

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 1st July, 2010

The House met at 2.30 p.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

QUESTION BY PRIVATE NOTICE

JUSTIFICATION FOR LOWERING IMPORT DUTY ON WHEAT

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

(a) What justification does the Minister have for lowering import duty on wheat to 10 per cent in the 2010/2011 Budget, considering that even the previous rate of 35 per cent was in reaction to drought in 2008/2009?

(b) What plans does the Minister have to increase the duty to enable farmers benefit from the expected bumper harvest particularly in Narok North and Narok South?

(c) Is the Minister aware that farmers held a demonstration on 28th June, 2010 and blocked the Narok–Nairobi Highway in reaction to the expected financial loss resulting from his action?

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Finance (Dr. Oburu): Mr. Deputy Speaker, Sir, I beg the indulgence of the House, that you allow us to answer this Question on Tuesday. We received this Question yesterday and it is a Question which needs very good answers. We got some answer from our officers but the Minister is not satisfied that the answer is good enough. Therefore, we are requesting that we be allowed to answer this Question on Tuesday. I have already talked to Mr. Konchela.

Mr. Deputy Speaker: Mr. Konchela!

Mr. Konchela: Mr. Deputy Speaker, Sir, in accordance with the Standing Orders, Questions by Private Notice should be answered within 24 hours. This Question is crucial because the whole country is waiting. Agriculture is the main- stay of our economy and our farmers are in danger of being auctioned by banks. It is a very crucial Question that must be answered. However, under the circumstances, the Assistant Minister has requested for that time. I agree that he brings the answer on Tuesday.

Mr. Deputy Speaker: Fair enough! It is so directed that the Question appears on the Order Paper on Tuesday next week.

(Question deferred)

Next Question by Mr. Joseph Lekuton!

ORAL ANSWERS TO QUESTIONS

Question No.034

PROVISION OF FUNDS FOR ENERGY-SAVING BULBS

Mr. Deputy Speaker: Mr. Lekuton is not in the House, we will come back to the Question later!

Next Question by Mr. John Pesa!

Question No.135

NON-PAYMENT OF DUES TO RETIRED TEACHERS BETWEEN 1997 AND 2007

Mr. Pesa asked the Minister for Education:-

(a) if he could state what the Ministry's position on the dues of thousands of teachers who retired between 1997 and 2007 and are yet to receive money running into millions of shillings as was ordered by the High Court two years ago;

(b) why the Teachers Service Commission (TSC) deliberately refused to implement Court Orders issued by the High Court sitting in Nakuru in 1997 soon after the negotiated salary deal between the Government and the Kenya National Union of Teachers (KNUT); and,

(c) whether he could state the position of the Pensions Department and Treasury on the matter and also indicate how much interest will be paid on these monies, considering that the affected teachers have incurred a lot of expenses in the hope of being paid by the Government.

Mr. Pesa: Mr. Deputy Speaker, Sir, I have stood for the eighth time to ask this Question on the Floor of the House bearing in mind that many teachers who have served this country very dedicatedly are eagerly waiting for this answer.

The Assistant Minister for Education (Prof. Olweny): Mr. Deputy Speaker, Sir, I think---

Mr. Deputy Speaker: I think you should answer why you want us to come back to this---

The Assistant Minister for Education (Prof. Olweny): Mr. Deputy Speaker, Sir, I think we were waiting for a ruling from the Chair today, given the fact that other papers were given to the Chair in regard to this Question.

Mr. Deputy Speaker: Did the Chair indeed give an undertaking of giving a ruling on the same today?

The Assistant Minister for Education (Prof. Olweny): Yes, an undertaking was made that a ruling will be made based on the papers that we submitted.

Mr. Deputy Speaker: Fair enough! While finding out the facts of the same, let us move on to the next Question by Mr. Adan Keynan!

Question No.116

MEASURES TO IMPROVE EDUCATION STANDARDS
IN NORTH EASTERN PROVINCE

Mr. Keynan is not in the House. We will come back to the Question!
Next Question by Mr. Maina Kamau!

Question No.222

POLICY ON ARMED OFFICERS DURING
NATIONAL EXAMINATIONS

Mr. James Maina Kamau asked the Minister for Education:-

(a) whether it is the Ministry's policy that policemen guarding examination rooms during National Examinations must be armed; and,

(b) whether he could halt the practice, considering that the presence of armed officers can intimidate and negatively affect performance.

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

(a) Yes, it is the Ministry's policy to deploy armed policemen in examination rooms during the national examinations exercise.

(b) The practice of deploying armed police officers during the national examinations exercise cannot be halted since there is no evidence and therefore, there is no justification that it negatively affects the performance. In fact, the police officers are assigned duties away from the examination rooms and are advised to avoid direct contact with the candidates. This practice has had no negative impact on the candidates and performance. It has provided both the candidates and the examination officials a conducive environment and the security necessary for the exercise.

Thank you.

Mr. James Maina Kamau: Mr. Deputy Speaker, Sir, I would like to thank the Assistant Minister for giving me such an answer. However, I do not think it is necessary to have armed officers in the examination area because they are scaring. Some children may not have come across a G3 rifle. Are they doing something to make sure that they are removed? We do not need armed policemen in the examination areas.

Prof. Olweny: Mr. Deputy Speaker, Sir, I do not think he gave me a question. I think it was a statement.

Mr. Imanyara: Mr. Deputy Speaker, Sir, the presence of armed police officers has not stopped cheating in examinations. Every year, you give a list of names of students alleged to have been involved in cheating, despite the presence of armed policemen in the classrooms. Would it not be wise to consider keeping these armed policemen away from the classrooms during examinations? They could very well be contributing to incidents of cheating that we have been talking about after every examination results.

Prof. Olweny: Mr. Deputy Speaker, Sir, the police officers are not invigilators and as I have said, they are not supposed to be in the examination rooms. They are however, supposed to provide security within the compound just in case something happens. We do not want to be blamed. Something might happen. Someone might invade

the examination centre. Therefore, the police officers with their guns are not supposed to be within the examination rooms. Within the examination rooms, we expect the people in charge who are the invigilators.

Mr. James Maina Kamau: Mr. Deputy Speaker, Sir, I am still not satisfied because I have noticed that in examination areas, armed police officers move around next to classrooms. That alone is intimidating. I do not think it is necessary to have armed police officers in examination areas. Are they considering doing away with armed police officer in examination areas?

Prof. Olweny: Mr. Deputy Speaker, Sir, we just do not want to take chances. However, should a centre think it is necessary that we keep away police officers, then we can hire for them security guards. However, let it be in writing. Let them request officially.

Question No.158

DISMISSAL OF RANGER PAUL OKUNGU FROM
TSAVO EAST NATIONAL PARK

Mr. Ochieng asked the Minister for Forestry and Wildlife:-

(a) why Mr. Paul O. Okungu (KWS No. 8315), who was working as a Ranger at Tsavo East National Park, was dismissed from service in September 2009; and,

(b) whether he could consider reinstating him?

The Minister for Forestry and Wildlife (Dr. Wekesa): Mr. Deputy Speaker, Sir, I wish to apologize for what happened on Tuesday. There was a miscommunication from my office. I was unable to answer this Question because my colleague was indisposed. I sincerely apologize to the House.

However, I beg to reply.

(a) Mr. Paul Okungu (KWS No.8315) was removed from the Service for losing Service property. He and others were attached to Singayaya Platoon located in Tsavo East National Park. He could not account for 62 corrugated iron sheets, 15 ridges and 32-inch GI water pipes which disappeared while under his care in the course of duty between June and September 2008. Those items disappeared mysteriously and in circumstances that he was not able to explain or exonerate himself.

(b) I cannot consider reinstating the ranger because he committed a serious offence punishable under the Kenya Wildlife Service Disciplinary Code, 1990. Due process was followed leading to his removal.

Mr. Ochieng: Mr. Deputy Speaker, Sir, on that particular night, there were eight rangers who were charged with the responsibility of taking care of that camp. They were under the care of Corporal Adan Yaro. It is so surprising that after that incident, it is only seven, including Corporal Adan Yaro, who were dismissed. A Mr. Peter Gicheha, who was also among the group, was not dismissed. Could the Minister explain that discrepancy?

Dr. Wekesa: Mr. Deputy Speaker, Sir, the information that I have is that Mr. Paul Onyango was one of the five officers who were disciplined. They all received the same punishment. They were removed from KWS. The records that I have, have Messrs.

Branson Kibet Kiboi, Paul Kimng'etich Bett, Paul Onyango, Wyclif Mugoba, Geoffrey Mautia and Abdul Hassan Ali. Those six officers who worked at Tsavo East National Park received the same disciplinary action and they were all removed from the service.

Mr. Deputy Speaker: Mr. Ochieng, you have no more supplementary questions. Are you satisfied?

Mr. Ochieng: Mr. Deputy Speaker, Sir, I am not satisfied. I was expecting any other hon. Member to actually---

Mr. Deputy Speaker: No! You can ask the last question!

Mr. Ochieng: Mr. Deputy Speaker, Sir, the Minister has avoided to answer my question. I have asked a very straightforward question. What criteria did they use to dismiss the six and not Mr. Peter Gicheha who was among the people who were taking care of that camp at night?

Mr. Deputy Speaker: Dr. Wekesa, do you want to explain the criteria used?

Dr. Wekesa: Mr. Deputy Speaker, Sir, disciplinary action was taken. An inquiry was conducted and orderly room proceedings were held on 18th August, 2009. All the six officers were given an opportunity to explain their circumstances. It was very obvious that those materials were stolen and sold. I have the details of the lorry that carried all those materials. I have a complete record of the inquiry on each individual and, if the hon. Member is interested, I can lay it on the Table for him to see. But as for Mr. Gicheha, I do not have that record. All I know is that those were officers who were disciplined. All of them were removed.

Mr. Bahari: On a point of order, Mr. Deputy Speaker, Sir. I have listened to the Minister very keenly and I am aware of the Question by Mr. Ochieng. He asked what criterion was used to retain Mr. Gicheha and dismiss the others. Is the Minister in order not to answer that question? He does not have the details here. Will I be in order to ask you to defer this Question so that he can bring the answer that the hon. Member has asked?

Dr. Wekesa: Mr. Deputy Speaker, Sir, I do not have any details about Mr. Gicheha. I do not see in my records that Mr. Gicheha was one of the officers.

Mr. Deputy Speaker: Do you wish to go back to your Ministry and come with an answer that has Mr. Gicheha?

Dr. Wekesa: Yes, Mr. Deputy Speaker, Sir.

(Applause)

Mr. Deputy Speaker: Under the circumstances, the Chair directs that this Question appears on the Order Paper on Wednesday morning next week!

(Question deferred)

Question No.242

PERCENTAGE OF FOREST HARVESTED BY PRIVATE COMPANIES

Mr. Mututho asked the Minister for Forestry and Wildlife:-

(a) what percentage of the forest was harvested by the three private companies compared to all local saw millers under the banner of Saw Millers Association from year 2000 to date, and what is the inter-relationship in directorship of the three private companies;

(b) what is the total amount in movement permit charges collected from the three companies for the period compared to all the local saw millers during the period; and,

(c) what are the respective acreages of trees successfully established by the three companies over the last 10 years in relation to the total acreage harvested.

The Minister for Forestry and Wildlife (Dr. Wekesa): Mr. Deputy Speaker, Sir, I have looked at the reply that I have and this Question requires far more information than I have on my document. I want to plead with the Questioner and you to allow me to bring a more comprehensive answer on Tuesday.

Mr. Deputy Speaker: Mr. Mututho, are you comfortable with that?

Mr. C. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. It has become a common trend for Ministers to look at the answers at the last minute and then come here to ask for an extension of time. I am asking the Chair to address that issue because this week alone, there have been about seven cases of that nature.

Mr. Deputy Speaker: Dr. Wekesa, the Chair expects Ministers to peruse the Questions before they come to the House. If you are dissatisfied with the answer, you can approach the Chair and seek more time.

The Minister for Forestry and Wildlife (Dr. Wekesa): Mr. Deputy Speaker, Sir, I will comply with that directive. But may I also mention that I have been out of the country and I only came back recently. I did not have enough time to peruse and look at this Question properly.

Mr. Deputy Speaker: Mr. Mututho, are you comfortable with the Question being deferred to another date?

Mr. Mututho: Yes, Mr. Deputy Speaker, Sir. I have looked at the flimsy answer the Minister was given as a reply and I agree with him. He truly needs to look at the whole thing again. How much time would he require?

Mr. Deputy Speaker: Fair enough! The Chair directs that the Question appears on the Order on Wednesday morning, next week!

Question No.199

LIST OF RETIRED/DEAD KISUMU MUNICIPAL COUNCIL EMPLOYEES FROM 2000

Mr. Olago asked the Deputy Prime Minister and Minister for Local Government:-

(a) whether he could table a complete list of names of staff of Kisumu Municipal Council who either retired or died from the year 2000 but whose pensions or death benefits have not been paid or paid only partially, showing dates of retirement/death and amounts owed as at today;

(b) who administers the pensions, retirement funds and death benefits for the Kisumu Municipal Council; and,

(c) what steps the Ministry is taking to assist and encourage the Municipal Council of Kisumu to make these payments without undue delay and to ensure that pension and retirement funds of the council are administered prudently and in favour of those they are meant to cover.

Mr. Deputy Speaker: Deputy Prime Minister and Minister for Local Government?

Mr. Olago: Mr. Deputy Speaker, Sir, I have just received a copy of the answer which contains in excess of 120 retirees of the Municipal Council of Kisumu. I need to interrogate this sufficiently. I need to compare the names on this list and find out if they tally with the names that I have been given from the Municipal Council of Kisumu, because the issue of retirees is very emotive. Under those circumstances, I wish to request that this Question be answered next week or as soon as possible but not today.

Mr. Deputy Speaker: Fair enough.

(Mr. Nguyai entered the Chamber)

Hon. Assistant Minister for Local Government you are late. Nonetheless, the Chair directs that, to enable the hon. Questioner to prosecute this Question adequately, the Question appears on the Order Paper on Tuesday, afternoon, next week.

(Question deferred)

Question No.229

ALLOCATION OF FUNDS FOR MAINTENANCE
OF MACALDER AIRSTRIP

Mr. Anyanga asked the Minister for Transport:-

(a) when the Government last allocated funds for the maintenance of Macalder Airstrip in Nyatike; and

(b) when he will re-open the airstrip to promote tourism and the mining of gold and copper, which are available in the region.

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

(a) The Government last allocated funds to Macalder Airstrip in Nyatike during the 2005/2006 financial year. The cost of work was Kshs1.3 million and the scope of works included bush clearing, runway repair and fencing with timber poles and barbed wire. The airstrip is currently unserviceable.

(b) The airstrip will be considered among other airstrips during the rehabilitation programme. The Government has embarked on an exercise to rehabilitate the provincial headquarters' airstrips before cascading to the districts' airstrips and others that are utilized for tourism, security, communication and other purposes. Currently, 146 damaged airstrips across the country are being inspected to ascertain their condition, so as to enable the proper budgeting to be carried out for their maintenance and rehabilitation.

I would want to state further that this is one of the airstrips that have already been inspected; it was inspected on 14th and 18th of June, 2010 with a view to giving it funding; this particular year the Ministry has received sufficient funding to rehabilitate the airstrips.

Mr. Anyanga: Mr. Deputy Speaker, Sir this Question was deferred last time because I wanted a more comprehensive answer. I had a lengthy discussion with the PS, Transport, yesterday and he confirmed that he would do everything possible to make sure that Macalder Airstrip is rehabilitated the way the Nyatike people want. I, therefore, wish to confirm that I am fully satisfied.

Mr. Deputy Speaker: Fair enough. Next Question.

Question No.248

MANDATE OF MINISTRY OF DEVELOPMENT OF
NORTHERN KENYA AND OTHER ARID LANDS

Is Mr. Ethuro not here?
Next Question.

Question No. 057

REVIVAL OF RAPSU/KINNA/MALKA-DALKA/
GAFARSA IRRIGATION SCHEMES

Mr. Bahari asked the Minister for Water and Irrigation:-

- (a) What the Government has done to revive the Rapsu, Kinna, Malka-Dalka and Gafarsa Irrigation Schemes in Garba-Tulla District; and,
- (b) How much money was allocated to these schemes in the financial year 2009/2010.

Mr. Deputy Speaker: Is the Minister for Water and Irrigation here?
We will come back to that Question again.

Mr. Lekuton's Question.

Question No.034

PROVISION OF FUNDS FOR ENERGY-SAVING BULBS

Is Mr. Lekuton out of the country or in the country on official parliamentary business by any chance?

We will come back to this Question later.

Question No.231

LACK OF WATER SUPPLY TO KABİYET MARKET

Is Mr. Koech not here? We will come back to this Question.

Final time, Question No.034.

Question No.034

PROVISION OF FUNDS FOR ENERGY-SAVING BULBS

Is Mr. Lekuton not here? The Question is dropped.

(Question dropped)

Question No.135

NON-PAYMENT OF DUES TO RETIRED
TEACHERS BETWEEN 1997 AND 2007

Mr. Deputy Speaker: Regarding Question No.135 by Mr. Pesa, the Chair gave an undertaking to give a communication on the same. The Chair will give communication on the same on Wednesday afternoon next week.

(Question deferred)

Question No.116

MEASURES TO IMPROVE EDUCATION STANDARDS
IN NORTH EASTERN PROVINCE

Mr. Keynan asked the Minister for Education what steps the Government is taking to improve the standards of education in North Eastern Province in view of the poor education infrastructure in the region.

Mr. Keynan: Mr. Deputy Speaker, Sir, I apologize for coming late. I expected that the other Questions listed ahead of mine would be answered.

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

The Ministry has developed policy frameworks and implemented the following intervention measures under the Kenya Education Sector Support Programme (KESSP) at the provincial and district levels towards addressing access, equity, transition, relevance and quality of education.

The Ministry has also convened annual education stakeholders fora on improving access, equity and quality of education and provision of infrastructure. Another forum will be held between 12th and 16th of July, 2010 and all the stakeholders, including hon. Members, have been invited.

We have disbursed a total of Kshs322 million to over 200 primary schools since 2007 under the Government of Kenya/USA project for School Infrastructure Improvement Programme (SIIP). In the financial year 2008/2009 the Ministry disbursed

over Kshs280 million to 99 primary schools and Kshs42.62 million to 101 primary schools in the financial year 2009/2010.

Further, we have disbursed a total of Kshs61,400,837 since 2007 to ECD centres under the Community Support Grants Programme (CSGP). We have disbursed grants worth Kshs506,387,000 between 2003 and 2010 for public secondary schools.

We have implemented child friendly schools CFC programmes in collaboration with the United Nations International Children Fund (UNICEF). The programme is aimed at improving physical infrastructure, teaching and learning and community linkages among others. We have introduced mobile schools for improving nomadic education, and a total of Kshs21,847,064 to support mobile schools was disbursed between 2006 and 2010.

We have established seven special schools and disbursed Kshs1,020 per child under the free primary education programme and an additional---

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

Mr. Deputy Speaker: Yes, Mr. Imanyara.

Mr. Imanyara: On a point of order, Mr. Deputy Speaker, Sir. Since the Minister has provided the answer and we know the tradition is to ensure that he takes maximum time in answering. Could he summarise so that we can interrogate this Question? Otherwise, he will read for the next one hour.

Mr. Deputy Speaker: Minister, it is a Question and Answer. It is not a speech.

The Minister for Education (Prof. Onger): Mr. Deputy Speaker, Sir, the question is what is the Government doing to improve the standards of education in North Eastern Province. He did not confine it to a constituency. Therefore, for me to be able to do justice to that Question---

Mr. Deputy Speaker: Can you summarise it? The Standard Order requires you to summarise it.

The Minister for Education (Prof. Onger): Mr. Deputy Speaker, Sir, it is known that we have lower cost boarding schools. Under the Economic Stimulus Package, centres of excellence have been established in collaboration with the Ministry of Northern Kenya and Other Arid Lands and, through the Constituency development fund, we are doing infrastructure programme. We are providing food to schools under the school feeding programme. We have posted quality assurance officers to the programme. We have organized building workshops and training programmes. We have strengthened mathematics and science under the SMASSE Programme. We have implemented the delocalisation policy to improve academic progress. Finally, we have disbursed infrastructure funds as Treasury increases the Ministry's allocation.

Mr. Keynan: Mr. Deputy Speaker, Sir, I appreciate the lengthy answer given by the Minister.

But I must say that this is a sweeping statement with no value to the people of North Eastern in terms of the poor performance of education in the region. What has been done and what he has said is what applies to every part of the Republic of Kenya.

(Loud consultations)

Mr. Deputy Speaker, Sir, I need your protection. Members are consulting loudly.

Mr. Deputy Speaker: Order, hon. Members! Order! Consult in very low tones to enable the hon. Questioner to be heard.

Mr. Keynan: Mr. Deputy Speaker, Sir, I said the answer given by the Minister is what applies to every part of the Republic of Kenya. I do not want just to dismiss it as a sweeping statement. The kind of answer I envisage in this particular Question is: What concrete measures has the Ministry put in place in order to address the perennial poor performance of students and schools in Northern Kenya? We appreciate these other policies that you have put in place have worked in other parts of Kenya.

So, could he tell us what he has done, particularly for the people of North Eastern Province?

Prof. Ongeri: Yes, indeed, Mr. Deputy Speaker, Sir, the other parts of Kenya did not get a special grant of Kshs280 million which North Eastern Province got for the purposes of infrastructure.

Secondly, the mobile schools are not elsewhere in the Republic of Kenya, but specifically in the ASAL areas. We have also targeted programmes for ECD. That is a specific programme for North Eastern Province.

The hon. Member is privy to the information that this morning we had a very lively debate on the way of improving both the access, retention, transition, equity and finally the relevance of the curriculum to that level. He is also privy to the information this morning we also discussed on the question of teacher provision to this region. That also has a direct relevance to quality of education.

(Loud consultations)

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

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

You are on a point of order, hon. Keynan. Proceed!

Mr. Keynan: Mr. Deputy Speaker, Sir, is it in order for the hon. Minister to mislead Kenyans and Parliament when we know what happened this morning was a programme that was meant to justify the closure of the end of Financial Year 2009/2010 with no tangible--- It was just meant to justify expenditure of money within the Ministry. Personally, that is why I did not wait up to the end of the programme. So, I do not want him to say that I am privy to this programme. I refused to participate in this programme. That is why I walked out.

Could he tell us the concrete measures he have put in place to address this peculiar problem of the people of Northern Kenya? I am not privy to that programme.

(Loud consultations)

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

The hon. Minister has to be heard, hon. Members. Could you, please, consult in very low tonnes? Proceed, Minister!

Prof. Ongeri: Mr. Deputy Speaker, Sir, I have no intention of placating any Member of Parliament on issues of facts. These are facts the hon. Member sought from us.

In Garissa, in the Financial Year 2008/2009, we spent Kshs91,823,940. In Ijara, we spent Kshs90,077,120. In Mandera, we spent Kshs57,860,580. In Wajir, we spent Kshs40,238,360; a total of Kshs280 million. This is a targeted programme, which is not available in the rest of the country.

Secondly, the hon. Member is fully aware that we are also doing what we call nomadic mobile schools in this region. There is a special budget which was set aside for this programme. The money may not be enough, but we have targeted at that level.

Thirdly, the hon. Member is aware that we have a special bursary programme where the best performing students - which has a direct relationship with the quality of education - where they are being given admission to schools outside their provinces and they are fully supported with the bursary funds to join national schools. This has given us a very good performance indices depending upon the number of candidates we have taken.

Mr. Keynan: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the hon. Minister to say the best performing students from that region are normally admitted to schools outside the province, when we know there is a national programme called national schools whereby the best performing students are admitted from every part of the Republic of Kenya? Is he in order to say that the best students from North Eastern Province, the admission they get to national schools is a privilege? This is a national programme. What has he done for North Eastern Province? That is a national programme.

Prof. Ongeri: Mr. Deputy Speaker, Sir, I think the hon. Member should care to listen. Apart from the national programme we are talking about, we have special bursary programme for North Eastern students, and particularly, the girl child, who are being taken and paid for full boarding. This has helped us to breach the gap with the rest of the country.

Mr. Abdirahman: Mr. Deputy Speaker, Sir, we have listened to the Minister very well. All that he talks about are not efforts of the Ministry of Education alone. We would not want to contest that now, but he has not really brought into the mainstream regions that were left out deliberately, even when there are national policies that were developed across the country.

From Independence there were Commissions that have actually recommended a number of things on education in this region and nationally. What he says even in terms of grants is one-off support. Even the Kshs280 million he talks about for infrastructural development is peanuts. That is not money which is continuous. Could he tell us of a sustained programme within that region, which would be able to address issues that relate to access and equity? Even in terms of bursary allocations, could he assure us that even in the current financial year which is beginning today, we will have better amounts of money as opposed to what we had received in the past? While we appreciate the efforts you are making; can you really do a complete shift?

Prof. Ongeri: Mr. Deputy Speaker, Sir, indeed, it is quite clear to me and to my Ministry that when we are looking at the total enrolment in terms of access to our schools, there are one million children out there. The bulk of them are from the ASAL or pastoralist areas. The other balance of children are within pockets of poverty in our municipalities and cities. We still have children we are unable to reach. For us to carry out a meaningful and successful programme and in order to achieve education for all by

2015, we are now doing a proactive programme to reach out to the one million children who are in this level.

The hon. Member knows that on 15th July, 2010, I will be launching the nomadic education policy in Garissa. I will go to Mandera on 12th July, 2010; Wajir - 13th July, 2010; Garissa - 14th July, 2010 to 15th July, 2010 for the launch of this policy. In order to capture the number of students who may be left out and to target quality programmes for this region, we propose to set up, through an Act of Parliament, what we call the “Nomadic Education Commission”. This Commission will have a direct policy and implementation programme. I indicated figuratively that this may cost Kshs12 billion. We have to seek this money from many other partners.

Mr. Mwangi: Mr. Deputy Speaker, Sir, the Minister has made an effort to explain the circumstances. With regard to improved standards, we are all aware that the failure in terms of performance in North Eastern Province is chronic, to be polite. There are some things that the Ministry has to consider, for example, inadequate number of teachers. I have not heard the Minister mention what he is doing to get enough teachers in North Eastern Province. Although he has given preference to the ECD, what has the Ministry done to change the attitude? This is part of the actions that ought to be taken for them to provide the infrastructure. If there are no teachers and their attitude still remains negative, what will we do, after having provided Kshs280 million? That is a substantial amount of money. There are other aspects that the Minister should look into to improve the situation. What concrete actions has the Minister taken in terms of providing adequate primary school teachers?

Prof. Onger: Mr. Deputy Speaker, Sir, I have expressed myself in this House and outside this House about the question of shortage of teachers. Currently, we have a shortage of 56,000 teachers, that is, 33,000 primary school teachers and 23,000 secondary school teachers. I made a presentation both to the Departmental Committee on Education, Research and Technology before the Budget was done. I also made a presentation to other committees and the Treasury. My presentation to the Treasury was that apart from the Economic Stimulus Package (ESP) under which we were to employ 12,500 teachers, we needed also to employ permanent and pensionable teachers. What I now see in the Budget, and I have said this before, is a provision of Kshs2 billion under the ESP. If this is implemented, it will only employ 15,000 teachers on contract. This is an issue I tackled with the heads and principals of schools in Mombasa last week. We agreed that in order to relieve this acute shortage of teachers, because it also has a direct bearing on the quality of education, we should be allowed to employ these teachers through the Board of Governors (BoGs) and the School Management Committees. I will expect Members of Parliament to be on board with me on this matter to convince our respective unions in our respective constituencies to agree that this is the only way we can tackle this problem, once and for all, as we look for other resources to employ teachers on permanent and pensionable terms.

Mr. Kizito: Mr. Deputy Speaker, Sir, I appreciate the manner in which the Minister has responded to the question. However, as an educationist, I think that most of the problems in North Eastern Province are very unique to that province. However much money you want to give that province or whatever the programmes you have for the region, this problem will persist until this Government gets to the core problem as to why North Eastern Province is unable to perform very well. I know there are very many

agencies there that deal with education issues. However, is it possible for the Minister to initiate proper research and delve into the problems that affect this region and come up with something that can help?

Prof. Ogeri: Mr. Deputy Speaker, Sir, I would like to thank Mr. Kizito for that question. Indeed, we have now gone beyond research and we have the policy document in place. We have done enough survey and research. We are now at the level of implementation. That is why I said that one of the documents I will launch on 15th July, 2010 is the Nomadic Education Policy. Beyond that and in conjunction with the UNICEF we now propose certain legislative processes establishing the Nomadic Education Commission. This Commission will tackle the problems and issues that we have so far researched and analyzed.

Mr. Deputy Speaker: Dr. Nuh, this Question has had a lot of attention indeed. Could you be very brief?

Dr. Nuh: Mr. Deputy Speaker, Sir, I will be very brief. The Minister wants to take credit for mobile schools. However, we know that even the teachers who come to teach in the mobile schools are not employed by his Ministry. They are employees of the Arid Lands Department. What concrete measures does the Ministry have to address the issue of mobile schools? What facilities does the Ministry provide? When do we expect the first graduates from the mobile school in our nation?

Prof. Ogeri: Mr. Deputy Speaker, Sir, mobile schools are no different from the other schools. It is the methodology of reaching out to the children. So, there are no special students to graduate from those schools. They are all Kenyan students. They are Kenyan children from Standard One to Standard Eight. So, do not expect that. I want to tell you this---

Mr. Deputy Speaker: Mr. Keynan, could you ask the final supplementary question on the same?

Mr. Keynan: Thank you, Mr. Deputy Speaker, Sir. The Minister has talked about establishing seven special schools. He has also said that he has implemented child-friendly schools. I would like to know where these schools are. If, indeed, it is true he will launch the policy in Garissa, and I want to believe it is true--- The current Education Act empowers the Minister to form a Commission or a Committee. Why does he not do the same as we wait for the enactment of the law that will implement the Nomadic Commission Act?

Prof. Ogeri: Mr. Deputy Speaker, Sir, I will choose another route in order to give this Commission--- It is a serious business and we must treat it as such. Instead of establishing it under the subsidiary legislation in the Education Act, we will go to the parastatal level where we will seek for an Executive order to establish the Nomadic Education Commission. The Commission will have all the rights and privileges spelt out in Parastatals Act. So, we can address this matter more adequately. Under the Education Act, it will be less pronounced.

Mr. Deputy Speaker: Let us move on to the next Question by Mr. Ethuro!

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

Mr. Deputy Speaker: Order, Mr. Keynan! You are out of order, Mr. Keynan!

Mr. Deputy Speaker: Next Question by hon. Ethuro!

Question No.248

MANDATE OF MINISTRY OF DEVELOPMENT OF
NORTHERN KENYA AND OTHER ARID LANDS

Mr. Deputy Speaker: Mr. Ethuro not there? The Question is dropped.

(Question dropped)

Question No.057

REVIVAL OF RAPSU/KINNA/MALKA-DAKA/
GAFARSA IRRIGATION SCHEMES

Mr. Bahari asked the Minister for Water and Irrigation:-

(a) what the Government has done to revive the Rapsu, Kinna, Malka-Daka and Gafarsa Irrigation schemes in Garba-Tulla District; and,

(b) how much money has been allocated to these schemes in the Financial Year 2009/2010.

Mr. Deputy Speaker: The Minister for Water and Irrigation is not here?

Mr. Bahari: On a point of order, Mr. Deputy Speaker, Sir. I have an answer here. This Question is about the livelihoods of people in Garba-Tulla which has been undermined through lack of allocation of resources. This Ministry drops answers here and does not take the lives of people in Garba Tula seriously. I beg that you take serious action against this Ministry.

Mr. Deputy Speaker: Fair enough! It looks like when the Chair gives sanctions against Ministers, they enjoy that, because it is like another way of giving them a longer leeway for them not to come and answer Questions. Under the circumstances, the Minister will not transact any business before she satisfies the Chair and the House that she has a valid reason for not being here.

(Question deferred)

Question No.231

LACK OF WATER SUPPLY TO KABİYET MARKET

Mr. Deputy Speaker: Hon. Koech still not here? The Question is dropped!

(Question dropped)

(Mrs. Ngilu walked into the Chamber)

Hon. Minister for Water and Irrigation, you better get to the microphone and apologize profusely to the House.

The Minister for Water and Irrigation (Mrs. Ngilu): Mr. Deputy Speaker, Sir, I apologize to the House.

Mr. Deputy Speaker: Hon. Bahari, could you ask your Question again?

Question No.057

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GAFARSA IRRIGATION SCHEMES

Mr. Bahari asked the Minister for Water and Irrigation:-

(a) what the Government has done to revive the Rapsu, Kinna, Malka-Daka and Gafarsa Irrigation Schemes in Garba-Tulla District; and,

(b) how much money has been allocated to these schemes in the Financial Year 2009/2010.

Mr. Deputy Speaker: Minister for Water and Irrigation, the Chair has noted that you have run out of breath. You can take your breath and then come to the Dispatch Box and answer the Question.

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

(a) For the local communities to access more economic benefits from irrigated agriculture, the Ministry allocated Kshs12.8 million in 2007/2008 and Kshs4.2 million in 2008/2009 financial years to rehabilitate these irrigation schemes. This year, the Ministry, through the National Irrigation Board (NIB) has entered into a consultancy with Sintex consultants to further improve, rehabilitate and expand Rapsu Irrigation Scheme. The beneficiaries of these schemes are also gradually prepared on operation and management of the schemes through irrigation water users associations.

(b) During the financial year 2009/2010, Kshs3.16 million was allocated to the district irrigation office for irrigation development to further rehabilitate works for the schemes' infrastructures.

Mr. Bahari: Mr. Deputy Speaker, Sir, as you can see, these are various irrigation schemes. Rapsu, Kinna, Malka-Daka and Gafarsa are irrigation schemes around the Ewaso Nyiro North Belt. They have been allocated Kshs3 million in the financial year 2009/2010 and we know what the prices of materials are in this country. Is the Minister satisfied that there is fairness in allocation of this Kshs3 million? Does she expect that some meaningful work will be done?

Mrs. Ngilu: Mr. Deputy Speaker, Sir, the hon. Member's observation is right, that this is not enough. But we have more resources now in irrigation this year than we have had before and I am sure we are going to look again at the allocations for all these projects, so that we can do meaningful irrigation programmes in the country.

Mr. Imanyara: Mr. Deputy Speaker, Sir, the Minister says that this year, they have appointed a consultancy. Are you satisfied that there is need for a consultancy on whom you are going to spend a lot of funds instead of giving these funds directly to the schemes? Would you not be saving money if you had continued allocating funds similar to the Kshs12 million you allocated three years ago, instead of giving the money to a consultant to do work that is already known can be done by the local expertise?

Mrs. Ngilu: Mr. Deputy Speaker, Sir, yes, that could be done by local people, but quite honestly, irrigation programmes in the country had died. We are resuscitating them and now involving the communities. But most importantly, we are now moving away

from flood irrigation to drip irrigation which has not been the case in the country. So, we really need to get consultants to actually build the capacity of the communities, so that they can undertake the work when they move out.

Dr. Nuh: Mr. Deputy Speaker, Sir, while appreciating the Ministry's work towards reviving irrigation schemes especially in Bura and Galole, there has been a disconnect between the Ministry of Water and Irrigation and the Ministry of Agriculture, that has resulted in our maize going bad in silos because of lack of co-ordination. What measures has the Ministry of Water and Irrigation taken this time round to make sure that they work in conjunction with the Ministry of Agriculture and others to make sure that the produce from the farms in irrigation schemes get to the markets?

Mrs. Ngilu: Mr. Deputy Speaker, Sir, the Ministry of Water and Irrigation and the Ministry of Agriculture really belong to the same sector. It is just a matter of co-ordinating and ensuring that the produce that we get can also be marketed. We also actually work with the Ministry of State for Special Programmes to ensure that whatever produce we get is also properly marketed, so that we do not get into a situation like the one we have found ourselves in after having done so much work in irrigation.

Mr. Deputy Speaker: Last supplementary question, hon. Bahari!

Mr. Bahari: Mr. Deputy Speaker, Sir, although the Minister says that the National Irrigation Board has entered into consultancy with the Sintex Consultants to further improve and regulate expanded agriculture this year. Six months have already lapsed and I have not seen this consultant anywhere in my constituency. Could she tell this House exactly what this consultant is expected to do and the timeframe, because half a year has already lapsed?

Mrs. Ngilu: Mr. Deputy Speaker, Sir, in fact, it is not half a year, the entire financial year has lapsed, because we are already in the new financial year, 2010/2011. However, they are already on the ground and the National Irrigation Board is going to ensure that this work is done and the money spent properly.

Mr. Deputy Speaker: Hon. Members, the Chair directs that Question No.248 appears on the Order Paper on Wednesday morning. Hon. Ethuro was within the precincts of Parliament and, indeed, the Chair is satisfied.

COMMUNICATION FROM THE CHAIR

Having said that, you will recall that on 29th June, 2010, while the House was conducting business under Order No.6, Question Time, Dr. Machage sought to ask a Question during debate on Ordinary Question No.183 of that day. Dr. Machage's question was directed to the Minister for Education. Mr. Mbadi rose on a point of order seeking direction from the Speaker as to whether it was procedural for Dr. Machage, a suspended Assistant Minister, to ask Questions in the House. In response to that, Dr. Machage noted that, as a suspended Assistant Minister, he had no duties assigned to him by the Executive and he could, therefore, exercise his mandate as the hon. Member for Kuria while in the House; which mandate would include asking Questions.

The Chair undertook to give directions on the matter yesterday afternoon. As the Speaker indicated, however, the communication, though ready on time, was not in its final form. Hon. Members, parliamentary practice the world over has always made a distinction between Members of Government and those not in Government. Those not in

Government are commonly referred to as Backbenchers. Both categories of hon. Members are critical for the proper functioning of any democracy. Members in Government are tasked with the responsibility of initiating and defending Government policies, decisions and actions.

Erskine May in the text on Parliamentary Practice 23rd Edition page 74 while discussing the question of Ministerial accountability to Parliament, further notes that Ministers have a duty to Parliament to account and to be held to account for the business of their Ministries. Conversely, Members not in the Government play the critical role of keeping the Government in check. For the proper functioning of the Legislature, the distinction between the two categories of Members must be clearly drawn and maintained. Hon. Members, the Question that has arisen relates to the status of a suspended Assistant Minister. To which category does such a Member belong for the purposes of the business of the House? Is such a Member considered as a Member representing the Government, or owing to the suspension, as a Member representing his constituency and Kenyans at large in checking the Government?

Hon. Members, as to whether a suspended Assistant Minister should be considered as a Member representing the Government, allow me to comment by citing Standing Order No.2 of our Standing Orders which defines a Minister as the President, the Vice-President, the Prime Minister, the Deputy Prime Minister or any other Minister. That includes the Attorney-General or an Assistant Minister or any person who holds--- The Prime Minister, Minister or any other Minister including the Attorney-General, an Assistant Minister or any other person who holds temporarily any such office. Although the Standing Orders do not make a distinction between a serving Minister and one under suspension, it is clear from the spirit and intent of the Standing Orders that a Member is either a Minister or not for the purposes of conduct of the business of the House. A Member cannot fall within both categories. Then, under what category does a suspended Minister fall?

Hon. Members, the Oxford Advanced Learners Dictionary defines suspension as an act of delaying something for a period of time until a decision has been taken. A suspension is further defined as a temporary state of affairs pending a conclusive decision. It is, therefore, my finding, hon. Members, that for the purposes of the business of the House, a Member who falls within the definition of a Minister under Standing Order No.2 remains a Minister as long as he continues to hold such office and has not been terminated by due process of the law, whether or not has been assigned duties or has, in fact, been suspended from performing his duties. The assignment of duties or lack of assignment of duties by the Executive to its Ministers is a matter that falls within the ambit of the internal administrative arrangements of the Executive.

Hon. Members, the question as to whether a suspended Minister can represent his constituency and Kenyans at large in checking the Government is one that would apply not just to suspended Ministers, but to all the Ministers as a whole. It is a questing that goes to the core of the doctrine of separation of powers. While the Executive and the Legislature are bound by the doctrine of separation of powers intended to be separate and independent entities, some confluence is to be found in the fact that hon. Members of our Legislatures are privileged to serve as Ministers in the Executive. Although such Ministers are responsible to their constituents, our practice, and that which establishes similar jurisdictions, dictates that Ministers, as Members of the Executive, cannot

participate in questioning the same Executive that they serve. However, that does not preclude and, indeed, has never precluded such Ministers from deliberating or making contributions to bi-parliamentary business that has a bearing on the constituencies that they represent.

In light of that, hon. Members, I find Dr. Machage, though a suspended Assistant Minister, remains, for the purposes of this House, a Minister in terms of Standing Order No. 2 and, cannot, therefore, seek to interrogate the same Parliament that he represents through Parliamentary Questions.

(Applause)

Mr. Olago: On a point of order, Mr. Deputy Speaker, Sir. I salute your ruling on that very vexed issue. However, considering the fact that there is no servitude or slave matter relationship between the Cabinet Minister and his Excellency the President, would it be in order to advise Dr. Machage to offer a letter of resignation and come and sit on the Backbench?

Mr. Deputy Speaker: Hon. Dr. Machage has not sought that advice from the Chair. In the event that he does so, that is not within the ambit of what the Chair is supposed to do in his official capacity. However, under the circumstances, clearly, hon. Olago Aluoch, being a lawyer yourself, you may want to offer your services to hon. Machage and become his counsellor.

(Laughter)

Hon. Members, the Vice-President and Minister for Home Affairs wishes to make a Statement about the health of the Right Honourable Prime Minister.

STATEMENTS

HEALTH STATUS OF THE RIGHT HONOURABLE PRIME MINISTER

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Thank you, Mr. Deputy Speaker, Sir. I rise to make a statement regarding the health of the Right Honourable Prime Minister, hon. Raila Amolo Odinga. I would appreciate if I could be heard in silence. That is because this is a matter that is important to the House. This Statement should have been made yesterday because the House was rightly concerned about what had befallen the Right Honourable Prime Minister. I think it is hon. Ojode who undertook to have the Government to respond on this matter. I am aware that the honourable Minister of State for Provincial Administration and Internal Security, Prof. Saitoti made some comments on this matter. However, I think it is important to place matters properly on record. Therefore, I have the honour to make the following statement.

The Prime Minister felt some discomfort immediately after his function at the Nairobi Dam on Monday evening, where he had launched a project to rehabilitate the dam. The Prime Minister felt general exhaustion and some headache. After the function, he branched to Nairobi Hospital for a check up and walked up to the clinic. Initial tests detected fatigue and the doctors straightaway embarked on dealing with that. They put

him on medication and recommended complete bed rest for a few days, during which period he was to be confined in hospital. Further tests were done to determine the cause of the headache that the Prime Minister was feeling. Late in the night, doctors detected that there was an unusual build up of pressure outside the brain and that was the cause of the headache. At this point, the Prime Minister told doctors that he could remember hitting his head against the roof of his car a few weeks earlier, but he never thought that it was a serious issue. This was an important revelation to the doctors and were agreed that the cause of the pressure that was causing the headache had a relationship with that incident.

Mr. Deputy Speaker, Sir, a team of doctors got together and agreed that it was necessary to carry out a minor procedure on the left side of the head to relieve the said pressure. This was done successfully. The Prime Minister has done well since that procedure. He is very well. Both the headache and the exhaustion are happily gone.

As of yesterday and it is all over the media, the Prime Minister was receiving well wishers, he took walks within the hospital and he was able to do some exercises. Doctors have, however, recommended that he remains in hospital for five days to get maximum rest and he has agreed to that request. Thank you.

Mr. Affey: Mr. Deputy Speaker, Sir, I do not wish to raise any clarification, but only to let the Vice-President and Minister for Home Affairs know and maybe, communicate the same to the Prime Minister that my father had a similar procedure two months ago and he is doing very well. So, this is a matter that, I am sure, the Prime Minister will get along with. In the meantime, it has only been discovered that camel milk has a very unique power and, perhaps you could advise the Prime Minister to take a lot of camel milk.

(Applause)

Mr. Deputy Speaker: Fair enough! The Vice-President and Minister for Home Affairs will most likely oblige to take that advice to the Right hon. Prime Minister. Are you seeking a further clarification? Indeed, I think the matter has been put to rest. We are all happy and the House wishes the Prime Minister quick recovery. Are you seeking a clarification, hon. C. Kilonzo?

Mr. C. Kilonzo: Mr. Deputy Speaker, Sir, not necessarily, but you can allow us, Members, to convey our messages of good wishes for the Prime Minister. We wish him a quick recovery and look forward for the next sitting when he will come here and perform his duties as the Prime Minister.

The Deputy Speaker: Fair enough! The Vice-President and Minister for Home Affairs will certainly take the collective concern and the wish of Parliament to the Right hon. Prime Minister.

Hon. Oparanya, you have a Ministerial Statement? Make it brief!

AUDIT REPORT OF CDF BY NTA

The Minister of State for Planning, National Development and Vision 2030 (Mr. Oparanya): Mr. Deputy Speaker, Sir, the Member for Embakasi, Mr. Waititu, sought a Ministerial Statement on the audit report of the Constituencies Development Fund

(CDF) by the National Taxpayers Association (NTA). He sought clarification as follows:- Who assigned this NTA the work of auditing the Fund; whether the personnel involved is qualified and licensed to practice in accordance with the law and what action the Minister will take to ensure that this organization does not peddle falsehoods which are injurious to the integrity of the Members of Parliament.

I have the following Statement to make. I would like to state that nobody instructed the NTA to conduct the audit of the CDFs. According to its website, the NTA is a national independent, non-partisan organization formed to support good governance in Kenya through strengthening citizens to Government and citizen to citizen accountability. Their mandate is to carry out independent social audits and promote the effective use of taxes by the citizens. The legal status of this organization is unclear as they are not registered with the Non-Governmental Organizations Co-ordination (NGO) Council. The organization is headed by an executive director by the name, Mr. Kenneth Masime, whose qualifications we have so far not been able to establish. The NTA has posted information on their website that they have countrywide network with regional coordinators.

With regard to the action that I have taken, as soon as the information appeared in the media, I directed the CDF Board to issue a rejoinder in the local dailies, which they did. In the statement, the NTA and other organizations, both in the public and the private sector, keen to study, analyze and investigate or constructively criticize the management and the actual utilization of the CDF were advised to verify the information with the CDF Committees and the CDF Board to prevent cases of serious misreporting of the facts. We have communicated with the NTA and implored the organization to verify any information on the CDF programme before publication.

Thank you.

Mr. Waititu: Mr. Deputy Speaker, Sir, considering the negative impact caused by the NTA report on some Members, I expected the Minister to publish the audited report from the Ministry, which could have clearly shown that what the NTA had reported was wrong. In future, the Minister should make those statements available, so that such organizations do not attempt to audit and publish false information.

Mr. Deputy Speaker: You have made your point. Any other Member seeking clarification on the same?

Mr. Mbadi: Mr. Deputy Speaker, Sir, I have no quarrels with Kenyans or groups of Kenyans who would want to independently audit the activities of the CDF. However, some of the comments from this particular body mentioned that there was re-allocation of funds which they falsely reported as having been misappropriated according to the rejoinder from the CDF Board. I am concerned and I do not know how the Minister will address this, because almost all our constituencies apply for re-allocation for funds from one project to another. If these reallocations will be highlighted by bodies that, probably, the Ministry has no control over, as embezzlement of funds, then I think majority of us will be painted in bad light before the public.

How will he address this issue, given the fact that he has expressed his fears that he may not be in control over some of these organizations?

Mr. Langat: Mr. Deputy Speaker, Sir, in the report that was released by the NTA, which audited the CDFs, they quoted some international organizations as having

supported them to do the audit. Could the Minister confirm whether those international organizations are willing to take responsibility for any misrepresentation in that report?

Mr. Deputy Speaker: Dr. Nuh, let us have the last clarification.

Dr. Nuh: Mr. Deputy Speaker, Sir, with your indulgence, I want to seek two clarifications. The first one is that everybody is supposed to be responsible for whatever he or she says, and so should NTA. Has the Minister taken the complaint to the NGO Co-ordination Council to see to it that NTA gives an adequate report? Secondly, I would like the Minister to clarify whether the Board, which falls under the ambit of his Ministry, can conduct a concurrent audit review whenever NTA wants to go and audit constituencies, so that when we have the NTA audit report, we also have the report from the Board, so that Kenyans can compare the two with a view to establishing where the truth lies.

(Mr. Ethuro stood up in his place)

Mr. Deputy Speaker: Are you seeking a further clarification, Mr. Ethuro?

Mr. Ethuro: Yes, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Proceed!

Mr. Ethuro: Thank you, Mr. Deputy Speaker, Sir. I wanted the other hon. Members to go first, so that I can summarise.

I would like the Minister to clarify the steps he is taking in order to ensure that the website of the Constituencies Development Fund (CDF) functions properly, so that these people do not have to create their own stories but actually his Ministry can provide timely and accurate information to the public. When will the website be functional?

Secondly, when the Minister in his address says: "NTA, in its website" apparently, what is available to him is what is available to any other person on the street. I thought that the Government has better sources of information rather than relying on a website of an organisation. He has also said that the legal status of this organisation is not known. How does a government allow an entity it does not know its legality to be operational to the extent of receiving such publicity? Does that not concern the Minister? If it concerns him, has he taken remedial action?

Could the Minister also confirm, if he has engaged his mind to such issues of legality, the source of funding and accuracy, that they can make use of the National Cohesion and Integration Commission, which has been very good in checking Members of Parliament on hate speech? Could he also refer them to that Commission?

The Minister for Planning, National Development and Vision 2030 (Mr. Oparanya): Mr. Deputy Speaker, Sir, as you are aware, the audit of Government funds is carried out by the Controller and Auditor-General (C&A-G). Unfortunately, the C&A-G has not been able to audit funds at the constituency-level. However, the C&A-G has been able to audit funds at the national-level. In fact, I appointed a task force, in June, 2009, to look into some of the structural problems that we are encountering in CDF. I am told that the report is now ready. It will be tabled in this House so that hon. Members can look at it.

Mr. Deputy Speaker, Sir, we have suggested that the Board should liaise with the C&A-G, so that, at least, all the constituencies can be audited from 2004 to the current financial year, and that every constituency shows that every programme that was to be undertaken has been undertaken in accordance with the law. When such issues arise, one

would want to show the certificate issued to him by the C&A-G. Unfortunately, the C&A-G has limited manpower and I think they are exploring ways of getting external auditors from the private sector to help in that area.

Mr. Deputy Speaker, Sir, most of the changes that came up in the report on funds that were not in existence were actually funds that were re-allocated. That is why I have stated here that before such organisations come up with such a report, they must make sure that they discuss these issues with the constituency committees and the Funds Managers to know whether these funds had been re-allocated or not. Unfortunately, I could not get the organisation that funded. I was told that they were in the national organisation but the NTA were not willing to give us the information on what organisations were funding them, and I have no capacity to force them to give me that information.

Mr. Deputy Speaker, Sir, we have written to the NGO Co-ordination Council and requested them to tell us the status of this particular organisation because when we checked, we were told that the organisation had not been registered by that particular council. So, we are waiting for a reply. As soon as I get one, I will communicate to the House.

The website of the CDF Secretariat is one thing, and I have directed them that they should make sure that the website is functional. Last month, they sent out tenders for a consultant to do that particular work. I am told that tenders have already been received and are being evaluated. So, we will soon have an expert to give some consultancy services to make sure that the website is working. I want to assure hon. Members that within three months, that problem will be sorted out.

Mr. Temporary Deputy Speaker, Sir, the issue of legality of the organisation is not within my mandate. I have to take that issue with the Office of the Vice-President, under which NGOs fall, to see how he can deal with this illegal organisation. I will also endeavour to see to it that I forward the same information to the National Cohesion and Integration Commission to look at it.

Thank you.

Mr. Deputy Speaker: Yes, Mr. Attorney-General!

ACQUITTAL OF EDWARD KIRUI

The Attorney-General (Mr. Wako): Mr. Deputy Speaker, Sir, I rise to make a Ministerial Statement requested by hon. Olago Aluoch on the acquittal of Edward Kirui, who had been charged with murder arising out of the post-election violence.

Mr. Deputy Speaker, Sir, Edward Kirui was arraigned in court, before Justice Muga Apondi, on 8th February, 2008, and charged with the offence of murder in two counts, contrary to Section 203 as read with Section 204 of the Penal Code. The trial commenced before Justice Mutungi, as he then was, on 9th April, 2008. Evidence was recorded from 19 witnesses before he retired from the Bench.

With the consent of the defence, and particularly the accused, the trial continued before Justice Fred Ochieng, who heard the remaining three prosecution witnesses and the two defence witnesses. The testimony of the witnesses was summarised *in extenso* in his Lordship's Judgement, dated 25th June, 2010, which I attach to this Ministerial Statement.

Mr. Deputy Speaker, Sir, the substance of the evidence, which formed the bedrock of the prosecution case, was recognition, identification, opportunity and recovery of the murder weapon from the accused. The accused himself had testified that he was issued with the firearm AK47 Rifle of Body Parts No.08378, which had subsequently been re-issued to him on a regular basis.

He testified that on 16th January, 2008 he had been issued with the same rifle from the armoury and was in the group led by Office Commanding Station (OCS) Chief Inspector, Handset Kaloki. In its judgment on page 75, the court noted as follows:-

“I do find the offence committed was murder”

The court made the following finding which is critical on page 80 which says:-

“In light of those questions, even though, all other evidence adduced shows that the accused was positively identified at the scene of the shooting incident and even though he was captured on film as he appeared to shoot the two victims, this court is unable to reconcile those facts with the findings by the fire-arm examiner who concluded that the bullet was discharged from a gun that was different from the one which the accused had.”

The acquittal of the accused was predicated on the apparent confusion of the number of the gun issued to the accused which was AK 47 rifle of body parts No.08378 and Serial No.23008378 as stated by the accused and serjeant-in-charge of the armoury, Serjeant Serem while the fire-arm examiner examined AK 47 rifle Serial No.3008378. This is the rifle which was used to fire the bullet which had been recovered from the body of the deceased, George William Onyango. He came to the conclusion that there were two different guns being referred to. The gun with Serial No.23008378 which was issued to the accused was different from the gun with Serial No.3008378 which was used to fire the fatal bullet.

Mr. Deputy Speaker, Sir, I have carefully examined the totality and the cumulative effect of the evidence tendered in this case. I have also examined and perused the judgment and it is my considered opinion with utmost respect to the learned judge that he was in error both in fact and in law to acquit the accused person. It is instructive to note:-

(i) The recovery of the gun was not an issue.

(ii) The chain of custody of the gun taken for analysis was not an issue. There was sufficient proof of the chain of possession of the weapon that the offending projectile emanated from.

(iii) It is clear that the body part number of the gun was 08378 and this is consistent in all the exhibits that were tendered and consistent also with the statement of the accused himself and all the material witnesses. The body part number of the gun is the number which is called “the control number” that identifies all the material components of the rifle. In fact, if you look at the arms movement register, you will find that we have a column of the body part number.

(iv) The fire-arm examiner and the investigating officers correctly stated that the serial number of the gun was 3008378 which coincide with that of the accused and the serjeant-in-charge of the armoury except the figure 2 at the beginning.

Mr. Deputy Speaker, Sir, as I have stated, the body number is the same throughout and the serial number again is the same throughout. The only difference is the two at the

beginning. That is quite clearly stated in the report of the examiner. The gun was assault rifle AK47 Serial No.3008378 marked as exhibit B.

(v) The learned judge in acquitting the accused relied on the decision of the Court of Appeal in the case of Eric Akeyo Otieno versus the Republic which he held, was binding on him. However, that case is easily distinguishable in the following respects:-

(a) More than one armed officer was involved in the shooting but only one was charged in the case that was before the Court of Appeal.

(b) There were six cartridges which were recovered from the scene which could have been shot from either of the rifles in order to have a confused state of affairs in that case in the Court of Appeal.

(c) There were two G3 rifles which were being used. Consequently, the serial numbers of the rifles differed in material numerical particulars, that is, 369369 and 359359. The difference in the serial numbers of the two rifles, in those circumstances, could well raise a legitimate question as to which of the two could have been the source of the fatal bullet.

In the current case, the judge did not have the same challenge. There was neither argument nor evidence to the effect that another gun, whose serial number may have confused with the one in possession and custody of the accused person at all material times, was involved. The only other guns that were in possession of PW4 and PW5 which were not AK47 but were G13, and those were also at the scene of the incident were taken for analysis also and excluded by the examiner as having shot the fatal bullet. That fatal bullet came from AK47 and not G13. As I have stated earlier, the body part number is the same in respect of all the witnesses that gave evidence before the court. That is the critical issue. What recourse does the Attorney-General have?

Unfortunately, under Section 379(5) and (6) of the Criminal Procedure Code, there can be no appeal against an acquittal by the High Court in the exercise of its original jurisdiction. Where a person has been acquitted by the High Court, in the exercise of its original jurisdiction, the Court of Appeal may permit a point of law of exceptional public importance which is also desirable in the public interest to be determined by the court on review of the case. This can only be done if the Attorney-General signs a certificate to that effect and files the same with the registrar of the Court of Appeal. But the Court of Appeal has no jurisdiction whatsoever, to reverse the decision of the trial court and in this case, release the convicted person or allow the appeal as we would call it in legal parlance. All that they can do is to have a declaratory judgment. That declaratory judgment cannot operate to reverse an acquittal. But what I am doing, particularly in respect to the matter of William Onyango from whom that fatal bullet was taken, I have directed the Director of Public Prosecution to prepare the requisite certificate for my signature so that the Court of Appeal can review that decision but it will only be a declaratory judgment. It will not amount to an acquittal of the accused person.

However, concurrently with or in the alternative to the certificate, I have also directed the DPP to explore the viability in law of seeking to have the entire proceedings of the case to be declared a mistrial on the ground that the learned judge made no findings and passed no judgment in respect of the murder of Ishmail Chacha which was a subject of count two of the joint information.

Mr. Deputy Speaker, Sir, this case demonstrates that the law should be amended to provide for such situations, particularly in connection with serious offences whereby the Court of Appeal may be granted jurisdiction to intervene and even reverse an acquittal ordered by the High Court in the exercise of its original jurisdiction where such an acquittal is patently against the available evidence or constitutes a gross injustice. Such amendments have recently been made to the laws in the United Kingdom, in Uganda, Trinidad, Tobago, Fiji, Australia and Nigeria to name but a few countries which have recently amended their laws to have the possibility of an appeal from the decision of the High Court in the exercise of its original jurisdiction. I will, therefore, be tabling an amendment to that effect to be considered by this House under the Statute Law Miscellaneous (Amendment) Act. This case does not in any way demonstrate lack of capacity to investigate and prosecute the perpetrators of post election violence. For the record, I would like to state categorically that this case was well investigated and competently prosecuted. I would also like to say for the avoidance of any doubt that I have every confidence in the trial judge, hon. Justice Fred Ochieng', who is a judge of outstanding integrity and ability. I have no doubt in my mind that in reaching that decision, he followed the due process without being influenced by any extraneous circumstances.

[Mr. Deputy Speaker left the Chair]

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

The Temporary Deputy Speaker (Mr. Ethuro): Who had sought a statement?

Hon. Members: Hon. Olago Aluoch!

Mr. Shakeel: Mr. Temporary Deputy Speaker, Sir, I have been asked by hon. Olago to stand in for him and I had informed the Speaker. Thank you for allowing me to comment.

I am disheartened by the situation as it has been presented by the AG and law. I am urging him to explore all the possibilities for declaring this a mistrial because in effect it is that. I am not a lawyer and I wish my colleague, hon. Olago, was here to handle this. But as we have taken the advice of the AG, I am also keen to see that that law is changed--

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Shakeel! Just ask for specific clarifications from the AG.

Mr. Shakeel: What are we going to tell the relatives of the deceased? Are we going to have a mistrial? Two, what is the effect of this judgment in the international arena? How will it be seen that we are not able to successfully prosecute a straight forward and well documented case?

Mr. Imanyara: Mr. Temporary Deputy Speaker, Sir, I am in complete agreement with the AG in the steps he proposes to take. What this case confirms is the urgency with which we need to perform the task of judicial reforms. The reason we have been calling for a local special tribunal to deal with post-election violence is because there is a feeling, and it is now documented and confirmed by this decision and also the decision recently rendered on the Kadhis' Court that our Judiciary as currently constituted, is not capable

of meeting people's expectations. Here, we are not passing judgment on the individual judges concerned but on the institution of the judiciary.

With regard to the post-election violence victims, our judicial system concentrates so much on the rights of the accused, forgetting that there are victims and that people were actually shot, the AG has confirmed that he does not agree with the findings of the judge in acquitting this accused person but he has said absolutely nothing regarding the victims and whether the state would consider even *ex-gratia* compensation for the family of the deceased, given that the evidence clearly points out to murder most foul. Would the Attorney-General agree with me that there is very urgent need for enactment of a special tribunal for Kenya to handle the post-election violence cases?

Mr. Ogindo: Thank you, Mr. Temporary Deputy Speaker, Sir. I just want to add from where Mr. Imanyara has left. It is the saddest day for this country because this death was very well documented and a large number of people died out of gunshots. We know that most of the guns that killed the people were in the hands of security personnel. I am seeking clarification against this background. We have seen serious concerted efforts from the Government to deal with the living Internally Displaced Persons (IDPs). We have not heard any concrete steps being taken to deal with people who died in similar circumstances. What undertaking is the AG giving this House in terms of the manner in which he is going to deal with the people who died and who left gaping holes in their families as far as their deaths are concerned, arising from members of the security personnel?

The Temporary Deputy Speaker (Mr. Ethuro): The hon. Member for Nyakach!

Mr. Ochieng: Thank you, Mr. Temporary Deputy Speaker, Sir. It is quite unfortunate from the conclusion that the Attorney-General has just given in his statement that he talks as if his arms are tied, while the evidence is so clear that the Judge did not actually give the right judgment that he ought to have given in this matter. Taking into account that so many people were killed – quite a number of people – in Kisumu; they were killed by even policemen from Uganda. So, can we say that the Government is trying to cover up some of these murders? Why is he saying that he cannot take action against the Judge, who has actually given a faulty ruling in this particular straight forward case?

Thank you, Mr. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Mr. Ethuro): Let us get the last one from the hon. Member for Chepalungu.

Mr. Ruto: Thank you, Mr. Temporary Deputy Speaker, Sir. It is clear from what the Attorney-General said regarding the findings by the Judge that, probably, the killer may not have been properly investigated. It is apparent that in the view of the Judge, probably anyone of the others could have shot the deceased. Could you clarify whether you are going to widen the investigation so as to determine exactly who caused the death instead of dwelling on probably widening the powers of the Executive to interfere with the Judiciary? You have---

The Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Ruto! You are seeking clarification and not originating your own Motion!

Mr. Ruto: Mr. Temporary Deputy Speaker, Sir, I am seeking clarification from the Attorney-General whether he is actually going to order that wider investigations be carried out.

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, a very important issue has been raised as relates to the victims and relatives of the deceased in this particular case. There was no doubt that the deceased met their deaths as a result of the activity of the law enforcement officers. There is no doubt, if you read the judgment, that the Judge actually found that the offence of murder had been committed. He was only confused on this issue of the guns. But that being the case, as far as the victims in this particular case are concerned, I think they are entitled to compensation; if they lodge their claims, we will be willing to consider them.

Mr. Imanyara: On a point of order, Mr. Temporary Deputy Speaker, Sir. Why should the Attorney-General wait for the claims to be made when he recognizes that the victims deserve compensation? Do the facts not speak for themselves, Mr. Attorney-General? Surely, why must you wait for the deceased family to raise a claim when you acknowledge that they deserve compensation? Why can you not offer *ex-gratia* payment of some kind?

The Attorney-General (Mr. Wako): My learned friend, as you know, one does not just want to offer an *ex-gratia* payment, which may be completely out of proportion or maybe too small, depending on the circumstances of the case. It is up to the families of the deceased persons to make their claims, and give us that information which can form the basis of a fair compensation. That is as far as this case is concerned.

Mr. Temporary Deputy Speaker, Sir, an issue was raised on judicial reforms. I agree and I think we have all agreed that we must have judicial reforms. In fact, only this morning, the hon. Chief Justice, the Minister for Justice, National Cohesion and Constitutional Affairs and the Attorney-General were receiving the final report on judicial reforms. So, that is being looked into. I would wish to ask my learned friends to fit the cases on their own merit. When it came to the Kadhi's Courts, I was the first to shout and say that one is very wrong, to an extent where I will be filing an appeal, most probably in the course of next week. We have seen all the certified copies of the proceedings, and we should be ready sometime next week to file the appeal on the issues of the Kadhi Courts. But in this particular case, I think it is the judge who just misdirected or confused himself. Maybe, the confusion may have arisen because it was another Judge who heard the 19 witnesses who saw the guns. He only heard the investigating officer and a few witnesses and somewhere in the judgment when he saw the figure two, he thought it was a typographical error and, therefore, was trying to look at the handwritten notes of the former Judge. But, actually, had he just looked at the examiner's report, he would have found an answer there; it was not a typographical error – it was actually the number of the gun that was used.

Mr. Temporary Deputy Speaker, Sir, on the issue of the special tribunal, as you know, I have supported at all times a special tribunal being established or constituted in this country to try the perpetrators of the post election violence. I was signatory to the Cabinet memorandum that asked that the special tribunal be set up.

Mr. Temporary Deputy Speaker, Sir, I think I have answered hon. Ogindo's clarification on the issue of being concerned with not only IDPs, but also those who died. But on the facts of every case like this one, definitely, to me, the families of the victims are entitled to compensation.

Mr. Temporary Deputy Speaker, Sir, if hon. Ruto had listened to me very, very carefully, this case was properly---

Mr. Ochieng: On a point of order, Mr. Temporary Deputy Speaker, Sir. The Attorney-General is not addressing my clarification. He has again repeated here that the Judge actually misdirected himself in handling this particular matter. So, I wanted to know what action he is taking against the same judge who mishandled the entire ruling.

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, I understand the anxiousness of the hon. Member, but if he could just sit and listen and then when I have finished, if I have not on touched that issue---

The Temporary Deputy Speaker (Mr. Ethuro): Order!

The Attorney-General (Mr. Wako): I was going to come to that issue, Mr. Temporary Deputy Speaker, Sir. So, just---

The Temporary Deputy Speaker (Mr. Ethuro): Order! Order, Mr. Attorney-General! If you, yourself, are satisfied that you had satisfied the hon. Member, he has every reason to tell you that he is not satisfied. You have agreed that the case was mishandled; surely, you are admitting that there is a problem! So, his is a valid concern, Mr. Attorney-General; address yourself to it!

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, I do agree entirely that his is a valid concern, but I am yet to address it. I am saying that I am going to address it. I have not doubted at any time that any point that is raised here is valid.

The Temporary Deputy Speaker (Mr. Ethuro): Proceed, Mr. Attorney-General!

The Attorney-General (Mr. Wako): Now, the hon. Member said that this case was not properly investigated. It was properly and competently investigated. The hon. Member said that it is not clear who shot; who shot is very clear; I have no doubt in my mind that it was Eric - the accused person who was acquitted in this case. There was one gun - a gun which went to the examiner, who confirmed that the shot that was taken from the body of one of the deceased persons was shot from that gun. He was seen on television shooting. But not only that; there were independent witnesses who saw him on the ground; and not only that, there were also some of his officers who knew him. So there is no doubt whatsoever. There was never an issue as to who shot. So, this particular case does not call for any more investigations because the matter was competently discussed.

Now, as to when a judge is directing himself, that in itself cannot form a disciplinary action. It is happening every day. One can misdirect, one can be wrong on the law or come at the wrong decision and will go on appeal. The appeal will reverse that judge's ruling. It does not mean that when the Appellate Court is reversing the decision of the judge because he may have misdirected himself on a particular matter, he must be disciplined and terminated. You may find that that very same judge, when the case goes to a higher appeal, the original judge is confirmed and the middle court judgment is overruled. This is an everyday occurrence in our court system. That is why on this particular issue, there is no need whatsoever, to consider even remotely to try to discipline the judge because he misdirected himself.

As I stated in my Statement, this is a judge whom I have every confidence in. He has ability and experience in issues of the law and so on. I think he just applied his mind to it in accordance with the due process. If he applied wrongly, that was in the course of his duties. I do not think there was any other extraneous considerations that came into play.

Mr. Shakeel: On a point of order, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Ethuro): We have been on this matter for so long.

Mr. Shakeel: It is very important, Mr. Temporary Deputy Speaker, Sir.

Mr. Temporary Deputy Speaker (Mr. Ethuro): I agree it is very important, so let us have the last one. What is your point of order?

Mr. Shakeel: Mr. Temporary Deputy Speaker, Sir, is it in order for the Attorney-General to lightly say that the issue of the Kadhis Court is very important and he is going to appeal but the issue of the two people who were shot dead is not as important and he will consider to see whether he is going to make an appeal? Is it in order for the Attorney-General to trivialize the shooting and killing of people, especially from Kisumu where 87 of our people were shot? We have evidence of this. Is it in order for him to trivialize this whole issue?

Could the Attorney-General confirm to us that he is going to appeal and alternatively ask for a mistrial?

The Temporary Deputy Speaker (Mr. Ethuro): Attorney-General, even the Chair does not understand what you are trying to say. You are admitting that the judge did not use all the information that was available to him. What is the course of action from your part?

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, the point of action on my part in accordance with the due process of the law is to do exactly what I have stated. If the law allowed me to appeal, I would have definitely appealed. However, the law does not allow me to appeal. That is why we go the way of certificate for a declaratory statement on an important point of law. That is the law and that is what I am going to do.

However, on top of that, we are evaluating very seriously in view of the fact that there were no findings on the second deceased person. The judge focused his mind on the deceased person from whose body the bullet was recovered and made a decision on it. He did not make a decision on the second deceased. In view of that, we are exploring every avenue to see if in that declaratory order, we cannot seek the order that the case was a mistrial so that it is tried again. That is the best I can do under the law.

(Several hon. Members stood up in their places)

The Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Members!

Mr. Shakeel: Good enough; Mr. Temporary Deputy Speaker, Sir, our people have died and you are saying we go to the next order! I am not satisfied.

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Shakeel! The Chair has been extremely sympathetic to your case. This is a national issue. It is not just a Kisumu issue. We would want the Government to take action. I think the Chair has been more than generous enough to allow Members to ask more clarifications. The Chair has even probed the Attorney-General to ensure that he responds to the matters that you have raised. He has said he is going to do something.

Attorney-General, you have seen the mood of the House. The entire country is looking upon you to ensure that justice is done and is seen to be done. You can also be proactive the way you are in dealing with the issue of the Kadhis Courts.

Let us go to the next item!
Mr. Ojode, please, proceed!

PRESENCE OF OROMO LIBERATION FRONT IN KENYA

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Temporary Deputy Speaker, Sir, on Thursday 24th June, 2010, the Member of Parliament for Wajir North Constituency, Mr. Gabbow rose on a point of order requesting a Ministerial Statement in regard to the presence of the Oromo Liberation Front (OLF) in Wajir North Constituency.

Mr. Temporary Deputy Speaker, Sir, in the Statement, he wanted to know what the Government is doing to make sure that these people are out of Wajir North Constituency. He also further alleged that the OLF are being supported by two ex-chiefs and a lawyer based in Nairobi.

I wish to state as follows: The allegation made about the presence of suspected OLF militia in Wajir North cannot be ascertained by security organs in the district. However, on 6th January 2010, our security personnel received information from members of the public that suspected OLF militia had been seen in the Ramu area within Buna Location of Wajir North District. On receipt of the information, a team comprising of Kenya Army personnel, regular and administration police officers accompanied by elders was dispatched to the area. The team patrolled the area from 7th to 10th January 2010 but they did not trace the suspected militias.

Mr. Temporary Deputy Speaker, Sir, around June this year, rumours started again on the presence of the OLF militia in the district. Following these rumours, the regional commissioners upper North Eastern and the District Commissioner accompanied by the other members of the district security and intelligence committee Wajir North, have held several leaders' meetings and *barazas* in which the Member of Parliament has participated, sensitizing the leaders and wananchi on the dangers of harbouring the aliens at any time in future.

Mr. Temporary Deputy Speaker, Sir, the provincial administration is not aware of any ex-chief or a lawyer who is either sympathetic to or harbouring the aliens. However, I have directed the security organs to be on high alert to apprehend any alien or militia who might be in the country illegally.

Finally, I would also like anybody with any information on the presence of the OLF militia in the country to come forward and volunteer the same to our security agents to help us apprehend them and thus foster security of the area.

Mr. Gabbow: Mr. Temporary Deputy Speaker, Sir, I am glad that the Assistant Minister has now confirmed that there are no OLF fighters in Wajir North. That should put the case to rest. I would like to ask him whether he could take the necessary action against the rumour mongers who continue making public statements in *barazas* and accusing individuals and tarnishing their names. I also wish to congratulate the Assistant Minister for acting positively and posting an OCPD and a new 4x4 Toyota Land Cruiser. I am glad and that will improve the security in the area. However, I still insist that the same individuals must be investigated by this Government. That is because we are aware that they have connections with OLF. But I am glad that the Government has confirmed that there are no OLF fighters in Wajir North. Let us close that chapter.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Temporary Deputy Speaker, Sir, we do not wish to investigate individuals based on rumours. If there is any evidence from those individuals, the Government is on high alert. This Government is not sleeping! We will arrest anybody who harbours aliens. We will arrest those who want to cause chaos. The OLF is an Ethiopian factor. It does not affect our country. I have said that the OLF Militia is not within Wajir North.

ASSENTING TO THE INDEMNITY REPEAL ACT

Amb. Affey: Mr. Temporary Deputy Speaker, Sir, I rise to seek a Ministerial Statement from the Attorney-General. On 18th April, 2010, this House passed the Indemnity Repeal Act. The House expected the Government to move with speed--- The House expected the President to sign it into law. But, almost three months down the road, the President has not signed it. I am not sure whether the Attorney-General has advised him accordingly. But I would like to request the Attorney-General to request the President to sign that Bill in order to allow the TJRC to go to the districts that are affected by this law. Otherwise, we have advised Kenyans who live in the districts affected by this law to boycott all the sittings of TJRC until the President signs that Bill into law. I would like to get a Statement from the Attorney-General on when, indeed, the Government is going to sign that Bill into law.

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, it is not the Government that signs the Bill into law. So, the Government cannot do it. It is the President---

Amb. Affey: On a point of order, Mr. Temporary Deputy Speaker, Sir. Could I know from the Attorney-General who is the Head of Government and Head of State in this country? It can be only one person! The procedure, and the Attorney-General knows, is that once we do what we are supposed to do in this House, it is the work of the Government to do the rest.

(Amb. Affey and Mr. Wako stood up in their places)

The Temporary Deputy Speaker (Mr. Ethuro): Order! Both of you cannot stand at the same time!

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, he has now amended it to say the Head of State, Head of Government, Commander-in-Chief of the Armed Forces and so on. But he had just said: "The Government". The Government does not sign laws! If you read the Constitution, you know who signs the laws and I have heard him.

(Several hon. Members stood up in their places)

Mr. Chachu: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for Mr. Wako to state that he has heard the hon. Member without specifically committing himself to what he needs to do for that Bill to be signed?

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Wako! I am sure you have been in this House long enough. You know hon. Members do not ask questions for the sake of asking. They demand answers. Either you disqualify yourself from answering, rather than just saying you have heard or you respond.

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, if the Attorney-General says he has heard, he will do something about it and hon. Members who have been here long enough know that.

(Several hon. Members stood up in their places)

Amb. Affey: On a point of order, Mr. Temporary Deputy Speaker, Sir. You can see that the House is not satisfied. We are asking: This matter was concluded by this House on 18th April, 2010. It is now nearly three months since that time. Could the Attorney-General, for heaven's sake, give us some timeline when he expects the President to sign the Bill? It is not so difficult for the Attorney-General to say that he will communicate that tomorrow and the President will sign it tomorrow. That is because there is reason why the President cannot sign that Bill into law.

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, it is very difficult to give a timeline, but I will take it up with the President.

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Wako! The Standing Orders and the Constitution have defined a time-frame between the passage of the Bill and the signing. You know it. I think that is the matter that the hon. Member is raising. You owe it to this House, the country and to yourself to be honest with the timetable and the procedure that is involved. Let us save the time of the House!

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, I am aware of the provisions of the Constitution and the Standing Orders. That is why I said I will take it up with the President.

(Mr. Ogindo and Amb. Affey stood up in their places)

The Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Members! I know Mr. Ogindo, Amb. Affey and a few others who were interested will know what to do under the circumstances. The Attorney-General has basically refused to respond and you are also aware of the Standing Orders. You will be at liberty to exercise them!

Let us move to the next item!

DISBURSEMENT OF FUNDS FROM THE YEAR
2003-2009 FOR FREE PRIMARY EDUCATION FUNDS

The Minister for Education (Prof. Ongeri): Mr. Temporary Deputy Speaker, Sir, I rise to respond and give a Ministerial Statement on a matter that was raised by hon. Ochieng, Member for Nyakach Constituency, on the question of the disbursement of funds from the year 2003-2009 under the Free Primary Education funds and the capitation of Kshs1,020 per pupil from the financial year 2009/2010. The Government began the disbursement in categories of Kshs852, Kshs183 and subsequent categories. He wondered why some schools were receiving lower amounts per child and wished to know

whether the Minister could table the allocation per school, province and explain the basis of the categorization.

He also wanted to know whether, if all the schools received the same allocation per child from the year 2003 to 2009, how come the Ministry alleges that schools have less text books than others from the 2009/2010 financial year and what informed the reduction in the allocations and where the extra amounts been directed to. He also sought to know what the Minister will do to curb any misappropriation of those funds.

We all know that when the Free Primary Education was established, the capitation per student per year was Kshs1,020. But from the Financial Year 2009/2010, the disbursement decreased in categories of Kshs852, Kshs183 and subsequently lower amounts. First, a summary on the disbursement per province and district is attached. I have the pleasure to lay that document before this House. Every district and province has been summarized and the amount that they have received since that time.

(Prof. Ongeru laid the document on the Table)

That categorization was based on a joint study carried out by the Ministry of Education, the UK's Department for International Development (DFID) and Kenya National Audit Office (KENAO) Value for Money Programme during the Financial Year 2008/2009. The objective of the study was to determine the amounts of free primary education grants received by every school and instructional materials/textbooks purchased on subjects and class basis from 2003 to 2008. The 2009/2010 allocations were thus based on the findings and recommendations of the above study based on five categories below. If adopted, there will be a paradigm shift for a targeted funding strategy as opposed to the previous approach of giving a flat rate to every enrolled pupil. Category one, textbook pupil ratio of less than 2.4. The allocation for the first tranche was Kshs852 and the second tranche. Therefore, allocation per child for the whole year including the capitation which was available is Kshs1,704.

Mr. Temporary Deputy Speaker, Sir, category two were the textbook pupil ratio of between 2.5 and 5.5. The first tranche is 183, bringing the allocation per child to Kshs366. Category three, where the textbook pupil ratio is 5.5 to 7.4; the allocation is Kshs92 bringing it to Kshs185. Category four is 7.5 and 9.4 is Kshs64.50, bringing it to Kshs129 per child per year and more than 9.5 category five is Kshs50.50, bringing the total per child per year to Kshs101.

This is a targeted approach. It means, therefore, that the schools with the lowest textbook pupil ratio, that is category one, will be given higher allocations compared to schools that have much better textbook pupil ratio, category five. This categorization will ensure the effective utilization of the limited free primary education tuition funds for quality education.

Mr. Temporary deputy Speaker, Sir, on the issue of the variation in the quantity of textbooks from 2009/10 financial year despite new schools that have few textbooks, some schools have already attained a textbook/pupil ratio of one to one. Thus, schools with a textbook/pupil ratio of one to one do not need the same amount of funds as those in category one, where the textbook/pupil ratio is less than 2.4.

Third, is that the above decision is based on the above mentioned study that informed the variation in the free primary education allocation. Fourth and lastly, on the

issue of measures against misappropriation of free primary education funds, the Ministry has mounted tracking programmes targeting schools identified by the value for money study findings with the consumption rate greater than 45 per cent to ensure that proper action is taken. Further, any misuse by the priority schools will be promptly investigated.

Mr. Temporary Deputy Speaker, Sir, I also wish to reveal to the House that between March and April this year, 2010, the Ministry investigated 452 schools and the report is being generated. Schools that will be found to have mismanaged the funds will be disciplined.

Further, it is crucial to note that the annual school audit programme is continuously being conducted and schools found to have been involved in non-conformities will be dealt with as per laid down Government financial regulations and free primary education guidelines.

In addition, the Provincial Education Directors and District Education Officers monitor all the FPE funds under their jurisdiction. The report generated by the two officers are deliberated on by the Provincial Education Boards and District Education Boards and forwarded for action by the Ministry and other relevant agencies. Thank you.

Mr. Ochieng: Mr. Deputy Speaker, Sir the Statement is quite elaborate and I do want to appreciate what the Minister has done. He has done proper research, but I would also want to look into the statement that he has just read through plus the documents that have been tabled. If I have any questions, then I will raise them in future. Thank you.

The Temporary Deputy Speaker (Mr. Ethuro): Well done, Prof. Onger. It is very rare for an hon. Member to complement a Minister. I wish all Ministers would be that accurate and deliberately so.

The Minister for Education (Prof. Onger): Mr. Temporary Deputy Speaker, Sir, there was a note from the Implementation Committee on a matter that we needed to inform this House. I will not read the statement. I want to put it on record that my Ministry was requested to put it on record what action we have taken on the question of budgetary allocations to public primary and secondary schools to enhance quality education.

Therefore, we have written to the Clerk of the National Assembly. I have this statement here, and I want to place it on record that we have complied with the request by the Implementation Committee. Thank you.

The Temporary Deputy Speaker (Mr. Ethuro): Next Order.

BILL

Second Reading

THE MALARIA PREVENTION BILL

(Mr. Kaino on 30.6.10)

(Resumption of debate interrupted on 30.6.10)

The Temporary Deputy Speaker (Mr. Ethuro): Mr. Boaz Kaino, I think you were on the Floor.

Mr. Kaino: Mr. Temporary Deputy Speaker, Sir, yesterday while moving this Bill on malaria, I did mention that malaria is a number one killer disease in the country. It requires the attention of this hon. House, the Government, the Ministry concerned and all citizens in the country. It requires the attention of particularly the Ministry of Public Health and Sanitation and the Ministry of Water and Irrigation, which can control this anopheles mosquito.

Mr. Temporary Deputy Speaker, Sir, this Bill comes as no surprise because malaria accounts for 30 to 50 per cent of all the outpatients, and 20 per cent of all admissions to health facilities. Children under the age of five and pregnant women are particularly susceptible to malaria.

It is estimated that malaria causes 20 per cent of deaths of children under five years of age. Statistics further indicate that about 170 million working days are lost to malaria in each year. That certainly would translate to huge annual losses in our economy on account of malaria. We are only talking about working days; we have not talked about the medication that these people take and also the suffering that the children or other dependants undergo.

These statistics reveal a sorry state of affairs in our nation caused by malaria. I have noted that the Government, in recognition of this alarming trend has developed a 10-year Kenya National Malaria Strategy 2009/2017, which was launched on 4th November, 2009.

Mr. Temporary Deputy Speaker, Sir, this strategy is aimed at reducing morbidity and mortality associated with malaria incidents.

Mr. Temporary Deputy Speaker, Sir, while this and other policy interventions by the Government are welcome, I am of the view that a solid framework is central to improve the fight against malaria. Policy interventions on their own cannot adequately tackle the malaria scourge. It is at this juncture that I wish to examine our legal framework and the provisions on malaria. Our legal regime presently provides for a Malaria Prevention Act, Cap.246, which commenced in 1929. This enactment of Parliament on malaria was done in 1929 before we got Independence. You can realise how the colonialists were seriously concerned about malaria. But after we shook off the chains of the colonial systems in this country, we are not even concerned about malaria itself. We have never done anything about the Act on malaria. We have just left it the way it is.

Mr. Temporary Deputy Speaker, so many changes have come to this country. While human beings have different behaviours, even insects have different behaviours. Things change. Environments change. In 1929, what is today known as highland malaria was not there. Today, mosquitoes even breed in highland areas where there was no malaria. But today, many people die and others are admitted to hospitals just because of malaria. The Ministry of Public Health and Sanitation and the Ministry of Medical Services take a lot of concern about HIV/AIDS control, leaving the number one killer disease in this country, which is malaria. Malaria is caused by female anopheles mosquito. This has caused problems in this country. It can be controlled in various stages. It can be controlled while in aquatic stage when it is still in the water. It breeds in water. If the water is tapped today, the eggs are spread and breeding systems will be blocked. These eggs will never hatch into mosquitoes. They will die in that stage.

The Government is now geared to making this country sufficient in food production. We have directed all our efforts in irrigation schemes. Irrigation schemes make water available in even areas where there was no water. By so doing, we are creating breeding places for mosquitoes. We are doing so without considering the health of the communities around those places. We are creating a disaster. The purpose of this Bill is to make sure that there are enough medical personnel to deal specifically with malaria. That is why I have brought this Bill for the Ministry and the Government to take this issue seriously. Malaria Institute will be established. We will help our neighbours who do not have such institutions. It is right to say that Kenya has gone very far, especially in the training of medical personnel. We export medical personnel to countries such Botswana, Sudan and even United States of America. But we have forgotten a simple thing. That is the control and prevention of malaria.

Mr. Temporary Deputy Speaker, I am seeking the support of my colleagues in this House because this will relieve Kenyans who are suffering from this disease. Half of outpatients in our hospitals today are diagnosed to be malarial cases. Half those occupying hospital beds in this country are malaria cases. This tells us how serious this issue is. We must take measures to control the breeding of mosquitoes. In 1960s, some countries thought they would completely eradicate malaria. But many people died from malaria cases. Even people in Asian countries who thought they were experts on malaria, have now designed malaria control programmes. They are no longer talking of eradication programmes.

Mr. Temporary Deputy Speaker, Sir, we can train people who would control spread of malaria mechanically and biologically. By the way, we can use fish to control malaria. There is Lavifarash(?). This is the fish which eats mosquitoes in aquatic stage, when they are lava or eggs. The Minister for Fisheries Development is here and we can look into this aspect. Mosquitoes are the best food for the fish, especially in aquatic stage. If we can introduce these fish in all our irrigation schemes and ponds, we shall control malaria. It is only a matter of getting things right. Let us put things right. The Ministries of Public Health and sanitation, Water and Irrigation and Fisheries Development should unite in the fight against malaria. Mosquitoes cause death of many Kenyans.

The long title of the Act indicates that the Act was enacted to enable health authorities to take measures for prevention of malaria. With this primary objective, the Act then goes ahead to deal with specific action that health authorities may take in order to prevent malaria. Such actions include construction and maintenance of drainage. This is the breeding place of mosquitoes. It is also aimed at encouraging cutting of grass. Those were the specifics of the Act of 1929.

Mr. Temporary Deputy Speaker, Sir, the Bill seeks to prohibit certain actions by individuals if such actions would jeopardize the work of health institutions. This includes building or maintaining dams. We have dams everywhere nowadays for irrigation and yet we have no measures in place to prevent the breeding of mosquitoes. It is paramount when we build dams in every constituency to come up with measures to prevent the breeding of mosquitoes. Otherwise the people who are supposed to benefit from the dams will spend most of their time in hospital beds because of malaria infection. The malaria cycle will continue and the people who were to benefit from the fish ponds or irrigation dams will always find themselves in hospitals. We need to ensure that the health of people is taken care of.

Connection of drainages into canals or streams under the control of health authorities is paramount. The Malaria Prevention Act established in 1929 has served us very well. However, mosquitoes behave differently today. They behave just like human beings. For example, they now breed in highlands. We can tell human beings to stop the transmission of HIV/AIDS, but we cannot speak to mosquitoes because we do not understand their language. The only control we can employ against mosquitoes is to eradicate them. We need to control the breeding of mosquitoes in the drainages, dams, rivers and all the water bodies. It is paramount that we take seriously the issue of preventing the breeding of mosquitoes. This is because we cannot talk to them. The only alternative we have is to eradicate them in their breeding grounds. We also need to do indoor spraying.

So, the law that was enacted by the colonial Government has served us up to today. Do we not have people who have gone to school? We have many Medical Training Colleges (MTCs) today, but we have failed to turn even one into a Malaria Training Institute. This Bill intends to establish that very important institution for this country and our neighbours who depend on us.

Having carefully considered and reflected on the provisions of the Act of 1929, and having studied the emerging trends related to malaria, I have found that the Act does not sufficiently address itself to modern day challenges related to Malaria. We have researchers in this country who have studied abroad such as Canada and so on. The Government does not encourage them to tackle this problem. Where is the research done on the control of malaria in this country? We have not seen anything going on. It is important that we take seriously the prevention of Malaria. If we do that, I am sure this nation will be very rich. This is because the country is spending a lot of money to treat people who suffer from Malaria. There is wastage of manpower hours. If we can turn this round, I think we shall be very rich. This is not something difficult. It is not a miracle because other countries have managed to eradicate malaria. Why can we not do the same? We might have people with malaria parasites in their blood crossing over our borders, but we can still do something to reduce the alarming statistics of malaria cases.

Mr. Temporary Deputy Speaker, Sir, allow me to illustrate some areas in the old Act. First, it does not make reference to the conduct of research and studies aimed at addressing the prevalence of malaria and yet the subject of malaria is dynamic. The approaches in the prevention of malaria that were contemplated in 1929 are not reflected in the present generation. Secondly, the Act does not address itself to mechanisms to be employed in the monitoring of the prevalence of malaria. The fight against malaria must be conducted from the point of knowledge. It is important to monitor the trends in the spread or decline of malaria throughout the country as well as the difficult dynamics related to malaria and the anopheles mosquitoes. We need to understand the geographical spread, seasonal malarial occurrences and others.

Today, you cannot say that malaria is confined to a certain area. Malaria is now everywhere in Kenya. It is both in the highlands and the lowlands. It is with this in mind that I seek to introduce the Malaria Prevention Bill, 2010. This Bill seeks to repeal and re-enact the Malaria Prevention Act which is certainly in need of revision in order to adequately address the present-day challenges related to malaria.

The proposed Bill is structured in five parts. I have proposed the establishment of the Malarial Prevention and Control Institute. This institute will consist of professionals

with, say, Diploma in Nursing; Diploma in Public Health; Diploma in Laboratory and so on. These are the people who will dedicate their time to the study of this killer disease, malaria and its causing agent, the anopheles mosquitoes. The people in that institute should be equipped adequately to tackle this disease and free Kenyans from their suffering. This institute will come at the time when the country wants to be self-sufficient in food production through irrigation. We know that irrigation dams are breeding grounds for mosquitoes.

We have urban and rural mosquitoes. The urban mosquitoes mainly breed in drainages, cans and bottles left in the streets. This calls for the attention of persons who have been properly trained. That is why I propose in this Bill the creation of an institute that will tackle malaria and other mosquito-related diseases. This is because there are other diseases that are also spread by mosquitoes other than malaria. The institute will be involved in the control of malaria. It will conduct research on the prevention, control and treatment of malaria. It will be involved in:-

- (i) Monitoring of the prevalence rates of malaria in the country.
- (ii) Liaising with other institutions and organizations of research on matters relevant to the prevention, control and treatment of malaria.
- (iii) Dissemination of research findings.
- (iv) Liaising with relevant Government Ministries in matters relating to malaria prevention.

Mr. Temporary Deputy Speaker, Sir, from these functions, it is clear that the institute will serve as a centre of excellence on malaria and mosquito control. In the prevention and control of the treatment of malaria, the institute will holistically address all malaria related concerns.

Mr. Temporary Deputy Speaker, Sir, in order to ensure that the highest possible standards are attained in the institute, I have at Clause 5 of the Bill proposed that the management of this institute shall vest in a board of management with its membership drawn from experts from universities, research institutes, medical practitioners and Government representatives. The intention is that these members would enrich the board with their diverse skills and knowledge on malaria related diseases.

Mr. Temporary Deputy Speaker, Sir, in Clause 7 of the Bill, I have provided for a competitive recruitment of the director of the institute who shall be the Chief Executive and Secretary to the Board. This is a professional institution that we are trying to make. It is probably one of its kind in the region. The director shall be required to be a person who possesses proven knowledge and experience in public health and management. The members of staff of the institute are to be employed by the Board.

Mr. Temporary Deputy Speaker, Sir, Part 3 of the Bill covers financial provisions related to the Institute, while Parts 4 and 5 of the Bill largely retain the provisions of the current Malaria Prevention Act of 1929.

Mr. Temporary Deputy Speaker, Sir, with those many remarks, I beg to move and ask Dr. Eseli to second. The Member for Kimilili has also been concerned about malaria. Last year, he brought a Motion which was passed in this House, but apparently because Ministers “sleep” on Motions, that Motion is still “sleeping” and we do not know when it will wake up.

Dr. Eseli: Mr. Temporary Deputy Speaker, Sir, I wish to thank my colleague, hon. Kaino, for allowing me to second this Bill.

My agreeing to second this Bill is mainly based on two issues. We are dealing with a very professional area here when it comes to malaria control. I think we need to be very careful that we have the full input of the professionals who are involved in this area before we put something before them that they might not understand and willing to work with us. The history of malaria control the world over is very interesting. There are countries where we have succeeded in eradicating malaria and others where we have not succeeded. Funny enough, the countries that have succeeded in eradicating malaria are in the West and they will be considered high-income countries compared to us in Africa, except, perhaps a country like Cuba which has also eliminated malaria by using various methods.

Mr. Temporary Deputy Speaker, Sir, you will be surprised to find that the history of malaria control is also coloured or muddied with the aura of racism in the sense that it has been believed for a long time that many of us actually do not deserve a better life, mainly because of our skin colour. You will find that when it comes to malaria control in Africa, the hands of most African Governments seem to be tied by international organizations and international drug manufacturers, because malaria is a big business. One tablet of malaria drug goes for Kshs300 in Africa and with the level of malaria in Africa, it is big business for drug manufacturing companies. Malaria is also very big business for manufacturers of mosquito nets and for those who manufacture the chemicals that they use to impregnate the mosquito nets. So, we must realize that when we are dealing with malaria, we are dealing with big business and we are going to fight it in order to succeed and get malaria to be controlled in Africa. Control of malaria is not just based on treatment alone. Every sphere of life is involved, be it the Ministry of Public Works or Ministry of Roads. All sectors of life are involved. Even the Ministry of Water and Irrigation is involved, because of the life cycle of the mosquito. It is interesting that malaria is the only vector where the female is very bad. In most other species the female is usually very liked, but in this case of malaria, the anopheles mosquito, in order to be able to multiply, has to take a meal of blood to fertilize the eggs. That is why it is only the female that transmits malaria and not the male. So, at least, for once, the males can see one area where they are not very bad, but most of the other areas, they are worse than the females.

Mr. Temporary Deputy Speaker, Sir, the pillars of Malaria control right now are a bit haphazard. In fact, some of them are groping in darkness not knowing how to control malaria. We talk about maybe coming up with a vaccine, which is a very expensive endeavour. We are also talking of using mosquito nets and all sorts of things. None of these on their own can be successful in controlling malaria. Mosquito nets, for example, is one thing that I have always laughed at and wondered what we are trying to do with them. This is because the anopheles mosquito has got over 400 species. Some of these species bite at night, some late night, early morning, indoors and outdoors. So, actually mosquito nets are just a little bit of the armament of controlling malaria, such that when we keep on encouraging everybody to sleep under the mosquito nets, we give them the impression that the mosquito nets will prevent them from getting malaria. That is not true. So, the control of malaria is something that needs to be very well co-ordinated. That is why I stood up to second this Bill, although I might have some reservations in its body. But I am sure we can iron out these reservations when eventually the Committee on

Health sits down with the Mover of the Bill, hon. Kaino. Probably, we can even go on a retreat to look at this, so that we can harmonize and make it very effective.

Mr. Temporary Deputy Speaker, Sir, I believe that setting up a malaria Prevention and Control Institute would be very good because we will be able to coordinate all these activities of Malaria control, be it use of mosquito nets or in-house spraying of residual insecticides. By the way, I brought a Motion here in early 2008, which was unanimously passed by the House; that the mainstay of malaria control in this country should become in-house spraying of residual insecticides. However, that has not been effected by the Ministry. It is still being used selectively, which is also very dangerous. This is because when you do selective in-house spraying then you are encouraging resistance to develop among those mosquitoes. So, that kind of haphazard implementation of that Motion is not right. In fact, I am contemplating requesting the Committee on Implementation to follow up the matter with the Ministry of Public Health and Sanitation, to find out how far they have gone with this problem. But with the setting up of a malaria Prevention and Control Institute, we would be able to coordinate all these activities of the research institute, Ministry of Public Health and Sanitation, Ministry of Roads and any Ministry that is involved, where breeding of mosquitoes and transmission of malaria could be increased. This is because when all these activities are coordinated under one roof, we are bound to see results. Then when everything is under one roof, we will be able to sieve out the wheat from the chaff because it is sad to report that many researchers in this world have attained PhDs on malaria research while thousands and millions of children in Africa continue dying from malaria. So, it has become big business even for academia to achieve PhDs at the expense of our children. We want everything to be put under an institute so that we are also able to co-ordinate. Is it worth undertaking a research that is going to be useful to us or is it just for the purpose of having a PhD before their names? If it is a question of having a PhD after their names, this institute will be able to control that.

Mr. Temporary Deputy Speaker, Sir, I think when we are talking about fine-tuning this Bill, it will be important to remember that we have a Malaria Control Act dating back from the colonial days; 1920s which we have virtually just appended on the part of putting up an institute. We need to harmonize that so that that old Act that came in the 1920s synchronizes well with the idea of having an institute.

So, while I second this Motion, I still realize that we still have a long way to go to be able to fine-tune this Bill to make it more responsive to our needs. This is because, as the Mover said, the way malaria is behaving these days is very different. It seems to be also evolving and part of its evolution, I think the people who have dealt with climate change will be able to explain it better is because of the change in climate. Even in areas where the mosquitoes were not breeding, they are now breeding very well. When I say that, we need to realize that the Third World of Africa is a very good incubator for all manner of bacteria and pests because of our conducive temperatures. Our temperatures actually encourage growth of all manner of bacteria and that is why you will find that most of the diseases in Africa are communicable diseases either by certain types of microbes because our climate actually encourages the growth of most of these bugs.

Mr. Temporary Deputy Speaker, Sir, you will find that with climate change, even in areas which were the highlands, where you did not expect transmission in the course of a year or a decade, now it is almost turning to be endemic because of the climate change. Now, with those challenges coming on, then we need an institute that can actually co-

ordinate all these activities of malaria control taking into account the climate change and all those issues that are also encouraging the increase in malaria transmission.

Mr. Temporary Deputy Speaker, Sir, I would like to end by stating that the level of malaria in our country is too high and it is leading to high mortality – that is high death rate of our under five years children, leave alone women who are expectant who we are also losing to malaria. Also, those expectant mothers are also losing their unborn babies from malaria as one of the main causes of abortion in this country. Despite what the churches believe that it is the clause in the Constitution that is going to encourage abortion, it is malaria that causes most of the abortions in this country. I hope that we will allay the fears of the clergy who fear that that clause in the Constitution is going to encourage abortion.

Mr. Temporary Deputy Speaker, Sir, if we are able to control malaria, we will be able to save this country billions of shillings which we are directing towards treatment and other preventive measures which as I have explained, might be ineffective on their own. So, this Bill is long overdue and I am sure with an institute - like the motion we passed earlier on, the Government would have taken it up and given us results.

We are very aware that now we cannot use DDT much in the world. We, being a horticultural producing country, will not be encouraged to use DDT but there are very many other residual insecticides that can be used apart from DDT which have been used even in America. After Hurricane Katrina, the American Army released huge Hercules aircraft which were able to spray thousands of acres in a day using Dibrom which is a non-DDT substance that can actually eradicate mosquitoes. Probably that is one of the areas we will have to look at to be able to control malaria in this country because malaria is a vector borne disease. Being a vector borne disease, the only way to control it is to control the vector and in this case, the vector is the mosquito.

Mr. Temporary Deputy Speaker, Sir, I believe when we pass this Bill after we have done the necessary amendments, it will be a Bill that eventually will revolutionalise the way we have been handling malaria in this country and despite what people think, when the level of malaria goes down, we will see the economic benefits trickling down to the common *mwananchi*.

With those few remarks, I wish to second.

(Question proposed)

The Assistant Minister for Livestock Development (Mr. Duale): Mr. Temporary Deputy Speaker, Sir, from the outset, I want to thank hon. Boaz Kaino for bringing this great Bill to Parliament. When we talk about malaria, I think in the minds of many people, it is a very serious matter. Every day the number of people who die as a result of malaria can be equal to the people who died in the September 11 bomb blast in New York. We are talking of a child dying in Africa of malaria every 30 seconds. It is that serious? Moreso, children under the age of five years are dying everyday. Research has shown that even those who survive malaria will end up experiencing brain damage and learning disabilities. These are facts! So, when we are talking of malaria prevention and control, I expected this House to be full because it affects each and every constituency and family.

Mr. Temporary Deputy Speaker, Sir, coming to the national figures, today, one of the leading diseases in this country is malaria. It is the leading cause of morbidity and mortality in Kenya. If you look at our health sector percentage, how many out-patients go to our health facilities? We are talking of about 30 per cent of the people who go to hospital as out-patients doing so as a result of malaria. About 19 per cent of all admissions in health facilities, whether it is a dispensary, health centre or hospital, is as a result of malaria. Above all, 20 per cent of all the deaths of children under five years in this country are as a result of malaria. I want hon. Members to look at these figures. These figures should help the Government in bringing up policies to control and prevent malaria. Who are the vulnerable? The vulnerable groups in our society are the pregnant women and children under five years.

Mr. Temporary Deputy Speaker, Sir, I have a lot of reservations about this Bill at the Committee Stage because as we stand here today, we have the Malaria Control Division in the Ministry of Public Health and Sanitation. We have the Kenya National Malaria Strategy Programme for the years 2009/2017. So, we are not saying that this country does not have strategies or that this country needs this Bill to move forward. No! That is why those strategies must be harmonized with this Bill. I mean, we should get out of our way, where a Member of Parliament does research and comes with a Bill. That is why as the Ministry for Livestock Development, we have the Animals Technicians Bill. We said that we need to bring a Bill that carries everything.

So, at the Committee Stage, I want hon. Kaino to bring on board the National Malaria Strategy Programme of 2009/2017. He must work with the already existing institution which is the Division of Malaria Control at the Ministry of Public Health and Sanitation.

Mr. Temporary Deputy Speaker Sir, malaria fatality rate in this country is about 6 to 7 per cent. Hon. Members were saying that we lose millions of hours in this country. To be specific, 170 million working days are lost due to Malaria. It is not even hours. The projection of our population of 2009 was about 40 million. Researchers are saying that 20 million Kenyans are exposed to malaria. I am sure that 20 million Kenyans are not exposed to tuberculosis or HIV/AIDS. This certainly shows you the gravity of malaria in this country. We have 20 million Kenyans who are exposed to Malaria. I like working with figures. I would like hon. Kaino to note these figures. The mortality rate among children under five years in this country is very high. How many children die as a result of malaria under the age of five years? About 26,000 children die every year in this country as a result of Malaria. I am shocked because today; I am not seeing the Minister for Public Health and Sanitation in his House. We are not seeing the Minister for Medical Services. This has to be a serious House. This is a very serious Bill. However, because I am also from the Front Bench and my colleagues are here, we will pass the message. This is a very serious matter. I do not want to go so much into figures. I would like to thank, on behalf of the Kenya Government, organizations which this Bill has not mentioned. There are organizations in this country that have supported the Kenyan people in the fight against malaria. We have CARE Kenya doing great work in Siaya. We have Marlin, a British organization in Kisii and African Medical and Research Foundation (AMREF) in Trans Mara. Mheshimiwa Konchella will bear me out, we have MENTA which is an organization in my constituency in Garissa. We have Medicines sans Frontiers, France in Homa Bay. Above all, we cannot forget World Health Organisation (WHO), UNICEF,

DFID and USAID for the role they have played in funding and facilitating prevention and control of malaria.

I am shocked that the same hon. Member, Mr. Kaino, is saying that the institute headquarters should be in Keiyo Valley. I have a feeling that, if we want to set up the institution headquarters because of malaria prevalence, then that institute should be based in Kisii. It should be based in Trans Mara and other areas with high prevalence rates. However, I think that is for the committee.

Finally, I want to give the mandate of the Institute of malaria Control and Prevention. I think we need to be very specific. We need to come up with a strategy, as Government, that will provide malaria prevention and treatment, especially to pregnant women. That should be an affirmative action. We want to be very clear. We need to deal with the vulnerable; pregnant women and children below five years. Those are the vulnerable groups that malaria attacks. We must ensure that insecticide-treated nets are provided to poverty stricken communities in this country. Many Non-Government Organisations (NGOs) and the Government are doing that, but we must have affirmative action and a specific budget line.

As a country, we must have a strategy of improving Malaria epidemic preparedness and response. We do not want to be fire-fighting all the time. We must have a strategy. That is why I said that the Ministry of Public Health and Sanitation has the Kenyan National Malaria Strategy Programme. Above all, we must have information, indication and communication. We must have education for our people. We must provide civic education and communication.

Finally, monetary evaluation and research should be the main mandate of that institute. However, we feel that the institute should be independent. Our reservations on this Bill will be addressed at the Committee Stage.

With those few remarks, I support this Bill.

Mrs. Shabesh: Thank you, Mr. Temporary Deputy Speaker, Sir. I want to support this Bill. As I support it, I want to congratulate the hon. Member who has brought this Bill and also other hon. Members who have spoken before me. I would like to, especially, thank the one who has just left the Floor because he has emphasized what I wanted to emphasize; that this Bill must carry the vulnerable group of pregnant women and children. So, I cannot say it better than he has said; that if this Bill does not give special emphasis to the most vulnerable who are pregnant women and children, then it will not serve its purpose. That is because those are the ones who are mostly affected by malaria.

I also wanted to speak about medication and say that malaria medicine has become very expensive. The prevention of malaria has been left to the NGOs for a long time. It has become an issue of getting support from outside to your constituency to deal with the issue of malaria. It is high time that the Government took it as a serious Government issue so that, even without NGO support, the Government can tackle malaria. However, as you know, there is always something that is exciting the donor community. Today, it could be malaria and tomorrow, it could be HIV/AIDS. The other day, it could be the issue of governance. So, when we lose the interest of donor community on malaria, then we will have an increase of malaria because medicine is very expensive.

I would like the Kenyan Government to take the example of the Ugandan Government. The Uganda Government has set up a factory where it is producing its own malaria drugs. There is no reason why Kenya cannot go the same way, instead of waiting for the expensive imported drugs. The Government should take up the example of Uganda, set up a factory in Kenya where we can produce our own malaria medicine, so that it is affordable to the Kenyan person.

The last thing that this Bill should address is climate change. As my colleagues have alluded, it is true that malaria has increased because of climate change. What we see are floods and drought. However, what we fail to see are the effects of the flooding. There is an increase in malaria but because our people will not get the connection, they will not realize that the reason why they are getting more bouts of malaria is because of the climate change, flooding and the seasonal changes that are happening in this country. So, this Bill must address the issue of climate change. There is no way we can assume that one region is the one which is at risk of getting malaria. Due to climate change, every region in this country is susceptible to getting malaria. So, we are speaking about making sure that the issue of climate change is taken care of.

The Assistant Minister, Ministry of State for Defence (Mr. Musila): Mr. Temporary Deputy Speaker, Sir, I thank you for giving me this opportunity to contribute. This is a very important Bill. I want to give it my full support.

It is a shame that malaria has continued to harm the economies of our countries in Africa, and Kenya in particular. As has been stated by previous speakers, so many lives are lost every day, because of malaria. Historically, this disease has killed millions and millions of Kenyans, not to mention the negative economic impact that malaria has in our country. Every day, you have people who cannot go to work because they are suffering from malaria. Therefore, we lose very many man hours and unproductive days because of this terrible disease.

Apart from that, travel advisories are being given every now and then by the developed countries that people should not visit Kenya because it has malaria. Therefore, the growth of tourism is also hampered by the presence of malaria in our country. So, there is so much negative economic impact caused by malaria apart from the many deaths.

So, there is need for us to consider measures that can reduce this disease. Therefore, I wholly support the establishment of an institute that will be charged with the responsibility of research and advising us on how to fight this disease.

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

*[The Temporary Deputy Speaker
(Prof. Kaloki) took the Chair]*

Mr. Temporary Deputy Speaker, Sir, while congratulating hon. Kaino, I have very serious issues with the location of the headquarters of the institute. It is not right whenever we make laws, to direct where institutions should be situated in the Bill. This is wrong. As legislators, we should create institutions and then the relevant authorities, in this case the Ministry of Public Health and sanitation knows best where such institutions

should be located. In this case, in the Committee Stage, I will be moving that we cross out the location of this institute in Kerio Valley because I think it is wrong.

Mr. Ethuro: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for my good friend, the Assistant Minister, Ministry of State for Defence, to ask the Mover of the Motion not to identify the location of the institute? If the Member feels, and maybe was motivated by where he comes from---

The Temporary Deputy Speaker (Prof. Kaloki): What is your point of order?

Mr. Ethuro: Is it in order for the Assistant Minister to mislead the House that Kerio Valley is not part of the great Republic and you cannot locate an institute like the Malaria Control Institute there?

The Temporary Deputy Speaker (Prof. Kaloki): Proceed, hon. Musila!

The Assistant Minister, Ministry of State for Defence (Mr. Musila): Mr. Temporary Deputy Speaker, Sir, my good friend was on the Chair and he gave me an opportunity to speak. I did not expect him to interrupt me after he graciously gave me permission to contribute.

I never, at any one moment, suggested that Kerio Valley was not part of Kenya. I never at any moment criticized my friend, hon. Kaino. I said that in principle, as legislators, we create institutions without tying the Government as to where the institutions should be based. In this case, the Ministry of Public Health and Sanitation knows best where malaria is prevalent, where such an institute should be located and even if it is in Turkana, so be it. But that should be the responsibility of the authorities. Our responsibility here is to make the law, create the institution and leave the rest to the Government to do. Therefore, I am supporting this very strongly that we create this institution because it is desirable.

Before my good friend, hon. Ethuro, interrupted me, I was going to say that, perhaps, malaria could not have been bothering us so much if it had not been for the West banning the use of DDT. I still do not believe that there is good reason for us to ban DDT because I have information that DDT is still used in some developed countries. Therefore, if DDT can be used to effectively control malaria in this country and save us from the loss of lives that we go through, it is a risk worth taking. I tend to agree with Dr. Eseli when he says that the West tends to want us to continue with this disease called malaria because they manufacture the drugs that they sell to us. He told us that malaria is big business. Therefore, it could be possible that the West bans certain drugs like DDT for this reason. When this institute is established, it will do a deeper research and inform us what drugs we should use in the control of malaria, including *miti shamba* because I am told that Mwarubaine has been proved to be very effective in this area. Hon. Michuki, who is in charge of the environment tells me that a certain tree that is found in Central Province called *Muringa* is also very useful. Therefore, this institute will also give us informed research to identify herbal cure for malaria.

Mr. Temporary Deputy Speaker, Sir, another reason why malaria has been so prevalent and we have been unable to control it is the insufficient doses that our people take in the rural areas. Because of poverty, whenever people feel like they have malaria, they just rush to a kiosk, buy a number of tablets, swallow them and suppress malaria. They do not cure it. They continue taking these tablets until malaria becomes resistant to the available drugs. This is one of the biggest problems. We must, therefore, fault the Ministry of Public and Health Sanitation. Why does it allow malaria drugs to be sold in

kiosks instead of making sure that the sufficient doses are available in health centres? Therefore, while we decry the prevalence of malaria in our country, we must also blame ourselves for certain acts. Another act is by the population itself. The Minister for Environment and Mineral Resources will bear me witness that our people have become very careless. They cut trees and do not clear bushes. These are some of the problems which are man-made and which can be avoided. This institute will research and do everything possible to guide the country on the type of drugs that should be taken and the sufficient dosages, so that we do not have the re-occurrence of malaria. We must do everything possible to control this disease.

Mr. Temporary Deputy Speaker, Sir, I have already said that because of malaria, our tourism suffers. I have also said that because of malaria, we lose a lot of lives. It is also very degrading when you enter an aircraft, say, in Europe, en-route to Africa, and you are told: "Close your noses, because this aircraft is going to Kenya and we must spray it." You all start sneezing as they spray the aircraft. When an aircraft leaves Kenya for Europe, we do not have any spraying.

Do you not feel bad when an aircraft coming to your country must be sprayed, indicating that you have diseases? These are some of the things we must work very hard and ensure that we eliminate them, so that our country can be within other nations that are developed, and which have tried to become free of disease.

Mr. Temporary Deputy Speaker, Sir, I also have issues with Part IV of the Bill, because I do not think it is the responsibility of the Ministry of Public Health and Sanitation to dig canals, trenches and drainages in order to chase away malaria. It is the responsibility of the Ministry to ensure that people do so, but Part IV gives the impression that the Ministry of Public Health and Sanitation will be responsible, in some cases, to dig drainages. However, these are areas we can streamline during the Committee Stage. Otherwise, this is a good Bill, subject to the amendments that we will be proposing. It should be supported.

With those remarks, I beg to support.

Dr. Otichilo: Mr. Temporary Deputy Speaker, Sir, I also rise to support this very important Bill.

As we all know, malaria is the main public health menace in this country. Malaria contributes greatly to the deaths in this country. So, it is a disease which is costing this country billions of shillings. If we could have a way of controlling malaria, this country would move forward. This country would concentrate on economic activities and people will have the energy to deal with economic activities.

Mr. Temporary Deputy Speaker, Sir, malaria is a disease which is mainly endemic in tropical areas. In Africa, malaria is a disease which contributes a lot to mortality. Therefore, as a country, we need to focus on the elimination of this disease. The proposal to create a prevention and control institute to handle this disease is welcome. Therefore, Mr. Kaino has done a good thing by bringing the Bill to this House, so that we can deliberate on it and have it passed into law.

I have gone through this Bill, and I feel that there are lots of deficiencies in it. We need to strengthen this Bill, if it has to play its role. Therefore, my feeling is that, as we support this Bill, we need to involve many key stakeholders involved in malaria control, so that they can contribute. I believe that this Bill can be strengthened further, because we

have many institutions in this country dealing with malaria issues. However, their activities are not co-ordinated.

Mr. Temporary Deputy Speaker, Sir, therefore, I believe that we need to get all the key stakeholders in one way or the other in a forum to strengthen this Bill. Therefore, I would like to appeal to Mr. Kaino to consider this proposal. As this Bill goes to the Departmental Committee dealing with health, I believe that other key stakeholders should be involved, so that we can come up with a Bill that will be very comprehensive, given the nature of malaria in this country.

As it was said earlier, malaria is likely to become a major problem, with the change in climate, where temperatures are increasing. So, malaria is likely to become a major problem in Kenya and Africa as a whole. As a country and region, we need to focus on malaria, if we intend to address the issue of economic development. So, I would like to request that this Bill be looked into afresh.

Mr. Temporary Deputy Speaker, Sir, I want to also agree with the rest of the hon. Members who spoke earlier on regarding Clause 10, which proposes the location of the headquarters of the proposed institute. I do not think this is necessary. This is an issue which can be left to the concerned parties to eventually decide the most appropriate area to locate the institute.

I want to agree with Mr. Musila that the measures given in this Bill under Part IV are outdated. These are measures which were formulated in the early 1920s. Today, we have many challenges in terms of control of malaria. Therefore, Part IV of this Bill needs to be looked at afresh, because the evolution of malaria has brought many changes which need to be addressed differently. So, I believe that Part IV must be looked at afresh in a manner that is integrated and in consonant with the prevailing conditions.

Mr. Temporary Deputy Speaker, Sir, Part II of this Bill, which deals with financial provisions is very weak. If we want the proposed institution to be very strong, the part dealing with financial provision must be strengthened. We must see the Government coming in as a major financier of the institution proposed in this Bill. There is no way we can have this Bill enacted and hope that goodwill will help this institution to grow. Therefore, I want to appeal to Mr. Kaino to contact all the agencies in the Ministry, so that they can come up with a strategy on how this Bill can be fortified. The Ministry should play a major role.

I got surprised when the Mover said: "The enactment of this Bill will not occasion additional expenditure to public funds." It defeats the whole purpose of the Bill. This is an issue which deals with Kenyans. If we are not going to commit public funds, then we are in a futile exercise. So, I want us to look at this Bill in a more rational and pragmatic manner.

Mr. Temporary Deputy Speaker, Sir, therefore, I want to support this Bill with the recommendation that, if possible, it be withdrawn and given to key stakeholders to deliberate on it extensively and then be brought back to the House for enactment into law.

Thank you.

The Temporary Deputy Speaker (Prof. Kaloki): Order, Dr. Otichilo! Are you supporting the Bill or opposing it?

Dr. Otichilo: I am supporting it, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Prof. Kaloki): Thank you very much.

Yes, Mr. Muthama!

Mr. Muthama: Mr. Temporary Deputy Speaker, Sir, thank you for giving me this opportunity to contribute and support this very important Bill which has been brought by Mr. Kaino.

I want to state that Article 10 should not be here because we want to be here to represent the entire Republic of Kenya and work out ways and modalities to do that. If there is an institution to be established, we do not give reference and priorities to the areas where we come from. I would have preferred if Mr. Kaino would have said that this institution should be based in one of the corners in this country. Whether this institution is in Kisumu, Coast Province or North Eastern Province, at the end of the day it serves Kenyans. The continent of Africa and not only Kenya, has a very bad face when it comes to diseases. In my travelling due to my businesses, I asked a friend if he would like to come to Kenya and enjoy the facilities and the tourist destinations in the country, but he wondered about the malaria disease in Kenya. As you know, in the United States of America (USA), they are not experts in the treatment of malaria. If someone is infected with malaria here and travels to Europe chances are that he or she would not survive. In fact, we have better treatment of malaria in this country than in the USA and other development countries.

Mr. Temporary Deputy Speaker, Sir, I totally agree with those who spoke before me. As we try to establish an institution that can provide prevention, and we all believe that prevention is better than cure, we also need to be adequately and fully equipped for the treatment of malaria. The people who are affected and suffer from malaria are the poor people. Up today, the villages, where we come from, we have a big population of citizens who do not even know that there is a dose for malaria that costs Kshs150. So, they get infected, affected and they die. Therefore, the institution is very important. However, as we deal with it, let us also find ways and means---

The Minister for Environment and Mineral Resources (Mr. Michuki): On a point of order, Mr. Temporary Deputy Speaker, Sir. This is a good Bill but it has been presented to this House in the wrong way. Section 40 of our Constitution is the source of my point of order because the Bill is calling for the establishment of an institute called "Malaria Institute". To establish an institute, you need money. So, this Bill is proposing to appropriate money although the Mover wants to get this House to believe that there is no financial implication. Section 48 of the Constitution says:-
"Except upon the recommendation of the President, signified by a Minister, the National Assembly shall not-

"(i) proceed upon a Bill including an amendment so that the Bill in the opinion of the person presiding makes provision for any of the following purposes---"
The purposes are stated. Therefore, is it in order that even this debate should proceed when in fact, the whole section is infringed, even though there is a misleading statement that there is no financial implication when an institute will probably cost millions of shillings? Is it sufficient for the Mover just to say that there will be no financial implication and the House just takes it like that when the Constitution is very clear towards the Chair about what the House should do?

Mr. Muthama: Mr. Temporary Deputy Speaker, Sir---

The Temporary Deputy Speaker (Prof. Kaloki): Order, Mr. Muthama! There is a point of order. Mr. Kaino could you confirm whether the Bill is likely to increase and affect the Budget? You can move your Bill but you have the responsibility for the

statement calling for an increase to the Budget. Will your Bill affect the Government by increasing the existing Budget?

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

The Temporary Deputy Speaker (Prof. Kaloki): Let me, first of all, get a clarification from Mr. Kaino. Mr. Kaino, you are the Mover of the Bill.

Mr. Kaino: The hon. Member has sought to give me some information and I would be grateful if I am given the information.

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Kaino, I can help you. Part 3, Section 14 of the Bill, and I am still dealing with the point of order raised by Mr. Michuki says:-

“(a) The funds of the institute shall comprise monies that may accrue to or in the institute in the course of the exercise of its functions under this Act.

(b), “---grants or donations as may be given to the institute”

Mr. Kaino, I think the institute will not increase the Budget and thereby affecting the Government in any way. I think we can proceed with the debate.

The Mover of the Bill has the responsibility to convince the House that he has complied with that requirement that there is no additional funding from the Government. Is that clear, Mr. Michuki

The Minister for Environment and Mineral Resources (Mr. Michuki): Mr. Temporary Deputy Speaker, Sir, if you look at our financial regulations, you will find that the fees collected at any Government institution are regarded as Appropriations-In-Aid (A-in-A) which are apart of public funds. That is to say that you cannot use public funds to build an institute, or use some money collected from an institute because of the services it offers and pretend that those are not public funds.

The very fact that it is not monies voted here does not disqualify fees paid from being public funds. I am sure that our financial regulations are very clear on this.

The Temporary Deputy Speaker (Prof. Kaloki): Yes, hon. Michuki, the Mover is very clear that we do not have any additional taxation or any withdrawal of funding from the Consolidated Fund. He is very clear on that. Minister, proceed!

The Minister for Public Health and Sanitation (Mrs. Mugo): On a point of order, Mr. Temporary Deputy Speaker, Sir. Indeed, we were just consulting with the Mover of this Bill. Let me begin by congratulating him and say that it is a good Bill. It has very good intentions and we definitely need to concert our efforts. We have a strong division on fighting malaria.

If the MP really wants this to be a meaningful exercise, we have information right now that even the donors who support us, there is donor fatigue. To build a whole institute depending on what will come from elsewhere might be an exercise in futility. We are discussing how my Ministry can collaborate with the Mover and maybe make it a Bill that even the Government can take part in so as to enrich it a little bit more. If it is agreeable, we are meeting on 8th July, 2010 with the Mover and see how best to go about this, so that we make this a very good Bill to serve Kenyans in a better way.

Eng. Rege: I want to commend the hon. Member for introducing such a Bill. This institution or referral hospital, whatever you want to call it, is long overdue; Kenyans are dying of malaria. We all agree that this Bill needs to be looked into properly and a proper institution built, we are busy doing research on other illnesses but all the way everything we do is cutting around the malaria which is a major killer in this part of the world. If the

Mover is agreeable, then this requires a proper research. First of all, the Attorney-General misled this House by gazetting this and knowing very clearly that we are violating Sections 40 and 48 of the Constitution which hon. Michuki just mentioned. I think there should have been proper guidance in publishing this document.

Mr. Muthama: Mr. Temporary Deputy Speaker, Sir, I wish to continue---

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Muthama, I will give you time in a minute. Hon. Kaino, I want to give you time for your last bit there, and then we will go to hon. Muthama. But, again, I am convinced that the Bill is in order; there is no effect on the existing Budget. In my opinion, the source of funding is outside.

Proceed, hon. Kaino!

Mr. Kaino: Mr. Temporary Deputy Speaker, Sir, with due respect to the Minister for Environment and Mineral Resources and all other speakers who are concerned about the financial implications, this Bill meets all the concerns and requirements of Section 48 of our Constitution.

Mr. Temporary Deputy Speaker, Sir, regarding what the Minister has said, we are all concerned about the problem of malaria in this country. The Minister has talked; the Chairman of the Committee on Health has also talked and some concerns will be considered in the meeting that we will have later on.

The Temporary Deputy Speaker (Prof. Kaloki): That is okay, hon. Kaino; it is very clear!

Proceed, hon. Muthama now! Again, to answer Minister Michuki, it is very clear in the present Constitution, Section 48, about taxation and all that. It is very clear. The Bill is not seeking any additional funding from the Government.

Proceed, hon. Muthama!

Mr. Muthama: Mr. Temporary Deputy Speaker, Sir, this is not a private institution; it is a Government institution that will serve Kenyans.

Mr. Temporary Deputy Speaker, Sir the Budget for this year was read here by the Minister. We are not going to touch the money. We should just pass the Bill and the issue of money will be dealt with in the next financial year. We have many outstanding issues which have not been solved. We passed a Bill here last year and there was no money. When money is available, what the Bill provides for will be funded.

Mr. Temporary Deputy Speaker, Sir, I wanted to say that with all those problems and financial difficulties, Kenya needs an adequate health care, and the best way to start it is to actually come up with institutions. We just spend millions of shillings and we are now spending billions to buy contaminated maize. Why can that money not be diverted and used to save the lives of those who are about to die instead of buying the contaminated maize, which nobody knows where it came from? We will keep on spending money on unnecessary things; this institution is very important and I am not trying to discourage those who made their suggestions here.

So, Mr. Temporary Deputy Speaker, Sir, this institution is very important, and once, again, I want to say that the issue of Article 10 on where it should be based should be removed and we go ahead.

Mr. Temporary Deputy Speaker, Sir, I have been interrupted so many times that I have even lost the points I wanted to raise here.

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

Thank you, Mr. Temporary Deputy Speaker Sir.

Mr. Konchellah: Mr. Temporary Deputy Speaker, Sir, I stand to support this very important Bill. I also want to thank the Mover for bringing this Bill; I am glad that the Minister for Public Health and Sanitation is here; I am happy for her attitude towards this Bill because she knows the problem; I am sure she cares about the people of Kenya.

Mr. Temporary Deputy Speaker, Sir, 80 per cent of all in-patients and all out-patients who go to our medical institutions suffer from malaria. You can, indeed, say that the child mortality rate and maternal mortality rate of the people of this country today, 80 per cent is due to malaria. This is so much that if we are going to talk about the issue of abortion, let us, first and foremost, talk about malaria prevention. About 80 per cent of child mortality is as a result of malaria causes abortion and sometimes mothers die.

Mr. Temporary Deputy Speaker, Sir, in 2003, we, as the Ministry of Public Health and Sanitations, started the indoor spraying to try and prevent malaria, because of its endemic nature then. Indeed, we were able, after two years, to reduce malaria infection in the whole country by 40 per cent. We were experimenting with pyrethride drugs which can be used for spraying outside. Indeed, when I now look at it, malaria is now back to where it was, yet we had reduced it by 40 per cent. So, what we are saying now is that we need other measures and other ways of fighting this epidemic.

I believe the west is making Kenya the market for their drugs – most of them are useless as they do not cure malaria; the disease has become resistant to their drugs. So, to deal with malaria we should eradicate mosquitoes; this is the only answer to the problem. So, I am suggesting to the Minister for Public Health and Sanitation to, particularly in the future, look at the use of DDT for indoor spraying. I know we talked about DDT and how it will affect our farmers if it goes to the field, or if it flows to our flower farms. I know Europeans will detest its use, but as far as the people of Kenya are concerned, I believe we have a duty, as a Government and as leaders, to prevent malaria and to ensure a better life for our people. Our people should come first and foremost. South Africa has cleared malaria because of the use of DDT, yet there are also very big farmers there, and they export a lot of farm produce to other parts of the world.

The Temporary Deputy Speaker (Prof. Kaloki): Order, hon. Konchella! You will have an additional 17 minutes to contribute next time the House resumes.

ADJOURNMENT

The Temporary Deputy Speaker (Prof. Kaloki): Order, hon. Members! It is now 6.30 p.m. and is time to adjourn the House. The House stands adjourned until next Tuesday, 6th July, 2010, at 2.30 p.m.

The House rose at 6.30 p.m.