

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 14th August, 2012

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

COMMUNICATION FROM THE CHAIR

WELCOME TO PARLIAMENTARY DELEGATION FROM SIERRA LEONE

Mr. Speaker: Order, hon. Members! I have one Communication to make. I wish to introduce to you, and welcome this afternoon a delegation from the Parliament of Sierra Leone seated at the Speaker's Row.

They are Members of the Economic Development Committee of the Sierra Leone Parliament and are on a study visit to share with us and draw lessons on best practices of parliamentary democracy with a view to improving on parliamentary standards and capacity building for committee work.

The delegation comprises the following hon. Members:-

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| 1. Hon. Hassan Shariff | - | Deputy Chair and Leader
of the delegation |
| 2. Hon. David B. Konte | - | Member |
| 3. Hon. Mathew Tiambo | - | Member |
| 4. Hon. Foday Rado Yokie | - | Member |
| 5. Hon. Alice Foya | - | Member |
| 6. Hon. Tamba Kabaganja | - | Member |
| 7. Hon. Albert Mac Bailey | - | Member |

The delegation is accompanied by Mr. Kamoo Konte, Committee Clerk and Ms. Lydia Silvyia Griffin, a representative from the Ministry of Finance.

On behalf of the House, and on my own behalf, I wish the delegation a fruitful and happy stay in Kenya.

Thank you.

(Applause)

PAPERS LAID

The Following Papers were laid on the Table:-

Sessional Paper No. 2 of 2012 on the Integrated National Transport Policy.

(By the Minister for Transport)

Special Audit Report of the Auditor-General on the purported supply of earthquake data measuring equipment worth Kshs31,245,700 - Ministry of Transport for the Financial Year, 2009/2010.

(By the Minister for Finance)

The Departmental Committee on Lands and Natural Resources Report on the Nominations of the Chairperson and Members of the National Land Commission.

(By Mr. Musyimi)

The Departmental Committee Report on Education Research and Technology on the Teachers Service Commission Bill, 2012.

(By Mr. Koech)

NOTICES OF MOTIONS

SESSIONAL PAPER ON THE INTEGRATED NATIONAL TRANSPORT POLICY

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT, this House adopts Sessional Paper No.2 of 2012 on the Integrated National Transport Policy laid on the Table of the House on Tuesday, 14th August, 2012.

NOMINATION OF CHAIRPERSON/MEMBERS OF THE NATIONAL LAND COMMISSION

Mr. Musyimi: Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT, this House adopts the Report of the Departmental Committee on Lands and Natural Resources on the nominations of the chairperson and members of the National Land Commission, laid on the Table of the House on Tuesday, 14th August, 2012.

QUESTIONS BY PRIVATE NOTICE

DISREGARD OF NEMA RECOMMENDATION ON CONSTRUCTION OF SOUTHERN BY-PASS

Dr. Otichilo: Mr. Speaker, Sir, I beg to ask the Minister for Forestry and Wildlife the following Question by Private Notice.

(a) Could the Minister confirm that the Government has approved the de-gazettement of parts of Nairobi National Park for the construction of the Nairobi Southern bypass against the recommendation of NEMA?

(b) Is the Minister aware that the degazettement of any national park in the country is prohibited by law without the approval of Parliament?

(c) Is the Minister further aware that implementation of the proposed de-gazettement will set a dangerous precedent for demands for de-gazettement of various parts of national parks in the country by the local communities and could the Minister assure the House that the proposed de-gazettement will not be implemented and instead the earlier planned road reserve will be repossessed from illegal allottees and developers who may have encroached on the same?

Mr. Speaker: Yes, Dr. Noah Wekesa!

The Minister for Forestry and Wildlife (Dr. Wekesa): Mr. Speaker, Sir, I cannot log on.

Mr. Speaker: Did you not bring your card with you?

The Minister for Forestry and Wildlife (Dr. Wekesa): I did not, Mr. Speaker, Sir!

Mr. Deputy Speaker: Proceed to the Dispatch Box!

(Dr. Wekesa moved to the Dispatch Box)

The Minister for Forestry and Wildlife (Dr. Wekesa): Mr. Speaker, Sir, I beg to reply.

Following your advice on full consultation by the Ministries concerned, the Minister for Lands, the Minister for Roads and the Minister for Forestry and Wildlife, alongside with our technical personnel, held a meeting. We formed a technical committee whose membership was drawn from the three Ministries. The matter is very weighty. The report we got from the technical committee is that they need another two weeks to give us a comprehensive statement which I will present to Parliament.

So, I beg that the hon. Member obliges.

Mr. Speaker: Dr. Otichilo, do I have your agreement to allow another two weeks?

Dr. Otichilo: Mr. Speaker, Sir, this is a very important Question to this country. The Minister says the three Ministers have met and held discussions over the matter. I would like him to note that this Question has been on the Order Paper for more than a month. Therefore, I will consent to his request, on condition that the construction of the Southern bypass is stopped until this matter is brought to the House for review and direction.

Mr. Speaker: Minister, do you have any reaction? You have got a conditional agreement.

Dr. Wekesa: Mr. Speaker, Sir, we are not constructing the road in any of the areas that concerns this Question. So, the hon. Member should be assured that we will not go ahead with the construction of the road through the Nairobi National Park without having permission from this House.

Mr. Speaker: Very well. The Question is deferred to two weeks away from today. Dr. Otichilo, please, note.

(Question deferred)

Mr. Speaker: Next Question, Member for Gichugu.

IRREGULAR ALLOCATION OF LAND
LR.NO.BARAGWI/RAIMU/22

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

(a) Is the Minister aware that land parcel LR No. Baragwi/Raimu/22 which belongs to Kirinyaga County Council and which was a subject of Civil Appeal Case No.280 of 2001 has been irregularly subdivided and transferred to a third party contrary to a court order?

(b) What is the Minister doing to reverse the irregular transaction?

The Assistant Minister for Lands (Mr. Bifwoli): Mr. Speaker, Sir, I had answered this Question. I had even written to the hon. Member after receiving the court order. I was advised by my officers that once we get a certified copy of the court order and forward it to Kirinyaga County Council, we shall cancel the transaction.

Ms. Karua: Mr. Speaker, Sir, the copy of the court order that I enclosed for the Assistant Minister was actually certified. If he needs any further documentation, I am willing to engage with him. If he looked at the copy of the court order that I gave him, he should have noticed that it was, indeed, certified.

Mr. Speaker: Mr. Assistant Minister, in that case, you have a simple situation. Could you confirm that you will comply with the court order?

Mr. Bifwoli:----(*Off-record*)

Mr. Speaker: Hon. Bifwoli, use your microphone properly! You do not switch it on after you have sat down!

Proceed, Member for Vihiga.

DELAYED DISBURSEMENT OF FREE PRIMARY/
SECONDARY EDUCATION FUNDS

Mr. Speaker: Mr. Minister for Education, I am advised that the Minister for Finance will deal with this Question.

So, proceed, Mr. Chanzu!

Mr. Chanzu: Mr. Speaker, Sir, I beg to ask the Minister for Education the following Question by Private Notice.

(a) Is the Minister aware that schools are about to close for second term holidays and yet the free primary and secondary school education funds have not been released to them and, if so, why?

(b) What measures is the Minister taking to expedite the release of the money in order to relieve the schools and parents of the hardships they are experiencing in their operations for lack of funds?

The Minister for Finance (Mr. Githae): Mr. Speaker, Sir, this Question had largely been answered. The only remaining issue is whether the Ministry of Finance has remitted the money.

I am glad to inform this House that in June, 2012, the Treasury released Kshs7 billion in respect of Free Day Secondary Education (FDSE) and Free Primary Education (FPE). They also gave a commitment to release the balance of Kshs4.8 billion in July, this year.

Mr. Speaker, Sir, the pledge by the Treasury to release the balance of Kshs4.8 billion in July was not achieved because in the current financial year, the Government adopted a new chart of accounting, which takes into account the counties. It took some time to migrate the Budget data to the Integrated Financial Management Information System (IFMIS) under the new charter of accounting. However, I am glad to inform the House that this has since been finalised. Immediately the system became operational, the Treasury released the balance of Kshs4.8 billion to the Ministry of Education for disbursement to schools. We did this on Friday, 10th August, 2012.

Let me assure this House that the Treasury is committed to releasing funds for the various functions in time in order to ensure timely implementation of programmes.

Mr. Chanzu: Mr. Speaker, Sir, I would like to thank the Minister for the information he has given to the House and the country. This is the third time the Question has come up in this House. First, it came up on Wednesday morning. It came up again on Thursday afternoon. This is the third time we are discussing it.

I would like to ask the Government to take this matter seriously. He says there was a change over from the old chart of accounting to a new one. The problem is that there was no communication. The Government should learn to communicate when there is this kind of aspect because this affects students in primary and secondary schools all over the country. The Government should have communicated this early enough. Schools will be closing on Friday. That is the reason this Question came up.

Could he make commitment to the House that, in future, he will make this kind of commitment early enough, so that he does not cause the kind of anxiety that we have witnessed across the country over this period?

Mr. Githae: Mr. Speaker, Sir, what the hon. Member has said is, indeed, correct. If there will be delay of this nature in future, we will issue a Statement so that Kenyans can be assured that the Treasury intends to remit the necessary funds in good time.

Mr. Mungatana: Mr. Speaker, Sir, there is a question that is fundamentally worrying many Kenyans about the FPE funds. We want a categorical statement from the Minister to clarify whether the FPE programme is, indeed, sustainable or the Government is having problems or second thoughts about it. We have, unfortunately, had a lot of threats by teachers. Is this programme on or it will go with the President when he retires?

Mr. Githae: Mr. Speaker, Sir, I would like to very categorically say that the FPE and FDSE programmes will continue. This is now provided for in the Constitution. Having synchronised our system with the Ministry of Education, we will be releasing funds on schedule. We are actually going to increase it. We have now released funds for Early Childhood Education (ECE). So, I would like to state categorically that although the FPE and FDSE programmes were started by His Excellency President Mwai Kibaki when he took over the reins of power, it will continue even after he has retired. I am very privileged that some of the Presidential candidates are hearing this. They need to re-assure this country that they will continue with the FPE and FDSE programmes.

Mr. Koeh: Mr. Speaker, Sir, while I thank the Minister, it is unfortunate that he wants to claim before this House that he is glad that he released that money on 10th August. 10th is the day that the schools closed for August holidays and, definitely, the operations in our schools must have been affected in one way or another. Could the Minister confirm to this House that, in future, beginning this September, the money shall be released to schools at least one week before they open? That is what happens in private institutions. They receive all the money before the

students report to schools. That way, children from very poor families can also enjoy and be able to compete favourably with the students from private schools? Secondly, could he table evidence to show that the money has been released?

Mr. Githae: Mr. Speaker, Sir, the Minister for Education is here. So, he can confirm whether the Ministry has received the money or not. On the other issue, as I said, we have now synchronised the school terms with the Exchequer issues. So, I would like to assure this House and the country at large that those problems are now over. We are now aware of the requirements of the Ministry of Education and when they are due. We will endeavour, one week before the schools open, to make sure that those funds are actually with the schools so that, as they begin their academic term or semester, they will have the funds to continue with their operations. But as to whether the money has been received or not, the Minister for Education is here and he can confirm.

Mr. Speaker: Hon. Prof. Ayiecho Olweny, could you confirm whether you have received the money now that the Minister has called you to his aid? Hon. Ayiecho Olweny, your microphone is actually working! Have you brought your card since there is no request?

(Prof. Olweny switched on his microphone)

Mr. Speaker: Yes, the request is now there!

The Assistant Minister for Education (Prof. Olweny): Mr. Speaker, Sir, my colleague here is the one who interchanged things! Anyway, I wish to confirm to the House that the money has come from the Treasury to the Ministry and I have with me here a printout dated 14th August that shows that the money has been sent to the various banks, so that it can be sent to the accounts of all the schools across the country. I wish to thank this House for helping me to get the money from the Treasury.

(Applause)

(Prof. Olweny laid the document on the Table)

Mr. Njuguna: Mr. Speaker, Sir, while I thank the Minister for releasing the funds to the needy primary schools, what plans does the Government have to review their allocation to the primary schools because of the soaring commodity prices prevailing in the country?

Mr. Githae: Mr. Speaker, Sir, yes, it is true that the commodity prices have gone up over the last six months. The individual allocations have not been reviewed. This is a matter that has been brought to our attention by the Ministry of Education, and we are considering how much can be added. But this will take time and it will be within the next financial year. But we are discussing the matter with the Ministry of Education.

Mr. Chanzu: Mr. Speaker, Sir, this one is slightly more refined. In the same spirit, now that the Minister for Finance is here, and following the kind of commitment he made here when we were opening this Chamber last week, I brought a Motion here where we were seeking - in line with the new Constitution - that we must provide education for all. There is a Motion we passed in this House that, that money be raised from Kshs1,060 to Kshs3,180 per child in primary school. We were trebling the amount. The amount for secondary schools was to be doubled from Kshs1,265 to Kshs2,530. Could the Minister inform the House when he intends to

implement that because we have already passed the Motion? I think it will go a long way to sort out the problems that education is facing in the country?

Mr. Githae: Mr. Speaker, Sir, I had clearly indicated that even before this Motion came to the House, the Ministry of Education had raised this matter with us. It was time to review the individual allocations and we are in discussions with the Ministry to see how much is required and how much the country can afford and, therefore, I would like to thank this House for putting those recommendations that there should be an increase. However, I have discussed this matter and, definitely, there shall be an increase; but in the next financial year. So, this one has already been overtaken by events. But the matter is actively being discussed and we shall be guided by the figures that the House has recommended.

ORAL ANSWER TO QUESTION

Question No.1424

UPGRADING OF MAKUTANO-KITHIMANI ROAD TO BITUMEN STANDARDS

Mr. D. Muoki asked the Minister for Roads:-

(a) whether he is aware that tender bids for the upgrading of Makutano-Kithimani Road (C100) to bitumen standard were invited in 2007 and, if so, who won the tender and at what cost; and,

(b) when the works on the road will commence.

The Minister for Roads (Mr. Bett): Mr. Speaker, Sir, I beg to reply and, in doing so, I wish to apologise to the House for the inadequate answer that was given previously.

(a) I am aware that the tenders for upgrading of Makutano-Kithimani Road (C100) were invited, but were cancelled due to non-availability of funds.

(b) Currently, there are no funds for upgrading the roads to bitumen standard, but the design works were completed in 2006. However, there is a budgetary allocation of Kshs65,038,020 for maintenance of the road during this financial year. I have also directed that the procurement of that maintenance work begins immediately, and not later than September 2012.

Mr. D. Muoki: Mr. Speaker, Sir, procurement rules demand that budgetary provision be made available before you tender for public projects. Why were the people of Mwala duped that the road was going to be done, especially during an electioneering year? That was misleading them!

Mr. Bett: Mr. Speaker, Sir, I am not aware that the people of Mwala were duped because it is an election year, but I am only saying that there was a budgetary shortfall which caused the construction works not to continue.

Mr. Keter: Mr. Speaker, Sir, what policy does the Minister have concerning some of the contractors who are not doing proper work? I give the example of Mau Summit-Kericho Road, which is in a very pathetic situation.

Mr. Bett: Mr. Speaker, Sir, I beg to indicate that I did not get the Member well because of movement from the Dispatch Box to the seat. I seek your indulgence if the Member can repeat the question while I am here at the Dispatch Box.

Mr. Speaker: Mr. Keter, please, proceed.

Mr. Keter: Mr. Speaker, Sir, my question to the Minister is, what plans do you have concerning some of the contractors who are very slow in completion of their work? I give an example of Mau Summit–Kericho-Kisumu Road.

Mr. Bett: Mr. Speaker, Sir, that is a fair question which is being addressed through the new law which this House was gracious to pass recently, the Engineers Act and the National Construction Authority Act. Those two pieces of legislation will be used to make sure that the contractors do comply with the time limits, or the deadlines that have been set. Nevertheless, there are also challenges which are beyond the control of the contractors like the weather conditions and other situations affecting them from outside the country like inability to receive some of the inputs for road construction on time. However, we will do everything we can to make sure that timeframe is complied with.

Mr. Speaker: Member for Kisumu Town West!

Mr. Olago: Mr. Speaker, Sir, the Minister is looking at me! I thought he was going to take his seat first!

(Mr. Bett resumed his seat)

Mr. Speaker, Sir, I heard the Minister say that the reason why this road was not constructed was because it was tendered, an award was made and then there were no funds. There is the requirement of Act No.3 of 2005 – The Public Procurement and Disposal Act, Regulation No.10, which says, before an award is made, the Accounting Officer must satisfy himself or herself that funds have been allocated for that contract. So, clearly, the Accounting Officer must have made a mistake in awarding the work before he was satisfied that the funds were available. What action has been taken against the Accounting Officer?

Mr. Bett: Mr. Speaker, Sir, I agree that the Public Procurement and Disposal Act requires that before a contract is awarded funds must be in place. I have not delved into that past as to be able to know what really happened, but I want to believe that other extraneous and emergency situations must have arisen, and must have caused reallocation of funds at that time. This would be excusable because an emergency has to be attended to ahead of other activities.

Mr. Mbadi: On a point of order, Mr. Speaker, Sir. The question by Mr. Olago was clear that the Public Procurement and Disposal Act stipulates a condition that before an award of a tender, or even initiation of it, you have to first ascertain that you have the resources. In view of the Minister's answer, would it be in order for us to ask him to go back and bring to this House a clear answer as to why the tender for this road was not awarded? This is a tendency by the Government, especially by the Ministry of Roads. They budget funds, start the tendering process---

Mr. Speaker: Order, Member for Gwassi! You are now over-stretching the point. Your point of order was simple and I understood that the Minister has not answered the question. Minister, can you now answer?

Mr. Bett: Mr. Speaker, Sir, I have stated that the contract was advertized, tendered; I have indicated that I have not delved into the past history, but I strongly believe, which I can confirm later, that there could have been some emergency that arose at that time and took away the funds which were meant for these works.

Mr. Ruteere: Mr. Speaker, Sir, this road did not get adequate funds in that financial year; there was a shortfall. However, that was in 2007. Several financial years have passed since then, what efforts has the Ministry made to see that in the subsequent financial years---

Mr. Speaker: Order, Mr. Ruteere! Member for Isiolo South is on a point of order.

Mr. Bahari: on a point of order, Mr. Speaker, Sir. I had made a request earlier than Mr. Ruteere but---

Mr. Speaker: Proceed with your point of order now that you have caught my eye.

Mr. Bahari: Mr. Speaker, Sir, the point of order raised by Mr. Mbadi has not been adequately responded to by the Minister.

Mr. Speaker: To what extent?

Mr. Bahari: To the extent that he says that he believes. He does not have the facts. I think you noted that and you said that the Minister should appropriately respond. Let him answer that question. Belief is one thing and we are expecting him to give us facts. If he does not have the facts here let him ask for more time.

Mr. Bett: Mr. Speaker, Sir, I do not mind asking for more time to go and dig into the past to be able to brief the House well on what happened then.

Mr. Speaker: After we have spent so much time on it? You should have said so much earlier. Mr. Ruteere, please, proceed.

Mr. Ruteere: Mr. Speaker, Sir, I was saying in the subsequent years there should have been financial allocations to that particular road, if it was a priority. Why was it not necessary to allocate it funds in the subsequent years, or from 2007 to date?

Mr. Bett: Mr. Speaker, Sir, I have indicated that we carried out a design study on that road, which was completed at a cost of Kshs19.2 million. That study is now ready and it is for us to source for funds from the Treasury. In the meantime, as I have indicated, we are set to maintain that road at a cost of Kshs55 million.

Mr. Speaker: Member for Mwala, last question. Member for Mwala, do not press the bell too many times. Press it just once.

Mr. D. Muoki: Mr. Speaker, Sir, it is in the public domain that, indeed, Nyoro Construction Company was given the tender, he came to the site but before he started the work he was withdrawn and money was transferred elsewhere; maybe it went to a favoured area. Can he explain under what circumstances this was done?

Mr. Bett: Mr. Speaker, Sir, I thought I indicated that I want to go and dig into the past. I think when answering the bit that was asked earlier by Mr. Mbadi, I should be able to address what the Member is asking at this moment.

Mr. Speaker: Fair enough. We will put this Question on the Order Paper once again two weeks to come for you to deal with the two aspects raised by the Member for Gwassi and the Member for Mwala.

(Question deferred)

Member for Juja, please, proceed.

Mr. Kabogo: Mr. Speaker, Sir, I was trying to catch your eye on a point of order.

Mr. Speaker: Proceed, Mr. Kabogo!

Mr. Kabogo: On a point of order or Question?

Mr. Speaker: I have spoken on this matter so many times before. Will you kindly proceed?

Mr. Kabogo: Mr. Speaker, Sir, I am wondering whether you want me to ask a Question or the point of order.

Mr. Speaker: Mr. Kabogo, Question No.6 by Private Notice.

QUESTIONS BY PRIVATE NOTICE

KILLING OF DR. JOSEPH MATU MWIHIA BY POLICE IN SOUTH SUDAN

Mr. Kabogo: Mr. Speaker, Sir, I beg to ask the Minister for Foreign Affairs the following Question by Private Notice.

(a) Is the Minister aware that a Kenyan citizen Dr. Joseph Matu Mwhia was tortured and killed by policemen in Torit National Security Station, Juba, South Sudan on the 3rd of August, 2012?

(b) What measures is the Ministry taking to ensure that Kenyans working in South Sudan are safe?

The Minister for Foreign Affairs (Prof. Ongeru): Mr. Speaker, Sir, I beg to reply.

(a) Yes, the Minister is aware that Dr. Joseph Mwhia Matu died on 4th August, 2012, apparently as a result of injuries that he sustained while in police custody. The Kenya Embassy in South Sudan dispatched the deputy head of mission to Torit, the capital of Eastern Equatorial State on 11th August, 2012 in order to follow up the case, ascertain facts on the ground and obtain first hand information regarding the late Dr. Joseph Matu's mistreatment and subsequent death. During his visit, the deputy head of mission held meetings with officials of the Kenyan Community Association in Torit, visited Torit State Hospital and held a meeting with a Dr. Gerry who treated the deceased at the hospital. He also visited the premises of the late Dr. Matu called Sky Pharmacy at the market center in Torit, interviewed several Kenyans operating pharmacies in Torit and also held meetings with State Government officials including the Attorney-General, the State Minister for Public Administration and Internal Security and the Deputy Governor of Eastern Equatorial State. From the meeting and interviews, the deputy head of mission established that Dr. Matu was taken into custody on Friday, 3rd August, 2012. This happened after he had earlier been asked to close his pharmacy at around 2.30 p.m. by the Ministry of Health---

Mr. Mututho: On a point of order, Mr. Speaker, Sir. Last week it was suggested that the Ministers should have a seat in front there so that they can keep coming to and fro, instead of answering from the back. It was a matter of procedure. I had raised this point of order earlier when the Minister was talking so that you can give us direction; have a loose seat so that it becomes easier for us. They do not have to be on their feet when we are on our feet.

Mr. Speaker: I have given directions on this before and, in fact, adequately. That is why the Minister is answering from the Front Row; the first row. If he is not able because he does not have his card, then he would go to the Dispatch Box. Is that not clear? I think it is.

Proceed, Mr. Minister!

The Minister for Foreign Affairs (Prof. Ongeru): Mr. Speaker, Sir, Dr. Matu was taken into custody on Friday, 3rd August, 2012. This happened after he had earlier been asked to close his pharmacy at around 2.30 p.m. by the Ministry of Health officials allegedly because it operated as a clinic but was only licensed to operate as a pharmacy, which he did. Dr. Matu's assistant subsequently called him between 5.30 p.m. and 6.30 p.m. to open the pharmacy to enable her to collect her house keys which she had forgotten inside. As soon as Dr. Matu came from his wife, Purity Njambi's hardware shop within the same vicinity and opened the premises, the health officials appeared accompanied by National Security Intelligence Officers and ordered

the deceased to close down the pharmacy and accompany them, which he agreed to and walked away with them. He was detained by the National Security Intelligence Officers in Torit National Security Station. Dr. Matu's wife was informed of his arrest but denied access to him.

In the morning of 4th August, 2012, Mrs. Matu was informed by the National Security Intelligence officers that Dr. Matu had been admitted at Torit State Hospital. The hospital administration informed her that the deceased was brought in by the National Intelligence Officers while unconscious with his clothes being very dirty and wet. The initial examination by the doctor at the hospital indicated that the deceased had internal bleeding in the head that was likely caused by being hit by a blunt object. The rest of the other details are in the doctor's findings.

After learning of the incident, officials of the KCA and State officials including the Deputy Governor of Eastern Equatorial State explored ways of evacuating Dr. Matu to Juba including chartering an aircraft but due to lack of funds, it was decided in the evening to use road transport but the deceased passed on while on the way to Juba.

(b) On the measures the Ministry is taking to ensure that Kenyans working in South Sudan are safe, on 4th August, 2012 on receiving information of Dr. Matu's death through the officials of the KCA in Torit, the Kenyan Ambassador to South Sudan, His Excellency Clayland Leshore contacted the South Sudan Minister for National Security, the Minister for Interior and the Governor for Eastern Equatorial State to report on the incident and request for investigations. This was followed up with a protest note to the Government of the Republic of South Sudan (GRSS) on 6th August, 2012 condemning the incident and calling on the GRSS through the Ministry of Foreign Affairs and International Co-operation, the Ministry for the Interior, the Ministry for National Security and the Ministry for Justice to undertake thorough investigations into the circumstances leading to the death of Dr. Matu and ensure that culprits are brought to justice.

Subsequently, the Minister for Foreign Affairs, Kenya, requested the Minister for Foreign Affairs of the GRSS, hon. Lt Gen. Nyar Deng Nyar to call on him for discussions which took place today morning, 14th August, 2012. I raised concerns regarding the deaths of Kenyans among them Dr. Matu and several Kenyans in South Sudan and measures being taken by the Government to ensure the safety of Kenyans as well as their investments in that State. The Lt. Gen. Nyar observed that there have been incidences in which not only Kenyans but also nationals of other countries have been killed. He noted that these incidents have been sporadic and are basically as a result of the fact that South Sudan is hampered by under capacity in terms of security officials. He stated that South Sudan does not have a proper police force and it is only a few months ago that a batch of 6,000 newly recruited police force completed their training and are still being deployed. He further informed me that the security officials who are involved in Dr. Matu's case have been arrested and investigations are going on at a very high level and we expect a very quick prosecution.

Mr. Speaker, Sir, Lt. Gen. Nyar, the Minister for Foreign Affairs also stated that the State governments in GRSS are concerned about the security situation in their territories and the Governor of Eastern Equatorial State where Dr. Matu was killed was personally following up the matter and wished to assure residents and investors in South Sudan of their security. It should be noted that the Kenya Government is working with the GRSS to build up its capacity to tackle insecurity through training of police officers, officials of the judicial system and other public service officials such as administrators that will help to strengthen governmental control and curb misuse or abuse of authority.

Furthermore, in order to strengthen liaison between Kenyans in South Sudan and the Kenyan Embassy, the mission has encouraged and facilitated the formation of the KCA in all the States of South Sudan and major towns. It has also established a database and encouraged Kenyans living in South Sudan to register at the Embassy to enable direct communication with them and also facilitate the offer of assistance to them promptly when required. They have also been asked to hold regular meetings with Kenyan nationals in South Sudan to address some of the concerns raised in the mission by the diaspora, establish diaspora office to specifically handle issues affecting Kenyans living in South Sudan. The diaspora office records all cases reported by Kenyans to the mission daily and promptly follows up with the South Sudan authorities, disseminate new laws and regulations of the Republic of South Sudan to Kenyans living in the country as well as any other useful information that will affect their stay, for instance, immigration requirements, registration of aliens and information in trade and investment. I thank you, Mr. Speaker, Sir.

Mr. Kabogo: Mr. Speaker, Sir, it is a very sad story. It is also important for him to note that it is wise when he has such a long statement to make a copy available to the Member.

Mr. Speaker, Sir, having said that, you heard him say that Dr. Matu died because of injuries while in police custody. Could he confirm that those injuries were not just accidental injuries? These injuries were as a result of torture; torture of a Kenyan simply because he had a bed in his pharmacy! Also---

Mr. Speaker: Order, Order! Member for Juja, one Question at a time. Minister, please, answer that question?

Prof Onger: Mr. Speaker, Sir, from the information collected by our deputy head of mission and from the Kenyans around that particular pharmacy, it shows that he must have died because of blunt object injury on the head which caused internal bleeding. We demanded for a postmortem report. The report is being finalised and it will be availed to us through the Government. As I said, there is Equatorial Government. So, let us wait for that report. I will not be surprised if the injury was as a result of torture.

Mr. Mungatana: Mr. Speaker, Sir, these facts are incontrovertible. We are told the man was in the hands of the police at the time of his death. The death was confirmed by a doctor from that country.

Mr. Speaker, Sir, the State officials from both countries have confirmed that, indeed, the death occurred in the hands of state agents. This is a very clear-cut case where the Government can make reasonable demand for financial compensation from that Government. In fact, where state agent terrorism is involved, there is precedence; for example, the Lockerbie bombing. Has the Minister made financial demands for compensation because this was a person who was earning income for his family?

Prof. Onger: Mr. Speaker, Sir, my meeting this morning with the Minister for Foreign Affairs for South Sudan was specifically to look at what will be done eventually at the conclusion of this matter. He has assured me firmly that the culprits are in custody and that they will be arraigned in a court of law. I think hon. Mungatana, as a lawyer, will know that any compensation process must follow due process. So, ultimately, that must be the route to take whether it is State to State compensation or allow the family to raise compensation request to the Government of South Sudan. This cannot be done overnight because there are many facts that need to be corroborated. For instance, the report which was carried out by experts ought to be in our hands. As soon as that report is in our hands, I am sure that it will help the victims, relatives and us to take further action.

Mr. C. Kilonzo: Mr. Speaker, Sir. The microphone is switched off.

Mr. Speaker: I gave you the Floor, you switched yourself off.

Mr. C. Kilonzo: Mr. Speaker, Sir, last year in October, a young man by the name Nicodemous Mwanzi from Yatta was shot by soldiers in one of the states in South Sudan. He was in his 30s. This year barely two months ago, a girl from Makueni by the name Tabitha Musangi was also shot by soldiers. Now a doctor has been killed by State officers. Surely, we hosted South Sudan as refugees in this country for long and even protected them when they were fighting for their rights.

Could the Government of Kenya negotiate with the South Sudan Government to get an assurance from them that Kenyans living in South Sudan will be protected?

Prof. Ongeri: Mr. Speaker, Sir, it maybe of interest to the House that in our discussions this morning, I did raise the issue not only three of cases where Kenyans have suffered gun shots or gun shot wounds---

Mr. Bahari: On a point of order, Mr. Speaker, Sir. I had expected that point of order to come up immediately this Question was asked---

Mr. Speaker: Order! Then, please, resume your seat. Member for Garsen.

Mr. Mungatana: Mr. Speaker, Sir, I rise on a point of order because the Minister did not answer my question. Is he in order to fail to answer as to whether in those discussions the Kenya Government requested for monetary compensation?

Mr. Speaker, Sir, I have said---

Mr. Speaker: Order, your point is made. Minister, that specific part, you have not dealt with it.

Prof. Ongeri: I did say when all facts are clearly in our possession, including the in-depth postmortem, security report and our own report, we shall then be able to deal with the issue raised by hon. Mungatana. It will be premature at this stage to start asking for compensation. I think we will base it on factual information, so that both relatives of the victim and ourselves know how to proceed forward in search of that compensation. I can assure him that will be the end story.

Mr. Speaker: Member for Juja, you are asking for a point of order intervention.

Mr. Kabogo: Yes, Mr. Speaker, Sir. My point of order is simple. When the Minister was answering the question by hon. Mungatana, he did state that there could be a State to State compensation arrangement, or the family will ask the Government of South Sudan to compensate them? Is it in order for him to mislead this House that a Kenyan can go before the Government of South Sudan to seek compensation? He says there are no adequate police facilities? How do we turn to them to ask them for compensation when they are killing us? Could he tell the House that the option available is State to State compensation?

Mr. Speaker: Mr. Minister, can you kindly respond to that?

Prof. Ongeri: Mr. Speaker, Sir, I talked about the families also seeking redress. That is as a result that the Eastern Equatorial State officials have expressed deep regrets over the incident, terming it as an isolated case and informed us that Kenyans in Torit area are not being targeted by the security personnel. They additionally informed us that they will invite the family of the late Matu to open a case against the arrested suspects. Those being State officers, obviously, it is the Government that will have to foot the compensation bill.

Mr. Speaker: Last question, Member for Juja!

Mr. Kabogo: Mr. Speaker, Sir, you have heard the Minister say that, that is an isolated case. But you heard the Member for Yatta narrate several cases. He even forgot the last one. Last

week, a Kenyan girl was in a taxi and because they did not stop when the flag was being raised, she was shot dead. Is the Minister satisfied that Kenyans in South Sudan are safe? If he is not, what are they going to do, as a Government, to make sure that Kenyans in South Sudan are safe? As it was said by other Members, we have housed South Sudanese and still have them here. Not even one has been killed by the police, yet the Minister wants to tell the House that it is an isolated matter. Is the death of five Kenyans in South Sudan what you call an isolated case? Could the Minister get serious on this matter?

Prof. Onger: Mr. Speaker, Sir, if hon. Kabogo dared listen to me carefully, I was quoting the statement from the Eastern Equatorial State. My position when hon. Kalonzo---

Mr. C. Kilonzo: Kilonzo!

(Laughter)

Prof. Onger: Sorry! Hon. Charles Kilonzo!

Mr. M'Mithiaru: On a point of order, Mr. Speaker, Sir. I also stand here as a very worried person because I lost two people in South Sudan. They were actually killed in the hands of security officers of South Sudan. Is the Minister actually in order to tell this House that it is only one case, when the security officers of South Sudan could be killers that we do not know?

Prof. Onger: Mr. Speaker, Sir, if the hon. Members could only give me an ear, most of these points of order could be cleared. I was just about to answer the question raised by hon.---

Mr. Speaker: Order, Minister! You know the procedure very well. Yes, you can continue to deliver your answer but, if a point of order is raised, it is legitimate. The Standing Orders allow it and so, you cannot complain. Just respond!

Prof. Onger: Mr. Speaker, Sir, in the eastern part of that State, it is an isolated case. In the Republic of South Sudan, since 2008 to date, we have had about 24 Kenyans killed in that period. This year alone, five Kenyans have been killed. That is why, when we were dealing with international relations, as a Minister for Foreign Affairs, I have taken the necessary step that is required under the International Relations Co-operation, to bring to the notice of the South Sudan Government of Kenya's displeasure at the manner in which Kenyans are being killed without any reason whatsoever.

Mr. Koech: On a point of order, Mr. Speaker, Sir. This is a very grave matter, while we are aware of the role that this Republic played in putting in place the Government of South Sudan. The entire leadership of South Sudan---

Mr. Speaker: Order, Member for Mosop! You know that you have stood on a point of order. Do not go back to what may have been said previously.

Mr. Koech: Mr. Speaker, Sir, is the Minister in order to claim that he has done everything possible to protect Kenyans, when he has listed many Kenyans who have been killed? If he cannot defend Kenyans, I would have expected him to tell all of them to leave South Sudan.

Prof. Onger: Mr. Speaker, Sir, let us understand one another. If there is an incident in a particular country, the process of addressing that issue is through a *note verbale*. This was done by Kenya's Ambassador to South Sudan, raising concern that Kenya is obviously uncomfortable that Kenyans should lose their lives, when they have gone there to participate in the investment activities of that nation. Secondly, I have also taken the liberty not to leave it at the level of *note verbale*. I have raised the bar to the level of my counterpart in South Sudan, again, reiterating our displeasure in the manner in which Kenyans are being killed.

(Mr. Linturi gestured at the Chair)

Mr. Speaker: What is it, hon. Linturi? Hon. Linturi, once you press your gadgets, you do not have to make any gestures. We have moved on. This is technology.

(Laughter)

Mr. Linturi: Mr. Speaker, Sir, I am IT compliant.

Mr. Speaker: Proceed!

Mr. Linturi: Mr. Speaker, Sir, in view of the sensitivity of this matter, considering that the Minister has admitted before this House that 24 Kenyans have lost their lives in South Sudan -- Sudanese are living here. I would like to request that this matter be referred to the Committee on Defence and Foreign Relations, so that it can look into the details of how those Kenyans lost their lives and this Parliament can decide on the position that we must take to protect the Kenyans that are living in South Sudan. We cannot condone our fellow brothers and sisters dying in the cruel hands of Government agents in South Sudan.

Mr. Speaker: Order! Minister, can you kindly complete your answer. I will give directions on that as we finish.

Prof. Ongeri: Mr. Speaker, Sir, I have, as I said, met my counterpart this morning and raised my displeasure about this rather careless way of handling the Kenyan citizens in South Sudan. We have agreed and he has assured me that they have now deployed the newly recruited police – the 6,000 – to ensure that the safety, not only of Kenyans, but of other nationals is secured. At that level, I cannot exert anything more than the assurances that I have sought from my counterpart, which I did get this morning. I have already transmitted that message to our Ambassador. But in the meantime, I think this august House should appreciate the fact that those are people who are emerging from a very difficult moment, with many guns astray in the community. Therefore, the guerrilla type of warfare is something that we will have to work with them, to assist them also to cope with it. I think it is our responsibility to do so.

Mr. Speaker: Order! Order, hon. Members! Hon. Members, you will notice that I have accorded this matter 25 minutes. So, we have really, as a House, ventilated on the matter. With respect to the request by hon. Linturi that I direct this matter to be investigated by the Committee on Defence and Foreign Relations, the direction from the Speaker in this regard will be superfluous because the mandate of the Committee is clear from the Standing Orders.

It is up to the Committee, if it feels inclined that it should investigate this matter because of its gravity, to proceed and do so. So, I will not give directions. I will not give an order to the Committee, because it is a matter within its mandate and it may proceed as it deems appropriate.

KILLING OF TILAM LERESH BY BRITISH ARMY SOLDIER

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

(a) Under what circumstances was Tilam Leresh (ID No. 26535835) killed by the British Army on 9th June, 2012, at Lolkanjau area outside the gazetted military training area near Archers Post in Samburu East?

(b) What happened to the body and was the next of kin informed of his death?

(c) Was the British Army soldier responsible for the killing arrested and prosecuted in a court of law?

The Assistant Minister of State for Defence (Mr. Musila): Mr. Speaker, Sir, I seek the indulgence of the House. I have the reply and I have discussed this with hon. Letimalo, but I request that this Question be scheduled for Thursday this week and he is in agreement.

Mr. Speaker: Member for Samuru East, do I have your agreement?

Mr. Letimalo: Mr. Speaker, Sir, I have no objection.

Mr. Speaker: Very well. It is so directed. Thursday afternoon.

(Question deferred)

RECRUITMENT OF APs WITHOUT FOLLOWING
LAID DOWN CRITERIA

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

(a) Under what circumstances were Administration Police constables recruited and enrolled at Administration Police Training College (APTC) without basic academic qualification certificates and without being given service numbers that resulted in 600 of them being given three days off on 28th May 2012 to present the documents to enable them proceed with training?

(b) How many of these officers have so far returned to the college with genuine documents, and could the Minister provide a list of the 600 officers who were affected?

(c) Why were the officers exempted from normal courses offered at the college and instead only taught "Field Craft" (Science of War)?

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

(a) The Administration Police recruitment was carried out in accordance with the laid down recruitment guidelines of 25th March, 2011, issued by the Ministry of State for Provincial Administration and Internal Security. The required documents to be presented by the potential recruits were: original identification card to prove citizenship, the Kenya Certificate of Secondary Education (KCSE) with a mean Grade C Plain, or a Bachelors Degree in case of graduate recruits; other physical and medical requirements were age, medical fitness, good vision, hearing and without criminal record. The recruits undergoing training at the Administration Police College underwent the above and we were satisfied beyond reasonable doubt that they were fit to undergo police training as required by the guidelines. As the training progresses, there are other subsidiary administrative requirements by the Directorate of Personnel Management to assist in updating personnel records of the recruits into the Integrated Personnel Payroll Database (IPPD) and the issuance of service numbers. This necessitates additional requirements, including the Kenya Revenue Authority (KRA) Personal Identification Number (PIN) and birth certificates. Since these requirements were not initially included in the recruitment, the college administration made efforts to facilitate the recruits to acquire these documents. Those who had the documents at home were requested to collect them during the midterm break. A total of 225 recruits who did not submit them by the end of the internship citing various reasons for the delay, were given two days off duty on 28th May, 2012, to collect the documents.

(b) All the recruits have so far returned to the college after submitting their birth and KRA PIN certificates as requested.

(c) The issue of selective training on science of war does not arise as the recruits undergo an extensive 15-month course, which is guided by the new training guidelines adopted by both the Kenya Police and the Administration Police training institutions.

The issue of equity as raised by one of the hon. Members does not therefore, arise. This was catered for during the recruitment exercise.

Mr. Olago: Mr. Speaker, Sir, first, I wish to apologize. This morning, I informed your Chambers that I would be away and I would not be attending this session, but my doctor postponed my appointment. So, I am here. I am glad that the Question has been answered.

This answer is a little like hon. M. Kilonzo's school miniskirt. It is short, but it is meant to hide the truth. The reason I asked this Question was to find out if there was training of private militia at public expense to be used after the elections. It is a very serious issue. I wish to ask that we do not interrogate this answer because, clearly, it fails to address a very important limb of my Question, namely limb (c), which asks: How many of these officers have so far returned to the college with genuine documents and could the Minister provide a list of the 600 officers who were affected? That list is completely missing from this answer and that is the crux of my Question. With all humility, I wish to ask that this answer is not interrogated today and the Assistant Minister comes back with a more substantive answer with the details which I asked for.

Mr. Speaker: Order! Assistant Minister, is the correct position that you do not have that information with you? You do not have a list of 600 recruits and you cannot explain whether or not they have returned to college!

Mr. Lesrima: Mr. Speaker, Sir, I do not have the list of 600. I mentioned that 225 recruits initially---

Mr. Speaker: So, how much time do you need to have the complete list? The Question is specific and it has got quantum in it. How long do you need to come with the information?

Mr. Lesrima: Mr. Speaker, Sir, I would require at least up to Wednesday next week.

Mr. Speaker: This Question expressly calls for certain information. It is in the Question. So, you should have expected this. I will give you two weeks, Assistant Minister, and please, come with an exhaustive answer.

Mr. Lesrima: Thank you, Mr. Speaker, Sir.

(Question deferred)

ORAL ANSWERS TO QUESTIONS

Question No.1230

ATTORNEY-GENERAL'S RESPONSE TO TANA RIVER POLICE
INQUEST FILE NO.2/2008

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

(a) whether the Attorney-General has responded to Police Inquest File Number 2/2008 (CID Tana River) for the three men shot by General Service Unit (GSU) Police Officers at Charindende;

(b) what the Attorney General's comment was and whether the victims have been informed; and,

(c) what action the Government has taken against the officers involved.

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

On 23rd May, 2012, this Question was adequately answered. However, the Member requested that I table a copy of the Attorney-General's letter dated 4th November, 2010 that was recommending that the file be placed before a magistrate to be heard, determined and finally disposed of by way of public inquest. Further, the Member wanted me to table the magistrate's ruling, proceedings and the witnesses' testimonies. I, therefore, wish to table a copy of the Attorney-General's letter dated 4th November, 2010, and the magistrate's ruling and the testimonies.

(Mr. Lesrima laid the documents on the Table)

Dr. Nuh: Mr. Speaker, Sir, these documents were to be tabled on 19th June, but because of the unfortunate incident, I understood that it would take longer. But the Assistant Minister did not have to wait until the Question appeared on the Order Paper; he had all the time to table the documents. This again goes to the core of the ruling we have been expecting from you, Mr. Speaker, since June, which was about Question Time and the way Ministers address Questions in the House and how they deliver answers. That ruling would have enlightened Ministers on how they are supposed to comply with the Standing Orders. It seems they have a very shallow understanding of the Standing Orders which we operate with in this House. I humbly ask that you deliver that ruling, probably within the week.

Therefore, I request more time to peruse the documents tabled for me to maybe ask a few other clarifications.

Mr. Speaker: Fair enough. I think this matter was largely transacted the last time it appeared on the Order Paper, except for the information which the Assistant Minister has brought this afternoon; the Member for Bura requires time to peruse the documents. That is understandable because any other intervention will be by the Member for Bura. I want to defer this Question to Wednesday next week in the morning. Assistant Minister, please come prepared to take supplementary questions from the Member for Bura.

(Question deferred)

We want to take the next Question. The Member for Bura is anxious about a ruling by the Speaker to emphasize the importance of Standing Orders and makes an allegation that has gone unchallenged that Ministers have a very shallow understanding of the Standing Orders. So, we will leave that as it is because Ministers do not appear disturbed by that comment.

Question No.1604

IRREGULAR ALLOCATION OF KMC
LAND TO PRIVATE DEVELOPERS

Mr. Duale asked the Minister for Lands:-

(a) whether he is aware that huge acreage of land and properties that is owned by the Kenya Meat Commission (KMC) has been irregularly allocated to private developers across the country;

(b) whether he could provide a list of all the land parcels and properties owned by KMC indicating the Land Reference Numbers, their locations and status of ownership; and,

(c) what action the Ministry has taken to safeguard properties owned by KMC.

The Assistant Minister for Lands (Mr. Rai): Mr. Speaker, Sir, this Question was asked on Thursday, last week and the Questioner asked for some time to interrogate the list which I tabled. It was decided by the Speaker that the Question be asked on Thursday.

Mr. Speaker: Thursday, this week?

The Assistant Minister for Lands (Mr. Rai): Yes, Mr. Speaker, Sir.

Mr. Speaker: So, it has come too early?

The Assistant Minister for Lands (Mr. Rai): Mr. Speaker, Sir, it has come too early because I was supposed to go to another Ministry to check on the names of directors of certain companies which is not within my docket. In fact, I am requesting for more time so that I can answer this Question on Thursday, 23rd because when I went to the Registrar of Companies, I was told that for certain files to be available, they require about seven days.

Mr. Speaker: Fair enough! The Member for Dujis, it would seem that although this Question has appeared too early on the Order Paper away from the directions which were made, the Assistant Minister requires more time. So, will you agree that we grant him up to 23rd?

Mr. Duale: Mr. Speaker, Sir, as much as we will grant him time, he must bring the names of who is who in this document. We do not mind granting him that time.

Mr. Speaker: That is fine. Mr. Assistant Minister, that indulgence is extended to you. However, can you in the same vain confirm that you will bring all the names to the House?

The Assistant Minister for Lands (Mr. Rai): Mr. Speaker, Sir, I will do my best because I tabled the list. What was requested were the names of directors of certain companies which I am pursuing with the Registrar of Companies.

Thank you, Mr. Speaker, Sir.

Mr. Speaker: Very well! We will wait until 23rd.

(Question deferred)

Question No.1414

NAMES OF PROVINCIAL SCHOOLS EARMARKED FOR UPGRADING TO
NATIONAL STATUS IN COAST PROVINCE

Mr. Yakub asked the Minister for Education:-

(a) whether he could provide names of the two provincial schools per county earmarked for upgrading to national status in all the six counties in Coast Province; and,

(b) whether he could indicate the amount disbursed to the 12 schools so far.

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

(a) The schools that have been earmarked for upgrading in Coast Province per county are as follows:

In Mombasa County, they are Mama Ngina Girls and Shimo la Tewa High schools while in Kilifi County, they are Kilifi Boys School and Bahari Girls High School. In Kwale County, we have Kwale High School and Matuga Girls High School while in Taita Taveta County, we have Bura Girls and Kenyatta High Secondary schools in Mwatate. In Tana River County, they are Hola Boys and Ngao Girls High schools. In Lamu County, we have Lamu Girls and Mpeketoni High School.

(b) The schools have received money for upgrading as follows. Mama Ngina Girls has received a total of Kshs25 million; Kilifi Boys – Kshs25 million; Bura Boys - Kshs25 million and Kenyatta High School in Mwatate, Taita Taveta County has received a total of Kshs25 million. All the new schools have each received a total of Kshs25 million to date for upgrading.

Mr. Yakub: Mr. Speaker, Sir, I would like to thank the Assistant Minister for mentioning all the 12 national schools. I would also like to take this opportunity to thank the Minister and his Permanent Secretary for banning all the tuition holiday classes for both public and private schools.

My question is: What criterion did the Assistant Minister use in Mombasa County to pick the two schools; namely, Mama Ngina Girls and Shimo la Tewa?

Prof. Olweny: Mr. Speaker, Sir, the criterion that we used to pick those schools are the same ones that were used to pick the rest of the schools across the country. There were no special criteria used to pick those schools. However, generally, we followed this criterion across the country.

Each school that was to be selected had to have consistency in academic performance at the Kenya Certificate of Secondary Education (KCSE) for the last five years with a mean grade of C+. The second criterion is the accessibility and availability of physical facilities in the school; that is classrooms, dormitories and sanitation facilities. We were also looking at the geographical spread within the counties.

Affirmative action was also applied whereby schools which are in the Arid and Semi Arid Lands (ASAL) areas but could not meet the mean grade of C+ were considered. Those were the criteria used, but there was a meeting in which the District Education Boards (DEB), Parents Teachers Organizations (PTAs), Boards of Governors (BOGs), sponsors and stakeholders were called at the Kenya Institute of Education (KIE) last year on 16th May and 9th August to discuss and agree on the schools that were selected. So, this was not done by the Ministry alone. Several people were involved and they agreed on the schools which were selected across the country including the two schools the hon. Member has talked about.

Mr. Nyambati: Thank you, Mr. Speaker, Sir. I really want to thank the Assistant Minister for creating national schools in the counties. However, I want to know what steps he has taken to ensure that these schools are truly national because a school in my constituency which is supposed to be a national school is operating with less than half of what is supposed to be the teaching staff. This is Nyambaria High School which is a national school. What steps has the Assistant Minister taken to ensure that all the national schools we have created in counties have the facilities and the staff required to make them real national schools?

Mr. Odhiambo: On a point of order, Mr. Speaker, Sir. I wanted to ask the Assistant Minister---

Mr. Speaker: Order, the Member for Butula! “If you wanted”, that is in the past. So, Mr. Assistant Minister, proceed and answer the question by the Member for Kitutu Masaba.

Prof. Olweny: Mr. Speaker, Sir, I do not know which school the hon. Member is talking about. However, with regard to shortage of teachers, this is felt across the board in the whole country. All schools do not have adequate number of teachers and that is a problem we have put before the House quite often.

With regard to facilities, we have given out money. That is why the schools to be upgraded have been given Kshs25 million each. We will keep on funding these schools depending on the need. We will do an assessment after their upgrading and see how much money those schools still require to improve all their facilities and infrastructure.

Mr. Langat: Mr. Speaker, Sir, when this idea of creating national schools came up, the stakeholders were promised that each of those schools selected will be given Kshs25 million for four consecutive years. The Government has only paid for one year. What are you doing to pay to each of those schools the other amount which is now Kshs75 million?

Prof. Olweny: Mr. Speaker, Sir, I think I got the hon. Member right that this will be for four years and we are in the first year. Consecutive years means this year goes, then the next year and then the following one we come in. That is what consecutive years means; one year after the other.

Mr. Yakub: Mr. Speaker, Sir, I am a worried man on the issue of national schools at the Coast Province. From the answer given by the Assistant Minister, he has only mentioned four schools out of 12 which received the Kshs25 million. When will the Assistant Minister send the money for the rest of the eight schools which have not received the Kshs25 million for the first year, not for the other years?

Prof. Olweny: Mr. Speaker, Sir, that list has only four names. But all the schools as I have said have received their money even though it is not typed there. The first tranche was given in January this year. The second one for all of them was given in June.

Question No.1697

DRILLING OF OIL IN NYATIKE CONSTITUENCY

Mr. Anyanga asked the Minister for Energy:-

(a) when the Government will commission the drilling of oil in Nyatike Constituency which has been established through previous studies conducted in the area; and,

(b) how much money has been allocated for the drilling of the oil and whether he could indicate if there is any commitment from development partners supporting the project.

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

(a) The Ministry of Energy is not aware of any previous studies conducted in Nyatike area revealing any targets for drilling. However, the Ministry, on behalf of the Government of Kenya, signed the production sharing contract with Tullow Kenya (BV) and Swala Energy Kenya Limited on 16th February, 2012, to carry out oil exploration in the Nyanza trough that is popularly known as Block 12B. Tullow (BV) which is the block operator is already undertaking geotechnical surveys which are essential for ascertaining drillable prospects. On the basis of the production contract, drilling is expected to be undertaken in the year 2015.

(b) Under the production sharing contract, the aggregate expenditure on the geotechnical investigations including drilling and exploration well is estimated at a value of US\$10.6 million.

There is no other commitment so far from any development partner to support oil exploration in the said area.

Mr. Anyanga: Mr. Speaker, Sir, I sympathize with the Assistant Minister because he has given me an answer which is full of contradictions. I believe that before coming up with Block 12B, there must have been some studies done. Now that the Assistant Minister has confirmed that the contract has been signed between the Government and Tullow Kenya (BV) and Swala Energy, could he tell this House how many constituencies are covered in Block 12B and the names?

Mr. Magerer: Mr. Speaker, Sir, I want to tell the hon. Member that he does not need to really sympathize with me because what I am giving is very competent information and that is why he is asking me. Block 12B encompasses a general area within and around Lake Victoria on the side of Kenya which begins from the constituencies in my neighbouring county of Kericho; that is, the lower part of Belgut. We have Nyando, Nyakach, Nyatike constituencies and part of Kisumu. When we create a block we are not confirming that there is oil. We are only saying that there are prospects and that is why we have commissioned those two companies to begin the studies so that the Ministry of Energy can competently move forward and say this is the area that we feel the prospects are more positive.

Mr. Anyanga: Mr. Speaker, Sir, the Assistant Minister has confirmed clearly that Nyatike is also included in Block 12B. That is why I was saying he is contradicting himself. Now that he has confirmed that Nyatike is also in Block 12B, could he confirm the compensation prospects that are supposed to be done by the Government for the local residents on whose lands the activities are to take place?

Mr. Magerer: Mr. Speaker, Sir, I still insist I have not contradicted myself in any of my answers. I have just said we have cast the net wide. The hon. Member is supposed to be a fisherman and he knows what it means to cast the net wide. We have chances of catching more fish within that net. The Ministry has commissioned two competent companies to begin studies after which now we will move prospectively to know what exactly we are supposed to do. If it touches any community which may be required to give up some of the land or their property, then the procedures of compensation are obvious.

I want to assure the House and the hon. Member that there is no need to panic and I know he will be sheikh soon when we discover that his area has oil.

Thank you.

Question No.1686

NON-PAYMENT OF MONIES AWARDED TO
M/S ECHALCO CONTRACTORS

Mr. Mbadi asked the Minister for Medical Services:-

(a) whether he is aware that the owner of M/s Echalco Contractors was to be paid Kshs525,181 and the total cost of the suit file and interest against the Medical Superintendent of Suba District Hospital; and,

(b) when he will be paid.

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

(a) I am aware that Homa Bay Principal Magistrate court ordered that M/s Echalco Contractors be paid a sum of Kshs525,181 plus interest and the suit cost.

(b) He will be paid after the necessary authorization has been obtained from the Attorney-General and the Treasury.

Mr. Mbadi: Mr. Speaker, Sir, this particular contractor comes from my constituency and they are just beginners who we are trying to encourage to do business. They have tied this amount of money in this contract. This case was determined in January this year. From January to date, the contractor has been waiting for this payment without any success. Could the Assistant Minister tell this House when this contractor will be paid because all the information he is giving us is about one Government department doing something? Could he tell us comprehensively when this contractor will be paid for the amount that the court has already awarded him?

Mr. Kambi: Mr. Speaker, Sir, there are always some procedures to be followed once a court has awarded a client and the procedure---

Mr. Speaker: Order, Assistant Minister! It is a simple question; when will the contractor be paid?

Mr. Kambi: Mr. Speaker, Sir, once we have the authorization from the Office of the Attorney-General, we will inform the Ministry of Finance to avail the funds.

Mr. Bahari: Mr. Speaker, Sir, I am surprised that it has taken the Ministry so long to act on a matter that has already been determined by court. Even after hon. Mbadi asked specifically when the money would be paid, the Assistant Minister did not answer. Could he give a timeframe within which this matter will be sorted out? This is a court's decision.

Mr. Kambi: Mr. Speaker, Sir, I agree that it is a court decision, but in Government, we have procedures which must be followed to the letter.

Mr. Olago: Mr. Speaker, Sir, the Government has taken a deliberate affirmative action decision to encourage the youth to partake of Government contracts. This is very discouraging to the youth. You put in all the investments that you have in Government tenders, but you do not get paid. You and I know that this money will not be paid until the matter has passed through the Chambers of the Attorney-General. I am glad that the Attorney-General is in the House or in his office listening. Maybe, he could be in a position to offer more assistance to the House on what his office is doing to ensure that the Cabinet resolves on how to discharge of all pending judgements. They are in billions of shillings.

Mr. Speaker: Mr. Assistant Minister, you are the one answering this Question. Give an estimate of time and live with it.

Mr. Kambi: Mr. Speaker, Sir, we, as a Ministry, fast-tracked the process and forwarded the necessary documents to the Office of the Attorney-General. If we receive back the documents today, we can process the payment immediately.

Mr. Speaker: Mr. Assistant Minister, are you able to be comfortable to say that you will pay within the next 45 days? Put it on record and then pursue payment.

Mr. Kambi: Mr. Speaker, Sir, I am not sure. I do not know how long the Office of the Attorney-General will take to process the documents. I may give a timeframe of a month and then it turns out that they take two days.

Mr. Speaker: Order, Mr. Assistant Minister! In that case, I direct that you endeavour to effect payment within 45 days from today. The Attorney-General has heard the House and he will give you the requisite support. We will place this matter on the Order Paper again after 45 days to see if you have paid or you have not.

Mr. Kambi: Thank you, Mr. Speaker, Sir. I will try my best to pursue the matter.

(Question deferred)

Mr. Speaker: Next Question, Member for Machakos Town.

Question No.1676

CAUSE OF FREQUENT POWER BLACKOUTS
IN MACHAKOS TOWN

Dr. Munyaka asked the Minister for Energy-

(a) what the cause of the frequent power shortages/blackouts in Machakos Town and its environs is;

(b) whether he is aware that this has caused immense suffering and loss of business to the residents of Machakos; and,

(c) what urgent action he will take to solve the problem once and for all.

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

(a) The power interruptions have been caused by breakdowns due to vandalism on the 66 KV lines from Juja and Embakasi, which supply Athi River Sub-Station, from where a 33 KV line supplies Machakos Town. During the last three months, 7 stays and 15 transformers were vandalised on the Machakos Town feeder. The transformers had their oil siphoned and the stays stolen, thus causing power interruption and disruptions.

(b) I am aware that the situation then caused suffering and some business loss to Machakos residents. The situation has since been rectified.

(c) The Kenya Power and Lighting Company (KPLC) Limited has embarked on replacement of all the stays with strut poles on all lines where feasible. The company has also intensified maintenance of the main 11 KV Machakos Town feeder line. Vandalised transformers are also being replaced and erected above the 11 KV lines, with some of them being relocated to safer locations.

Mr. Speaker, Sir, I would also like to convey my appreciation to this august House for amending Sub-Section 64(4) of the Energy Act, 2006, to introduce a fine of Kshs10 million or a jail term of ten years or both on persons found guilty of vandalism of energy infrastructure. This is expected to mitigate on the vandalism on electricity supply lines, which has become too much in the country.

Other measures we envisage to complete putting in place by 2014 include the upgrading of the sub-station off Machakos to 7.5 MVA; the construction of a 66/11 KV Sub-Station in Daystar University area; construction of a 220/66KV Sub-Station at Isinya to provide an alternative to the 66KV power supply line, which comes all the way from Juja and Embakasi; and the construction of a new Sultan Hamud 132/33 KV Sub-Station to provide another supply source dedicated to Machakos Town and its environs, including Konza City.

Dr. Munyaka: Mr. Speaker, Sir, I want to disagree with the Assistant Minister because, as late as Sunday and yesterday, and the whole of last week, Machakos experienced power blackouts. People have lost their electronic devices such as television sets and computers due to power surges. Could I request him to transfer the KPLC staff members who are there, because they are very lazy and are unable to communicate with my people as they suffer? They do not even give my people notice of electricity supply interruption.

Mr. Speaker: Mr. Assistant Minister, restrict yourself to the part that is the question in answering.

Mr. Magerer: Mr. Speaker, Sir, I want to assure the hon. Member that in the event that people lose property arising from a problem occasioned by our failure to supply adequate power, there is a way in which we compensate individuals. I also want to assure the hon. Member that all my staff members are hardworking. Should there be any evidence of laziness among staff members within any of the parastatals within my Ministry, I will not hesitate to deal with them with immediate effect.

Mr. Njuguna: Mr. Speaker, Sir, emerging from the answer given by the Assistant Minister, it is saddening that even up to yesterday, transformers were being interfered with by vandals. What deliberate efforts is the Ministry taking to ensure that the remaining transformers are protected from vandals?

Mr. Magerer: Mr. Speaker, Sir, first of all, we are trying to locate transformers in very safe areas, unlike before when we would locate them anywhere along the line. To this end, we are working with communities who have allowed us to locate transformers within school compounds or in areas with 24-hour security. In areas where we do not have any form of assured security, we have started placing transformers higher than the 11 KV lines, so that they are actually above the power lines. We are trying to discourage people from accessing the transformers. So, I am sure that with time, we will have less cases of transformer vandalism.

Mr. Pesa: Mr. Deputy Speaker, Sir, power blackouts are not peculiar to Machakos area. It is happening almost all over Kenya. The Assistant Minister has said that there is a new law that will help protect our transformers and bring vandalism of electricity lines in the country to an end. Has he started using that law?

Mr. Magerer: Mr. Speaker, Sir, I would not have talked about that law if we had not started using it. I want to assure the House that the law is being followed. The Ministry of Energy will not hesitate to act on any case where the law is seen to have been violated leading to suffering by Kenyans.

Dr. Munyaka: Mr. Speaker, Sir, since the Assistant Minister has said that he is aware of the law and Kenyans are losing a lot of money due to vandalism, could he, in real sense, confirm how many people have been arrested and taken to court because of vandalism which is taking place every day?

Mr. Magerer: Mr. Speaker, Sir, I cannot confirm the number of people or cases that have already been forwarded now, but I can assure this House that the Legal Services Department of the Ministry and also the concerned parastatals can avail that information. I can avail it to the House as soon as Thursday.

Mr. Speaker: Very well. Please ensure that you file that information with hon. Dr. Munyaka and make it available to the House by depositing copies of that information in Room No.8. I will not direct that the Question should reappear on the Order Paper. If it is necessary, hon. Dr. Munyaka will do the necessary prompting. That brings us to the end of Question Time.

Next Order!

MINSITERIAL STATEMENTS

AUDIT REPORT ON THREE WORLD BANK-FUNDED PROJECTS

The Minister for Finance (Mr. Githae): Mr. Speaker, Sir, on 1st September 2011, hon. Ogindo rose on a point of order and requested for a Ministerial Statement from the Minister for Finance in relation to the following three World Bank-funded projects:-

- (a) Western Kenya Community-driven Development and Flood Mitigation Project.
- (b) Kenya Education Sector Support Programme.
- (c) Arid Lands Resource Management Programme Phase II.

He further sought for a clarification on the findings and recommendations of the Internal Audit Department of the Treasury on those projects and further, an explanation on the responses of the World Bank, if any, to the audit report. He also requested that I table copies of the reports and responses from the World Bank.

Mr. Speaker, Sir, the audit findings, recommendations and responses from the World Bank are as follows:-

Let me start with Western Kenya Community-driven Development and Flood Mitigation Project. That project is implemented by the Ministry of State for Special Programmes and the initial indepth forensic audit carried out in October 2009 revealed cases of suspected fraud and ineligible expenditure amounting to Kshs55,993,947.20.

[Mr. Speaker left the Chair]

*[The Temporary Deputy Speaker
(Dr. Laboso) took the Chair]*

Madam Temporary Deputy Speaker, however, a validation exercise done jointly by the parent Ministry and Treasury confirmed that the expenditure deemed ineligible amounted to Kshs11,530,212, of which an amount of Kshs8,726,407 was financed with a credit from the World Bank, IDA, while Kshs2,803,805 was funded from other Government of Kenya (GoK) sources of financing. The staff involved in the loss of funds were subjected to Government disciplinary and legal mechanisms, while the IDA finance portion of the ineligible expenditure was reimbursed to the World Bank as part of the conditions of the financing agreement.

Madam Temporary Deputy Speaker, let me now turn to Kenya Education Sector Support Programme (KESSP). Treasury conducted two audits reviews of KESSP. The first audit review conducted between 12th January 2009 and 24th April 2009 was part of a joint initiative between the Government and World Bank, whose key objective was to assess operational, fiduciary, project design and other factors that were hampering smooth flow of funds and effective project implementation.

Madam Temporary Deputy Speaker, the fiduciary audit of KESSP flagged key integrity issues relating to forged documents and signatures amounting to Kshs102 million relating to 13 out of 23 investment programmes of KESSP. However, this audit covered only a sample size of less than 0.5 per cent of the targeted population and concentrated only on 30 per cent of the transactions at the Ministry of Education headquarters for the month of June 2009.

Madam Temporary Deputy Speaker, in order to have a clear picture of the magnitude of risks and financial management challenges facing KESSUP, Treasury, on the request of the Ministry of Education, decided to undertake an expanded forensic audit of KESSUP covering a period of four financial years from 2005 to 2009. That audit revealed ineligible expenditure amounting to Kshs4.6 billion. Those were expenditures which do not need some financing

conditionalities e.g. fraud, lack of supporting documents, miscoding and miscalculation of expenditures.

Madam Temporary Deputy Speaker, I wish to inform this House that a figure of Kshs2.274 billion forming part of the total ineligible expenditure figure of Kshs4.6 billion has now been reconciled and explained to the satisfaction of the audit department, while other amounts relating to imprests and facilitation payments have been flagged as requiring further administrative action by the Ministry of Education. I wish to further inform this House that the Government has refunded to the development partners a total amount of Kshs347,902,827.30 as follows:-

World Bank – Kshs144,244,070; DfID – Kshs164,536,531.02; CIDA – Kshs47,475,714, and UNICEF – Kshs1,818,512.

Madam Temporary Deputy Speaker, KESSUP closed in June 2011 and the joint financial partners supporting the programme have been impressed by the action taken by the Government in addressing the identified governance challenges.

Lastly, let us turn to Arid Lands and Resource Management Project Phase II. The Arid Lands and Resource Management Project is a community driven development project (CCCD) under the Ministry of State for Development of Northern Kenya and other Arid Lands. The project was implemented in 28 arid and semi-arid districts and came to an end in December 2010 following a joint decision by the Government and World Bank to suspend further disbursements. A forensic audit by Institutional Integrity Department of the World Bank was triggered by allegations of fraud and corruption in the implementation of the project which were communicated directly to the World Bank headquarters. However, the nature and details of the allegations have never been shared with the Government. The World Bank audit of April 2009 focused on seven districts namely Wajir, Isiolo, Samburu, Garissa, Tana River, Nyeri and Kajiado, including the project headquarters in Nairobi, and covered 2006 to 2008 financial years. The report was forwarded to the Government after a period of two years since the commencement of the audit. The report highlighted some questionable expenditures as well as suspected fraudulent expenditures totaling Kshs362 million, including specific risks and financial management challenges facing the project. In order to address the accountability and financial management challenges highlighted in the World Bank forensic audit report, Treasury made a commitment to conduct a risk based audit review of the project using World Bank as a roadmap. A key outcome of the audit review was a confirmation that a total amount of ineligible expenditures amounted to approximately Kshs48 million as opposed to the World Bank figure of Kshs362 million, while expenditures amounting to Kshs165 million were categorized for further investigations.

Madam Temporary Deputy Speaker, an accountability action plan jointly developed between the Government and the World Bank has been under implementation in order to ensure that the risks and financial management challenges that plague those three projects do not re-occur again. All Government staff that were adversely involved in integrity issues highlighted in all the three audit reports were put under investigations by Kenya Anti-Corruption Commission (KACC) and some have been arraigned in court.

Madam Temporary Deputy Speaker, I now table the three audit reports together with the letters dated 9th November 2011 from Mr. Hassan Bahari, the Executive Director of the World Bank, another dated 24th October 2011 from Mr. Joseph Kinyua, Permanent Secretary to the Treasury and another of 6th October 2011 from Mr. Johan Issut, the Country Director for Kenya in the World Bank.

(Mr. Githae laid the documents on the Table)

Further, I wish to assure this House that the lessons we have learnt with respect to the weaknesses in the control environment in the three programmes will form further work in the rest of the Ministries in order to ensure strengthened public financial management system in the entire Government.

Madam Temporary Deputy Speaker, you have given me permission to read the second one.

QUARTERLY ECONOMIC/BUDGET REVIEW REPORT

Madam Temporary Deputy Speaker, on Thursday 17th November, 2011, the Member for Garsen, Mr. Mungatana, sought a Ministerial Statement from the then Deputy Prime Minister and Minister for Finance on the Quarterly Economic and Budget Review Report. Specifically, the hon. Member sought clarification on the following:

(i) Why is it that there were exceptionally high Exchequer releases in the first quarter of 2011/2012 to the Ministry of Education, 41 per cent, Ministry of East African Community, 35.6 per cent, State Law Office, 31 per cent and Ministry of Trade, 30.6 per cent---

The Temporary Deputy Speaker (Dr. Laboso) Order, Mr. Minister!

What is your point of order, Mr. Ochieng'?

Mr. Ochieng: On a point of order, Madam Temporary Deputy Speaker. I thought procedurally we were supposed to interrogate the first Statement before the Minister proceeds to read the next Statement. This is because we have weighty issues to raise.

The Minister for Finance (Mr. Githae): Madam Temporary Deputy Speaker, the Speaker had said that I read them together.

The Temporary Deputy Speaker (Dr. Laboso): I think it is in the interest of time. Allow him to do the two; just put your questions down. We will take no more than four interventions on the two Statements.

Continue Minister.

The Minister for Finance (Mr. Githae): Thank you, Madam Temporary Deputy Speaker.

(ii) Why is it that there was non-release of the Exchequer to the Ministry of State for Immigration and Registration of Persons in the first quarter of 2011/2012? Does it mean that the Appropriations-In-Aid (A-in-A) that is collected by the Ministry was not converted to revenue?

(iii) Why have most Ministries received exceptionally low Exchequer issues on development funds? Will this lead to non-implementation of the projects and the programmes?

(iv) Is the commitment to keep inflation rate within a single digit being violated? What have been the factors? Why is it that in this quarterly review the inflation has been disobeyed; we have gone double digits within the first quarterly review?

(v) Has the Minister been faithful in utilizing the funds that Parliament has given him? If he has overdrawn any money from the Consolidated Fund which was not in the Budget, has he, in keeping with the Constitution, brought anything to Parliament under Article 243 of the Constitution for further approval?

Madam Temporary Deputy Speaker, arising from the above request, I wish to state the following:

(i) As part of the ongoing financial management reforms being undertaken in Government, Exchequer issues are released to Ministries and departments as per their cash requirement projections which are based on work plans and procurement plans. Further, in order to eliminate idle cash in Ministries' and departments' bank accounts, cash is availed only when the payment process is finalized at the Ministry and payment instructions issued to the Central Bank of Kenya (CBK). Therefore, Ministries with programmes which require cash early in the year will, on the basis of agreed cash projections, receive more cash during that period relative to those Ministries whose programmes are to be undertaken in the second quarter or later in the second half of the financial year. That explains why Exchequer releases differ among Ministries and departments.

(ii) Regarding the non-release of Exchequer issues to the Ministry of State for Immigration and Registration of Persons, this was because the Ministry has been utilizing cash brought forward from 2010/2011 which, when confirmed after audit is completed, the balance will be paid into the Exchequer. The Ministry can at anytime request Exchequer issues through instructions to the CBK when cash carried from 2010/2011 is exhausted.

Madam Temporary Deputy Speaker, I wish to state that it is true that the A-i-A which the Ministry has been collecting was converted into revenue with effect from 2011/2012 financial year, and a receiver of revenue has since been appointed for that purpose.

(iii) It is true that most Ministries have received low Exchequer issues or development funds in the first quarter of 2011/2012 financial year. As indicated above, Exchequer issues to Ministries and departments are based on cash projections drawn against work plans, procurement plans and payment instructions to the CBK. Usually, most of the Ministries are not able to absorb funds in the earlier part of the year because their procurements are yet to be finalized.

(iv) On inflation, I wish to state that the Government has not moved away from its commitment of keeping inflation at the single digit level. However, it is true that there was inflation due to high food and fuel prices associated with the drought at the first half of 2011, and the high international oil prices. During this period, also electricity tariffs increased and the country had to resort to use of expensive thermo-generated electric power, following reduced hydro-power as water levels in the dams were adversely affected by the drought. In addition, the weakening of the shilling against convertible currencies during this period also exacerbated the inflation pressures.

Finally, there was also demand pressures associated with faster growth in bank credit to the private sector.

To rein in on inflation, the CBK has taken measures to tighten monetary policy, while on the fiscal side, the Government has taken austerity measures to contain Government expenditures.

(v) I wish to confirm that I have been faithful in disbursing funds to Ministries and departments on the basis of the appropriations by Parliament. It is also important to know that the Consolidated Fund cannot be overdrawn and no cash can be drawn from the Consolidated Fund without the approval of the Controller of Budget.

I thank you, Madam Temporary Deputy Speaker.

The Temporary Deputy Speaker (Dr. Laboso): Hon. Members, I will allow two clarifications on each Statement. Let us start with the first Statement.

Mr. Charles Keter, is this a clarification or you want to request a Statement?

Mr. Keter: A request for Statement.

The Temporary Deputy Speaker (Dr. Laboso): Could you hold on and let us get the clarifications on these Statements first?

Dr. Khalwale: Madam Temporary Deputy Speaker, on his own admission, the Minister has confirmed that the Treasury has refunded a total of Kshs356 million to the World Bank CIDA, UNICEF and Dfid. This money was intended to give Kenyans development instead it has been used to pay money that was stolen by officers. Could the Minister tell the House what action the Government is going to take against the following officers:-

- (i) the project coordinating officers;
- (ii) the accountant in the Ministry of Education;
- (iii) the Accounting Officer, namely the Permanent Secretary;
- (iv) the Minister in charge.

Madam Temporary Deputy Speaker, the Minister will remember that the Prime Minister, because of these funds, suspended Prof. Ongeru from his duties and told the country that he had sent the Efficiency Monitoring Unit (EMU) into that Ministry to get to the bottom of this. If this is now the finding, is the Government going to allow the Prime Minister now to move from suspending Ongeru to sacking him?

Mr. Njuguna: Madam Temporary Deputy Speaker, I thank the Minister for that very bold Statement. We note with disappointment that a huge amount of money, running into billions, was lost by the Ministry. What is the Ministry doing with the individuals suspected to have misappropriated these funds? What is happening with the accounts?

The Temporary Deputy Speaker (Dr. Laboso): Mr. Ogindo, is it on the first Statement or the second? We should now be moving to the second Statement. Is your clarification on the first or the second Statement?

Mr. Ogindo: Madam Temporary Deputy Speaker, mine is on the findings and recommendations of the internal audit on the World Bank-funded projects; that is the first Statement.

Madam Temporary Deputy Speaker, my clarification on that Statement is: Now that the money has been refunded, what is the fate of these projects? Could the Minister clarify?

The Temporary Deputy Speaker (Dr. Laboso): Mr. Namwamba, is yours on the second Statement?

Mr. Namwamba: Madam Temporary Deputy Speaker, it is on the first Statement on the World Bank funded projects.

The Temporary Deputy Speaker (Dr. Laboso): Go ahead! It looks like there are no clarifications on the second Statement because I really have to end these clarifications on these two Statements.

Mr. Namwamba: Madam Temporary Deputy Speaker, the Western Kenya Flood Mitigation community driven project was particularly badly hit by this problem to the extent that the project has lagged behind. The project has lost two years of the scheduled eight year implementation programme. Whereas I want to appreciate the efforts that the Government has made and the progress that has been made to get the project back on track, I would like the Minister to just clarify the efforts or steps that have been put in place to now protect this project from these kind of challenges and how the Government intends to conclude this project in time, in view of the time lapse, the two years that we have already lost and whether while making those refunds, the Government engaged the World Bank on the completion period, the project period which was initially set at eight years.

The Minister for Finance (Mr. Githae): Madam Temporary Deputy Speaker, let me start with the clarification sought by Dr. Khalwale. We must make a distinction between what he calls stolen funds and ineligible expenses. Starting with the funds, the funds that were proved to have been stolen or obtained through fraud, action was taken against individual officers who either took the imprests and submitted forged receipts or took imprests and did not account for it. So action was decided to be taken against the individual officers and not the Accounting Officer because when you take imprest, it is personal. You are the one who is supposed to account for it and so if you account for it through fraudulent receipts, then action is due on you and not the Accounting Officer. So action was taken against those officers and quite a number of them were taken to court and one or two jailed.

The other is the issue of ineligible expenses. What I did when I was given this docket was to unlock - because for two years, these programmes were suspended - the further disbursements. I made a decision that we separate between internal and external issues. We said for us to get further disbursements from development partners and even further credit, we needed to unlock. So we said we should refund and as we do so, we take action internally against those officers. We started with the ones who had stolen the funds and they were taken to court. Then there were others who had misused the funds either through over-inflating the invoices or having no regard to common sense. For those, administrative action and disciplinary action has been taken against them.

There were others who were heading towards ignorance, for example, facilitation. When the credit agreement did not allow for facilitation of, say, transport, they would pay petrol which was properly used but was not covered by the credit agreement. That should have been covered by the Ministry itself. So on those ones, they have been taken through training so that they do not incur further ineligible expenses.

Madam Temporary Deputy Speaker, so action has been taken against those who stole the money and they have been taken to court. On the project co-ordinators, action has been taken against them especially those who misused the funds, particularly those who gave fictitious lists of attendance because that can be proved. Lastly, action was not taken against Prof. Ongeru because he was not the one who actually received the imprests. It was the individual officers who received the imprests and, therefore, no action was taken against Prof. Ongeru.

Mr. Ogindo: On a point of order, Madam Temporary Deputy Speaker. Is it in order for the Minister to take us through this without really tabling evidence, particularly in the manner they made the refunds?

The Temporary Deputy Speaker (Dr. Laboso): The Minister had already tabled the documents. I think it was three documents. Continue, Minister and please try to summarize because we are running out of time.

The Minister for Finance (Mr. Githae): Madam Temporary Deputy Speaker, I am going to table all these reports; they are huge. I thought I may need to refer to them but I am going to do that.

On the clarification sought by Mr. Njuguna, again, we had to unlock---

Dr. Khalwale: On a point of order, Madam Temporary Deputy Speaker. Is the Minister in order to say that the Kshs356 million they refunded was not lost when it is a fact that after the ineligible expenditure was established and a decision was made to refund, the money which was refunded was not the money which the World Bank and those other institutions channeled to that Ministry? They got that money from other sources including money meant for drought mitigation. So if there was no money lost, why did they not use the same money that had been

channeled to refund but instead went to other sources? Could he give us full disclosure on who took the Kshs356 million because had it not been taken away, they would have simply taken it back but they had to source the refund from other sources?

The Minister for Finance (Mr. Githae): Madam Temporary Deputy Speaker, as I explained very clearly, we had to unlock further disbursements because this was affecting further credit. So it is true that we refunded the amounts from the Budget and other programmes obviously were affected but it was in a way a good investment because it unlocked further disbursements and the programme is now back on course. We have been promised more donor funding, so to that extent this is money well spent.

For those who misused, defrauded or stole funds, action has already been taken against them. The ones who incurred ineligible expenditure; meaning that although the funds were actually utilized, they were not covered under the credit agreement, administrative action has been taken against them. I am being advised that it is called misapplication of funds and not misappropriation. The ones that were done through ignorance, particularly by the project coordinators, they have been retrained and we have learnt lessons.

On the clarification sought by Mr. Njuguna, yes, we have many lessons for this and now before project coordinators are appointed, they are, first of all, trained so that they do not incur those kind of ineligible expenses. They have been taken through the agreement and they now know what is allowed and what is not allowed. If facilitation is not provided for in the credit agreement, you cannot use it to pay drivers, petrol or accommodation because most of the expenses were relating to ineligible expenditure.

With regard to Mr. Martin Ogindo's question, yes, the money was refunded. Obviously, it affected other programmes. If you look at the money that was refunded and the further disbursements that are going to take place and even further credit, purely from a business point of view, it was the right decision to take. We have actually unlocked the process.

I would like to assure hon. Namwamba that the programme is now on course. This was a very important project, but it was mishandled by the project co-ordinators. So, it is on course and we will recover the time we lost.

Thank you, Madam Temporary Deputy Speaker.

The Temporary Deputy Speaker (Dr. Laboso): I will not take any more interventions on that Statement. I will now move on to requests. Hon. Keter, you are the first one. I am only expecting two requests that have already been approved by the Speaker.

POINTS OF ORDER

CANCELLATION OF TENDER AWARDED TO AWI CONSTRUCTION ENGINEERING COMPANY

Mr. Keter: Thank you, Madam Temporary Deputy Speaker. I wish to seek a Ministerial Statement from the Minister in charge of Transport in relation to the ongoing tender to construct another airport at the Jomo Kenyatta International Airport known as the Green Field Project.

In the Statement, the Minister should explain why the tender awarded to a Chinese Company, AWI Construction Engineering Group, is being cancelled at the end, when the whole procurement process appears to have been above board.

Two, whether or not he instructed Kenya Airports Authority to cancel the tender when the Authority feels the procurement process was adhered to and the Attorney-General has advised as much.

Three, how much money is the Government going to lose or pay, if it cancels the tender at this stage and why he is disregarding the advice from the Attorney General.

(Mr. Duale stood up in his place)

The Temporary Deputy Speaker (Dr. Laboso): Order, hon. Member! Are you on a point of order, hon. Duale because you have switched yourself off again? Allow hon. Keter to complete his request.

Mr. Keter: Lastly, are there other considerations being applied to cancel this tender? Thank you, Madam Temporary Deputy Speaker.

The Temporary Deputy Speaker (Dr. Laboso): Hon. Baiya, do you have a request for a Statement?

(Mr. Baiya stood up in his place)

I am only aware of requests by hon. Keter and Dr. Khalwale. I cannot see your request---

Mr. Duale: I want to add on to hon. Charles Keter's request.

The Temporary Deputy Speaker (Dr. Laboso): You want more points to be included in his Statement?

Mr. Duale: Madam Temporary Deputy Speaker, I want the Minister for Transport to further provide a list of all the bidders; both local and international, for the Green Park section of the airport. We want him to provide the technical and financial evaluation reports done. We also want him to confirm whether he has a personal interest in this said contract.

The Temporary Deputy Speaker (Dr. Laboso): Mr. Minister, when will that Statement be ready?

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Speaker, let me at the very outset state that I have no personal interest in this tender now or in the future. My only interest is to ensure Kenyan taxpayers get value for their money. That is not personal. That is what every Kenyan wants.

Madam Temporary Deputy Speaker, I just want to state that the tenderers have also lodged an appeal with the Public Procurement Oversight Administrative Review Board (PPOARB), which is a *quasi-judicial* institution. I will need your guidance in terms of whether we should be responding to this before the determination of that matter in the PPOARB. This is because whatever we say here could be used there, especially with the way the whole of this transaction has been handled. There is information being peddled around and used to support various actions.

So, I need your guidance on that. I am prepared to give the Statement any time from Thursday, but subject to clarification as to whether the House should be discussing this matter when it is also being canvassed with the PPOARB for the same reasons.

Madam Temporary Deputy Speaker, let Members disregard what appeared in the media by the obviously some interested and compromised journalists. I can say that without doubt. The issue that we are talking about here is that there is no tender that has been awarded. A tender that has not been awarded cannot, therefore, be cancelled. So, there is no issue of a cancellation of

what has not been awarded but I will clarify that within the statement. I would like ask the House and the nation to ignore what obviously appeared in the media by people who are trying to canvass things for a tender and who are misusing the information that has been given. But I need your guidance as to what happens when the matter is also before the PPOARB.

The Temporary Deputy Speaker (Dr. Laboso): So, you are ready? You said you can have the Statement by Thursday, next week.

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Speaker, I can even issue the Statement on Thursday this week. I have all the facts at my fingertips. We can give them on Thursday but I need your guidance on whether the appeals they have lodged will not be highly compromised, or whether it is not quite *sub judice*. I am sure they want the pressure from the House to go and put more pressure on the PPOARB by telling them this is what Parliament has said. We need to protect public funds. We are talking about \$700 million at play here.

The Temporary Deputy Speaker (Dr. Laboso): Hon. Members, I think we will get the ruling.

Mr. Kimunya, get your Statement ready and we will get the ruling from the Speaker as to whether there is any damage by having the Statement read. You will be given direction on when you will give it.

POINT OF ORDER

PROCUREMENT OF BVR BY KENYAN GOVERNMENT

Dr. Khalwale: On a point of order, Madam Temporary Deputy Speaker. Last week, the Minister for Justice, National Cohesion and Constitutional Affairs undertook to issue a Ministerial Statement in response to my request for one in respect of the Government to Government procurement of the BVR for use in voter registration. He said he will do it today.

The Temporary Deputy Speaker (Dr. Laboso): Who is the Minister concerned?

(Mr. Wamalwa rose to speak from the Back Bench)

Now, Mr. Minister, you need to be in right position! When will you be able to give that Statement and you may not speak from that position.

(Mr. Wamalwa moved to the Dispatch Box)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): *Off record.*

The Temporary Deputy Speaker (Dr. Laboso): In the afternoon, it shall be.

The Minister for Transport, you will also get the direction on Thursday before giving your Statement.

Mr. Keter: On a point of order, Madam Temporary Deputy Speaker. After listening to the Minister in charge of Transport, he has said this case is before the PPOARB. I want him also in that Statement to include, which companies of those who tendered appealed against the company which had been awarded this contract, so that truth can come to the Floor of the House.

Madam Temporary Deputy Speaker, this is a contract which has not been signed yet. So, to me, the facts are facts. It will not change anything even if it is before the PPOARB. It will not change. They will remain the same.

(Dr. Khalwale stood up in his place)

The Temporary Deputy Speaker (Dr. Laboso): Dr. Khalwale, are you on a point of order?

Dr. Khalwale: Yes, Madam Temporary Deputy Speaker. The Minister for Justice, National Cohesion and Constitutional Affairs should, at least, give us an explanation as to why he has changed from giving the Statement today to Thursday this week. That is because when the Speaker allowed Tuesday, it was after a request from them. We had demanded that the Statement be issued on Thursday last week; the reason being that there is the issue of urgency. Unless the procurement is concluded expeditiously, it means that belatedly as it might be, it might not be accorded sufficient time, so as to allow the Biometric Voter Registration (BVR). Could he tell us why he cannot do it today?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Madam Temporary Deputy Speaker, I was not in the House when the hon. Member requested for this Statement, but I have been advised to make the Statement on Thursday. Perhaps, we might need to look at the HANSARD. The impression I had was that the Statement be made on Thursday. We have prepared it and we will deliver it on Thursday.

Mr. Baiya: On a point of order, Madam Temporary Deputy Speaker. It is possibly better that I also bring to the attention of the House the fact that the Committee on Justice and Legal Affairs as well as the Constitution Implementation Oversight Committee (CIOC) are already seized of this matter. We were due to actually present a report today but, owing to the nature of the matter, we are likely to do so on Thursday. I am not sure whether the Minister, by coming and making his own response to this, it will not be anticipating the report that the Committee is about to actually present to this House. So, really that is a matter of procedure that I am raising on a point of order.

The Temporary Deputy Speaker (Dr. Laboso): So, the point of order is whether we should have the Statement and Report on the same day or we should have one and not the other. Minister, do you want to make a response?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa): Madam Temporary Deputy Speaker, I am actually appearing before the Committee on Justice and Legal Affairs tomorrow on the same matter. I believe that whatever I will be delivering before this House on Thursday will be basically the same as what I will be submitting before the Committee. So, perhaps, in the interest of saving time of the House, if we could wait for the Committee Report after getting what I will be delivering before it, and then the hon. Member and House can interrogate that Report which will basically be on the same matter.

The Temporary Deputy Speaker (Dr. Laboso): I think that sounds like a reasonable way to proceed. We can get the Report of the Committee and if there are further clarifications, then they can be sought at that time.

That brings us to the end of Statements. We will not take any more interventions. Dr. Khalwale, I can see your light is on, but, unfortunately, it is late. Before we move to the next order, I would like to clarify that we will only be dealing with the Teachers Service Commission

Bill. The other two - the Legal Education Bill and the Kenya School of Law Bill are both deferred because the amendments are not ready. So, we will only be handling the first one.

THE LEGAL EDUCATION BILL

THE KENYA SCHOOL OF LAW BILL

(Consideration of Bills in the Committee of the Whole House deferred)

Next Order!

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

*[The Temporary Deputy Speaker
(Dr. Laboso) left the Chair]*

IN THE COMMITTEE

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

THE TEACHERS SERVICE COMMISSION BILL

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Members! We are in the Committee of the whole House and will be considering the Teachers Service Commission Bill.

Clause 2

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

THAT, the Bill be amended in Clause 2 by-

(a) inserting the following new definitions in proper alphabetical sequence-

“learner” means a person undergoing instruction in an educational institution;

“head teacher” means the lead educator or administrator in a primary school level educational institution appointed by the Commission as such and responsible for the implementation of the educational policy guidelines and professional practices;

“principal” means the lead educator or administrator in a post-primary school level educational institution appointed by the Commission as such and responsible for the implementation of the educational policy guidelines and professional practices;

(b) by deleting the definition of the word “teacher” and substituting therefor the following new definition-

“teacher” means a person who has been trained as a teacher as provided for in law and registered as a teacher”

(Question of the amendment proposed)

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

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

(Clause 2 as amended agreed to)

(Clauses 3 and 4 agreed to)

Clause 5

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

THAT, the Bill be amended in Clause 5 by inserting the words “for a non-renewable term of six years” immediately after the word “basis” appearing at the end of sub-clause (2).

(Question of the amendment proposed)

(Mr. M. Kilonzo stood up in his place)

The Temporary Deputy Chairman (Mr. Ethuro): Do you have your card, hon. Minister? You may use it and then put your request. Hon. Minister, we will use this opportunity to teach you how to operate that gadget. Maybe, your good neighbour can assist you.

(Mr. M. Kilonzo was assisted by Dr. Nuh to log in and send a request)

Proceed, hon. Minister!

The Minister for Education (Mr. M. Kilonzo): Mr. Temporary Deputy Chairman, Sir, I accept.

The Temporary Deputy Chairman (Mr. Ethuro): Mr. Minister, I hope you appreciate being a senior counsel.

The Minister for Education (Mr. M. Kilonzo): Absolutely, and I accept your lessons. Senior counsel are always learning.

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

(Clause 5 as amended agreed to)

Clause 6

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

THAT Clause 6 of the Bill be amended in sub-clause (3) by deleting the words “matters relating to” appearing immediately after the words “experience in”.

(Question of the amendment proposed)

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

(Clause 6 as amended agreed to)

(Clause 7 agreed to)

Clause 8

Dr. Nuh: Mr. Temporary Deputy Chairman, I have withdrawn my amendment to Clause 8(2) in favour of the Chairman’s amendment, because they seem to be conveying the same message and he is my senior in the House.

(Dr. Nuh’s proposed amendment withdrawn)

Clause 8

Mr. Koech: Mr. Temporary Deputy Chairman, I wish to appreciate and welcome those wise and good comments from my good friend.

I beg to move:-

THAT, the Bill be amended in Clause 8-

(a) by deleting the words “Principal Secretary” appearing in paragraph (d) of sub-clause (2) and substituting therefor the words “Cabinet Secretary”;

(b) by deleting the words “Cabinet Secretary” appearing in paragraph (f) of sub-clause (2) and substituting therefor the words “registered trade unions”;

(c) by inserting the following new paragraph in sub-clause (2) –

(g) one person nominated by a recognized association of private schools;

(d) by deleting the words “or member” appearing in the repeated sub-clause (2) ;

(e) by inserting the words “within seven days of his or her appointment” at the end of sub-clause (3);

(f) by deleting the words “sub-section (4)” appearing in sub-clause (7) and substituting therefor the words “sub-section (6)”;

(g) by inserting the words “within five days” immediately after the word “shall” appearing in sub-clause (8);

(h) by deleting the words “as soon as is reasonably practicable” appearing in subclause (10) and substituting therefor the words “within five days”.

(Question of the amendment proposed)

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

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

The Temporary Deputy Chairman (Mr. Ethuro): There is a further amendment by hon. Duale.

Mr. Duale: Mr. Temporary Deputy Chairman, I have also withdrawn my amendment in favour of the Chairman’s, because he is also the whip of the *chama cha kusema na kutenda!*

(Proposed amendment by Mr. Duale withdrawn)

Mr. Koech: Mr. Temporary Deputy Chairman, Sir, having looked at the selection panel, we realize that it is not an odd number and the Minister was to propose a further amendment to the same.

The Temporary Deputy Chairman (Mr. Ethuro): The Chair is fully aware of the amendment by the Minister; that is why you saw us consulting on whether we should dispose of your amendment before we take his. We have agreed to dispose of yours and then allow the Minister to move his.

The Minister for Education (Mr. M. Kilonzo): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 8 of the Bill be further amended by adding the following words immediately after 8(g) –

“8(2)(h) A prominent educationist not serving in Government appointed by the Cabinet Secretary”.

That will result in an odd number in the selection panel.

(Question of the further amendment proposed)

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

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Members, just for clarification, when I look at the Bill, Clause 8(2) was ending at (f). So, the further amendment by the Minister should read (g) and not (h). Secondly---

Mr. Koech: Mr. Temporary Deputy Chairman, Sir, it is (h).

The Temporary Deputy Chairman (Mr. Ethuro): In which amendment?

Mr. Koech: There is already a (g).

The Temporary Deputy Chairman (Mr. Ethuro): You introduced (g) in your amendment?

Mr. Koech: Yes.

The Temporary Deputy Chairman (Mr. Ethuro): That is correct. So, (h) remains as proposed by the Minister. Minister, you need to help us. If you look at Clause 8 on pages 1350 and 1351, we have 8(2) twice. We want to believe that it is just a matter of getting it right. We just want you to put it on record for the purpose of the Attorney-General

The Minister for Education (Mr. M. Kilonzo): Mr. Temporary Deputy Chairman, Sir, I recommend that we remain with the first Clause 8(2) and not the second one.

I then propose that the Clause 8(2) at page 1352 becomes (3) and we renumber all the others all the way down.

The Temporary Deputy Chairman (Mr. Ethuro): That is what we wanted to hear from you.

Mr. Koech: Mr. Temporary Deputy Chairman, Sir, just on the same, we realized that (2) is repeated, and the Legal Department said that, that could be dealt with later. That is why in my proposed amendment, if you look at (d), it reads that “by deleting the words or member appearing in the repeated sub-clause (2)”.

The Temporary Deputy Chairman (Mr. Ethuro): We were just stating it for the record, so that the Legal Department and the Attorney-General appreciate our sentiments as well.

The Assistant Minister for East African Community (Mr. Munya): On a point of order, Mr. Temporary Deputy Chairman. The one you were seeking renumbering of is also reading wrongly. It says “sub-section 1(f)” instead of saying “sub-section 2(f)”; the Bill reads sub-section 1(f) instead of 2(f).

The Temporary Deputy Chairman (Mr. Ethuro): Where do I find that, hon. Munya?

The Assistant Minister for East African Community (Mr. Munya): On page 1351, you want to renumber (2) as (3). It should read 2(f).

(Clause 8 as amended agreed to)

Dr. Nuh: Mr. Temporary Deputy Chairman Sir, it is on the same issue. So, I do not need to proceed.

Mr. Odhiambo: On a point of order, Mr. Temporary Deputy Chairman, Sir. I just wanted to support Dr. Nuh.

The Temporary Deputy Chairman (Mr. Ethuro): Mr. Odhiambo, nobody supports points of order. Once a clause is disposed of, it is done.

(Clauses 9 and 10 agreed to)

Clause 11

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

THAT, Clause 11 of the Bill be amended by inserting the words “including the appointment of head teachers and principals” at the end of paragraph (e).

(Question of the amendment proposed)

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

(Clause 11 as amended agreed to)

(Clause 12 agreed to)

Clause 13

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

THAT Clause 13 of the Bill be amended by inserting the words “employed by the Commission” at the end of sub-clause (5).

(Question of the amendment proposed)

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

(Clause 13 as amended agreed to)

Clause 14

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

THAT, Clause 14 of the Bill be amended in sub-clause (1) by deleting the words “as it may determine” and substituting therefor the words “in accordance with the Regulations”.

(Question of the amendment proposed)

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

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

(Clause 14 as amended agreed to)

(Clauses 15, 16 and 17 agreed to)

Clause 18

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

THAT, Clause 18 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (2)-

(2A) Further to subsection (2), the Commission may second its staff to other national government institutions at the request of those institutions.

(Question of the amendment proposed)

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

(Clause 18 as amended agreed to)

(Clauses 19, 20, 21, 22, 23, 24 and 25 agreed to)

Clause 26

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

THAT, Clause 26 of the Bill be amended in paragraph (a) by deleting the word “conduct” and substituting therefor the words “moral character”.

(Question of the amendment proposed)

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

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

(Clause 26 as amended agreed to)

Clause 27

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

THAT, Clause 27 of the Bill be amended-

(a) in paragraph (c) by deleting the word “child” and substituting therefor the word “learner”;

(b) in paragraph (f) by deleting the words “the Commission” and substituting therefor the words “a registered medical practitioner”;

(Question of the amendment proposed)

Mr. Njuguna: Mr. Temporary Deputy Chairman, Sir, what is the import of this amendment?

Mr. Koech: Mr. Temporary Deputy Chairman, Sir, though Mr. Njuguna is a Member of the Departmental Committee on Education, Research and Technology, I wish, maybe, to clarify for the benefit of the rest of the Members. In the Bill, it was referring to a “child”. We note that the teachers employed by the Teachers Service Commission start from Early Childhood

Education all the way to our students in our technical institutions, and thus the need to replace the word “child” with the word “learner”.

The Temporary Deputy Chairman (Mr. Ethuro): I am sure that hon. Njuguna is satisfied. In the absence of any objection, I will put the Question.

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

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

(Clause 27 as amended agreed to)

(Clauses 28, 29 and 30 agreed to)

Clause 31

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

THAT, Clause 31 of the Bill be amended in sub-clause (1) by deleting the words “holding such inquiry as the Commission thinks fit” and substituting therefor the words “observing due process” .

(Question of the amendment proposed)

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

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

(Clause 31 as amended agreed to)

Clauses 32 and 33 agreed to)

Clause 34

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Members, there are many proposed amendments. We will start with the one of hon. Koech, the Chairman Departmental Committee on Education, Research and Technology. You may also move all your amendments because they are several and they are on the same sub-clause.

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

THAT, Clause 34 of the Bill be amended in sub-clause (3) by -

(a) deleting the opening paragraph and substituting therefor the following new paragraph-

“The Commission after interdicting a teacher may take the following disciplinary actions against the registered teacher-”

(b) deleting paragraph (b)”;

(c) deleting the words “eighteen months” appearing in paragraph (d) and substituting therefor the words “six months”;

(Question of the amendment proposed)

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

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

The Temporary Deputy Chairman (Mr. Ethuro): Dr. Nuh, do you also have an amendment?

Dr. Nuh: Mr. Temporary Deputy Chairman, Sir, I humbly withdraw in favor of my Chairman’s amendments.

The Temporary Deputy Chairman (Mr. Ethuro): It has actually been killed by the Chairman’s amendments.

Dr. Nuh: But “withdrawal” is a better term to use than “killing”.

The Temporary Deputy Speaker (Mr. Ethuro): Mr. Nyambati, yours meets the same fate. I hope you are satisfied.

Mr. Nyambati: I am fully satisfied, Mr. Temporary Deputy Chairman, Sir.

*(Proposed amendments to Clause 34 by Messrs Nuh and
Nyambati were withdrawn)*

(Clause 34 as amended agreed to)

Clause 35

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

THAT, Clause 35 of the Bill be amended in subclause (3) by deleting the words “shall not engage in the teaching service” and substituting therefor the words “shall be dealt with in accordance with the Regulations”.

(Question of the amendment proposed)

Dr. Nuh: Mr. Temporary Deputy Chairman, Sir, my amendment has been catered for by the Chairman’s amendment.

The Temporary Deputy Chairman (Mr. Ethuro): The Chair notices that you keep on introducing better phraseology and wishes to congratulate you for such.

*(The proposed amendment to Clause 35 by
Dr. Nuh was withdrawn)*

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

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

(Clause 35 as amended agreed to)

Clause 51

Mr. Koech: On a point of order, Mr. Temporary Deputy Speaker, Sir. If I heard the Clerk-at-the-Table reading, I do now know where he got Clause 51.

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Minister, you may need to help us because our problem is that in the Table of Contents, you have indicated Clause 51; Transitional and Saving, but in the body, the Clause has disappeared.

The Minister for Education (Mr. M. Kilonzo): Mr. Temporary Deputy Chairman, Sir, the Bill has 50 Clauses and that is what I will settle for. It does not have Clause 51. Knowing you, I will be in a lot of difficulties if I introduce Clause 51 because it is not in the Bill and I do not want trouble.

Mr. Duale: On a point of order, Mr. Temporary Deputy Chairman, Sir. This Bill has up to 50 Clauses. I think because of the history of the Government Printer, this must be another sneak-in from the Government Printer. But I am sure Parliament must note that the current situation in Government printing is where they sneak foreign clauses into Bills. So, I think Clause 51 should be covered and Parliament must take note of what is happening at the Government Printer.

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Minister you will do us a great favour by not just acknowledging the wrath of the Chair but, really, this should be your brief. If you look at the marginal notes, they have been brought up by one Clause. Regarding the point of order raised by Mr. Duale, as the Minister contemplates on an appropriate response, there was nothing sneaked in; if anything, it was a deletion. You do not sneak in what was removed already unless you are talking of the Clause being sneaked out.

Before we conclude and the Minister responds, I realize Dr. Eseli has a point or two.

Dr. Eseli: Mr. Temporary Deputy Chairman, what had been put down as Clause 51 and later on omitted from the old Bill talks about transition. There is nothing about transition in this Bill. As we have been forming constitutional commissions, all the constitutional commissions have had some transitional clauses as to how we transit from the current into the next one. So, I do not know if that has been really left out.

The Assistant Minister for East African Community (Mr. Munya): Mr. Temporary Deputy Speaker, Sir, what I wanted to say is that Clause 50 is actually the transitional clause. So, the problem is with the numbering. There is no Clause 51. So, there is a saving transitional clause which is actually Clause 50.

The Minister for Education (Mr. M. Kilonzo): Mr. Temporary Deputy Chairman, Sir, Mr. Munya is dead right. Obviously, his brilliance as a lawyer has come out. The fact of the matter and the reason I did not want to seek trouble with you---

The Temporary Deputy Chairman (Mr. Ethuro): Except Minister, you cannot be right because all those clauses have some title. So, what happens? One must be missing!

The Minister for Education (Mr. M. Kilonzo): Mr. Temporary Deputy Chairman, Sir, that is what I have been trying to calculate. My point right now is to say that saving and transition which was expected to be covered by Clause 51 as appears at page 1345 has already been covered by Clause 50. Similarly, if you look at the repeal which was initially in the Table of Contents intended for Clause 50 has been covered in Clause 49. The Code of Conduct in the Schedule of Contents was to be covered by Clause 49 but it is already covered by Clause 48. So, strictly speaking for my purposes, I have the law that I required. If you could allow this to be covered by the Attorney-General's office in polishing, we will find out where the numbering error has occurred. But I have the law that I require.

The Temporary Deputy Chairman (Mr. Ethuro): The Chair agrees with you hon. Minister except just to say if you follow your own logic and given that in the Table of Contents, each clause in the marginal notes is basically indicated. I fear assuming that you are going one step up, finally the Short Title will disappear and that is even more fundamental to the law you need than anything else. It does not take rocket science just to be re-looking at your own pieces of legislation so that you take the earliest opportunity, before it come to the Floor of the House, to correct whatever needs to be corrected.

(Mr. Njuguna stood up at his place)

Mr. Njuguna, I think this matter has been deliberated on quite excessively.

What is it, Mr. Njuguna?

Mr. Njuguna: Mr. Temporary Deputy Chairman, Sir, the Minister has already responded to the amendment to Clause 35, on page 1381, on transition processes. It is already provided for in that part.

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Njuguna! You are now treading on even more dangerous grounds. The two last pages are on the Memorandum of Objects and Reasons are just giving explanation. The body of content, including the Schedules, is up to page 1379.

Let us dispose of this matter, hon. Members.

Yes, hon. Nuh.

Dr. Nuh: Mr. Temporary Deputy Chairman, Sir, I have realised where the mistake is in the Bill. On page 1343, in the arrangement of Clauses, you will notice that "Membership of the Commission" has been repeated twice under Clauses 5 and 6. That is why the numbering of Clauses has gone up to 51.

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Members, that is correct. One of them should go. The Minister also needs to show appreciation and some platitude.

Dr. Nuh: Mr. Temporary Deputy Chairman, Sir, despite my fasting, I am still hawk-eyed enough to critically look at the Bill. I wish to be congratulated for that.

The Temporary Deputy Chairman (Mr. Ethuro): Dr. Nuh, definitely, the Minister may not be willing to congratulate you but the House appreciates.

(Laughter)

Hon. Members, therefore, I wish to put the Question; that, the Clauses, as read out, with all the minor corrections taken into account, be part of the Bill.

*(Clauses 36, 37, 38, 39, 40, 41, 42, 43, 44,
45, 46, 47, 48, 49 and 50 agreed to)*

(First Schedule agreed to)

(Second Schedule agreed to)

(Third Schedule agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Minister for Education (Mr. M. Kilonzo): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of The Teachers Service Commission Bill, Bill No.17 of 2012, and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

*[The Temporary Deputy Speaker
(Mr. Ethuro) in the Chair]*

REPORT, CONSIDERATION OF REPORT AND THIRD READING

THE TEACHERS SERVICE COMMISSION BILL

Mr. Koech: Mr. Temporary Deputy Speaker, Sir, I beg to report that a Committee of the whole House has considered The Teachers Service Commission Bill, Bill No.12 of 2012, and approved the same with amendments.

The Minister for Education (Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

The Minister for Transport (Mr. Kimunya) seconded.

(Question proposed)

Mr. Koech: Mr. Temporary Deputy Speaker, Sir, I wish, at this juncture, to sincerely thank the Members of my Committee, all the stakeholders in the education sector, and in particular, the Minister for Education; for having agreed with us. The TSC will now be put back

into proper operation, being aware that most of the Commissioners have retired. Therefore, I wish to thank everybody and indicate that we are now looking forward to a very vibrant TSC.

The Temporary Deputy Speaker (Mr. Ethuro): I can see that there are quite a number of requests by hon. Members on this Bill. If you want to contribute like hon. Koech, yours will come as the final bit of this Order.

Hon. Minister, do you still want to proceed?

The Minister for Education (Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, Sir, it is very important that I take this opportunity to thank the Chairman of the Departmental Committee on Education, Research and Technology, its Members and the entire Membership of this House, and to particularly congratulate the teaching fraternity of this country because the TSC has now come of age. It is an independent Commission, created under Chapter 15 of the Constitution.

Mr. Temporary Deputy Speaker, Sir, I will also be failing in my duty if I do not call upon the TSC to ensure that they now implement the National Government Policy on Tuition to make sure that tuition is stopped in all schools, and that principals of schools that violate the policy are subjected to proper disciplinary processes. There are some schools which are now even telling pupils to dress in civilian clothes while attending tuition.

So, I want to join the House in supporting and congratulating the country for this particular endeavour.

(Question put and agreed to)

The Minister for Education (Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, Sir, I beg to move that the Teachers Service Commission Bill, Bill No.17 of 2012, be now read the Third Time.

The Minister for Finance (Mr. Githae) seconded.

(Question proposed)

The Minister for Trade (Mr. Wetangula): Mr. Temporary Deputy Speaker, Sir, I want to congratulate my learned senior and teacher for chaperoning through this very important Bill. In doing so, I want to say two things. One, my learned friend, the Minister for Finance sitting on my left here must, as a matter of urgency, provide enough money to the Teachers Service Commission (TSC) through the Ministry of Education to hire enough teachers for this country. It is not good enough for children to go to school if they just go to school as if they are at holiday camps. Every school must be adequately staffed with enough competent teachers so that, when our children go to face exams at the end of the year, they are all coming from the same level of preparedness to sit uniform exams. What happens, as you know, is that urban schools are overstaffed. Rural schools have no teachers and this I believe my *mwalimu*, hon. Mutula here, will endeavour to correct the imbalance and my learned friend here will provide the money to achieve that.

Mr. Temporary Deputy Speaker, Sir, my second and last point is this: On the controversy about holiday tuition, I want to suggest this to the Minister, if the teachers of this country are patriotically offering to give free tuition to our children during holidays without asking for a cent from the parents, I see no difficulty with that. But if they are turning it into a business to levy unnecessary money from parents, guardians and children, then there is a problem. So, it should not be just a question of “let there be tuition or let there be no tuition”. Let us have some

form of policy that clearly says what is doable and what is not doable and how it is done and how it is not done, so that where there are weak children who require extra tuition, we should not undermine the efforts if it is not going to cost the parents unnecessary taxation.

Thank you, Mr. Temporary Deputy Speaker, Sir.

Mr. Bahari: Mr. Temporary Deputy Speaker, Sir, I want to congratulate the Minister and the Committee for a job well done. For once, the aspect of continuous learning has been taken into account for the teachers in this Bill, which is excellent.

Mr. Temporary Deputy Speaker, Sir, the second item is on the issue of tuition. In other countries, teachers do it for free, the moment they realize that one of their students is slow. They do not commercialize it. Otherwise, definitely, tuition where parents have to pay for will actually pull in different directions in terms of utilization of the teachers during the normal hours. Those two interests contradict and now the TSC which has now been mandated to look at the teacher's affairs and the Ministry must put its foot down. The union, surely, should help in this because they are serious stakeholders.

Thank you, Mr. Temporary Deputy Speaker, Sir.

The Assistant Minister for Lands (Mr. Bifwoli): Mr. Temporary Deputy Speaker, Sir, thank you for giving me this chance. I want to congratulate the Minister for preparing this Bill. I also urge the Minister for Finance, to give money directly to the TSC, now that it is independent, to employ teachers. The issue of tuition or no tuition is because of the understaffing situation in the country. I am wondering if you are banning holiday coaching and there is a school where there are seven or five teachers against 15 streams, how will that school cover the syllabus if the teachers cannot volunteer, come back and do what we call remedial teaching? Sometimes, you might be misunderstanding what the teachers are talking about. They might be coming to do remedial teaching. Remedial teaching is to cover the syllabus because there are no enough teachers or the children are slow learners. Now, are you saying that the slow learners are not going to be given an opportunity to be nurtured up to the level where they also pass exams like others? That means we want to turn this country to be for only the genius children, while the slow learners are going to be condemned to hell.

Mr. Temporary Deputy Speaker, Sir, I want to urge the hon. Minister to study the genesis of remedial teaching before banning it wholesale.

Mr. Nyambati: Mr. Temporary Deputy Speaker, Sir, allow me also to take this opportunity and commend the Minister, the Departmental Committee and, indeed, the TSC for this very good Bill that they have brought in.

Mr. Temporary Deputy Speaker, Sir, I want to really thank the TSC, its CEO and staff for doing a good job in this country under very difficult circumstances. I want also to say that the Minister for Education should review the issue of remedial tuition because most of our rural schools do not have teachers. That is why we are trying to catch up. We have many problems. We have a lot of requests to the TSC and yet the TSC cannot meet our requests. I think it is the responsibility of this House to ensure that we give the TSC enough money to hire teachers. That is because a country that cannot take care of its youth has no business governing. So, I want to suggest here that it is our responsibility as a House and nation to ensure that every school has enough teachers so that our children can have a bright future.

Mr. Temporary Deputy Speaker, Sir, I want to end my contribution by thanking the Minister for Education. Recently, a headteacher in my constituency could not register my students for examinations and the Minister and the CEOs of the Kenya National Examinations

Council (KNEC) and the TSC helped me to register those 22 students in my constituency who were condemned.

Mr. Temporary Deputy Speaker, Sir, I want to say as I finish. I am happy that TSC---

The Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Nyambati! You may realize that this is the Third Reading and you are debating. Conclude.

Mr. Nyambati: Mr. Temporary Deputy Speaker, Sir, let me conclude by saying that we have given the TSC a chance now to appoint headteachers and principals without interference. I thank you for this Bill.

The Temporary Deputy Speaker (Mr. Ethuro): Hon. Njuguna and hon. Members, I will give you a maximum of two minutes and if you exceed, I will switch off the microphone.

Mr. Njuguna: Mr. Temporary Deputy Speaker, Sir, let me start by thanking the Minister and his entire staff for their dedication in drafting this new law.

Secondly, this law will raise the discipline of our teachers and standards in our schools.

Lastly, let me thank the Chief Executive Officer (CEO) of the Teachers Service Commission (TSC) for continuously providing credible leadership and making the commission a very stable organization. Leading up to 220,000 teachers is a very big responsibility.

I support, Mr. Temporary Deputy Speaker, Sir.

Dr. Otichilo: Mr. Temporary Deputy Speaker, Sir, I want to take this opportunity to thank the Minister for bringing this Bill to this House and working very hard with his staff to ensure that this Bill has undergone the right process.

I also want to thank the TSC officers for having worked with us very closely as the Members of the Committee on Education, Science and Technology.

Mr. Temporary Deputy Speaker, Sir, I expect the TSC to take control of the management of teaching in this country. We want to see improvement in the management of our educational system in this country, particularly as regards performance management. I wish to see that now that the TSC has the powers to control and deal with the teachers directly, performance management must be put in place, so that we see our schools managed well or like corporate organizations.

I also want to appeal to the Minister for Finance to consider recruitment of teachers. This is a very important issue on which the Ministry of Finance must work with Members of Parliament and our committee to see that teachers are recruited for our students and pupils to get the right education.

Finally, I want to appeal to the Minister for Finance, the TSC and all teachers' unions to work very closely to see that teachers are well remunerated for the good work they are doing for this country.

Thank you.

Mr. Kizito: Mr. Temporary Deputy Speaker, Sir, I would like to take this opportunity also to commend the Minister and his Ministry in totality for having come up with a very good law that is going to govern education. We can see the autonomy that the TSC is going to have. We are very happy. We want the TSC to continue playing the complementary role. Although autonomous, they are going to play a complementary role and we want to wish them well.

I want to revisit the issue of tuition in schools. I want to tell the Minister and the TSC that we would like to play complementary roles even down to the schools. We do not want a situation where we are going to look like the Minister for Education, and even the TSC, is going to micromanage headteachers and activities that go on in schools. We would like to allow the teachers and stakeholders within a given school to come up in their own way and see whether it

is possible to have tuition. If they are in agreement, why should we interfere and say we want to ban it? We would like to have the rule of law in this country. We would not want a situation where we are going to look like we do not want that. We want everybody to be independent and to play a complementary role in whichever aspect. After all, teachers are the ones who have brought up all of us.

I also want to bring up something on what my colleague, Mr. Wetangula indicated, that teachers should do tuition for free. I am a teacher. I am an educationist and I would like to mention that teachers never ask for money for tuition. What goes on in school is this, this money---

The Temporary Deputy Speaker (Mr. Ethuro): Your time is up.

Mr. Kizito: I beg for your indulgence, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Ethuro): I cannot help you. You are timed. Proceed, Dr. Eseli.

Dr. Eseli: Mr. Temporary Deputy Speaker, Sir, mine is brief and I am going to speak as a clinician. Usually when you are presented with a patient who is unwell, you look for the cause. You might give a little pain killer to relief the symptom. Now this issue of tuition is only a symptom. Let us look at the cause and we know the causes. The cause is underpayment of teachers and understaffing. That is the cause! Unless we treat that problem, I am sorry, this tuition is going to go underground; it is going to be done at the teachers' homes. I assure you that. Because of understaffing, these children are not getting education. The Executive prescribed free primary education; they did not prescribe free primary attendance as is happening now and unless we treat the cause, let us not meddle around with the symptoms only.

The Temporary Deputy Speaker (Mr. Ethuro): Hon. Members, because of immense interest, I do not want to deny anybody a chance, we are reducing debate to one minute now.

Mr. Onyancha: Mr. Temporary Deputy Speaker, Sir, I will take one minute and a half. I want to thank the Minister; he has done a very good job along with the Constitution Implementation Commission (CIC) bringing this Bill which we all support. On tuition, I think the Ministry should improve on its quality assurance and the DEOs should supervise to see to it that the syllabus is completed on time.

I want to urge that during the upcoming recruitment of teachers, the gender issue should be looked into and the constituencies that were left behind are favoured in the recruitment. Lastly, I want to commend the Minister for allowing girls to wear miniskirts. I think the issue of what you wear or not want to wear is an issue for parents and for the teachers. However, I do not think the Minister made a mistake; he was misunderstood and the country should know that.

(Laughter)

The Assistant Minister for Education (Prof. Olweny): Mr. Temporary Deputy Speaker, Sir, let me also---

The Minister for Trade (Mr. Wetangula): On a point of order, Mr. Temporary Deputy Speaker, Sir.

The Assistant Minister for Education (Prof. Olweny): Mr. Wetangula, let me talk!

Mr. Koech: On a point of order, Mr. Temporary Deputy Speaker, Sir. We cannot let this go. Did you hear the hon. Member thanking the Minister for allowing our girls to wear miniskirts? Is he in order to mislead the House that the Minister has allowed that? As a Committee we say "no" to miniskirts!

The Temporary Deputy Speaker (Mr. Ethuro): That is not a point of order, Mr. Koech. The point of order was to the Minister. The hon. Member was telling the Minister and you are disagreeing with the Minister so there was nothing wrong.

The Minister for Trade (Mr. Wetangula): On a point of order, Mr. Temporary Deputy Speaker, Sir. It is not right to let it go unchallenged. The Minister is on record, first as supporting miniskirts and then vehemently denying it. We want to know if he actually said that our children should wear miniskirts so that we can deal with him in that vein. We cannot let Mr. Onyancha get away with it. You should give the Minister an opportunity to clarify.

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Minister! I hope your senior counsel did not engage you as his attorney because that is more to the Minister than to Mr. Onyancha.

The Minister for Education (Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, Sir, I have never supported a miniskirt and I would not support it even now, leave alone in a school, even in the workplace for many reasons that I do not want to go into because I do not want to appear to be interfering with the rights of our women to wear what they like.

(Applause)

For my purposes, I am dealing with school girls and quite honestly I did not support a miniskirt. I even threatened to sue the media and they never repeated the thing and so I think it is far better we bury it because I have now taken a picture, a cartoon, from the internet Facebook. I have framed it and put it in my office; I am wearing a miniskirt but I am the only one allowed to wear a miniskirt and not my students.

(Laughter)

The Assistant Minister for Education (Prof. Olweny): Mr. Temporary Deputy Speaker, Sir, it is a great day for the Teachers Service Commission (TSC) that they have the Bill passed. With this legal instrument, the TSC should be in a position to deal with teachers; discipline teachers who do things that are worsening schools. They already misbehave with their students, misappropriate funds and the TSC should deal with that problem.

Lastly on the issue of tuition, I remember when I was in class Eight in 1968----

The Temporary Deputy Speaker (Mr. Ethuro): You have 15 seconds, Professor.

The Assistant Minister for Education (Prof. Olweny): When I was in Class Eight, we were given remedial teaching for free. But this one of commercializing remedial teaching is what we do not want and we say “no” to it.

The Assistant Minister, Ministry of State for Planning, National Development and Vision 2030 (Mr. Kenneth): Thank you, Mr. Temporary Deputy Speaker, Sir, although you had called the lady before me, but I stand to support this Bill.

The Temporary Deputy Speaker (Mr. Ethuro): I stood her down because I realized the Professor had the Floor. She will have her turn.

The Assistant Minister, Ministry of State for Planning, National Development and Vision (Mr. Kenneth): Mr. Temporary Deputy Speaker, Sir, I would like to support the Minister. One of the things that we need as a country is to ensure that this Constitution is fully implemented. This Bill goes a long way to ensure that in the teaching sector, the constitution is implemented as we passed it in 2010.

Mr. Temporary Deputy Speaker, Sir, it is very serious that we must take it upon ourselves to ensure this Constitution is fully implemented, so that we do not appear to have taken Kenyans for a ride.

But very quickly also, it is important for us to thank the TSC for having struggled over the years and also to ensure that there is enough money for them to employ more teachers.

The Assistant Minister for Co-operative Development (Mrs. Kilimo): Mr. Temporary Deputy Speaker, Sir, I congratulate the Minister for bringing this TSC Bill. Definitely, it will enhance the performance of the TSC which has been steered very well by its Secretary since 2004.

With regard to holiday Tuition, it should have continued until January when we would have given teachers adequate notice to cover the syllabus. It is a pity that in the middle of the year, we have stopped it. This will not help our students considering rural villages where the Chair and I from. We always find students on the road walking home because of lack of school fees. When will they cover the syllabus unless we allow them to have tuition?

Mr. Mwangi: Mr. Temporary Deputy Speaker, while I congratulate the Minister and the TSC for a job well done, there are two issues that I want to address.

Mr. Temporary Deputy Speaker, Sir, the deployment of teachers by the TSC needs to be looked into. Some of the regions in this country have a surplus of trained teachers and others are suffering the shortage of teachers. Domesticating teachers does not help the national goal of giving us quality education. The TSC should come up with a policy to make sure teachers are evenly deployed in this country. Arid and semi-arid areas should not suffer shortage of teachers.

Again, those teachers that are trained to teach and they have continued---

Mr. Odhiambo: Mr. Temporary Deputy Speaker, Sir, I wish to thank the Minister for bringing this Bill to this House.

On the issue of holiday tuition, I wish to say that normally, it is not the teachers who really want the money for holiday tuition. In fact, it is the parents who request teachers to come up with remedial measures so that they can cover the syllabus. Since the Ministry and the whole country are aware that we have a shortage of teachers, it is also proper that they allow the holiday tuition to go on, as we look for funds to employ more teachers.

The only advice, I will give as a teacher is that they should, perhaps, give guidelines on how this holiday tuition should be done. After all, in the private sector even---

The Temporary Deputy Speaker (Mr. Ethuro): Order! I will now put the question.

(Question put and agreed to)

*(The Bill was accordingly read the
Third Time and passed)*

BILL

Second Reading

THE FINANCE BILL

(The Minister for Finance on 9.8.2012)

(Resumption of Debate interrupted on 9.8.2012)

The Temporary Deputy Speaker (Mr. Ethuro): Who had the Floor?
Minister!

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Speaker, Sir, I was moving.

The Temporary Deputy Speaker (Mr. Ethuro): When you move, you still have the Floor.

Proceed, hon. Minister!

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Speaker, Sir, I will be very quick because, as you can see even from the volume of the Finance Bill, I have reduced it to just a few pages.

Mr. Temporary Deputy Speaker, Sir, first, let me thank the hon. Members for their cordial support to the budgetary process and other related Government policies, aimed at sustaining and enhancing the economic growth and development of our country.

Mr. Temporary Deputy Speaker, Sir, the taxation measures I proposed in the Finance Bill, 2012 are aimed at complementing the broader economic policies that I outlined in both the Budget Policy Statement and the Budget Statement. In particular, the measures are intended to, among others:-

- (i) facilitate the private sector for growth and employment;
- (ii) invest in people and support rural development;
- (iii) promote equity and fairness in the tax system; and,
- (iv) further reform the tax system for efficiency and effectiveness.

The miscellaneous measures are aimed at enhancing stability, efficiency and effectiveness of the financial sector, especially the banking and insurance industries and retirement benefits.

Mr. Temporary Deputy Speaker, Sir, I will only highlight a few proposals, as hon. Members will have an opportunity to debate the entire Bill during the Committee stage. I have proposed an amendment to the Customs and Excise Duty Act to ensure that no person enjoys tax exemption by virtue of holding a State office in line with the Constitution.

Mr. Temporary Deputy Speaker, Sir, further, I have proposed to amend the Customs and Excise Duty Act to facilitate faster processing of applications for renewal of Excise licences in line with the Constitution that requires very high standards in delivery service.

Mr. Temporary Deputy Speaker, Sir, hon. Members will also note that in my Budget, I never increased any tax. I did not increase or introduce even the so-called Landlords' Tax. It has always been there. What I said is that there will be full compliance with the Income Tax. What I did in the Budget Statement is to expand the tax base. That is why I have now proposed that no State officer will be exempted from paying tax, merely because of that position. But we are also mindful of the fact that these are new measures and according to the International Labour Organization (ILO), you cannot affect the salaries and remuneration of an existing contract. That is why those who have been exempted by the Constitution or Act of Parliament have been cushioned until their term expires. If it is Members of Parliament, it will be until their term expires. If it is other constitutional measures, it will be by increasing their basic salary, so that they end up with the same tax.

Mr. Temporary Deputy Speaker, Sir, under the Income Tax, I have proposed, among other measures, the following to ensure efficiency, fairness and also align the income tax to the Constitution:-

1. An amendment to align taxation of non-resident taxpayers who engage in the business of transmission of messages with that of non-resident taxpayers who engage in other business and those based in Kenya. That has been supported by the professionals.

2. An amendment to empower the Minister responsible for Finance to make rules for purposes of administering exemption of trusts, churches and Non-Governmental Organizations (NGOs). Again, contrary to what was reported in the media, I did not impose any taxation on churches. I was also accused of doing that. All we are saying is that the rules should provide for separation of the charitable activities of churches, NGOs and other trusts and their commercial business. That is all that the rules will provide.

Mr. Temporary Deputy Speaker, Sir, if you are a charitable trust, church or an NGO and you engage in commercial activities, then, surely, you should pay tax on the profit from the commercial enterprise. That is how we become equal. We are aware of some churches with 100 matatus. At the moment, all the income they get is still tax exempt. We are aware of some preachers who demand money for prayers and miracles. Those are commercial activities. If they engage in such activities, then they must pay tax. That is all we are saying. So, I did not impose any new tax on churches. The churches that continue with their charitable activities will continue to be tax exempt.

The other amendment is to provide for qualifications of the local committee and tribunal members, and to specify the period within which the Commission is required to file its statement of facts with the local committee. This is important to ensure effective dispute resolution mechanism that will allow faster and efficient settlement of tax disputes.

The Temporary Deputy Speaker (Mr. Ethuro): Minister, you have four minutes remaining.

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Speaker, Sir, as the KRA continues to expand the tax base, we expect a lot of tax disputes. Instead of this committee being a *jua kali one*, we now want to have specific qualifications for the members. We are sure that will increase efficiency.

The Temporary Deputy Speaker (Mr. Ethuro): Minister, my system is misleading me. You actually have a lot of time; almost 50 minutes remaining.

The Minister for Finance (Mr. Githae): Thank you, Mr. Temporary Deputy Speaker, Sir.

The other amendment is on retirement schemes. They are important, and through them, coverage of savings for retirement can be achieved. To strengthen governance, encourage Kenyans to save and promote their growth, I have proposed to amend the Retirement Benefits Act to bar individual retirement benefits schemes from appointing corporate trustees related to their sponsors. Again, we want to make sure that the retirement benefits schemes are independent. We do not want the sponsor to also provide the services of trustees, because in this way, the independence will be lost.

The other amendment is on the Banking Act. I propose to provide for a robust, effective and comprehensive consolidated supervision framework to enable the Central Bank of Kenya to adequately supervise banks and their subsidiaries. This is in realization that activities of banks and subsidiaries have a direct impact on the safety and stability of our banks. Secondly, there is an amendment to expand the scope of the banking business to include incidental financial services that can be offered by banks, subject to review and approval by the Central Bank of Kenya to ensure adequate risk mitigation. This is in line with the trend globally, in which there is

convergence of financial services where banking, insurance and stock brokerage services are offered under one roof.

Thirdly, there is an amendment to make the banks liable for the acts and omissions of their contracted agents. This was an omission. Most of the banks are now on agency business, but this was missing. We are now saying that we shall allow them to appoint as many agents as they can. It is a good thing. We now have kiosks and shops as agents of banks. In other words, even as late as 9.00 p.m., you can still receive and bank money, but we are saying that the banks must be responsible for the omissions and commissions of their agents.

Finally, I have also proposed amendments on the Scrap Metal Act, basically to deal with scrap metal dealers who buy stolen and vandalized cables, wires, signage and transformers. I have proposed amendments to the law to empower the Minister of State for Provincial Administration and Internal Security to issue regulations requiring identification and traceability of scrap metal handled by dealers. We are saying that if you are now found with scrap metal, you must be able to identify the person who sold it to you. They must be traceable. These rules will now enable the Minister to do that.

Finally, I would like to thank the Members for the support they have given me at the Treasury as I continue to discharge my duties.

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

The Minister for Trade (Mr. Wetangula): Mr. Temporary Deputy Speaker, Sir, I want to second this Bill. The Finance Bill is best interrogated at Committee Stage because this is about taxation. However, I want to thank the Minister for pledging efficiency and fairness in tax collection or levying taxes and, more importantly, in dispute resolutions that take too long to resolve.

I want to urge the Minister, and encourage hon. Midiwo to let him listen, to reconsider the lowering of taxes on *mitumba*. In fact, I want to encourage him to support the local cotton industry by giving a decisive decision on *mitumba* altogether. Questions regularly asked include tax refunds. The process of refunding tax remissions, particularly Value Added Tax (VAT) raises many questions. I get letters from all manner of business people who keep asking about this and I think the Minister should streamline this so that we have a proper system where investors know that when you put in this and there is a refund, it comes in this manner and at what time so that it is not an issue that continues to cloud our investment climate.

I also want to encourage the Minister to clarify the issue of who and where he will be taxing the church. I agree with him that there are certain churches in this country that are commercial enterprises. These churches are owned by individuals. We know them and we need not say it. When a person sets up a church and fraudulently holds himself out as a miracle performer and charges for it, that becomes a commercial enterprise bordering on crime because it is a misrepresentation to begin with. The income must be taxed just like any other income. I laud the Minister for doing this. Of course, there are certain churches that have provided enormous support services in health, education and other social services which the Minister should not mix up with these commercial enterprises.

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

(Question proposed)

Mr. Mututho: Mr. Temporary Deputy Speaker, Sir, I support this Bill and take a slightly different view from that of the Minister in respect to *mitumba*. Because most of us can afford a

few nice clothes, they forget that many Kenyans walk naked. Many Kenyans cannot even afford a blanket or something like that. We have seen under the help of the Minister for Finance that the last few days, at least, they can get a tie for Kshs5 and a jacket for about Kshs20 or Kshs30. These are some of the parameters that we should consider. Whereas we do appreciate the plight of cotton farmers and the industry that relies on that, I feel strongly that, that was the way to go.

In terms of churches, once a church becomes commercial, let it pay tax.

Mr. Temporary Deputy Speaker, Sir, I beg to support this Bill.

Mr. Nyambati: Thank you, Mr. Temporary Deputy Speaker, Sir. I also wish to stand here and support the Finance Bill. First and foremost, I want to take this opportunity to thank the Minister for Finance for being available to us for consultations and for the support we are getting. We are not taking that for granted. We have the right Minister and we should support him in what he is doing.

I want to say here and now that it is extremely important for the Minister to really extent the tax base because there are many Kenyans who are supposed to be pay taxes but they do not pay, including the churches that we have talked about. There are some churches which are more commercial than even the commercial enterprises. They make more money than any other business in this country and yet they do not even contribute to charity. Of course, there are many other churches like the Catholic Church, the Seventh Day Adventists (SDA) and the Friends Church which are committed to helping Kenyans in very many ways. We want the Minister to look into these churches and see which ones must be included in the tax bracket because this is stealing from Kenyans in the wrong way and in the name of preaching. We should try and discourage this.

Mr. Temporary Deputy Speaker, Sir, even hon. Members of Parliament are paying tax and yet we are more charitable. We pay more in terms of charity to our constituencies than any other person or church under the sun. The churches hide when it comes to paying tax.

I want to finish by saying that I am happy that the Minister is taking measures against business like scrap metal that are messing up this country in terms of vandalizing telephone and electricity cables among other things. These are some of the things that the Minister must look into and ensure that the penalties are severe so that they discourage these things that affect our economy.

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Ethutro): Order, hon. Nyambati! You will have 17 minutes to proceed next time.

Hon. Members, it is now time to interrupt the business of the House. Therefore, the House stands adjourned until tomorrow, 15th August, 2012, at 9.00 a.m.

The House rose at 6.30 p.m.