and operating in Ethiopia. We have, as the Government, directed the Ministry of State for Defence to find a way of beefing up security by putting some detachment of the military closer to the border to protect the integrity of our border and our nationals who become victims of such incursions.

**Mr. Gabbow:** Mr. Deputy Speaker, Sir, as I speak now, I know the Ethiopian troops are in my constituency at a place called Beramu near Buna in Wajir North Constituency. It is saddening when another---

*(Loud consultations)*

I am well informed of what is happening in my constituency and I understand what I am talking about! Right now, those troops are there harassing my people. I request the Government to ask the Ethiopian troops to leave Wajir North immediately! This is a sovereign State and Wajir North should be granted protection by the Government.

**The Minister for Foreign Affairs** (Mr. Wetangula): Mr. Deputy Speaker, Sir, the integrity of the boundary between Kenya and Ethiopia, including Wajor North, cannot and shall not be comprised. I assure the hon. Member that this afternoon, I will be on the beat dealing with the issue. I will be able to confirm back to either the hon. Member or the House on the outcome of what I have done.

**Mr. Bahari:** Mr. Deputy Speaker, Sir, Buna is not anywhere near the border. It is right inside Kenya. That is a serious aggression by the Ethiopian army. What assurance can we get from this Government that there will be proper surveillance at our borders all the time? We seem to be responding to incursions from Sudan, Ethiopia and Somalia.

**Mr. Mbadi:** And Uganda!

**Mr. Bahari:** It looks like there is no proper surveillance mechanism!

**Mr. Deputy Speaker:** Mr. Minister, can you take one more clarification?

**Mr. Affey:** Mr. Deputy Speaker, Sir, you realize that this is a very serious matter. It is not a matter that the Minister can speak from the Floor of this House even when he does not have enough information on what is happening on the ground. The Minister has said that the fellows who are in Wajir North illegally are ordinary citizens from Ethiopia and not military officers. The hon. Member has said that those people are military officers in Ethiopian military uniform. They are roaming in his constituency. So, it is very clear that the Minister does not have the information. Would I be in order to ask that this matter be deferred to the relevant Departmental Committee and the Minister comes up with a substantive Statement? In the meantime, he should ask those fellows who are roaming in our country to leave as soon as possible!

**The Minister for Foreign Affairs (Mr. Wetangula):** Mr. Deputy Speaker, Sir, I was very attentive. At no time---

*(Mr. Ruto stood up in his place)*

Why can I not respond to the other two first?

**Mr. Deputy Speaker:** Order, Mr. Minister! Mr. Affey sought a clarification. Mr. Ruto is on a point of order.

**Mr. Ruto:** On a point of order, Mr. Deputy Speaker, Sir. The matter before us is very serious. It is not a matter that we can treat casually! Is it in order for the Minister to purport to answer a question and yet, he has no facts in his hands? Is it in order for him to come before us and answer the question in a hurry without even checking with the security apparatus? It appears the Minister only wants to satisfy the hon. Member that something is being done. But this is a very serious matter. Are there foreign troops on Kenyan soil? That is the question! If so, is it a foreign affairs issue or a security matter? Is he competent to answer security issues?

**Mr. Mbadi:** On a point of order, Mr. Deputy Speaker, Sir. You know the main reason why Governments are elected is to protect the sovereignty and borders of countries. The Minister for Foreign Affairs, I think, should be restrained from giving such answers on the Floor of the House. I have even asked him a Question on Ugandan forces that are on Kenyan soil and he has not answered. He is purporting to answer a question that relates to another Ministry and yet, he cannot even answer a Question that relates to his Ministry. I would like to ask the Chair to make a ruling that this Minister is out of order and should not purport to answer this question because he is not competent enough to answer it.

*(Mr. ole Lankas stood up in his place)*



**Mr. Deputy Speaker:** Can you allow the Minister to respond to the points of order and then you rise on your point of order?

**The Minister for Foreign Affairs (Mr. Wetangula):** Mr. Deputy Speaker, Sir, on the issue by Mr. Bahari, I had already said very clearly---

**Mr. Deputy Speaker:** Can you respond to the points of order first?

**The Minister for Foreign Affairs (Mr. Wetangula):** Mr. Deputy Speaker, Sir, as to my good friend, Mr. Ruto, he has just made a statement that requires no response because, first of all, there is the element of collective responsibility.

Secondly, the Minister for Foreign Affairs is part and parcel of the security component of the Cabinet. The issue of dealing with the integrity of our borders is twofold. The first one is the physical protection of the borders which is dealt with by the Minister of State for Defence, and the Minister of State for Provincial Administration and Internal Security who sit in the same committee I sit. Thirdly, as a country, we cannot rush into conflicts when we can talk to our neighbours. That then falls under my purview.

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

**Mr. Deputy Speaker:** Order, Mr. Keynan! Let the Minister respond to the point of order and then you can rise on your point of order.

**The Minister for Foreign Affairs (Mr. Wetangula):** On the point of order by Mr. Mbadi, if he has filed a Question on Migingo on which we have worked very extensively and nearly satisfactorily with him, we have even visited the area together, that Question is not on the Floor now. I am responding to his point of order.

**Mr. Deputy Speaker:** Could you rise on another point of order when he has responded on the point of order that you raised?

**The Minister for Foreign Affairs (Mr. Wetangula):** If Mr. Mbadi has filed a Question and it is on the Floor, I will answer it. Today and now, we are dealing with the issue raised by the hon. Member who has expressed, by his body language and the way he has nodded to my answers, satisfaction to what I have told him. So, Mr. Mbadi's question will be dealt with. On the question of Mr. Affey---

**Mr. Affey:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Minister to suggest--- The matter raised by the hon. Member is a matter of life and death. We are talking about incursions by foreigners into the Kenyan territory. They are harassing ordinary Kenyans in Kenya. We have asked him to explain why those troops are in the country and he is saying that the hon. Member is satisfied. Could he explain what I have asked him to explain to the House?

**The Minister for Foreign Affairs (Mr. Wetangula):** Mr. Deputy Speaker, Sir, if you listen carefully to the hon. Member who raised the issue, at no time did he talk of people wearing fatigues and uniforms. He only talked about Ethiopian troops. Mr. Affey is introducing a new element of people wearing fatigues. Be that as it may---

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

**Mr. Deputy Speaker:** Order, hon. Keynan! Mr. Minister, in the first place the nodding or lack of nodding of the Member of Parliament who sought this Ministerial Statement, in no way does it signify satisfaction on the part of the House. It is the

property of the House. When you say “Ethiopian troops”, there is an assumption that they are in fatigues. You never find troops who are basically walking around dressed the way we are dressed here.

*(Mr. Thuo held loud consultations)*

Order, Mr. Thuo! You are treading on very dangerous ground.

Proceed, Mr. Minister!

**The Assistant Minister for Roads** (Dr. Machage): On a point of order, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Dr. Machage, the hon. Minister is responding to a point of order and you are out of order.

Proceed, Mr. Minister!

**The Minister for Foreign Affairs** (Mr. Wetangula): Mr. Deputy Speaker, Sir, I am an old Member of this House and I fully know that when a question or an issue is raised, it becomes the property of the House and it must be dealt with to the satisfaction of everybody, but the first shot goes to the hon. Member who raised it.

Mr. Deputy Speaker, Sir, I have said and I will say it again that we have had difficulties on our borders with Ethiopia and Sudan. These difficulties are not borne out of any official policy of our neighbours to make incursions on to our territory. A Ministerial team comprising of myself, Prof. Saitoti, Mr. Orengo, Mr. Kajwang and Mr. Munyes visited the border with southern Sudan. We have put a commission in place. We know that the communities that live across the border, being pastoralist communities with little presence of both Governments in terms of security provision, bear a lot of weapons. They keep on attacking each other.

My colleague from the Ministry of State for Provincial Administration and Internal Security who sits in the security committee has, in fact, been directed by Cabinet to make sure that he creates a presence of detachment of our army in these regions so that our territorial integrity is protected and safeguarded but more importantly our nationals and their property are protected. This will be done.

I am sure this now satisfies Mr. I. Ruto that in fact I have not answered this question without facts because I have the facts. I sit in the committee and I receive reports on security everyday.

**Mr. Keynan:** Mr. Deputy Speaker, Sir, first of all, we must accept that this is not a lecture hall or an academic class. Therefore, the use of parables or semantics does not change the facts on the Floor of this House. I am a neighbour. In fact my own home is less than 15 kilometres from the centre where Mr. Ruto is talking about.

The core functions of the Ministry of Foreign Affairs is to protect, project and promote the image of Kenya. It is not fair that this House is being misled on two grounds. You have heard the Minister for Foreign Affairs talk about Prof. Saitoti, Mr. Kajwang

and Mr. Munyes. It is on record that these very Ministers who are being mentioned did not visit the area. Mr. Kajwang could not visit one of the aggression centres between Kenya and Southern Sudan border. Even Prof. Saitoti could not do the same. When Mr. Munyes attempted to do the same, he was branded an espionage. Is it in order for the Minister for Foreign Affairs, even when he does not have the facts, to take this House for granted and mislead everybody when we know that the incursions by the Ethiopian security elements in northern Kenya have been there since time immemorial and the Government has failed to take any decisive action?

**The Minister for Foreign Affairs** (Mr. Wetangula): Mr. Keynan is talking about facts. These are the facts. At one time, Prof. George Saitoti accompanied by Mr. Munyes and Mr. Kajwang tried to go to the border point of Sudan called Nadapal. It is true that they found some resistance from the Sudan People's Liberation Army (SPLM) forces and they came back to avoid an incident. Thereafter, we convened a meeting chaired by Prof. Saitoti. We met with our Southern Sudanese counterparts and thereafter we had a delegation to visit the area. Prof. Saitoti, Mr. Orengo, Mr. Munyes, Mr. Kajwang and myself with officers from the Provincial Administration and other senior Government officials visited the border incident-free. We went up to Nadapal and met with the Sudanese leadership. As we speak, the Government has allocated a tranche of Kshs50 million and the construction of a border point full with Immigration personnel, Customs personnel, police and all other Government detachments is going on at Nadapal. In fact, we are due for an inspection visit in the next one month. So, those are the facts and they can be given to the House.

**The Assistant Minister for Roads** (Dr. Machage): Mr. Deputy Speaker, Sir, a precedent is being set in this House where a Member of this House can argue on an instruction given from the Chair on the interference of collective responsibility by Ministers. Are they in order to doubt the information given by a Minister who is very much well informed on collective responsibility or doubt the order of the Chair that he is competent?

**Mr. Deputy Speaker:** Indeed, the Minister, in line with collective responsibility, is competent to represent not only his Ministry but any other Ministry in the Government of Kenya.

**Mr. Imanyara:** Mr. Deputy Speaker, Sir, the Minister indicated that the Cabinet directed his colleague; the Minister for Defence, to establish a detachment. He does not know whether that Minister has acted on that directive. Since the Minister is present in this House, could he be allowed to tell this House whether he has acted on the directive to establish a detachment as the Minister for Foreign Affairs has told us?

**The Minister for Foreign Affairs** (Mr. Wetangula): Mr. Deputy Speaker, Sir, first of all, I do not think responding to a Ministerial Statement can be shared, and you have already directed. But more importantly, once a direction like that is given, obviously it has budgetary implications and administrative processes. So, I have no doubt

whatsoever that my colleague, the Minister of State for Defence, is in the process of executing the direction. Information can be brought in due course to the House.

**Mr. Imanyara:** Can we get a timeframe when this detachment will be set up?

**The Minister for Foreign Affairs (Mr. Wetangula):** Mr. Deputy Speaker, Sir, when you are dealing with issues of security, it is sometimes dangerous to start giving timelines, exact dates and areas and so on. This is because it can actually end up compromising our security. What is important for my learned senior to know is that the Government is not sitting back idle. It is moving to do what it is elected to do in defence of our territorial integrity, and our people and their property. That suffices.

**Mr. Imanyara:** On a point of order, Mr. Deputy Speaker, Sir. It cannot suffice because the Member who lives in and represents that region says that as we speak, there are foreign troops within his constituency. The Minister is not telling us when they will put a detachment there because this is a security matter. We have information from the Member that Ethiopian troops are in his constituency. What steps is the Minister taking to ensure that the Cabinet decision to set up a detachment is acted upon immediately?

**The Minister for Foreign Affairs (Mr. Wetangula):** Mr. Deputy Speaker, Sir, I took with no doubt a lot of integrity the statement given by the hon. Member. But an issue like that must be handled carefully. I will pass on this information now to the relevant authorities and they will take the necessary steps. I will play my role by speaking to our neighbours and see what it is that has been alleged here. What is critical is to give a firm assurance that the Government of the Republic of Kenya has a duty and will not shy away from discharging the duty of protecting its territory and people.

**Mr. Deputy Speaker:** Hon. Gabbow, can you seek the final clarification on that?

**Mr. Gabbow:** Mr. Deputy Speaker, Sir, I need Wajir North constituents to be left alone in peace so that they can continue with their daily work. I am happy that the Minister has attempted to give a good Ministerial Statement. I hope it will be practical and implemented. It should not just end with words.

**The Minister for Foreign Affairs (Mr. Wetangula):** Mr. Deputy Speaker, Sir, I thank the hon. Member. Wajir North Constituency will only be left alone to the extent that it must be peaceful and enjoy the peace dividends in this country. Otherwise, the Government will continue with its presence there to help the people of Wajir. Over and above that, the Government will be there to protect to the constituency, your people and everybody else who works there.

## POINT OF ORDER

### SHORTAGE OF TEACHERS IN PRIMARY/SECONDARY SCHOOLS

**Mr. Ruto:** Mr. Deputy Speaker, Sir, I rise to seek a Ministerial Statement from the Minister for Education on the serious shortage of teachers experienced both in

primary and secondary schools. All over the Republic, there are not enough teachers in schools. I have gone round my constituency and found that a number of schools have three teachers out of an establishment of 12 teachers. Secondary schools have eight teachers where there is an establishment of 28. This is a serious crisis and yet we are not even aware that there any plans to recruit the teachers.

Mr. Deputy Speaker, Sir, there had been some indication that there was going to be some short-term measure. I want a clear answer from the Ministry of Education. I request that there should be no volunteer Minister to respond to this issue, especially the Minister for Foreign Affairs should not get involved!

*(Laughter)*

**Mr. Deputy Speaker:** Hon. Minister for Education, can you give an undertaking on when you will give the Ministerial Statement? Judging by the mood of the House, the sooner the better.

### MINISTERIAL STATEMENT

#### SHORTAGE OF TEACHERS IN PRIMARY/SECONDARY SCHOOLS

**The Minister for Education** (Prof. Onger): Mr. Deputy Speaker, Sir, I want to agree with hon. Ruto that, indeed, we have a very serious shortage of teachers. To be very precise, we have a shortage of 23,000 teachers in secondary schools and 42,000 teachers in primary schools. That gives a total of 65,000 teachers.

Now, one of the short-term processes that were put in gear under the Economic Stimulus Package (ESP) was going to employ 12,500 teachers. This has been caught up with a court process which was taken to there by one of our stakeholders. However, as I am talking now, I had a preliminary and exploratory meeting with the Teachers Service Commission (TSC) yesterday because of the acuteness of the shortage of teachers. Tomorrow, I will also have a meeting with them in the morning courtesy of the aborted meeting in Naivasha. Hopefully, through the natural attrition and deaths that have occurred, you will be seeing an advertisement by next week inviting teachers to apply so that, at least, while pending the results of the court process, we can replace those who have left through natural attrition and the deaths or those who may have left to seek greener pastures. This will enable us to address this issue on a short-term basis. Possibly, in the coming Supplementary Estimates and subsequent Budget of 2010/2011, we may have to revisit this ESP and see how best we can handle this. Indeed, I have no points of dissent with the hon. Member.

**Mr. Namwamba:** On a point of order, Mr. Deputy Speaker, Sir. Given that the Minister seems to be extremely well prepared to handle this matter without any further

delay, would I be in order to ask that we treat his present presentation as the Ministerial Statement, so that we can prosecute it now?

**Mr. Deputy Speaker:** My presumption is that, that is what the Minister intends. Otherwise, he would not go elaborately as he is doing so. Is that not so, hon. Minister?

**The Minister for Education** (Prof. Ongeru): Mr. Deputy Speaker, Sir, what I have stated is factual. There will be no other additional information because I have just in effect agreed with the hon. Member about the acute shortage of teachers. I have even gone to an extent of giving the exact figures of the shortage of teachers both at the primary and secondary levels. So, I am ready to answer any other additional queries that may arise at this stage.

**Mr. Ruto:** Mr. Deputy Speaker, Sir, is the Minister confirming that there will be an advertisement to fill half of the vacancies? Is he converting the money we gave him under the ESP into proper and regular employment of teachers? Are you handing over that mandate to the TSC to start employing teachers next week? The borne of contention between the Minister, the TSC and Kenya National Union of Teachers (KNUT) was whether he could employ teachers on internship. Now that, that will go through a serious court process, could he channel that money to the TSC to enable them employ teachers? Have they agreed with Treasury on the budget?

**The Minister for Education** (Prof. Ongeru): Mr. Deputy Speaker, Sir, I am sure the hon. Member is too familiar with the Finance Bill, when it is processed through this House. Under the Finance Bill, the budget line was the ESP. The moment this House passed that Finance Bill it became the Finance Act. I have no extra powers to change an Act of Parliament to read differently other than what is stipulated in that Act itself. The minute I do it so, it becomes subject of audit. I am sure hon. Dr. Khalwale will be on my neck saying this is contrary to what was passed in Parliament. The remedy to that kind of a situation is in the subsequent supplementary Budget or the main Budget. If, in the wisdom of this House, they want to change that Act, in a manner that we will then be able to transfer these funds and use them for other Budget line other than the one it was meant for, I will have no objection. But right now, in terms of law, my hands are tied. I cannot force the courts to adjudicate on this matter expeditiously, nor can I break the law in order to transfer a budget line which is totally before this House as a law to another budget line which was not budgeted for because that will raise serious queries of audit.

**Dr. Khalwale:** Mr. Deputy Speaker, Sir, the Minister has told the House that the actual shortage of teachers which he says is factual is 65,000. The concern of Kenyans and Members of Parliament is that managers; that is, the heads of secondary schools, heads of primary schools, the Kenya National Union of Teachers (KNUT) and Kenya Union of Post Primary Education Teachers (KUPPET) have said that the shortage of teachers is double what he is telling us. Could he tell the country what is to be believed? Is it what the managers are experiencing on the ground or what he is telling us here today as 65,000 teachers? Which is which?

*(Several hon. Members stood up in their places)*

**Mr. Deputy Speaker:** Order, hon. Minister! Hon. Minister, you will take a few clarifications.

**Mr. Gunda:** Mr. Deputy Speaker, Sir, could I ask the Minister to tell the House whether they have a policy in place within the Ministry to deal with shortages of teachers which arises from retirement, death or natural attrition?

**Mr. Namwamba:** Mr. Deputy Speaker, Sir, I want to go back to the immediate response; the factor that the Minister is aware that origination of Budget is not the business of this House. This House debates and passes Budget originated by Government.

My question to the Minister is whether he has already drawn proposals to the Treasury as the Treasury prepares Supplementary Budget for these funds to be transferred from the stimulus plan to recruitment of teachers through the regular process by the Teachers Service Commission (TSC). Further, if he could also give this House a long term plan to deal with this matter continuously? This matter seems to be dealt in such a stop-gap, knee-jack manner that we will not have a permanent solution ever.

**Mr. Deputy Speaker:** Mr. Minister, respond to the clarifications sought.

**The Minister for Education** (Prof. Ongeru): Mr. Deputy Speaker, Sir, first of all, I will answer the first question by hon. Dr. Khalwale. The competent body that will know the shortages of teachers will be the TSC. There is a ratio that is calculated to know the number of teachers expected in every primary and secondary school based on the core subjects. What I have told you is the correct figure. Last year, when I came before the Floor of this House presenting the Budget, at that time, the shortage was slightly above 50,000 teachers. There has never been recruitment since that time. To refresh the memory of this House, I did come with a very clear proposal to the Floor of this House. I said that barring the 12,500 teachers that had been placed under the Economic Stimulus Package, we still need a continuous, permanent and pensionable teacher employment every year, for the next five years in order to reduce the shortage.

Indeed, I even suggested on the Floor of this House and in our Budgetary proposal to Treasury, that, not only did we need the 6,000 permanent and pensionable teachers, but we also needed an additional up to 10,000. By so doing, in a period of four years, we would have been able to clear the shortage along this economic stimulus package which was intended to reduce the acute shortage of teachers. After one or two years, the 12,500 teachers would have also been converted into permanent and pensionable terms. Unfortunately, this particular aspect of it was misunderstood by the KNUT and KUPPET. We have tried to come to terms with them on the way forward in dealing with this matter. These are actual figures based on the current enrolment of students in respective primary and secondary schools needs. Last year in the Budget, the total enrolment for secondary school was 1,347,000. Currently, the total enrolment in this year is 1,470,000. We are almost clocking 1.5 million children. We know that over a period of time, we will be able to reach at the critical figure of 1.6 million in secondary school. In fact, we may reach there before 2015. In the primary school, since 2003, the enrolment figure has risen from 5.9 million children to 8.6 million children currently. So, given those enrolment rates and given the net enrolment in our schools now is 92.5 per cent, it is, therefore, easy to tabulate and get the number of teachers required for deployment in all these respective schools. So, we cannot pick figures out of the air and say we need ten teachers when in effect we know through the enrolment rates and

numbers, what exact teachers are required. Therefore, for the avoidance of doubt, let me again repeat, we now have the latest figures of the shortages in the secondary circle as 23,000 teachers. In the primary circle, it is 42,000 teachers. So, we have a total of 65,000 teachers.

The question, how do you replace the ones of retirements, deaths and natural attrition? I have already answered it. In fact, yesterday, I called both the Chairman and Secretary of the TSC. Normally, they do it on *ad hoc* basis. This cannot continue being done on *ad hoc* basis. So, tomorrow they will see me in my office. They were to meet me this afternoon, but I knew we will have a session here. So, I have told them to be in my office at 8.30 a.m. tomorrow. What I want to know from them is the exact number of vacancies available. We will then be able to give an order for them to publish them in the newspapers. Indeed, there are schools with very acute shortage of teachers. Therefore, those will have the first priority. Where you have a school requiring ten teachers, and it has only a headmaster. Moreso, those schools which were recently built by Members of Parliament and were recently registered within the Ministry of Education. They are now public schools, and after registration, they get a head teacher. When teachers are available, we will post them there. This is becoming a burden to parents or BOGs because they are not able to employ them.

Mr. Namwamba wanted to know whether we have made any proposals to Treasury as they prepare Supplementary Budget. Yes, in the current budgetary proposals, we have made very firm proposals. We have no intention of perpetuating this crisis beyond what we can bear. I think the limitation has been on the ceilings that we are given on the budgets. I took the earliest opportunity when we met the Executive Board of World Bank last week and I told them that one of the impediments for us to reach teacher-pupil ratio in our institutions has been the ceiling normally placed on us by the so called Bretton Woods institutions. Therefore, we are not even able to fill those positions. Therefore, this is giving us difficulties in trying to fill positions, at least over a period of time. Indeed, the Budget cannot absorb all of it. Currently, the Ministry of Education, in terms of Teachers Service Commission (TSC) on salaries alone, takes Kshs93 billion to pay teachers. The total budget is about Kshs137 billion, and when you take the other services required by the Ministry of Education, it becomes very difficult to be able to employ even more teachers. But we are working out a formula, with the concurrence of the Treasury and this House. We hope that we will, at least, address this problem once and for all.

**Mr. Gunda:** On a point of order, Mr. Deputy Speaker, Sir. I had asked a question as to whether the Ministry has a policy on replacing those teachers who go on retirement, die or leave service through natural attrition. The Minister says that they have a policy, yet he is talking of the TSC employing on an *ad hoc* basis. Is that the policy the Ministry has?

**The Minister for Education (Prof. Ongeru):** Mr. Deputy Speaker, Sir, may be, for the benefit of the hon. Member, I would like to state that the employer in the circumstances is not the Ministry of Education, but the TSC. They are the effective employers of teachers and we can only advise them on how to fill those positions. But we cannot discharge function which does not belong to my Ministry. But, indeed, as the



responsible Minister, I have now strongly advised them that they should roll out an advertisement, which I promise this House--- Hon. Isaac has asked me if I am confirming it. Yes, I am confirming it to you. I just want to be satisfied that the figure that the TSC is giving me is the correct figure, which we will roll out to the public. There should be no other figures hidden somewhere, which would raise queries much later in this House.

**Mr. Bahari:** On a point of order, Mr. Deputy Speaker, Sir. I think the Minister is misleading the House. He has just told us that he is calling the TSC tomorrow to his office on matters of employment. This arose out of what an hon. Member asked on the policy of replacing those who leave the institutions through natural attrition. On the other side also, he is double-speaking by telling us that he has no power to direct the TSC!

Mr. Deputy Speaker, Sir, this is a very simple matter. Teachers die, retire or fall out due to natural attrition, and there should be a policy on direct replacement at the level of DEBs, so that we do not waste time. The money is already provided for. Is he in order to mislead the House?

**The Minister for Education** (Prof. Ongeru): Mr. Deputy Speaker, Sir, I think the details are in the devil. I mean, how you want to replace them, those are really the details--

**Mr. Deputy Speaker:** Order, hon. Minister! Are you sure the details are in the devil and not the devil in the details?

*(Laughter)*

**The Minister for Education** (Prof. Ongeru): Mr. Deputy Speaker, Sir, I just want to assure the House that the method of filling these vacancies is very clear. Once the TSC has the exact figures, which I will be able to know by tomorrow morning, they will be able to roll out the advertisement to replace teachers who have left service through natural attrition, and others who have left to join other services. Teachers will be employed through their respective DEBs, where the shortage is acute, and moreso, where teachers died or retired. I can assure you that you will all be witnessing this announcement; it will be in the papers, there will be no favouritism; employment will go directly where acute shortage is.

**Mr. Imanyara:** Mr. Deputy Speaker, Sir, I am glad that the Minister talked about there being no favouritism---

*(Loud consultations)*

**Mr. Deputy Speaker:** Order, hon. Members!

**Mr. Imanyara:** Mr. Deputy Speaker, Sir, it is good that the Minister is speaking in English, because when he speaks in mothertongue, Kisii, which I understand, he has the habit of enlarging the Budget line and providing more funds for his constituency.

*(Applause)*

Given what he has said, that that will go according to the Budget, can he tell us the basis upon which, when he addressed a meeting in his constituency in his own mothertongue, he said he had favoured it outside the budget allocated?

**The Minister for Education (Prof. Ongeru):** Mr. Deputy Speaker, Sir---

**Mr. Deputy Speaker:** Order! Order! Can you take a few clarifications and then deal with them together so that we can save time?

Proceed, Mr. Sambu!

**Mr. Sambu:** Thank you, Mr. Deputy Speaker, Sir. In 2003, we introduced free and compulsory primary education. That meant that there was quite an upsurge in the enrolment rate of students. That has also put a lot of pressure on the physical facilities. So, apart from the shortage of teachers, we now have a very serious shortage of classrooms. I would like clarification from the Minister on how he is addressing the question of the shortage of classrooms in schools.

Thank you, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Hon. Koech!

**Mr. Koech:** Thank you, Mr. Deputy Speaker, Sir. At last I have caught your eye.

**Mr. Deputy Speaker:** Indeed, you are the Chair of the Departmental Committee on Education, Research and Technology. So, you deserve to be given an opportunity to seek clarification!

Proceed!

**Mr. Koech:** Mr. Deputy Speaker, Sir, the issue of shortage of teachers has been with us for quite some time; we have shared a lot with the Ministry. It concerns Kenyans and I concur with hon. Ruto, and the rest of the House, that this is a great concern that must be addressed very, very seriously. We have schools where one teacher is teaching up to 300 pupils and that, definitely, compromises the quality of education. Listening to the Minister, he has indicated that there are plans to advertise for positions of teachers in the next two weeks. Could he confirm to this House how many positions he is going to advertise without, necessarily, telling us which schools they are going to?

Secondly, Mr. Deputy Speaker, Sir, what is the source of the funds to employ these teachers, because as we know, we did not provide for that in this financial year? Could he also confirm, as he has just put it clearly here, that they have already decided to transfer the stimulus package money to the next Supplementary Budget? Could he confirm that he has done that and, therefore, by extension, if the Supplementary Budget is

passed by this House, then we are going to have another extra 6,000 teachers before May this year?

**Mr. Deputy Speaker:** Yes, Dr. Nuh?

**Dr. Nuh:** Thank you, Mr. Deputy Speaker, Sir. Since this entails some planning to forestall such occurrence in this Ministry and in many other Ministries, could the Minister tell us whether adequate consultations were done between officers of his Ministry and those of the TSC, which he is calling the employer, before the Budget lines were drawn?

**Mr. Deputy Speaker:** Mr. James Maina Kamau!

**Mr. James Maina Kamau:** Mr. Speaker, Sir, would I be in order to put it to the Minister that the reason why some schools performed dismally in the last KCSE was lack of teachers? What will he do in the short-term to alleviate the problem? Could he also ensure that all the schools are given equal opportunities when teachers are available? This is because when teachers are available, they are normally divided amongst national schools at the expense of the schools in the countryside.

**Mr. Deputy Speaker:** Mr. Minister, you can now respond to those issues.

**The Minister for Education (Prof. Onger):** Mr. Deputy Speaker, Sir, I want to tackle the issue raised by Mr. Imanyara. He has said that I went to a local place and spoke in a vernacular language and gave an indication or an impression that I had taken money to Kisii which I favoured instead of Meru or any other area. Let me disabuse that notion. I think it was mischievous of the people who made the translation from the vernacular language to English. For the avoidance of doubt, let me state it again. When we went through province by province, we found that the amount of money---

**Dr. Khalwale:** On a point of order, Mr. Deputy Speaker, Sir. The Minister has said that when the newspaper reporters translated his remarks from Ekegusii to English, they misquoted him. He is now attempting to tell us exactly what he said in Ekegussi but he is saying it in English. I seek the indulgence of the Chair that we allow the Minister to speak in Ekegusii so that it goes on the HANSARD and then we shall invite an independent person to translate. After that, we can interrogate that statement.

*(Applause)*

**Mr. Deputy Speaker:** Order! Mr. Minister, you can only communicate in English. You started in English and the Standing Orders are very explicit. We shall not introduce a new language into Parliament without the leave of the House.

**The Minister for Education (Prof. Onger):** Mr. Deputy Speaker, Sir, thank you for your support. When Sessional Paper No.1 of 2005 was initiated, we looked at the amount of money that was transmitted in the form of capitation to all the schools in each province in the next five years. That was from 2005 to 2008. I have already tabled the

details to the Departmental Committee on Education, Research and Technology. I will give you an example.

Western Province received the highest amount of money in terms of capitation under the Free Primary Education Programme (FPE). It received Kshs1.65 billion and when we disaggregated the amount of money going to each district within that province, it was realized that Kakamega District received the highest amount of money amounting to Kshs328 million which represented 19.8 per cent of all the money that was disbursed to that province. Therefore, it was important for the Ministry to ensure that other districts within that province received the necessary amounts of money. This was not in the Budget.

A total of Kshs1.12 billion went to Nyanza Province from 2005 to 2008. The amount of money that was disbursed to Kisii districts in the five years was Kshs188 million. The remaining Kshs1 billion was disbursed to the districts in Luo Nyanza. A similar process was observed in Rift Valley Province. When we looked at the policy, we found that when it was started, there were only 71 districts that had been earmarked to receive the funds for development. Since then, there have been many other districts. This money was not captured in the Budget. Fortunately, this was Phase III of the project. We had gone through Phases I, II and III which supported the original 71 districts.

We made a windfall from the exchange rates when we got the pool funds from the partners. Whereas the exchange rate at the time the money was negotiated was Kshs76 to the dollar, when the money was disbursed to us, the exchange rate was slightly above Kshs80 to the dollar. We made a saving of Kshs359 million. Over and above that, we also took savings from the Ministry of Education of Kshs270 million and added to the Kshs359 million. That made a total of over Kshs600 million which we distributed to all the other districts as a first one-off tranche. Whereas the 71 districts continued getting their normal budgeted provisions, we made a one-off support to all the schools in the other districts which were not captured.

We looked forward to once again, under Phase IV, recruit all the districts in Kenya to be at par with the districts that have enjoyed this facility in the last five years. That will address the issues of access, equity and quality. If you cannot address that aspect, it cannot be done. For some mischievous reasons, somebody decided to think that I poured money in Kisii. In fact, they should have said---

**Mr. Deputy Speaker:** Order, Mr. Minister. You are making a very long speech. Could you conclude your facts so that we can proceed to the next order?

**The Minister for Education** (Prof. Ongeru): Mr. Deputy Speaker, Sir, I am doing this because this is an issue that has been totally misused in the public domain. Since it has been raised on the Floor of this House--- I was waiting for the Chairman of the Departmental Committee on Education, Research and Technology to raise the matter in order for me to comment on it. I think it is only fair that I clear that matter once and for all.

**Mr. Deputy Speaker:** You have said as much. Could you conclude now?

**The Minister for Education** (Mr. Ongeru): Mr. Deputy Speaker, Sir, the shortage of classrooms is a known fact. I want to thank hon. Members because they are helping us through the CDF to build more classrooms. Under the budget of infrastructure programme, we can only do so much. We cannot do more than what we are allocated in the Budget. Therefore, the supplement that we get from the CDF through hon. Members has enabled us to build enough classrooms for us to absorb more students in secondary schools. The only comfort is that the transition rate from primary school to secondary school has risen from 46.4 per cent to between 68.4 per cent and 70 per cent.

With regard to Mr. Koech's question, he knows that we have discussed this matter in the Departmental Committee on Education, Research and Technology which he chairs. It is my anticipation that it will feature prominently in the Report before the House. This is because we must address the question of shortage of teachers not in the manner in which we are trying to approach it. As a Ministry, we have made a request to the Treasury that what would satisfy us is the employment of a minimum of 10,000 permanent and pensionable teachers every year. In the last Budget, we quoted 10,000 teachers. We expected to hire 6,000 teachers, but they never made any allocation. So, this is a matter I will seek the support of this House so that we can move forward.

**Mr. Deputy Speaker:** Can you conclude?

**The Minister for Education** (Prof. Ongeru): Mr. Deputy Speaker, Sir, on the issue raised by Dr. Nuh, there were consultations, but they did not bear fruits.

On Mr. James Maina Kamau's issue as to whether poor performance is as a result of lack of teachers, I would like to inform him that a school like Wei Wei Secondary which did not have enough teachers produced the best results. Teaching alone cannot guarantee results, but it is a factor that contributes to good results.

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

**Mr. Deputy Speaker:** Order! Order, hon. Members! These were supposed to be clarifications on a Ministerial Statement. The House has got substantive business to transact. Can we give the Minister two more minutes to conclude this one and we go to the next Order?

**Mr. Koech:** Mr. Deputy Speaker, Sir, I have only one issue.

**Mr. Deputy Speaker:** What is it?

**Mr. Koech:** The Minister had indicated that he is going to advertise for positions in the next two weeks. I just requested him to give us the number, so that the public can know that something is happening.

**Mr. Deputy Speaker:** Mr. Minister, can you conclude in not more than two minutes?

**Dr. Nuh:** On a point of order, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** The Minister is already responding to a point of order, among other things.

**The Minister for Education** (Prof. Ongeru): Mr. Deputy Speaker, Sir, I said that I will be able to know the figure tomorrow, when the Teachers Service Commission (TSC) will see me. One of the things I have already indicated to them is that they must go

to the Press not within two weeks, but within a week, so that Kenyans can know. As for the details, we can find out.

**Dr. Nuh:** On a point of order, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** On the same?

**Dr. Nuh:** Yes, and a question, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Order! Order, hon. Members! If you have a point of order on a different issue, it is okay, but not on the same matter.

**Dr. Nuh:** Mr. Deputy Speaker, Sir, I have a point of order on a different matter.

**Mr. Ruto:** Mr. Speaker, Sir---

**Mr. Deputy Speaker:** Order, Mr. Ruto! You did raise it, but you must appreciate that this has turned into a debate, and it has taken much more than it should have taken. Can we have one last clarification that should not take more than a half a minute?

**Dr. Nuh:** On a point of order, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** What is your point of order, Dr. Nuh?

**Dr. Nuh:** Mr. Deputy Speaker, Sir, the question I asked is whether consultations were done, not now but before the planning was made. The Minister is telling us that consultations were done, but they did not bear fruits. If that is the case, there was no business of having a Budget line for an issue they had not concluded.

**The Minister for Education** (Prof. Onger): Mr. Deputy Speaker, Sir, I have made myself abundantly clear. We requested for 10,000 permanent and pensionable teachers, but we got none. We got only 12,500 teachers under the Economic Stimulus Package. That is why I said the planning and consultations did not bear fruit. I will avail you copies of documents showing our requests in several meetings with Treasury. When they came out with the final product of the Budget, we got only the Economic Stimulus Package. So, there is nothing I am hiding.

**Mr. Deputy Speaker:** Hon. I. Ruto, you have the last chance!

**Mr. Abdikadir:** Mr. Deputy Speaker, Sir---

**Mr. Deputy Speaker:** Order! Order, Mr. Abdikadir! I am not going to entertain any more points of order on the same matter.

Let us have the last clarification, Mr. Ruto!

**Mr. Ruto:** Mr. Deputy Speaker, Sir, we really seek your indulgence because this is a very serious matter facing the country. The Minister has admitted that there is a shortage of 65,000 teachers. If each teacher is teaching 40 pupils, then there are 2.5 million children without teachers, even as we sit here. The Minister should tell us when he is going to clear this backlog of employment. It is not enough for him to just tell us about 6,000 or 12,000 teachers. He knows that there is a shortage of 65,000 teachers now. He can even extrapolate on the number of children we will be having in another five years, even as he continues to employ 6,000 teachers every year.

Mr. Deputy Speaker, Sir, it is also not enough for the Minister to tell us that he asked Treasury for money, and that Treasury did not give him money. As far as we are concerned in this Parliament, there is only one Government. Is he admitting that this Government is not concerned about the welfare of children? We want a clarification. What is he telling the Kenyan public? Are we going to sort out the issue of shortage of teachers? As the Minister sits here, who is teaching the 2.5 million children?

**Mr. Deputy Speaker:** Order! You have made your point!

Yes, Mr. Minister!

**The Minister for Education** (Prof. Ongeru): Mr. Deputy Speaker, Sir, I have already indicated that even if we had the wish and the intention, we cannot replace 65,000 teachers in one year. We had worked out a programme; that, if we were given 6,000 permanent and pensionable teachers every financial year, it was conceivable that over a period of five years, we should be able to reduce the shortage considerably. I have also mentioned one of the handicaps that we have. There are ceilings for Budgets.

Therefore, we cannot burst the ceilings, which are also beyond the expectation of this House. It was my hope and expectation that if the Economic Stimulus Package was taken on board, and we also had a parallel permanent and pensionable programme going on, within a period of four years, we would have brought to zero the shortage of teachers. I will be coming back to this House when the Budget is tabled. We are currently negotiating with the Treasury. With the concern that you have shown, I hope that once the Budget is tabled, you will help us to be able to get along the programme that will ensure that over a period of four years, we will have no shortage of teachers in our schools.

Finally, it is not fair to say that this Government is not concerned about the children of Kenya. The education sector takes the biggest share of the national Budget, at 7 per cent.

**Mr. Deputy Speaker:** Next Order!

## BILLS

### *First Reading*

#### THE INDEMNITY (REPEAL) BILL

*(Order for the First Reading read – Read the First Time and ordered to be referred to the relevant Departmental Committee)*

## POINT OF ORDER

### VARIATION OF BUSINESS IN THE ORDER PAPER

**Dr. Khalwale:** On a point of order, Mr. Deputy Speaker, Sir. I rise under Standing Order Nos.36 and 38.

I notice, from the Orders of the Day, that Order Nos.8 and 9 are Motions pertaining to Private Members' Bills. According to Standing Order No.38, Private Members' Bills can only come on Wednesday mornings. The same Standing Order provides that you can vary Government Business to occur on Wednesday morning, with the resolution of the House. However, the Standing Orders do not provide that you can vary the Order of the Day for Private Members' Bills to come on a day other than Wednesday mornings. So, I would like you to direct whether, indeed, this Order Paper is properly before the House, and what happened to the Government Business that was intended to be discussed today. That is my first point of order.

Mr. Deputy Speaker, Sir, my second point of order is under Standing Order No.36(4), which provides as follows:-

“36(4). The Leader of Government Business shall, every Thursday or the last sitting day of the week before commencement of business, for not more than fifteen minutes, present and lay on the Table, a statement informing the House of the business coming before the House in the following week.”

I have also scrutinised the Order Paper, and I have not seen a provision where the two Chief Whips will be briefing this House today on the Business of the coming week.

Thank you, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Dr. Khalwale, indeed, Government Business takes precedence over Private Members' Bills. By and large, Private Members' Bills can be transacted on Wednesday mornings.

Hon. Members, the Government has no business to transact today. While the Government prepares its own Bills, the House is not going to adjourn or just sit tight. We have this business, and we will transact it. The Speaker, under the relevant Standing Order, also has the authority, under some circumstances, to direct that certain Bills be discussed. So, in the absence of any Government Bill, I direct that we proceed and transact the business on today's Order Paper.

**Dr. Khalwale:** On a point of order, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** What is it?

**Dr. Khalwale:** On a point of order, Mr. Deputy Speaker, Sir. We have no problem with you making that kind of ruling. We are not lazy that we want to run away. However, the point is, we have traditions which are set in this House. The customs and usages are such that when the Speaker chooses to go the route you go, usually, the Leader of Government Business will come and move a Procedural Motion requesting that things be varied from the way things are done traditionally before we move. If we allow the Chair, for one day, hour, minute or even a second, to become dictatorial, it will become extremely dangerous for democracy.

I am not suggesting that you are being dictatorial---

**Mr. Deputy Speaker:** Order, Dr. Khalwale! If you read the Standing Orders, you will find that it says Government Business has precedence over other business. Go through Standing Order No.38 and read it all. It does not say it is exclusively for Government Business. It has “precedence” over Government Business. In the absence of Government Business, we will transact the business that is available!

**Mr. Imanyara:** Mr. Deputy Speaker, Sir, I appreciate that the Chair is the Leader of Government Business. You are giving that ruling, probably as the Acting Leader of Government Business---

*(Laughter)*

**Mr. Deputy Speaker:** Order, Mr. Imanyara! The Chair, by no way, is the Leader of Government Business. The Chair, on a very temporary basis, until such a time the Coalition Government agrees on who will be Chairman of the House Business Committee (HBC), is playing that role. The business---

**A hon. Member:** For how long?

**Mr. Deputy Speaker:** That will depend on the two principals coming to an agreement and determining who will be the Chairman of the HBC.



As far as the House business is concerned, the Leader of the Government Business in the House are the two Chief Whips. Both of them represent the same Government. The Chair has no role in that.

Proceed, Mr. Imanyara!

**Mr. Imanyara:** Mr. Deputy Speaker, Sir, fortunately we do have the person to whom the Constitution mandates the role of co-ordinating and supervising the affairs of the Government. Since the Rt. Hon. Prime Minister is in the House, is he not the right person to be directed to tell us why there is no Government Business before we can take Private Members business on a day other than the Private Members' day?

**Mr. Deputy Speaker:** Hon. Member, this does not need the indulgence of the co-ordinator and the supervisor of Ministries and Government Business! This is provided for in the Standing Orders.

Standing Order No.38 (1) says:-

“The Government shall have the right to have its business placed on the Order Paper in such sequence as it may determine: Provided that, subject to Standing Order No.7 (Summoning the House during a Session after adjournment), on every Wednesday morning on which the House sits, business other than Government Business, shall have precedence except for business of the Financial Statement on Annual Estimates.

(2) Unless the House resolves otherwise, on Wednesday morning-

(a) Bills----“

This then proceeds on to determine the kind of business! Government Business has “precedence over” but there is no Government Business today!

Maybe, you should ask why the Government does not have any business to transact!

*(Applause)*

**Mr. Ruto:** Mr. Deputy Speaker, Sir, this House takes a very dim view of the fact that the Government has no business to transact today. This is extremely worrying, considering that even yesterday we intended to retreat to have a discussion on the Constitution and the same Government objected and scuttled that opportunity. This was done only for us to come here today and find there is nothing for us to transact from the Government.

Mr. Deputy Speaker, Sir, since the Rt. Hon. Prime Minister is here, I believe it is possible for him to explain to us. I am sure the Constitution gives him the responsibility to supervise Government or Ministers. He should tell us what happened. Where is the hitch? How come there is no Government Business to be transacted? Could he possibly tell this House whether it is his office or which Ministry did not meet to provide business? Is it the Cabinet or a sub-Cabinet?

**Mr. Deputy Speaker:** Hon. Members, proceed on to Standing Order No.38 (d). As to the reasons why the Government does not have any business to transact, this is a matter that the Chair would gladly allow the Government to respond.

As to the Business we have on the Order Paper today and whether it is legally right and in accordance with Standing Orders--- Standing Order No.38(d) says:-

“A motion not sponsored by the Government or by any other party shall have precedence over all other business in such order as the party whips, in consultation with the Speaker, may determine.”

**Mr. Imanyara:** On a point of order, Mr. Deputy Speaker, Sir. It is not correct that the Government has no business. We know that the debate on the Constitution is on the Order Paper. It is, therefore, not right to say the Government has no business. The Government has refused to place the business on the Order Paper. Could the Prime Minister or the Whips tell us why the Government has refused to place this business on the Order Paper so to that we can proceed to enact a new Constitution for the people of Kenya?

**The Prime Minister** (Mr. Raila): Mr. Deputy Speaker, Sir, to the best of my knowledge, the business of the House is usually discussed and prepared by the House Business Committee (HBC). The HBC is at the moment chaired by the hon. Speaker. The Members of the HBC, in their wisdom, sat on Tuesday evening at the rise of the House and prepared the Order Paper for the business for the whole of this week.

Mr. Imanyara has rightly said that the Government has a very big agenda before the House. That is the business of the Constitution. However, the Government does not control the HBC. The HBC works independently---

**Hon. Members:** On a point of order, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Order, hon. Members! Could you allow the Rt. Hon. Prime Minister to conclude his response?

Please, proceed!

**The Prime Minister** (Mr. Raila): Mr. Deputy Speaker, Sir, hon. Members are aware that Bills usually lapse with sessions. Once a new session begins, the Bills are republished by the Attorney-General. They require 14 days to mature. That is the reason there are no other Bills before the House. We are waiting for them to mature.

**Dr. Khalwale:** On a point of order, Mr. Deputy Speaker, Sir. I have two points of order.

First, is the Prime Minister in order to mislead the House that the Government does not control the HBC? We all know that the presence of the Government is the majority in the HBC. We also know that the two Chief Whips who are the acting Leaders of Government Business also sit in the HBC. Therefore, the Prime Minister cannot sit there and justify failure of Government to give us business to the fact that they do not control the HBC.

Secondly, Mr. Imanyara has alluded to the issue of the business of the new Constitution. We also know that the Departmental Committee on Local Authority Funds and Accounts Committee has tabled in this House a report on the cemetery scandal. That report is due for debate in this House. These are strong issues which could have been debated this afternoon.

**Hon. Members:** On a point of order, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** The Rt. Hon. Prime Minister is responding to points of order!

**The Prime Minister** (Mr. Raila): Mr. Speaker, Sir, ---

**Mr. Ruto:** On a point of information, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** If the Prime Minister needs the information that is fine. Mr. Ruto, wants to give you information. Are you willing to take it?

**The Prime Minister** (Mr. Raila): Mr. Deputy Speaker, Sir, I will not mind receiving information from the hon. Member for Chepalungu.

**Mr. Ruto:** Mr. Deputy Speaker, Sir, I rise to inform the Prime Minister that it is possible that maybe the Government has been distracted by some very great business in the Office of the Deputy Prime Minister and Ministry of Local Government.

**Mr. Deputy Speaker:** Proceed, the Rt. Hon. Prime Minister!

**The Prime Minister:** I think the hon. Member for Chepalungu was just trying to be mischievous. But on a more serious note, the House Business Committee is a committee of the House; it is not a Government department or committee. So, that Committee sits and in its own wisdom, decided to prepare the Order of business for the House for the whole of this week. The Government has no control over it. Secondly, the hon. Member is talking about a report; again, that report is before the House Business Committee. It has discretion to decide to bring whatever report it wants to bring before the House. I have mentioned that there is a lot of business that has already been passed by the Cabinet, which is supposed to be coming before this House, but it has not matured. In any case, there is a much more important business before this House, which is the Draft Constitution. But as I know, we are still trying to develop a kind of a consensus before that business comes before the House. So hon. Members, Back-benchers need to be grateful to the Government that instead of us today, on a Thursday afternoon, discussing Government Business, we have allowed private members business to be discussed during Government time.

**Mr. Thuo:** I hope I will be in Order to clarify the position, because I sit in the House Business Committee. I wish to bring to your attention the fact that, first and foremost, the House Business Committee in its wisdom, or maybe lack thereof given the vote of yesterday, determined that the House would go on adjournment to discuss a very important matter, the Draft Constitution. Hon. Members, in their infinite wisdom, decided otherwise. We have no problem with that but going by Standing Order 38 (2)(b) and (d) the Whips consulted with the Speaker as well as the Clerk and determined that the Order paper shall be as it was prepared for today. The Prime Minister is right when he says that every time we have taken a Wednesday morning for Government business, we have been hard pressed to explain why we would take away a private members day, and, indeed, in giving back today, we were hoping that there would be gratitude from the private Members.

I want to go further and say that we sit in the House Business Committee under Standing Order 158 (1) which says, "...provided further that at least 30 percent of the membership of the House Business Committee shall be members who are not Ministers". The purpose is to ensure that we are in harmony and this does not arise. We were all present when these things were being prepared, I am surprised that some of us who sit on the Committee have a problem with it. It is true there is a huge list of Government work but hon. Members have also explained the value of this Alcoholic Drinks (Control) Bill and the impact and ravages of alcohol in their own debate and contribution. I urge that you rule that we proceed as is and not spend any more time, because we may then have to allocate yet more time for what we could have finished.

**Mr. K. Kilonzo:** On a Point of Order Mr. Deputy Speaker, Sir. Is the Prime Minister aware that the Government, just because of its disorganisation, is going to pay over Kshs150 million to hotels in Naivasha which they have booked and nobody is going

there just because of poor arrangements, yet now he alleges that the head of the House Business Committee is the Speaker? The insinuation is that, that is the reason why we do not have Government business on the Order Paper today. Is the Prime Minister implying that the hon. Speaker, who is the head of the House Business Committee, is unable to conduct the Business of the House, so that the Government can appoint one of its own to head the House Business Committee?

**The Prime Minister** (Mr. Raila): Mr. Deputy Speaker, Sir, I really do not understand what the hon. Member means by saying that the Government is going to spend Kshs150 million. How can the Government be held responsible for that expenditure when the bookings for the hotels were done by Parliament under the Speaker? It is not the Government that has stopped hon. Members from going to Naivasha. It was Members of this House who voted, in their own wisdom or freely, not to go to Naivasha yesterday. It was not the Government! It was hon. Members! How more hypocritical can hon. Members be?

*(Several hon. Members stood up in their places)*

**Mr. Deputy Speaker:** Order, hon. Members! I think this matter has to come to an end. Mr. K. Kilonzo, the management of the House and its budget is under the Parliamentary Service Commission (PSC) which is headed by the Speaker. You have made an allegation that, in my opinion, is fairly misleading. You have stated that such a colossal sum of money has been used; I think you are misleading.

**Mr. K. Kilonzo:** Mr. Deputy Speaker, Sir, I am not misleading in any way. One, I said that, that is Government money because it belongs to the taxpayers. It pains all of us when taxpayers' money is being misused! That is because yesterday, those hotels were booked and hon. Members were expected in Naivasha. The same Government came here and opposed the move by hon. Members to go to Naivasha. Who is going to pay for that money? Is it going to come from the pocket of the Prime Minister?

**Mr. Affey:** On a point of information to Mr. K. Kilonzo!

**Mr. K. Kilonzo:** I want it!

**The Prime Minister** (Mr. Raila): I am not taking any information right now because you have finished!

**Mr. Deputy Speaker:** Order, hon. Members!

**Mr. K. Kilonzo:** He wanted to give me a point of information and I have accepted!

**Mr. Deputy Speaker:** You rose on a point of order and the Rt. hon. Prime Minister was directed by the Chair to respond.

**The Prime Minister** (Mr. Raila): Mr. Deputy Speaker, Sir, the Government, for the information of the hon. Member, consists of three arms. There is the Executive, the Judiciary and the Legislature. It is not the Executive arm of Government which is now being questioned here. It is the Legislature. The Government sits here in the House and there are also Backbenchers.

*(Mr. Affey stood up in his place)*

I am responding to a point of order!

**Mr. Deputy Speaker:** The Rt. hon. Prime Minister is responding to a point of order.

**The Prime Minister** (Mr. Raila): Mr. Deputy Speaker, Sir, the Motion was moved here by the two Whips and seconded. It was debated in the House and, eventually, it was defeated. It was not defeated by the Executive but by the Legislature. So, if there was any kind of irresponsibility or misuse of public funds, it is the Legislature that needs to be squarely made responsible.

**Mr. Affey:** On a point of order, Mr. Deputy Speaker, Sir. First of all, one reason why we want to change the Constitution, and the Prime Minister has mentioned it--- I want to find out from the Prime Minister whether, indeed, he is in order to mislead the House when he knows that the Office of the Clerk collected signatures from Cabinet Ministers who voted to go to Naivasha! The same Ministers came back here to deny an opportunity for Parliament to go to Naivasha! Is he in order? Is this an idea by Cabinet Ministers to sabotage an important function of Parliament?

*(Applause)*

**Mr. Deputy Speaker:** Order! We have a unique democracy where one can be a Member of Parliament and also serve in the Government. The Motion was defeated yesterday. That matter is closed. As far as we are concerned, we will proceed with the business of the day. The issue is whether we are, in accordance with the Standing Orders, in a position to transact the business before us or not. The Chair directs that the business is there in accordance with the Standing Orders and we must proceed on and transact it.

Next Order!

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

**Mr. Deputy Speaker:** Not on the same!

**Mr. Gumbo:** It is on a different matter!

**Mr. Deputy Speaker:** What is the different matter?

**Mr. Gumbo:** Mr. Deputy Speaker, Sir, I think it is incumbent upon us, as hon. Members of this House, to verify the authenticity of matters that we raise here. Mr. K. Kilonzo has just claimed that the seminar which was going to be in Naivasha was going to cost Kshs150 million. Unless he can verify that the seminar was going to cost Kshs150 million, he is out of order. Is he in order?

**Mr. Deputy Speaker:** Mr. K. Kilonzo, you actually made a statement that essentially touches on the dignity and integrity of the House, that of the Speaker, Deputy Speaker and PSC. That is because Parliament is an independent body in our country now. Are you in a position to substantiate your claims or you are going to withdraw?

**Mr. K. Kilonzo:** Mr. Deputy Speaker, Sir, first, according to the rules and traditions of the House, when you have ruled on a matter and we have proceeded, an hon. Member cannot come back again to raise it.

**Mr. Deputy Speaker:** Order! The magnitude of the claims that you have made touches on---

*(Mr. K. Kilonzo stood up in his place)*

Order, Mr. K. Kilonzo! It is not a business between the Backbenchers and the Government. It is the dignity and integrity of the House and the management of the Legislature in this country, which is independent from the Government. It is a matter that, essentially, will go to the public domain. Are you in a position to substantiate your claims because the amount of money that you have mentioned is colossal and puts into question the dignity of none other than the Speaker, Deputy Speaker, Clerk of the National Assembly and PSC, or withdraw?

**Mr. K. Kilonzo:** Mr. Deputy Speaker, Sir, in the first place, I am not, in any way, putting the dignity of the Speaker or the Clerk into question. Secondly, I said that because of the magnitude of the money that is going to be spent. I would want the Office of the Speaker to table to this House the amount of money that has been paid---

**Mr. Deputy Speaker:** Order! You have a perfect right to question. But then, you should follow the right procedure and put in your Question. As of now, you have made a statement. You have made a factual statement that, in your own opinion, Kshs150 million is being used for that seminar. Are you in a position to substantiate your claims or withdraw?

**Mr. K. Kilonzo:** Mr. Deputy Speaker, Sir, as to the exact amount in terms of the dots in cents, I am not able to substantiate. But what I am able to stand by is the fact that money has been spent for that expense. Therefore, I want to withdraw and apologize on the exact amount.

*(Applause)*

As to whether taxpayers' money has been spent on the retreat, I want to stand by that!

**Mr. Deputy Speaker:** Order, Mr. K. Kilonzo! It is one thing for rooms to be booked and for Parliament to fail to go that night and pay for that night. It is another thing for you to say Kshs150 million was spent! That amount is colossal and massive and I do not think that, that retreat was supposed to cost us anywhere near that amount. Under the circumstances, Parliament does not work on the basis of generalities. When you make a statement, you have got to have your facts right, right to the dots, zeroes and everything. When you say Kshs150 million was spent, you have to be sure that you have evidence of that figure. So, under the circumstances, have you withdrawn and apologized to the House?

**Mr. K. Kilonzo:** Mr. Deputy Speaker, Sir, I have listened to you and in any case, I do not even want to challenge what you have said. As for the figure of Kshs150 million, I want to withdraw unconditionally and apologise. As for all the money that has been spent---

**Mr. Deputy Speaker:** Order! That is common knowledge. When you book for a hotel and you fail to get there, definitely, money is involved. It happens in corporate affairs, even in your own private life. If you book a hotel and you fail to appear, you have to pay.

Next Order!

*Second Reading*

## THE ALCOHOLIC DRINKS CONTROL BILL

(Mr. Mututho on 10.3.2010)

(Resumption of Debate interrupted on 10.3.2010)

**Mr. Deputy Speaker:** Mr. Yusuf Chanzu was the last one on the Floor. Is there any other hon. Member who would like to contribute?

**Mrs. Shabesh:** Thank you, Mr. Deputy Speaker, Sir, for allowing me to contribute to this Bill which was brought by our colleague, Mr. Mututho, on the Alcoholic Drinks Control Bill.

When Mr. Mututho was moving his Bill, he gave us a lot of facts and figures. What caught my attention was how many Ministries are actually involved with the issue of alcohol and the way that alcohol is affecting not only our young people but also our labour force as well as those who are working in the civil society and the education system.

First and foremost, the issue seems to be concentrated in one constituency. By this, I mean one general area that was being discussed. I would like to ask the hon. Members to look at Nairobi. In Nairobi, we have the Kariobangi Light Industries. We also have the Kariakor sheds. We have garages where people repair cars. If you go there now, you will find that the young people who work there are no longer productive. In fact, you will find older people working as mechanics. You will find older people working in Kariobangi Light Industries. This is because there has come about these cheap drinks that are being sold in the name of *kumi kumi* and therefore, our labour force has been depleted.

So much has been said about the effect of this alcohol. I want to speak about the effect of alcohol on women. Women in this country have a right to give birth. The right to give birth means that you have to have a productive man who can help you give birth. We cannot give birth on our own. It is unfortunate that right now in some of the areas that have been spoken about here, women can no longer give birth because their men are no longer productive. In fact, many women go and collect their men in wheelbarrows from the roadsides to take them home.

I know of women in Kangemi who demonstrated and said that they would rather be without husbands than to have husbands---

## QUORUM

**Mr. Kioni:** On a point of order, Mr. Deputy Speaker, Sir. We do not have a quorum.

**Mr. Deputy Speaker:** Fair enough. Ring the Division Bell.

*(The Division Bell was rung)*

**ADJOURNMENT**

**Mr. Deputy Speaker:** Hon. Members, there is no quorum. The House is, therefore, adjourned until Tuesday 16<sup>th</sup> March, 2010, at 2.30 p.m.

The House rose at 5.10 p.m.