

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 17th November, 1998

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

ADMINISTRATION OF OATH

The oath of allegiance was administered to the following Member:-
Mrs. Josephine Odira Sinyo

(Applause)

ORAL ANSWERS TO QUESTIONS

Question No.660

PAYMENT OF HARDSHIP ALLOWANCE TO CIVIL SERVANTS

Mr. Parpai asked the Minister of State, Office of the President:-

- (a) whether he is aware that some teachers in Kajiado District are paid hardship allowance; and,
- (b) if the answer to "a" above is in the affirmative, when he will pay the other civil servants the said allowance since all of them are working under the same conditions.

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

- (a) I am aware that some teachers in Kajiado District are paid hardship allowance.
- (b) It is difficult to say when civil servants in Kajiado District will be paid hardship allowance for the following reasons: Hardship allowance is payable as a compensation for inconvenience arising from lack of certain facilities where an officer is stationed. Such facilities include schools, convenient transport, shopping centres and reasonable housing accommodation. Where such facilities are inadequate or non-existent, officers are eligible for payment of hardship allowance.

Mr. Parpai: Mr. Speaker, Sir, you must have heard the Minister admit that he is paying hardship allowance to teachers. Teachers, like other civil servants, draw their salaries from the Exchequer. Teachers in Kajiado District also live under the same conditions as other civil servants. What is so special about them so that they are getting hardship allowance while other civil servants are getting nothing?

Mr. Ndambuki: Mr. Speaker, Sir, for the other people to be considered, this has to be put through the DDC. It has to be discussed there and be forwarded.

Mr. Kihoro: Mr. Speaker, Sir, I think the problem here is treating people unequally when the Government is very much aware about what is happening to so many public servants who are employed in Kajiado. I think it is important for the Minister to admit at this point that lack of money can be a valid excuse on the part of the Government because there is no other rational reason that can be given. Is the Minister prepared to admit that?

Mr. Ndambuki: I have said that if the other people are being left out, the recommendation should come from the DDC.

Question No.308

CATTLE RUSTLING IN PASTORAL DISTRICTS

Mr. Leshore asked the Minister of State, Office of the President:-

(a) if he is aware that cattle-rustling and general insecurity amongst the pastoralists is a major contributor to under-development in the districts of Turkana, West Pokot, Samburu, Marsabit, Wajir, Mandera, Isiolo, Garissa and Tana River; and,

(b) if the answer to "a" above is in the affirmative, if he could state the programmes he has for the youths in these districts to influence them to forgo abominable traditional practices in favour of norms which would lead to eradication of the said vices.

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

(a) I am aware.

(b) The Government, through the Provincial Administration and local leaders, has held meetings to try and sensitize the youths in those areas on the importance of peaceful co-existence. The District Commissioners have also organised seminars and workshops in the districts to unite various ethnic groups and encourage them to discard moranism and other retrogressive traditional practices. Through the National Youth Development Fund, youth groups have been funded to start income generating projects, thus discouraging the youths from cattle-rustling.

Mr. Leshore: Mr. Speaker, Sir, I am surprised at what the Minister is saying. If you want to know the truth, there is no Government in those districts. The Minister is talking about chiefs and DCs, but there has never been any meeting held between the chiefs, DCs and warriors or youths in those districts. No wonder then that cattle-rustling is so rampant in those districts because the Provincial Administration has failed totally to integrate youth programmes for the economic benefit in those districts. Could the Minister tell us what programmes they have for the youths in those districts between now and 1999?

Maj. Madoka: Mr. Speaker, Sir, I did not quite understand that question.

Mr. Leshore: Mr. Speaker, Sir, what economic programmes does the Ministry have for the youths in those districts?

Maj. Madoka: Mr. Speaker, Sir, I do not think we have any specific programme other than what we are saying in terms of educating the youths and encouraging them to discard those practices.

Mr. Oloo-Aringo: Mr. Speaker, Sir, I stand to ask a supplementary question because this is a clear case where an hon. Member wants to assist the Government; a Government which has failed to produce a programme for the youths. Here we are and the Minister is telling us that he has no idea. Is there any way you can ask the Minister to do some homework and come back with some ideas because he does not seem to have any idea?

Maj. Madoka: Mr. Speaker, Sir, I think I will call upon the hon. Member who has asked this Question, that we should sit together and see what should be done.

Mr. Shidie: Mr. Speaker, Sir, so many people in northern Kenya have lost their lives due to banditry, particularly in my constituency where there are so many refugees. Could the Minister expand the composition of the DSC because, currently, the DSC is composed of the DC, the OCPD and the DSIO. We want local leaders to be included in such committees so that we can know our problem, address it and know exactly how we can come about with a peaceful solution to it.

Maj. Madoka: Mr. Speaker, Sir, that is a point that we will definitely consider.

Mr. Maore: Mr. Speaker, Sir, this Question is on cattle-rustling and general insecurity in those districts. Literally, the first step the Minister should do is to tell this House and the country at large, when law and order will be restored in those districts before he comes up with the rehabilitation programme. Is he undertaking, first of all, to use any means to stop the cattle-rustling, then arrest cattle-rustlers and rehabilitate them?

Maj. Madoka: Mr. Speaker, Sir, the Government is doing its best. In fact, we have increased the Police Force and we are looking at how best to increase the number of policemen in the areas.

Mr. Shill: Mr. Speaker, Sir, it is very clear that because there is no programme for the youths, people in those districts have resorted to cattle-rustling. Is the Minister aware that due to poverty, many people in Garissa District have enrolled themselves as refugees in the refugees camp because the Government cannot provide a livelihood for them? Is he aware that many Kenyans have registered themselves as refugees in the refugee camps in Garissa District?

Maj. Madoka: Mr. Speaker, Sir, I am not certainly aware. Those refugees in the refugee camps have definite refugee status from the neighbouring countries.

Mr. Oloo-Aringo: On a point of order, Mr. Speaker, Sir. What do we do as hon. Members when it is very clear that we are raising a matter of national concern; that the unemployment of large numbers of youths is one of the causes of insecurity in the country and the Minister is not serious with his answers? He is saying: "I do not know, advise me and so on" and yet he has a chain of civil servants to advise him. What do we do when he---

Mr. Speaker: I think what you can do, Mr. Aringo, is to advise him to sack his civil servants.

Mr. Oloo-Aringo: Mr. Speaker, Sir, with your permission, can I also ask that we name the Minister here because he is not even taking the House seriously?

Mr. Speaker: Well, I do not think that is appropriate.

Mr. Leshore: Mr. Speaker, Sir, the Minister has said that his Excellency the President held a harambee for the youths last year. Could he tell us how they are monitoring the usage of those funds?

Maj. Madoka: Mr. Speaker, Sir, I believe those funds were distributed to the various youth groups and they had specific projects which

they wanted to undertake.

Mr. Speaker: Next Question, Dr. Kituyi.

Question No.034

ALLOCATION OF WORLD BANK RESOURCES

Dr. Kituyi asked the Minister for Local Government:-

(a) if he will table a breakdown of the amount of money his Ministry has used in the World Bank funded urban transport, water and sewerage repair projects for each of the 26 towns affected;

(b) if he will present the list of how many kilometres of road are being covered under the programme in each of the affected towns; and,

(c) what was the rationale for the differential allocation of the World Bank Resources between the affected towns.

The Assistant Minister for Local Authorities (Mr. Sasura): Mr. Speaker, Sir, I beg to reply.

(a) The World Bank project funded through the Kenya Urban Transport Infrastructure Programme (KUTIP) for the 26 major towns in Kenya does not provide for water and sewerage works; it is for the road infrastructure only. I cannot table a breakdown of the money spent in the 26 towns being covered by the project because the project has not started in all the 26 towns in question. However, I am able to produce a breakdown in respect of some of the towns where periodic road maintenance work has been done as an emergency measure, pending the rehabilitation works as follows:

<u>Town</u>	<u>Amount(Kshs)</u>
Nairobi	333,213,262.90
Mombasa	64,087.10
Kisumu	85,300,693
Nakuru	8,984,729
Eldoret	55,710,800.20
Kitale	62,727,873.40
Total	691,822,642.60

The main work which will comprise of rehabilitation, re-designing and opening of the new roads has not started. It will start once the contractual process is finalised. This is at an advanced stage and the work is expected to start very soon.

(b) The following is the breakdown of kilometres of roads projected to be covered in each of the 26 towns. This is a list of 26 towns and the kilometres covered.

TownsKilometres

Nairobi70
 Mombasa78
 Kisumu50
 Nakuru35
 Eldoret33
 Kitale5
 Malindi3
 Voi Municipality2
 Makueni2
 Narok2

Kajiado²
Kapsabet³
Kericho⁶
Bungoma⁵
Kakamega¹²
Kisii⁶
Homa Bay³
Meru Municipal Council¹⁵
Nyeri Municipal Council⁸
Embu Municipal Council ⁴
Thika Municipal Council¹¹
Garissa⁶
Murang'a³
Machakos¹⁰
Kabarnet ³
Busia ²
Total 479 Kms.

(c) The rationale for the differential allocation of World Bank resources between the affected towns has been determined and influenced by the size of the towns in terms of population, traffic volume, rate of economic returns of the road and the need to serve the urban poor.

Identification of the work to be carried out in each of the towns was done jointly by the Government of Kenya and the World Bank following a strict criteria of prioritisation as is the normal case for World Bank financed projects. It was also based on the individual needs of each town depending on the state of the roads and socio-economic factors.

Dr. Kituyi: Mr. Speaker, Sir, I have a number of fundamental questions that I would like to ask due to the kind of answers the Assistant Minister has given today. If the argument of the Government is that prioritisation in the amount of money allocated per town depended on the size of the town and the number of urban poor, how will he explain that the Government did 33 Kilometres in Eldoret Town and eight Kilometres in Nyeri Town? More importantly, could the Assistant Minister explain to this House why roads damaged by *El Nino*-induced rains have been repaired in some towns, and yet, leaving out the City of Nairobi, expenditure on three towns in the Rift Valley Province account for more than two thirds of all the amount of money spent from that allocation? Is it because the damage caused by *El Nino* rains was felt more in those three towns of Rift Valley and not in towns in Bungoma District where, apart from allocation on three Kilometres, there has not been a single cent spent out of the World Bank money? What has been driving the prioritisation of the Ministry in using the little money it has used?

Mr. Sasura: Mr. Speaker, Sir, I stated very clearly that the prioritisation does not depend only on the population and the need to serve the urban poor. The other criteria applied, which I would like to repeat for the sake of hon. Kituyi, are the size of the town, traffic volume and the rate of economic return on the road. In part "C", which talks about the *El Nino* roads, projects concerning road infrastructure are covered under three different types of approach. These are: the Kenya Urban Transport Infrastructure Programme (KUTIP) which I have just outlined, whether the roads are under the *El Nino* Emergency Programme or covered by the fuel levy fund.

Dr. Kituyi: On a point of order, Mr. Speaker, Sir. I am worried that the hon. Assistant Minister is not answering the questions I have put to him. He has argued that because of the number of the roads damaged by the *El Nino* rains, an allocation out of the World Bank money has already been spent in some of the towns, and not others. I put aside my question as to why the Government has repaired 33 Kilometres in Eldoret Town and Eight Kilometres Nyeri Town. The amount of traffic that passes through Eldoret Town is usually intercontinental, which flows to Uganda. It also passes through Bungoma Town. So far, the Ministry has spent Kshs65 million to recarpet roads in Eldoret Town. How come that the Ministry has not spent a single shilling to repair the roads in Bungoma Town where the same traffic passes?

Hon. Members: That is the question!

Mr. Sasura: Mr. Speaker, Sir, I do not really understand why hon. Kituyi is concentrating on Eldoret Town. If he can look at the list I have provided him with he will see that Malindi Town, which is a big tourist centre in this country, with a high return on investment, had only three kilometres repaired. Secondly, KUTIP is not necessarily an emergency programme on the *El Nino* damage but it is a programme, which is sponsored by the World Bank, to help the towns to improve their damaged infrastructure. Part of the money that has been allocated by the World Bank through the KUTIP has been transferred to the *El Nino* Emergency Programme. These are two

different programmes.

Mr. Koske: Thank you, Mr. Speaker, Sir. I would like the Assistant Minister to actually tell this House-- Last week when I was making a contribution on the Local Authorities Transfer Bill the Minister told this House that some funds were being used as emergency funds to try and repair the roads that were hard hit by the *El Nino* rains. Now, the Assistant Minister is telling us that some funds, which were referred to in the question hon. Kituyi has asked were not linked to this *El Nino* fund. Where does the Government get the money that has really been misused? This is so in the sense that the roads that have been rehabilitated did not even last for a month, and yet some work is still going on!

Mr. Speaker: Mr. Koske, can you put your question? Can you be short and precise?

Mr. Koske: Mr. Speaker, Sir, I would like the Assistant Minister to tell us where the extra funds used in these emergency repairs have been found? This is because the money had not been budgeted for.

Mr. Sasura: Mr. Speaker, Sir, it is true that most roads in this country have been damaged by the *El Nino* rains. But this does not mean that the Government will move in immediately to repair them because they were damaged by the *El Nino* rains. For example, in Eastleigh, we are talking about roads that are not there any more. So, the Government has to redesign the roads and start working on them. On the second question, which has been asked by hon. Koske, the extra funds are obtained from other programmes like the fuel Levy, which the Ministry initiated this year. The councils are getting about 30 percent from the levy this year and about 40 percent next year. This percentage will continue increasing, and we expect that in the next two years, the councils will get about 50 percent of the fuel levy money to enable them work on the roads.

Mr. Raila: Mr. Speaker, Sir, first of all, a kilometre in terms of repair of roads is a very poor indicator. This is because there could be a kilometre of road with only two or three potholes, while another kilometre of road has got 100 or 200 potholes. Volume is usually the measure of repair of a road. The Government has spent a lot of money in the so called "emergency repairs" like on Kenyatta Avenue, which is already in disrepair again. What was the rationale in the Government spending a lot of money purportedly on repair of roads, which would not last more than six months before the same amount of money would be spent to re-do the same road?

Secondly, why does the Ministry of Local Authorities refuse to employ people with technical capacity in the City Council to supervise the repair of these roads? Why does the Ministry of Local Authorities, operating without the requisite technical know-how insist on awarding tenders that cost the country a lot of money to companies with dubious reputation?

Mr. Sasura: Mr. Speaker, Sir, the first question asked by hon. Raila is rather technical, and I am sure that our engineers know very well why they are concentrating on kilometres instead of the volume of work. The volume aspect will come in during the actual implementation. Secondly, we cannot delegate the work on roads to another Ministry because we have got a very competent and separate department, which deals with urban development. The department also addresses such issues as have been raised by the hon. Member.

Hon. Members: On points of order, Mr. Speaker, Sir.

Mr. Speaker: Are these points of order or supplementary questions?

Hon. Members: They are points of order!

Mr. Speaker: Very well, I will give this chance to an hon. Member who has not had a chance. Mrs. Mugo!

Mrs. Mugo: Thank you, Mr. Speaker, Sir. Is the Assistant Minister in order to mislead this House that the money was used to repair roads in Nairobi City when it was only used to recarpet roads in Westlands and Lang'ata Constituencies?

Mr. Sasura: Mr. Speaker, Sir, I am in order, because I did not say that the money was used to recarpet roads in Westlands only. I gave a break down of the amount of money that has been spent so far. I want to assure the hon. Members that more money will be spent in the repair of the damaged roads. The areas that she has in mind will definitely be covered.

Mr. Speaker: Order! Order! As I said last week and I intend to stick to that ruling, Question Time shall be one hour. Let us be mindful of other Members particularly those ones who have Questions by Private Notice at the bottom of the Order Paper. That being understood, Members who now want to ask questions please stop being wishy. Just be precise so that maybe we can have three or four Members asking their Questions. Nevertheless, Dr. Kituyi, I will give you the very last chance on this Question. After that we will proceed. Be all warned that at 3.30 p.m. whatever Questions that will not have been answered will be deferred.

Dr. Kituyi: First, the Assistant Minister is misleading the House by alleging that his Ministry has the technical competence to process the tenders forwarded without assistance from the Ministry of Public Works. They do not have engineers any more. I just asked the Assistant Minister to tell us one thing: He has totally refused to

tell us why the traffic that passes through Eldoret necessitated the use of Kshs65 million on roads in Eldoret but the same traffic passing through Bungoma could not necessitate the use of a single shilling on roads in Bungoma. But be that as it may, can the Assistant Minister now tell us since he has said that the amount of money spent so far is for emergency maintenance work, while waiting for the main job, why Kitale Town has been allocated money for repairs for five kilometres? Since for this temporary maintenance works you have spent Kshs52 million, what do you plan to spend there when you come to the main works?

Mr. Sasura: Mr. Speaker, Sir, it will be very difficult for me to give the amount of money we will have spent at the end of the work. I have said this work is in different stages. There is something being done in the feasibility study, design stages and implementation stage. I cannot tell the hon. Member the exact figure we are going to spend in Kitale. For Eldoret I have said and I repeat again that, that is not the only criteria. I do not know why hon. Kituyi is insisting on Eldoret anyway. That is not the only town we are dealing with.

Question No.040

PAYMENT OF CESS BY SONY SUGAR COMPANY

Mr. Onyango asked the Minister for Local Authorities:-

(a) how much cess was paid by Sony Sugar Company Ltd. to Migori county council during the years 1993, 1994, 1995, 1996 and 1997?

(b) how was the money utilised?

The Assistant Minister for Local Authorities (Mr. Sasura): Mr. Speaker, Sir, with all due respect, I would like to request that this Question be deferred until next week on Tuesday because there are some details that we have to get from Migori.

Mr. Speaker: Mr. Onyango, what is your reaction?

Mr. Onyango: Provided that next time they provide me with the written answer.

Mr. Speaker: Question deferred to Tuesday next week.

(Question deferred)

Question No.084

NUMBER OF MURDER SUSPECTS AT KISII PRISON

Mr. Obwocha asked the Minister for Home Affairs, National Heritage, Culture and Social Services:-

(a) if he is aware that conditions in Kisii and Nyamira Prison and remand homes are in a deplorable state; and,

(b) how many murder suspects were still in remand at Kisii Prison as at 28th February, 1998.

The Assistant Minister for Home Affairs, National Heritage, Culture and Social Services (Mr. Marrimoi): Mr. Speaker, Sir, I beg to reply.

(a) Kisii Prison is not in a deplorable state as stated by the hon. Member. Kisii Prison, though old, is in good condition and is habitable. It is clean and tidy.

(b) On 28th February, 1998 prisoners who had been charged with murder and were awaiting trial were as follows:

Men- 177
Women-22
Total -199

On 28th April, 1998, the murder cases awaiting trial were as follows:

Men-125
Women-16
Total-141

Mr. Obwocha: Mr. Speaker, Sir, you can see that the Assistant Minister has failed to answer the portion that relates to Nyamira Remand Home.

Mr. Speaker: You are right. What about Nyamira?

Mr. Obwocha: Let him finish so that I can ask a Supplementary Question.

Mr. Marrimoi: Thank you, Mr. Speaker, Sir. Nyamira is not a remand prison but an extra mural general employment centre where petty offenders whose sentences include performing public work report on daily basis and then go back to their homes. We do not hold any prisoners there.

Mr. Obwocha: The prison in Kisii was built during the colonial days. The 199 persons waiting for trial are too many. One other reason why I asked this Question is that the judge who is supposed to be based in Kisii is no longer there at the moment because he is hearing a petition case in Western Province. So, there is no judge in Kisii and these people are suffering in remand. I would like the Assistant Minister to tell this House how many persons are waiting for trial as of now.

Mr. Marrimoi: I am not aware. That Question should have been answered by the Attorney-General, but not my Ministry.

Mr. Anyona: It is quite clear that this Assistant Minister does not know what is going on. You can see it on his face. Between January 1st and 14th, two journalists were arrested in Kisii. They were charged and taken to Kisii Remand Prison. During their stay they witnessed what goes on there. They then came and told the story in a newspaper based in Kisii called the *Mirror*. Here it says, diseases---

Mr. Speaker: Mr. Anyona you are an old Member. You know you cannot do that.

Mr. Anyona: I understand that. I was trying to explain.

Mr. Speaker: Do not explain. Ask him the question. You can explain to him privately.

Mr. Anyona: I am not saying that he responds to this newspaper report because I know the rules do not allow that. What we are saying is that there is evidence of the deplorable condition at Kisii prison and yet he is saying here that it is in very good condition. Can he go out there and find out?

Mr. Marrimoi: Mr. Speaker, Sir, as we are speaking now it is very tidy and clean.

Mr. Obwocha: Mr. Speaker, Sir, everybody is shocked beyond repair over what the Assistant Minister is saying. Even Members of Parliament have been detained in this remand home and the place is congested. Recently, the Assistant Minister himself said many of those who have been accused of various offences and are awaiting trial from Oyugis come to Kisii. He is now saying that it is clean and tidy instead of checking the facts.

Mr. Speaker: What is your question?

Mr. Obwocha: Could this Assistant Minister assure this House that in consultation with the Attorney-General they are going to do something and send another judge to Kisii?

Mr. Marrimoi: The Member should be happy because we are going to consult.

Mr. Kikuyu: Mr. Speaker, Sir, for those of us who have had the experience of going through Kenyan prisons, there is no prison in this Republic which is clean and tidy. Can the Assistant Minister tell this House which prison is clean and tidy and let it be open to the public so that we can go and confirm that? Why should he come here to cheat us?

Mr. Marrimoi: Mr. Speaker, Sir, I am assuring the hon. Member that there is a lot of improvement now.

Mr. Magara: Mr. Speaker, Sir, the latest information from Kisii Remand Prison is that the remandees there are offered Kshs700 at the moment simply because the Judge who has been sitting there is now a Temporary Resident Judge in Kakamega. I am surprised when the Assistant Minister is saying that the conditions there are so proper. Can the Assistant Minister go back and bring a proper report to this House so that we can see how we can help those people?

Mr. Marrimoi: Mr. Speaker, Sir, I thought we had agreed that we are going to consult. Why are you taking us back again?

Question No.120

REVENUE COLLECTION BY MUSEUM DEPARTMENT

Mr. Maitha asked the Minister for Home Affairs, National Heritage, Culture and Social Services:-

- (a) how much revenue has been collected by the Museum Department in the Coast Region; and,
- (b) how much of that revenue has been used in the Coast Region as regards the provision and maintenance of infrastructure, health and education.

The Assistant Minister for Home Affairs, National Heritage, Culture and Social Services (Mr. Marrimoi): Mr. Speaker, Sir, I beg to reply.

- (a) The National Museums of Kenya collected a total of K£ shillings - K£1,481,355 in form of revenue

during 1996/97 Financial Year.

Mr. Nyanja: On a point of order, Mr. Speaker, Sir. I am sure you are at sea like anybody else. He said K£ shilling! What currency is he talking about?

Mr. Marimoi: Mr. Speaker, Sir, that one was a slip of the tongue. It is K£1,481,355 in form of revenue during the 1996/97 Financial Year, in the Coast Region.

(b) Out of K£1,481,355, K£1,405,291 was used in the Coastal Region to cater for the Recurrent and Development expenditure, which covered the maintenance of infrastructure and health educational services.

Mr. Maitha: Mr. Speaker, Sir, as you see, what I have asked has not been answered. This is because I asked how much revenue has been collected by the Museums Department in the Coast Region, which has been given, and how much that revenue has been used in the Coast Region as regards the provision and maintenance of infrastructure, health and education, which the Assistant Minister has not answered. He has not told us how this money was spent on the three things. Telling us that K£1,405,291 went to salaries, he was left with K£76,064. Can he tell us if the K£76,064 is the money which he is telling us that he is doing the Swahili Cultural Rehabilitation or buildings? Is he telling us that this is the money that he is using to rehabilitate all these things? How much in every project is he spending?

Mr. Maore: On a point of order, Mr. Speaker, Sir. I would like to seek your guidance, if a Government Department that appears under a certain Vote in the Votes of this House, either Recurrent or Development, there is no Head called Coast Region. If the Museums Department collects money, it is supposed to have accounting procedures that do not conform with this Question. Are we in order to debate about this Department collecting money and at the same time, using the money in the same area, flouting all accounting procedures?

Mr. Speaker: I suppose that is for the Assistant Minister to tell him and us!

Mr. Marimoi: Mr. Speaker, Sir, there are two issues here. Development funds and Recurrent funds. What we are talking about now is the Development funds. You know the procedures of how Government revenue is dealt with. What he was trying to ask is: How much has been used or collected---

(Mr. Michuki stood up in his place)

Mr. Speaker: Order! I expect you, hon. Michuki, to rise up and shout point of order, and not shout "Mr. Speaker"! You do not stand up there and start calling me "Mr. Speaker"!

Mr. Michuki: On a point of order, Mr. Speaker, Sir. Is it in order for the Assistant Minister to deal with the Question as if revenue collected is subordinated for projects, rather than accepting that this is general revenue like it would be raised from coffee or tea, to be spent throughout Kenya? Is he accepting the principle? Is he in order to accept the principle that every project raises its own funds?

Mr. Marrimoi: Mr. Speaker, Sir, what I am trying to say is this: What hon. Maore is trying to put is as if those monies were collected and used there. That is not the case!

Mr. Maore: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order, all of you! Proceed, hon. Marimoi, otherwise, I will go to the next Question!

Mr. Marrimoi: Mr. Speaker, Sir, the programmes that have been undertaken in the Coast Region are as follows: Swahili Cultural Centre for Arts and Crafts Training in Mombasa and Lamu, rehabilitation of old buildings in Lamu, Kipepeo (butterfly) project at Gedi, where the community is directly benefitting through the rearing and selling of butterflies. Those are some of the areas where the money was spent.

Mr. Magara: On a point of order, Mr. Speaker, Sir. Is it in order to be listening to people who cannot answer questions? Is it in order to listen to Assistant Ministers who cannot be able to answer questions?

Mr. Speaker: Is it in order for hon. Members to stand up on a point of order which is not correct? Let us move on to the next Question, if that Question is boring.

Question No.557

MAINTENANCE OF NAKURU-KERICHO ROAD

Mr. Kimeto asked the Minister for Public Works and Housing:-

(a) whether he is aware that wild vegetation has overgrown on the shoulders of some sections of the main Kericho-Nakuru Road and that the said shoulders are narrow and have been eroded by rain water;

(b) whether he is further aware that the neglect of the said shoulders of the road endangers the

lives of motorists using it a they are unable to swerve onto the sides of the road in a bid to avoid accidents; and,

(c) if the answers to "a" and "b" above are in the affirmative, whether he could ensure that the overgrown vegetation is regularly cut and the shoulders of the roads are widened and maintained.

The Minister for Public Works and Housing (Mr. Kones): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that wild vegetation has overgrown on the shoulders of the main Kericho-Nakuru Road and, the same shoulders have become narrow due to erosion by the rain water. I am aware also that overgrown vegetation along the road or narrow shoulders can be dangerous to road users. The necessary action will be taken. The District Works Officers for Nakuru and Kericho upon which this road falls will cut the vegetation and attend to the shoulders while widening road works will be tendered.

Mr. Kimeto: Mr. Speaker, Sir, at the moment, the problem of the road users is that the road is narrow and any time the vehicles pass on the road, it becomes very difficult to negotiate at the corners or along the roads because of its narrowness. Is the Minister putting the murrum road or the earth road to widen this road and ease the communication?

The Minister for Public Works and Housing (Mr. Kones): Mr. Speaker, Sir, where these damages have occurred, we will address it accordingly, if we feel that the job needs murrum along the shoulders, we will do so accordingly.

Mr. Speaker: Mr. Magara, your Question No.369 will be deferred to next week. Mr. Munyiri, your Question No.669 will be deferred to next week.

Question No.369

TARMACKING OF KAMAGAMBO-NYARAIYA ROAD

Question No.669

RATIFICATION OF PREVENTION AND PUNISHMENT
OF CRIME OF GENOCIDE CONVENTION

(Questions deferred)

QUESTIONS BY PRIVATE NOTICE

GRAVELLING OF WAMUNYU-KALAWA ROAD

Mr. Munyao: Mr. Speaker, Sir, thank you very much for that consideration because it was postponed last week. I beg to ask the Minister for Public Works and Housing the following Question by Private Notice.

(a) Could the Minister inform the House who won the tender to grade the E713 Wamunyu-Kalawa Road Market; the cost of the contract and when the construction work started?

(b) Could the Minister further inform the House how much work has been done on the ground and whether the contractor will finish the work within the agreed time-frame?

(c) In view of the above, could the Minister consider cancelling the contract and using his Ministry's officers to grade the road while making arrangements to engage a more competent contractor to complete the murruming and gravelling of the road?

The Minister for Public Works and Housing (Mr. Kones): Mr. Speaker, Sir, I beg to reply.

(a) The contract for gravelling and not grading Wamunyu-Kalawa Market Road C101 and E713 was awarded to M/S Con Services of P.O. Box 1105, Thika. The tender sum is Kshs59,445,305.60. The construction work commenced on 28th January, 1998.

(b) The work done comprises road sides clearing, earthworks and excavation.

(c) The Ministry has already cancelled the contract due to unsatisfactory performance. Arrangements will be made to re-tender, but meanwhile, the Ministry will maintain the road.

Mr. Speaker: Mr. Munyao! And very quickly, I have two Questions by Private Notice! Be very quick!

Mr. Munyao: Mr. Speaker, Sir, I do not know whether we are together because I have so far got two answers to this Question; the written and the one he has given me now. The one he has read now [**Mr. Munyao**]

is totally different. So, which one do we take? Do we take this one or what the Minister is telling us?

Mr. Kones: Mr. Speaker, Sir, he will take the answer that I have just given.

Mr. Munyao: Mr. Speaker, Sir, I was reading this. Yesterday because of this Question we had a meeting even with the who is the Chairman of the DDC, in that area. The residents of that area, including the DC, are very much worried. Now that the contractor is not in, what measures is the Minister taking so that this important road which joins two districts, Machakos and Makueni can still be used comfortably?

Mr. Kones: Mr. Speaker, Sir, I have clearly said that the contractor was lazy or rather slow to move and we discovered that he cannot perform. Consequently, we have had to cancel that contract. The contract will be re-tendered. Meanwhile, the Ministry will maintain the road to passable standards until such time that a new contractor will take over the job.

Mr. Munyao: Mr. Speaker, Sir, I am very grateful because the Minister, other than what he has said, has also been kind to come and tour the area with the leaders. The concern of the leaders is that the system used in tendering might take a bit of time. There was a reason why, in the first place, we wanted the road to be done. Could the Minister allow or take the second-lowest bidders in his records so that the business of starting the road can be done because these people are ready as they had the equipment?

Mr. Kones: Mr. Speaker, Sir, I think the fairest thing is to re-tender the contract, but we promise to do it quite fast.

IRREGULAR AWARDING OF TENDER BY KPTC

Mr. Maore: Mr. Speaker, Sir, I beg to ask the Minister for Transport and Communications the following Question by Private Notice.

(a) Is the Minister aware that Kenya Posts and Telecommunications Corporation (KPTC) is in the process of awarding a tender for international exchange irregularly?

(b) Could the Minister explain why Ericson Telecommunicazoni SPA of Sweden secured the tender when it tendered Kshs100 million higher than the lower bidder Alcatel of France?

(c) Could the Minister consider cancelling the tender of 12th October, 1998 and re-advertising it?

The Minister for Transport and Communications (Mr. ole Ntimama): Mr. Speaker, Sir, I beg to reply.

(a) Kenya Posts and Telecommunications Corporation is not in the process of awarding a tender for international exchange irregularly.

(b) Ericson Telecommunicazoni SPA of Sweden, secured the tender for the supply and delivery of international switching equipment due to the following reasons:-

(i) Ericson switching equipment are fully integrated in the Kenya Posts and Telecommunications network. In view of the above, Kenya Posts and Telecommunications has technical and operational experience with Ericson and not Alcatel.

(ii) Ericson agreed to supply and deliver the equipment at the price of the lowest bidder who is Alcatel.

(c) Since all the tendering procedure for the award of the supply and the delivery of the international switching equipment were followed, I do not consider cancelling the said tender.

Mr. Maore: Mr. Speaker, Sir, the way the Minister has actually answered, is what I was trying to explain as a scandal. The answer itself!

First, the switching equipment that the Minister says are integrated with the KPTC, amounts to single-sourcing because already when they were advertising, they knew that they were going to pick on Ericson. This is what happened on 12th October, 1998. When the Tender Board met, the name of Ericson just mushroomed from nowhere and was brought by the Managing Director without reference to anybody and everybody was shocked. Kenyans want to know who is this "power-broker" who can actually get the Minister to come and give an irregular answer where he says that Ericson agreed to supply and deliver the equipment at the price of the lowest bidder, who is Alcatel?

Why did they not give the tender to Alcatel which is a similarly reputed Corporation when they had advertised for it? Why were they advertising if they knew they were going to give the tender to Ericson?

Mr. ole Ntimama: Mr. Speaker, Sir, it was important for the Board to consider the relationship between Ericson and KPTC which has been there for many years, including technical co-operation and expertise from Ericson which is a very well-known international company. After considering very carefully, the Board decided that in view of the fact that Ericson had brought the price down below the one of the lowest tender, they should award the tender to Ericson. As a matter of fact, right now Ericson has got a commercial partnership with Gilgil Telecommunication Industry to assemble and instal some switching equipment to some of our stations.

In fact, some of these equipment that we are talking about, have been commissioned and installed in Ngong', Kikuyu, Lanet, Narok and a few other places. So, it was very difficult whether the tender was advertised wrongly, it was very improper and probably not commercially acceptable to write off Ericson.

Mr. Raila: Mr. Speaker, Sir, only two months ago, we passed a Bill here to try to liberalise KPTC. Now, the KPTC still continues to operate in a very opaque manner, acquiring very expensive equipment which is going to make Telecom Kenya, when it is finally formed, less competitive in the liberalised market. What step is the Minister taking to ensure that the Bill that was passed by this House is enacted and that we will now establish a regulatory body and an independent telecommunication company?

Mr. Ntimama: Mr. Speaker, Sir, I assure the House that we are in the process of liberalising the Posts and Telecommunication sector.

Dr. Ochuodho: Mr. Speaker, Sir, considering the past very poor record and lack of transparency in the Corporation, and also considering that the differential cost was Kshs100 million, and taking into consideration that we have an idea what international switching systems would cost, can this Minister tell this House why this equipment was costing so much and which other companies tendered and what they quoted?

Mr. Ntimama: Mr. Speaker, Sir, I do not have the tendering documents here, so I cannot really go down to tell this august House the details of what the papers were all about.

Maore: Mr. Speaker, Sir, the Minister is evading a very legitimate question. Ericson Telecommunicazoni SPA of Sweden did tender for US\$4.65 million and Alcatel of France had tendered for US\$2.89 million. Is the Minister going to stand here and put the records straight as to how much Ericson is going to charge the Kenya Posts and Telecommunications Corporation?

Mr. Ntimama: Mr. Speaker, Sir, all I know from the information I have is that, Ericson is now offering a price below the lowest that was tendered.

(Several hon. Members stood up in their places)

Dr. Ochuodho: On a point of order, Mr. Speaker, Sir. Considering that we do not have very vital information, could you prevail upon the Minister that we defer this Question so that he can bring those details to enable us discuss this matter?

Mr. Speaker: What is your reaction, Mr. Ntimama?

The Minister for Transport and Communications (Mr. Ntimama): Mr. Speaker, Sir, I think I have given most of the information that the hon. Members---

Hon. Members: No!

The Minister for Transport and Communications (Mr. Ntimama): Just hold on! If the hon. Members really require detailed information, then I promise to bring it here.

Mr. Speaker: Order! He will get in touch with the Clerk. Mr. Ndicho's Question.

DISAPPEARANCE OF RUIRU MUNICIPAL COUNCIL FUNDS

(Mr. Ndicho) to ask the Minister for Local Authorities the following question by Private Notice:-

(a) Is the Minister aware that Kshs5 million that was banked at Ruiru Branch of Kenya Commercial Bank, by Ruiru Municipal Council in the service charge account has gone missing?

(b) Is he further aware that last month Kshs3 million belonging to the same Council was withdrawn to purchase private land at Ruiru?

(c) If the answers to "a" and "b" above are in the affirmative, what steps will the Minister take to recover the money and have the culprits punished?

Mr. Speaker: Mr. Ndicho is not in? Question dropped. Question time is up. Next Order.

(Question dropped)

POINT OF ORDER

MINISTERIAL STATEMENT SOUGHT: BAN ON ILLEGAL ALCOHOLIC BEVERAGES

Mr. Michuki: Thank you, Mr. Speaker, Sir for giving me the opportunity to raise a matter which I brought on the Floor of the House on 30th July, 1998. On that occasion, I requested for a Ministerial Statement from the Minister for Health regarding his intentions and the Government policy following the passing by this House of the Motion to ban illegal alcoholic beverages which, essentially, are poisonous drinks. I am now taking this opportunity, with your permission, to remind the Minister for Health that I still await for a Ministerial Statement as to what his Ministry intends to do to ban the drinks in accordance with the spirit and the letter of the Motion.

Mr. Speaker: Very well. Mr. Madoka.

MINISTERIAL STATEMENT

WHEREABOUTS OF TIGONI OCS

The Minister of State, Office of the President (Maj. (Rtd) Madoka): Mr. Speaker, Sir, I wish to make a Ministerial Statement as asked by hon. George Nyanja on the whereabouts of the OCS, [**The Minister of State, Office of the President**]

Tigoni. I am glad that he is here. On the 19th of October, 1998, two lorries which were conveying second-hand clothes on transit from Kilindini Port in Mombasa to Bukavu in the Democratic Republic of Congo were diverted to Tigoni Police Station after allegedly developing some mechanical problems. The lorries were under police escort. They were to undergo some repairs while at the station for security reasons. During the night of the 23rd October, 1998, through some conspiracy to convert the goods to the local market, the vehicles were driven out of the Police Station Yard ostensibly to refuel. In the process, the contents were emptied before the vehicles were driven back to the station.

On the 26th of October, 1998, information leaked that the goods had been diverted to the local market. The OCS, Tigoni absconded duty on the same day after having reported that she was feeling sick and was going to seek treatment. As a result of the leakage of information that the goods had been diverted to the local market, the CID moved in to investigate. So far, some police officers and civilians have been arrested and appeared before Kibera Court on the 6th of November, 1998, charged with offences ranging from conspiracy to defraud the Customs and Excise Department, stealing, fraudulent evasion of the payment of import duty and forgery. The names of those arrested and charged so far, are: Geoferry Kang'iru Ngale, Eunice Hasin, Kamau Kuria Chege, Paul Kainya Mungai, Samuel Fred Otieno Koyo, Jackson Baro, who is a police officer and David Kariuki who is also a police officer.

The OCS has since then rung the police station saying that she has been sick and that she pledges that she will come back soon.

Mr. Speaker: Yes, Mr. Nyanja, do you want to say something? What do you want to say?

Mr. Nyanja: Mr. Speaker, Sir, a lot of untruths have been told to this House and the nation. It is very important that a police officer should not just disappear. First, this is a very serious matter because this is how the Government has been losing money. Of late, the police force has been involved in robberies, murder, et cetera. The truth of the matter is that the documents have reached the consignee in the Democratic Republic of Congo. And there are documents at the Weighbridge here. They only want to steal and harass this lady because she is a very good police woman. That is the truth of the matter because when she handed over the pistol why did they arrest her? Who is the complainant in this matter?

Mr. Speaker: Order, Mr. Nyanja!

Mr. Nyanja: Order, nini?

Mr. Nyanja: Order, Mr. Nyanja, the truth according to who?

Mr. Nyanja: The truth on the ground. Mr. Speaker, Tigoni is in Limuru and I know the truth now. When I asked this question I did not have most of the information.

Mr. Speaker: Well, do you agree, Mr. Minister that, that is the truth?

The Minister of State, Office of the President (Maj. (Rtd) Madoka): I do not agree, Mr. Speaker, Sir.

Mr. Speaker: Next Order.

BILLS

First Reading

THE CONSTITUTION OF KENYA REVIEW
COMMISSION (AMENDMENT) BILL

(Order for First Reading read Read the First Time)
(Ordered to be read the Second Time tomorrow)

Mr. Anyona: Mr. Speaker, Sir, this is an extremely important Bill in the history of this country and we are very concerned that it should go through the proper channels of our procedures in its enactment. I wanted to seek the guidance of the Chair with regard to the provisions of Standing Order 101A paragraphs one, two and four, in which it is required that, all Bills except the one which is under paragraph four, go through a relevant Departmental Committee of the House. I was sitting there---

Mr. Speaker: Mr. Anyona, what standing order are you referring to?

Mr. Anyona: Standing Order No.101A, paragraphs one, two and four, particularly.

Mr. Speaker: So, what do you want me to do?

Mr. Anyona: I was seeking the guidance of the Chair. In view of the fact that all Bills are required to go through the Departmental Committees responsible except the one under paragraph four, I thought that the Attorney-General was going to rise and commit this Bill to the relevant Committee. But he did not seem to be doing so, neither was a Member of that Committee doing so. So, I think, in order for Parliament not to be accused of having short-circuited this very important Bill, I thought you might have a say on it.

Mr. Speaker: Order! Order, Members! I can give and I do give the guidance. Under Standing Order No.101(a), there is a provision where a Bill having been read the First Time, the Minister in charge of that Bill may on a Motion request that the Bill be committed to a relevant Departmental Committee. Once the Minister has moved that Motion and it has been seconded by even the bowing of a head, automatically, the Bill would stand so committed. But the Minister is not obligated to do so. He may choose not to do so. Now, if the Minister chooses not to move a Motion to commit the Bill to a Departmental Committee, then a Member of that relevant Departmental Committee may instead move that Motion. If there is a Member who has moved that Motion who is a Member of the relevant Departmental Committee and gets a seconder, then again the Bill shall automatically stand committed to a Departmental Committee. In the event that neither the Minister nor a Member of the relevant Departmental Committee moves a Motion to refer the Bill to the Committee, then the Bill will not go to the Departmental Committee. It will stand committed for the Second Reading in the House without it having gone to the Departmental Committee. So, it is really up to the Ministers concerned if they so mind, to move a Motion to commit the Bill to a Departmental Committee. In the event of the Minister failing, any Member of that relevant Committee can stand and move that the Bill be so committed. If none of them requests, then the Bill will not go to that Committee. If no application is made either by the Minister or by a Member of the relevant Committee, for a Bill to go to the Departmental Committee, it does not follow that because the Bill has not been committed to the Departmental Committee for lack of a Motion to do so, that the Bill cannot be read here. It can. Indeed, even if it is referred to a Departmental Committee, and within seven days, the Departmental Committee does not report to the House, the House is entitled to take that Bill and proceed on it as if it was never reported to the Departmental Committee. So that is the clear position. So, we are completely in very sound ground here, Mr. Anyona. The Bill is properly before the House and it will come to be debated here.

Mr. Anyona: Mr. Speaker, Sir, I just want to seek a small clarification in terms of the wording of the Standing Orders. Paragraph one reads as follows:-

"A Bill having been read a First Time, shall---

If I leave out the words "Upon a Motion" and just proceed, it states as follow:

"... shall stand committed to the relevant Departmental Committee without question put".

I have just left out the words "upon a Motion by the designated Minister".

Mr. Speaker, Sir, it does appear to me that the Minister has no option, but to refer the Bill to a committee of the House. Because, part two of the wording there states: "A Member may". But the first one seems to---

Mr. Speaker: Order! Order! You read the Standing Order, but you asked me to leave for the time being the words: "Upon a Motion by the designated Minister". Why did you want me to leave that? Why? The words follow each other like day and night. So, it is the Minister who makes the application, and upon that application, the Bill shall stand committed. So, it is dependent upon the Minister making the Motion. Without the Motion, the "shall" is not even there.

Next order!

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[Mr. Speaker left the Chair]

IN THE COMMITTEE

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

THE LOCAL AUTHORITIES TRANSFER FUND BILL*Clause 2*

The Minister for Finance (Mr. Nyachae): Mr. Temporary Deputy Chairman, Sir, I beg to move:- THAT, Clause 2 be amended by deleting the definition of "Officer administering the Fund" and the inserting the following new definition - "Officer administering the Fund" means the Accounting Officer of the Ministry for the time being responsible for matters relating to local authorities or an officer deputed in writing for that purpose pursuant to the provisions of Section 3.

(Question of the amendment proposed)

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

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

Mr. Raila: Mr. Temporary Deputy Chairman, Sir, I beg to move:- THAT, Clause 2 be further amended by deleting the word "Finance" and substituting it with the words "Local Authorities" in place thereof.

The reason is, I am trying to rectify what I consider to be an anomaly by creating two Accounting Officers in the Ministry of Local Authorities. The Local Authorities ordinarily account to the Permanent Secretary, Ministry of Local Authorities and it is only this particular Fund that they are going to be required to account to the Permanent Secretary, Treasury. I think this is an anomaly that should be rectified.

(Question of the amendment proposed)

The Minister for Finance (Mr. Nyachae): Mr. Temporary Deputy Chairman, Sir, the proposal by hon. Raila will not work because it will be contrary to the Exchequer and Audit Act.

Mr. Raila: Mr. Temporary Deputy Chairman, Sir, the Minister has not explained why and how it will not work to the House.

The Minister for Finance (Mr. Nyachae): Mr. Temporary Deputy Chairman, Sir, I have stated that to substitute the Ministry of Finance with the Ministry of Local Authorities is going to be contrary to the Exchequer and Audit Act. Because, this is revenue collected in form of Income Tax. Parliament authorises the Minister for Finance to keep the money in the Consolidated Fund and it is the same Minister for Finance who has to state, on authorization of Parliament, as and when the money has to move. It is not the Minister for Local Authorities.

Mr. Raila: On a point of order, Mr. Temporary Deputy Chairman, Sir. The Treasury is responsible for the collection of public funds. That goes without question. But thereafter, the Minister for Finance prepares the Budget and the money is allocated to the various Ministries which account for it through their Permanent Secretaries. So, I see no contradiction at all in this particular Act, because we are talking about just one Fund which will go to local authorities and the Ministry of Local Authorities is the one through which all those local authorities account to this House.

The Minister for Finance (Mr. Nyachae): Mr. Temporary Deputy Chairman, Sir, if the hon. Member considered carefully the earlier amendment to this particular clause, it is very clear that the actual administration will be done by the Ministry of Local Authorities. But the appointing authority under the Exchequer and Audit Act must be the Ministry of Finance.

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

(Clause 2 as amended agreed to)

Clause 3

The Minister for Finance (Mr. Nyachae): Mr. Temporary Deputy Chairman, Sir, I beg to move:- THAT Clause 3 be amended by deleting the words "Permanent Secretary to the Treasury or a person deputed by him" and inserting the words "Accounting Officer of the Ministry for the time being responsible for matters relating to Local Authorities, or an officer of the rank of Deputy Secretary or above deputed by the Permanent Secretary to the Treasury."

(Question of the amendment proposed)

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

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

Mr. Raila: Mr. Temporary Deputy Chairman, Sir, I propose that Clause 3 be further amended by deleting the word "Treasury" and substituting it with the words "Local Authorities as released by the Treasury" in place thereof. There is no much difference. This is in agreement with what the Minister has actually proposed.

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

(Clause 3 as amended agreed to)

Clause 4

Mr. Murungi: Mr. Temporary Deputy Chairman, Sir, I beg to move: THAT Clause 4 be amended as follows:-

- (a) Third line: By inserting the words "the revenue of local authorities and" after the word "supplement."
- (b) Fourth line: By inserting the word "operations" after the word "the"
- (c) Fourth line: By deleting the word "provide" and replacing the same with the word "undertake"

Mr. Temporary Deputy Chairman, Sir, the purpose of these amendments is to enable the councillors to be paid allowances from the Local Authorities Transfer Fund that we are creating. Since the last elections, the number of councillors has tremendously increased and many local authorities are finding it difficult to pay the councillors' allowances. In my local authority, Meru, the councillors have not been paid arrears of their allowances for the last four months. I think it is ridiculous for us to expect the councillors to provide services through local authorities when they are hungry and they cannot survive at a personal level. We are not talking about a lot of money. So, I am asking the Minister to be in touch with the reality of poverty at that level and allow some of this money from the Fund to be used to pay the councillors' allowances. I am sure the councillors are listening to this and I hope the Minister will not make the mistake of saying "No."

(Question of the amendment proposed)

The Minister for Finance (Mr. Nyachae): Mr. Temporary Deputy Chairman, Sir, the proposed amendment is not acceptable, specifically because the objective of making these funds available is to create better facilities and the right environment for investment. It was never intended--- During the debate in this House by majority of Members, they never accepted that this money go to the councillors for eating. This is intended for providing services and, therefore, it is very important that we are very clear---

Dr. Ochuodho: On a point of order, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. Imanyara): What is it, Mr. Ochuodho?

Dr. Ochuodho: Mr. Temporary Deputy Chairman, Sir, is the hon. son of Nyandusi in order to talk of "eating" when he knows very well that some of these councillors have not been paid for seven months?

The Minister for Finance (Mr. Nyachae): Mr. Temporary Deputy Chairman, Sir, any salary I earn, I do so, so that I can go and eat. Therefore, when we are being told that councillors should get the money as allowances, what do they do with those allowances? They do not throw it away, they eat it. That is what I meant.

Mr. Keriri: Mr. Temporary Deputy Chairman, Sir, I do understand the Minister's sentiments that this money we are giving to local authorities is to enable them to do good work, development and finance services. But are we not in fact, forgetting that part of those services is a job done by councillors? The councillors are part of the people who carry out those services. My understanding is; even without that amendment, there is no provision in this Bill to stop local authorities paying from this Fund, salaries of their staff and councillors. I would like the Minister to tell us where that is provided and if it is, I think it is unfair because, to provide services, you must have people to guide the provision of those services. Now, why are we afraid of giving the small allowances--- These fellows do not even get one tenth of what we get. These fellows guide the councils to provide those services. They are not going to eat as much as the Minister seems to be imagining. In any case, we eat food, not money although we buy food with money; I agree with the Minister. We can distort English as much as we want to, but I think the Minister will have to convince me that it is wrong to pay councillors from any Fund provided by the Treasury or by tax-payers through another method.

The Minister for Finance (Mr. Nyachae): Mr. Temporary Deputy Chairman, Sir, I think the hon. Member is raising two issues. The first issue is to get clarification and I would request him to read Clause 4 which states:

"The object and purpose of the fund shall be to facilitate the disbursements of the funds specified under Section 5 to local authorities to supplement the financing of the services and facilities".

The key area is services and facilities. Allowances are excluded in this.

Mr. Temporary Deputy Chairman, Sir, secondly, I would like to emphasise the point here and I talk with a lot of knowledge about local authorities; which are established to render services to the electorate. Now, what has happened over the years is that instead of local authorities rendering services to the public, they are using all the collections from market places, rents, rates and what have you on their allowances. The Central Government has agreed to forego part of the income tax, so that while the councillors are giving themselves allowances out of the money that they collect from wananchi, this money can assist to create services. That is the objective. Now, I said that I speak with authority because I know this is one country in the Commonwealth where councillors living locally get allowances. In many other countries, councillors are doing voluntary work. It is only MPs because of the distances that they cover who get allowances.

Mr. Raila: On a point of order, Mr. Temporary Deputy Chairman, Sir. I have listened very carefully to the Minister's remarks. First, the executive should not take this House for granted. This House should not be turned into a rubber stamp where bills once drafted by the Attorney-General, come here and then are passed here word for word. So, what the Minister has read is how they drafted it. In their own wisdom, they said: "That this fund will be used for services and facilities". Now, the members are saying that is not enough. We are saying that, this money should go beyond just services and facilities. In any case, we are saying that the services that the councils are providing are commercial; that is, they can be able to get revenue for the services that they are rendering. But we are saying that, councillors also are rendering very important service that also requires some amount of remuneration. We are not saying that the Government should try to pay all the expenses of the councillors.

Mr. Temporary Deputy Chairman, Sir, the Government should also not think that, this is an act of charity; that, by surrendering part of the income tax collected, that is actually engaging in an act of philanthropy. This is a right because the Government has denied councils the opportunity to collect revenue to provide those services, so that the Government is doing it centrally and, therefore, the Government is under obligation to transfer part of that money back to the councils. So, that is why we are saying that, this should go beyond just services and facilities and we are just saying we include operations and then, the details can be worked out. We are saying that, it would be unfair to deny the councillors their allowances because these allowances are actually already granted by law. They have to be paid, whether they are paid now or they have accumulated over the years.

But eventually, it is money owed to those councils and that is why we are saying that, it is better that this money is paid upfront, so that the councillors can work without embarrassment.

Mr. Gatabaki: Mr. Temporary Deputy Chairman, Sir, one of the reasons why the councillors have become corrupt or have joined the corruptive KANU culture is due to denial of their rights; that is the denial of good allowances by this Government which hon. Nyachae serves. We must start treating councillors as people. They are people's representatives. They are elected and until we realise that they are rendering a service for which they demand and should get allowances--- This Government has deliberately denied field trips for the county councils and made sure that, the councillors become beggars and the KANU culture is to allocate the plots and forests. If they want decent councillors who can serve and provide services to the people, we must also allow them certain decent incomes and Mr. Minister, you must give these allowances. This Government must do that because it is right, proper and justifiable.

The Minister for Finance (Mr. Nyachae): Mr. Temporary Deputy Chairman, Sir, I think we should have a clear objective of what we want to do. We either decide as leaders of this nation that, we develop the future of our rural areas and our urban centres or we decide that whatever we are collecting in the form of taxation should be "eaten" by the few people who have been elected and we forget developing this country.

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

*(Clause 4 agreed to)
Clause 5*

The Minister for Finance (Mr. Nyachae): Mr. Temporary Deputy Chairman, Sir, I beg to move:- THAT, Clause 5 be amended in subclause (2) by inserting the words "with the approval of the National Assembly" immediately after the word "may".

(Question of the amendment proposed)

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

Mr. Raila: Mr. Temporary Deputy Chairman, Sir, I propose that Clause 5 be further amended: by deleting subclause 3.

(Question of the amendment proposed)

The Minister for Finance (Mr. Nyachae): Mr. Temporary Deputy Chairman, Sir, it is strange that we are discussing the amendment of Clause 3 when in fact this Parliament, under the Exchequer and Audit Act, gives authority to the Minister for Finance to create the accounts. Without the Minister authorising the existence of the Fund as required by law, I do not see how else the Fund can be created.

Mr. Otieno-Kajwang': Mr. Temporary Deputy Chairman, Sir, in my view, the Minister for Finance can disburse the money to the Minister for Local Authorities, who can then use the money according to the Budget. I do not see why the advisory committee, which will be advising the Minister for Local Authorities on the management of this Fund, should be under the Ministry of Finance. We want the Fund's advisory committee to be under the Ministry of Local Authorities. We also want to ensure that the money to be disbursed to local authorities will be managed accordingly.

The Minister for Finance (Mr. Nyachae): Mr. Temporary Deputy Chairman, Sir, the issue here is not the management of the Fund. It is actually the creation of the Fund.

Mr. Raila: Mr. Temporary Deputy Chairman, Sir, the Minister is actually contradicting himself. His proposed amendment to Clause 3 states as follows:-

"THAT, Clause 3 be amended by deleting the words "Permanent Secretary to the Treasury or a person deputed by him" and inserting the words "the Accounting Officer of the Ministry for the time being responsible for matters relating to Local Authorities, or an officer of the rank of Deputy Secretary or above deputed by the Permanent Secretary to the Treasury."

The understanding of this amendment is that the Treasury will appoint an officer who will sit in the Ministry of Local Authorities and who will be in charge of the Fund. Now, the clause we are proposing to delete actually talks of creating a Fund within the Treasury. So, all that we are trying to do by deleting this clause is to do away with this anomaly. The Permanent Secretary to the Ministry of Local Authorities will now be fully in charge of the Fund. This is the essence of this amendment.

The Minister for Finance (Mr. Nyachae): Mr. Temporary Chairman, Sir, I think the problem we have here is that we are dealing with two totally different issues. The amendment in Clause 3 has made it very clear that the administration of the Fund will be carried out by the Accounting Officer of the Ministry of Local Authorities, who will be appointed Accounting Officer by the Permanent Secretary to Treasury. However, the creation of the Fund before the account is opened has to be done by the Minister for Finance. That is the law.

Mr. Temporary Deputy Chairman, Sir, I would like to remind this Committee of the Whole House that when the Petroleum Levy Fund was created, it was clearly agreed in this House that the Minister for Finance would conform to the creation of the Fund as required by the Exchequer and Audit Act. Under this Act, it is only the Minister for Finance who has powers to create the Fund.

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

*(Clause 5 as amended agreed to)
(Clauses 6 and 7 agreed to)*

Clause 8:

The Minister for Finance (Mr. Nyachae): Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 8 be amended as follows:-

- (a) in paragraph (a) by deleting all the words appearing after the word "Fund";
- (b) in paragraph (f) by deleting the word "three" and inserting "five";
- (c) by inserting the following paragraph immediately before paragraph (a):-
"(a) a chairman, not being a public officer, appointed by the Minister"; and,
- (d) by renumbering paragraphs (a), (b), (c), (d), (e) and (f) as paragraphs (b), (c), (d), (e), (f) and (g) respectively.

(Question of the amendment proposed)

Mr. Raila: Mr. Temporary Deputy Chairman, Sir, I quite agree that the Fund should have a chairman to advise the Minister. However, in order to avoid any kind of abuse in terms of appointment, this Committee of the Whole House should know the qualifications the chairmen-to-be are supposed to have. This will enable us to avoid the possibility of the Minister appointing a brother-in-law to advise him.

The Minister for Finance (Mr. Nyachae): Mr. Temporary Deputy Chairman, Sir, I would like to confirm to this Committee of the Whole House that consultations will be done with professional bodies and the Ministry of Local Authorities before the appointments are done. I would also like to inform this Committee of the Whole House that I have no brother-in-law who is looking for a job.

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

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

(Clause 8 as amended agreed to)

(Clause 9 agreed to)

Clause 10:

The Minister for Finance (Mr. Nyachae): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, clause 10 be amended in paragraph (b) by deleting the expression "(e) and (f) of Section 7" and inserting "(f) and (g) of Section 8".

(Question of the amendment proposed)

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

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

(Clause 10 as amended agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Minister for Finance (Mr. Nyachae): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of the Local Authorities Transfer Fund Bill and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

(Mr. Deputy Speaker in the Chair)

REPORT, CONSIDERATION OF REPORT AND THIRD READING

THE LOCAL AUTHORITIES TRANSFER FUND BILL

Mr. Imanyara: Mr. Deputy Speaker, Sir, I beg to report that a Committee of the whole House has considered the Local Authorities Transfer Fund Bill and approved the same with amendments.

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

The Minister for Transport and Communications (Mr. ole Ntimama) seconded.

(Question proposed)

(Question put and agreed to)

The Minister for Finance (Mr. Nyachae): Mr. Deputy Speaker, Sir, I beg to move that the Local Authorities Transfer Fund Bill be now read the Third Time.

The Minister for Transport and Communications (Mr. ole Ntimama) seconded.

(Question proposed)

Prof. Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, unfortunately, I did not get the opportunity to speak on this Bill during the Second Reading; but I was thoroughly opposed to the Bill for two very good reasons. The Government is

putting the cart before the horse. The Government is trying to seek money to put into local authorities which are incapable and do not have the capacity either to absorb or administer these funds effectively. We know very well

that all local authorities have not had their accounts audited properly for the last "donkey years". We also know very well that all local authorities do not have proper internal audit systems which makes me question whether the Government itself has a proper internal audit system.

The Minister for Finance (Mr. Nyachae): On a point of order, Mr. Deputy Speaker, Sir. I would like the hon. Member to guide the House. He is talking of "donkey years", we do not know what that means.

Prof. Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, I do not know what the Minister is talking about. But if he knows what he is talking about, I suppose he will tell us. Finally, I was saying that the Government is letting the cart before the horse. I will predict that in the implementation of Clause 10 as amended, this Act of Parliament is going to be a disaster.

(Question put and agreed to)

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

Mr. Deputy Speaker: Next order.

Second Reading

THE NATIONAL HOSPITAL INSURANCE FUND BILL

(The Minister for Health on 8.10.98)

(Resumption of Debate interrupted on 12.11.98)

Mr. Obwocha: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to contribute to this very important Bill. The National Hospital Insurance Fund (NHIF) has previously been very poorly managed for the simple reason that it has been left to the management of one person only; the Chief Executive. It is, therefore, important to reduce the powers invested in the Chief Executive and give those powers to the Board. But the Board must take a serious responsibility over the management of the Fund to avoid fraud both from inside and outside the Fund. It is also important to consider the broad aspect of the health insurance services in this country so that we can include other players in the health insurance scheme. Further, the funds generated must be used for the purpose of providing health-care for the members and should not be invested in unworthy causes or projects that will lead to fraud and other misuse of funds.

Mr. Deputy Speaker, Sir, I will now go specifically to those clauses that I feel this House needs to give attention to and make amendments to this Bill, so that we can have a proper health insurance Act coming out. On the face of it, this Bill caters for only one player, the NHIF. But we have other players like the AAR, Medi-Plus, Bicko and so forth. Even the title of this Bill should have been changed to be the National Health Insurance Fund Bill not the National Hospital Insurance Fund Bill so that the Act can cater for all the players. I will start with the preliminary Clause 2 which gives the definition as to who should be included particularly the dependants.

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

Mr. Temporary Deputy Speaker, Sir, in Section 2(a), (b) and (c), the Clause includes children as dependents. To that extent, we agree that those who are above 18 years of age should be included. However, we feel that the dependents should also include infants of the contributor plus any child who has been adopted. If somebody has adopted a child, then that child belongs to that person. Therefore, in those clauses, we would like to see those children being included. The Act should go further, in its section 2, to provide for a special category to cover the contributions from contributors who want to include other dependents; for example, the parents, at an extra cost. This may not be necessarily with the money they have already contributed. If I also want my parents to benefit from this scheme, I should be allowed to include them, provided I pay for them.

Mr. Temporary Deputy Speaker, Sir, on spouses, the current policy is, that, if you have more than one wife, they cannot benefit from this scheme. You know, under the African customary law, many of these hon. Members, including other Kenyans, have more than one wife. So, I propose that we should be able to include and

provide for our current social set-up. If a husband wants to include all his wives, he should be allowed to do so at an extra cost.

Mr. Temporary Deputy Speaker, Sir, I would like now to come to part 2 of the Act which deals with the establishment and management of the Fund. Under section 2, (4) (i), which I would like to start with, it states: "There shall be an established Board to be known as the National Hospital Insurance Fund Board of Management which shall consist of---" Then it goes on to give all the people who are supposed to be included here. The Government is only a principal custodian of the public Fund, and it should stay as such. For this proposed Board, we agree that its number should be limited to 12 members, but the composition should change. With regard to the representation of the Government, the only people who should be on this Board are the Permanent Secretaries of the Ministries of Health and Finance. They should be the only representatives of the Government. The others who have been proposed under part (e); that is the Federation of Kenya Employers, (FKE) and under part (f) the Central Organisation of Trade Unions (COTU) and the Kenya National Union of Teachers (KNUT), we have also no quarrel with it. Equally, we do not have any quarrel with the one member representing the Non-governmental organisation (NGOs) as indicated under (g). All these other members proposed should be changed. I propose that there should be one member representing the Medical Practitioners from the private sector; the private hospitals, the nursing homes, mission hospitals and so on. Then we can have one member from the Kenya Medical Association, one other member from the Medical Practitioners and Dentists Board, another member from the combined religious organisations, another member from the Professional Societies of East Africa, who should be left on their own to choose their representative. I do object very strongly to the idea that one person will be nominated from the Kenya Hospital Association. Many hon. Members may not know that the Kenya Hospital Association represents only Nairobi and Mombasa hospitals. It does not represent any of these other hospitals. So, you cannot give them--- There is nothing so special about these two hospitals. One or two of them may have better facilities, but it is not better than Mater hospital, MP Shah or many other hospitals. So, we do object very, very strongly about the proposal that one member will be nominated from the Kenya Hospital Association.

Mr. Temporary Deputy Speaker, Sir, before I move to Clause 6, let me talk about Clause 5. In this Clause, the Bill lays down the objects and functions of the Board as:

"(a) to receive all contributions and other payments required by this Act to be made to the Fund.

(b) to make payments out of the Fund; to declare the hospitals in accordance with the provisions of this Act.

(c) in consultation with the Minister to set criteria for the declaration of the hospitals and to declare such hospitals in accordance thereto, for the purposes of this Act."

This portion, (c), has previously been abused. The Ministry has previously taken upon itself to decide unilaterally upon certain issues on certain hospitals. I propose that the Minister should only do that in consultation with the Medical Practitioners and Dentists Board of Kenya and the Kenya Medical Association (KMA) which is the legal representative of the doctors in Kenya.

Mr. Temporary Deputy Speaker, Sir, on part (f), it provides: "The Board shall advise the Minister on the national policy to be fulfilled with regard to the national health insurance and to implement all Government policies related thereto." This clause assumes that the NHIF is the only player in this field, which is not true as there are other players. So, my proposal is that the NHIF Act should include other players who would advise the Minister on matters relating to the health insurance covers.

Mr. Temporary Deputy Speaker, Sir, Clause 6(e) provides that "The Board may invest any monies of the Fund not immediately required for the purposes of this Act in the manner provided under Section 34."

Mr. Temporary Deputy Speaker, Sir, you know that previously, any excess money that has been held by this Fund and invested elsewhere has been invested in very dubious financial institutions. We have ended up losing a lot of money because it was dubiously invested. If there are any excess funds, this money should be lent out for the purposes of improving health-care in the country's hospitals. The money should be given to the contributors to enhance their health-care. Money should not be invested in dubious financial institutions.

Mr. Temporary Deputy Speaker, Sir, I now turn to the benefits under part 3. Clause 22 (1) states:

"The Board shall pay from the Fund benefits to declared hospitals for expenses incurred at those hospitals by any contributor, his named spouse, child or any named dependant."

I totally agree with that one because that was the purpose of my earlier proposal that if I want to include any dependant and I pay the extra cost, he should be included. That bit is okay. But Clause 22(2), while I agree that the NHIF should cover both in-patient and out-patient on medical care modalities, the rebate part of it should be worked out very carefully so that it should involve all interested parties. For now, the out-patient rebate is not possible. It is a cover which we should be very careful about because it can be misused. On Clause 22(3), the rebate should be geared to benefitting the contributor and not the hospital. Here, the Bill tends to focus on the

hospital more than the contributors. They should be focusing more on the contributors rather than the hospitals. I think it is now geared towards the hospitals and that is why there are different rates for different hospitals. The rebate should be uniform regardless of the hospital because it is the contributor who matters. The contributor contributes a certain amount of money. So, we should carefully consider the rebate. Any person suspected to have committed a crime should be given a hearing by the disciplinary committee of the Board and if found guilty, then he must be punished very heavily. The bottom line here is that a person who has messed should be given a hearing by the Board.

On the issue of suspension, the offenses committed by individuals--- There is no sense in suspending a hospital because in so doing, you deprive the contributors of facilities and services they are entitled to. So, suspension is actually a malicious tool geared towards frustrating small hospitals because they cannot operate without this funding.

On the same part, I would like to comment on Clause 27, which is on the payment of benefits and it states as follows:

"Subject to the provisions of this Act, the Board in consultation with the Minister may make regulations prescribing the amount of any benefits in the period within which any benefits shall be payable out of the Fund for the time being and such regulations may provide for any conditions or any limitations subject to which:

- (a) Any benefits shall be paid
- (b) The manner of the making and determination of any claim to any benefit
- (c) The postponement of any payment of benefits pending any relevant inquiry
- (d) The authorization of any person to claim benefit on behalf of a contributor where such contributor is unable for the time being to do so."

Mr. Temporary Deputy Speaker, Sir, once the claims have been verified as valid for payment, the payment should be made to hospitals within a specific period; that is within one week or two weeks. Rejected claims should also be returned with comments within the same period. Right now, what is happening is that there is no communication from the NHIF; these people are waiting to be bribed. So, the hospitals and the contributors are punished for reasons they do not understand. Therefore, my proposal under this is that this House should provide for a specific period for which a claim must be responded to.

Clause 29 states as follows:

(a) "Without prejudice to any specific power conferred by any provision of this Act, the Board, may, in consultation with the Minister make regulations facilitating the implementation of this Act, including particular regulations prescribing anything required to be prescribed under this Act.

(b) Prescribing the particulars and information proof or evidence to be furnished as to any question or matter arising under this Act including any question or matter relevant to the payment of contributions by or in respect of any person or the making or validity of any claim or application for the payment of any benefit under this Act and prescribing in respect of any such actions or permitted to be taken under this Act, the time and manner of taking that action, the procedure to be followed and forms to be used."

Mr. Temporary Deputy Speaker, Sir, this is just too vague. The so-called general administration, as regulation, should be specific as possible. If they are not specific, then this one can be misused or misinterpreted.

Mr. Temporary Deputy Speaker, Sir, under Clause 30 which deals with the declaration of hospitals for the purposes of the Act; we should formulate clear guidelines as to, first, who can own and run a hospital. That should be very clear in this Bill. Why should our hospitals and nursing homes be opened to non-professionals? How can individuals who have made illegal money be allowed to open hospitals and then employ doctors to run those hospitals for them? These are the root causes of professional malpractices and corruption. There should be strict minimum requirements to be met before a person is given permission to run a hospital.

On Clause 34, safe for Government investment in Treasury Bills and so on, banking should only be done in main banks that are stable and are known like Barclays, Kenya Commercial Bank, Standard and so on. In other words, banking should be done in the established banks. In Clause 34(b) the word "undeserved" is put here in bad faith and it is going to be misused. It says: "Any approved hospital is qualified to apply to the Fund for the financing of essential medical equipment regardless of the location."

Mr. Temporary Deputy Speaker, Sir, Clause 34 says: "A contributor is entitled to his benefits from the Fund in terms of treatment, whether he subsequently gets compensated or not."

In any case, that work-men's compensation or other claims are for subsequent disability and not for the treatment. Generally, the contributor is the owner of the Fund and he should have a bigger say in running this Fund. The Government is only a custodian of this Fund. The Board should, therefore, for the purpose of efficient

management from the subcommittee, put down in finance, discipline and administration clear committees that will deal with certain aspects of that Board. Then it should consider categories of hospitals, for example, a small category of about 40 beds, medium between 40-100 beds and then above 100 as large hospitals. The Fund should consider approving a small number of beds and increase the daily rebate. In considering small number of beds you avoid the temptation of fraud.

Finally, Mr. Temporary Deputy Speaker, Sir, I would like to comment on the accounting aspect of this Bill; that the annual estimates is basically a budget and this Fund must keep a budget. Secondly, on Clause 37, the Board must produce an income and expenditure account for the year; at least, within the first four months at the end of each financial year. On Clause 37(b), it should not produce the statement of assets and liabilities. What should be produced here - I hope the Minister is listening - is a balance sheet. It must produce a balance sheet. That is accounting. If you are talking about assets and liabilities, you have not catered for other items in the balance sheet. So, Clause 37(b) should be amended to indicate that the Board or the Fund must publish a balance sheet. That is a mandatory requirement of all organisations. For an organisation to be able to run properly and be accountable, it must produce a balance sheet and not a statement of assets and liabilities. A statement of assets and liabilities is part of a balance sheet because there are other items in a balance sheet which are not necessarily assets and liabilities. So, the final one is that other auditors should be allowed to audit the accounts of this Fund.

With those remarks, Mr. Temporary Deputy Speaker, Sir, I ask the Minister, either to make the proposed amendments or withdraw this Bill and redraft it.

Prof. Anyang'-Nyong'o: Mr. Temporary Deputy Speaker, Sir, I beg to contribute to the debate on this Bill. I want to say from the beginning that, although I am going to be very critical of the Bill, it will be done in the spirit of trying to get a proper health insurance system and scheme for our country.

First, Cap 255 of the Laws of Kenya which is being repealed intended to make the idea of health insurance be Government run. That was the assumption of Cap 255 of the Laws of Kenya, but although we had another National Hospital Insurance Fund, it was run as a department in the Ministry of Health and this always produced a lot of problems in the Public Investment Committee (PIC) because we said that such a Fund should be run by a State parastatal rather than by the Ministry. In response to our concerns, the Government has now repealed Cap 255 and introduced this National Hospital Insurance Fund Bill, which essentially creates the parastatal that the PIC called for. Unfortunately, this has been done a little too late. It is too late for two reasons. First, we are in the period of liberalisation; a period in which the State should be rolled back from being too actively involved in those initiatives where it is not quite catered for. Unfortunately, for Africa, the public sector has performed so poorly over the last 20 years, that although we know that public sectors elsewhere have performed well, people have little faith in the public sector. The public sector has an in-built culture of poor performance and of not being public oriented. To call it a "public sector" is, indeed, a misnomer because the culture of public sector has been a culture of individuals who are more preoccupied with rent-seeking activities rather than serving the public. When it comes to handling something like insurance, I think it is a little too late to introduce a National Hospital Insurance Fund run as a public sector, in Kenya when we are liberalising the health insurance sector and the economy in general.

Mr. Temporary Deputy Speaker, Sir, secondly, NHIF has been a major source of public savings in our country. But precisely because it was poorly run, that public saving has been wasted in two ways. First, it has not been invested in improving medical institutions and the provision of medical care. On the other hand, it has been diverted quite often by the Government to meet other expenses. It has also been used to fund financial institutions in which the political potentes in our Government have an interest. I do not see how this Bill will improve on the performance of the NHIF. All this is provided for its management Board, which is, nonetheless, dominated by the State. Therefore, I would be reluctant to support this Bill as envisaged precisely because I think hospital insurance should be put in the market competition and the Government, like any other insurer, should compete for providing this insurance rather than relying on a monopoly stance that this Bill is now seeking to establish.

Thirdly, up to now, the NHIF - as an insurance fund it is just like a bank - has not provided statements to insurers. I have been a contributor to the NHIF ever since I started working, but I have rarely benefited from it. This is because I would rather use other insurances which give better health services than the NHIF. So, my contribution to the NHIF has been like a Christmas gift by Father Santa Claus. I have been this Government's Father Santa Claus ever since I started working. I am sure that many Kenyans would demand from the Government a current statement of their account with the NHIF and they would not receive it. This Bill as envisaged does not improve on that fact. Those who are insured under this Bill will not receive regular statements on how their contributions are used by this Government, either under the old Cap 255 or under this new Bill as it is envisaged.

Mr. Temporary Deputy Speaker, Sir, I would rather propose that we should move away from the current

concept of establishing a NHIF as a state monopoly. We should instead go towards looking at insurance as a service that the state should provide to its workers. The Government should establish an insurance scheme for civil servants, where, if one is a Government employee he or she contributes to it. The Government should establish rules under which it will insure its workers and leave everybody else free to fend for himself or herself in the market. But to compel all the workers in Kenya over the age of 18 years to contribute to the NHIF when they can get better services elsewhere is to go against the spirit of liberalisation.

Therefore, my first proposal is that the Government should establish a regulatory body to regulate insurance. It should also ensure that all insurance firms conform to certain civilised standards of insurance. That is the role of the Government. After establishing a body that will regulate insurance, the Government should then move forward to establish its own insurance scheme for its workers, which would be agreed upon between it and its workers. That means that the agreement would be between the Government and the representative of those contributors, which is Parliament. A Bill brought to this House establishing an insurance scheme purely for the Government employees would definitely be welcome during this year of liberalisation. Therefore, I would like to propose that rather than present a Bill like this here, there should be a Bill called the "National Insurance Board Bill" as a regulatory body brought to this House. In as much as we had a national communications board attached to the Communications Bill, we also need to be proposed, in this Bill, a regulatory body that will set civilised standards for insurance practice in this country. The Government will be one of the players who will establish insurance schemes for their workers. They should not take it upon itself to provide compulsory insurance for everybody because it does that poorly.

Mr. Temporary Deputy Speaker, Sir, this means that Clause 15 is really, in spirit and word, contrary to the liberalisation spirit that we have in this country at the moment. For example, it says:

"Subject to this Act, any person who is ordinarily resident in Kenya, has attained the age of 18 years and whose total income whether derived from salary or self employment in the immediate preceding month was not less than such amount as the Board in consultation, with the Minister may prescribe shall be liable as a contributor to the Fund."

This is unconstitutional. The Government cannot compel people to buy a commodity contrary to the market forces. For example, if this person who is a resident in Kenya and has attained the age 18 years and has an income feels that the African Air Rescue (AAR) is a better insurer than the NHIF, why must he be liable to be a contributor? Health and education are basic rights! If, of course, the Government says in the same breath that it shall be liable to provide basic health facilities to every Kenyan, then making somebody to subscribe to this Fund becomes constitutional. In other words it is infringing on its people's civil liberty. If the Government through this Bill can undertake to provide certain basic health standards to all these people then their being liable to contribute to this Fund will be welcome. But at this point in time, I think it is unconstitutional, unfair and contradictory to the liberalisation policies that we are committed to, to have a provision like this in a Bill like this one.

Mr. Temporary Deputy Speaker, Sir, therefore, I would like to say that, if the National Insurance Board is established as a regulatory body, employers would be expected to provide health insurance approved by the regulatory Board. Therefore, this Bill will provide clauses and regulations which will stipulate those things that every employer must do to ensure that his employees are insured properly. It is more or less like a workers compensation Act, where every employer is expected to pay certain compensation under certain circumstances. The same should apply in insurance.

Clause 16 of this Bill establishes standard contributions to the NHIF. Supposing, for the sake of argument, we moved away from expecting everybody to contribute compulsory to the NHIF and accepted my proposal that the National Hospital Insurance Board should be a regulatory body, what would Clause 16 read like? It would form a model for establishing an insurance fund for Government workers only. Indeed, the clause does not apply to a liberalised market economy: This kind of clause applies to a single employer, who is the Government. This is precisely because in the past the NHIF has assumed that employers will implement this clause. This is what has led to corruption in the NHIF. The Government is not and will never be capable of supervising every employer in implementation of this clause.

Mr. Temporary Deputy Speaker, Sir, for example, how will the Government know that a *Jua Kali* employer in Busia District is implementing this clause as effectively as the East African Industries (EAI)? The Government would have to employ a lot of supervisory ability to ensure that this is done. Once the Fund, as a regulatory body, establishes standards of regulation, indeed, it is in the interests of the employer to ensure that proper records of those to whom it gives insurance schemes are kept. Just like now, if you are insured by the AAR, these clauses under which you are insured are so meticulously observed by the AAR. It is upon the insurer, the AAR, to ensure that it is not defrauded. The Government should not take it upon itself to allow every Tom, Dick and Harry to be issuing the NHIF cards, whose authenticity it is not capable of establishing.

I think that the Government will only be in a position to be an issuer of the National Hospital Insurance Cards which apply only to Government employees.

Further, Clause 22 on payment of benefits further goes on to illustrate exactly what I mean. It says that the Board shall pay from the Fund benefits to declared hospitals for expenses incurred at those hospitals by any contributor, his named spouse, child or other named dependant. Subject to such limitations as may be imposed under Sub-section 3, the medical or health care expenses referred to in Sub-Section 1 shall cover both in-patient and out-patient medical health care. People think that by now in areas of covering out-patient and in-patient medical health care that there is an improvement. Let me tell you that there is no improvement whatsoever. It depends on what amount of money you are talking of. At this point in time I know that in-patient coverage by the NHIF is so small that, indeed, it acts more as a tiny token contribution to hospital expenses than an insurance fund. The whole idea of insurance is that you take care of the future. You pay money now to take care of the future so that when you fall sick you are not worried that your hospital bills shall not be paid. It defeats the purpose to tell people that they are going to contribute to a Fund which finally only pays only 5 per cent of the bill that the hospital hands over to you.

This Section now seems to cover so many things that can be covered, but does not tell us what percentage will be covered. Without prejudice under the provisions of Sub-section 1, the benefits payable from the Fund shall be limited to expenses incurred in respect of drugs to laboratory test and diagnostic services, surgical or medical procedures or equipment, physiotherapy care and doctors fees subject to such limits, regulations and conditions as the Board may in consultation with the Minister prescribe. This is where the problem is. The Act has given the Board and the Minister such latitude of establishing the extent to which child coverage or health insurance will go that if the Board and the Minister say: "We can only cover up to 20 per cent of the total bill incurred" or "We can only cover up to so much of your salary" we will go back to the old story where the NHIF only covers a tiny fraction of hospital expenses making minimal contributions. An insurance scheme is much more important in stating the extent to which the bill will be covered rather than leaving the important Clause so open ended. I do not therefore, think that this is any improvement at all on the existing inadequacies of the NHIF as established under Cap.255. This is what has made a mockery of the whole insurance idea as was established by Cap.255.

What I would like to propose here is that once the Board is established as a regulatory body Government insurance for its workers should go toward covering the total bill in the hospital for a certain number of days when a patient is in the hospital until such time that the doctor can certify that extra insurance is needed or some extra coverage is needed beyond labour insurance firm as a Government insurance firm can afford. This is possible because there are hundreds of contributors to the NHIF like our selves who have not contributed or who have not claimed any coverage from that Fund when ourselves, our relatives or our families are in hospital. It means, therefore, that the Fund, as it exists today, has enough contribution from contributors who do not claim for it to cover those poorer Kenyans who are in dire need of the NHIF full coverage when they go to the hospital. What is important here is the proper administration in the field and the proper investment from the revenue from the Fund to ensure that it gives effective coverage to those who are insured. Further, once the Board is established as a regulatory body the Fund is confined as an insurance fund purely for Government employees then we shall move to a new stage of administering Government hospitals. Government hospitals will not be under the Ministry of Health. They will come under the National Hospital Insurance Board.

The board will be given the responsibility of managing hospitals. It will then go further and put the management of each hospital under management boards which will have performance contract with the Board. It is under this performance contract that each board managing each hospital will either get money from the NHIB and will also get incentive from managing those hospitals well. Now it is a mockery. You cannot have Government hospitals being run by the Ministry. You have seen the improvement that has occurred at the Kenyatta National Hospital. Once the Kenyatta National Hospital Board was given some latitude on managing the hospital with some relative autonomy from the Ministry and once the Director of the KNHB was given the incentive to do certain things in that hospital through the World Bank Funded Project there was a lot of improvement. Once you give autonomy and incentive to a management Board and you sign a proper performance contract, you will go a long way to improving performance in Government hospitals than is the case now. I will assure you that if we make this Bill to be an Act and to be operational before we change the manner in which Government hospitals are managed the performance in those hospitals is going to make a mockery once more of how insurance money coming out of this NHIF is used. What we need to do is to make sure that the hospitals are managed by boards which have performance contracts from the NHIF Board away from the right controlled by the Government with certain relative autonomy and then the insurance money will in that way be invested in the running of the hospitals under a performance contract by those management boards running those hospitals.

At that point in time, we will be infusing the idea of insurance with the idea of effective performance in

hospitals to deliver that very needed commodity called health care, which is not being delivered in our Government hospitals to those poor Kenyans that need it most.

Mr. Temporary Deputy Speaker, Sir, I, therefore, propose in this House that the whole philosophy behind this Bill be changed. Once the Government gets the proper perspective on how to deliver proper health care to Kenyans, which is funded by a well-run insurance fund for Government employees, then, indeed, we shall have good health care delivery in Government hospitals. That is one objective that a Bill like this should meet. The other objective which is equally important is: A bill like this should provide for a National Hospital Insurance Board as a regulatory body, regulating insurance for those people who give insurance as a commodity in the market. But once that is said, we are not going to go very far unless and until in the Government, the culture of public performance is infused. The concept "civil servant" means that people are employed with a civil mission in serving the public. Indeed, in colonial times, we had a civil service. Indeed, soon after Independence up to about the year 1974, we had a civil service. I very much doubt whether today, we have a civil service in this country. Those civil servants with a civil service commitment or mentality are highly frustrated because they are not given the space or the leeway to perform in service for the public. Everybody is expected to fend for himself. The Government itself has no notion of what public services are because it is infused with individuals who are more self-seeking than public-seeking.

Therefore, if that is the consuming mentality in the Government, it is also very difficult for that Government to conceive of laws that will go towards a better public oriented civil service. I am, therefore, proposing that before this Bill is amended to be brought into this House, a Bill that will go towards: One, establishing a proper insurance scheme for Government workers because the Government workers are the poorest served in terms of health insurance. Two, a Bill that will go towards establishing a regulatory body for insurance. Before that is done, the Government needs to consult seriously with those elements in the Kenyan society who have the spirit of serving the public.

I think the people in the insurance industry have come up with very good proposals on this Bill. The Kenya Medical Association has come up with very good proposals to this Bill. I would appeal to the Minister to take one step backward, with the idea of taking two steps forward, to consult thoroughly with the Kenya Medical Association and the insurance industry. One step backward will mean withdrawing this Bill and revising it, and coming up with a Bill in Parliament, which will meet those two objectives. If you do that, the Minister, when he comes back to this House, will make two steps forward. Those two steps forward will go towards:

- (a) Making the Government more capable in regulating insurance in this country.
- (b) Making the Government more effective in providing insurance for Government workers.
- (c) It will also give the Government the first opportunity since Independence, to run and fund Government hospitals effectively and with efficiency.

At this point in time, we must realise that it is a big tragedy. Government hospitals are known more as mortuaries than as hospitals. The death rates in Government hospitals has greatly overcome the birth rates, not withstanding the so-called AIDS HIV infections.

The Assistant Minister for Health (Mr. Criticos): No, that is not true.

Prof. Anyang'-Nyong'o: I know the Assistant Minister is saying no because he does not go to as many funerals as I do. I am talking about the rates. I am not talking about the absolute numbers. The rates means the number of deaths *per capita* as opposed to the number of births *per capita*. If, indeed, you consult the Central Bureau of Statistics for the last couple of years, the death rate has overcome the birth rate. That is what I am saying. This is not in one area, it is generally in all areas. So, if that is the case, then there must be something wrong with the health delivery in the Government hospitals. The basic duty of the Government is to preserve life. Every Government exists to ensure that each one of those citizens in that country has equal opportunities to live. You have to remember the Biblical story of the fellow who went to look after the 100 sheep. When the 99 sheep came home, one was left in the bush. He was more concerned about the one in the bush than the 99 sheep. So, the Government must be concerned with every extra life that is lost, which should not be lost. That has got to do with the funding of Government hospitals, and the effectiveness of the delivery of health services. So, when I am saying this, I am concerned with the fact that the principle of citizenship in our nation must be observed under one realistic criteria, the basic rights and needs of all Kenyans. Health is a basic need and right.

So, a Bill like this must come to Parliament with the right philosophy, which should advance the basic rights and needs of all Kenyans. If it does not meet that criteria, it must go back to the drawing board and be conceived properly. So, I think it is extremely important that this Bill envisages the importance of proper delivery of health services in the health sector, as one major goal to be met when the Bill becomes operational, than any other.

Just to summarise, I would like to point out the following:

(i) I would like the Government to come up with a Bill that establishes a regulatory body for all insurance deliverers in this country.

(ii) I would like the Government to think, first and foremost, of its own employees. Do they have a proper insurance scheme or not? If so, how does this Bill take care of insurance, first and foremost, for Government employees? The NHIF should be a Fund, first and foremost, for Government employees than anybody else. Every other person should be able to find in the market, in the liberalised economy, and buy the insurance commodity from the private sector as well as the Government itself. The Bill contradicts the spirit of liberalism and the freedom of choice by putting Section 15, which makes every Kenyan over the age of 18 liable to contribute to the Fund. I oppose that, and I believe this Parliament will oppose that provision profusely.

With those remarks, I beg to oppose.

Mr. Kitur: On a point of order, Mr. Temporary Deputy Speaker, Sir. I beg to move that the Mover be now called upon to reply, in view of the fact that we have discussed this Bill for a long time.

(Question, that the Mover be now called upon to reply, put and agreed to)

QUORUM

Prof. Anyang'-Nyong'o: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the Mover to be called upon to reply, when we do not have a quorum in the House?

The Temporary Deputy Speaker (Mr. Imanyara): No, we do not have a quorum. Ring the Division Bell.

(The Division Bell was rung)

The Temporary Deputy Speaker (Mr. Imanyara): I am now satisfied that we now have a Quorum. Mr. Minister, do reply!

The Assistant Minister for Health (Mr. Criticos): Mr. Temporary Deputy Speaker, Sir, I beg to reply. I would like to assure hon. Members that their views and those of the stakeholders, have been taken into consideration when preparing and making amendments to this Bill. As we know, most polygamous marriages are by choice and not by necessity. The NHIF caters for one wife and children, but the extra wives can also be covered under special and voluntary contributors and self employed, if they are engaged in the informal sector. I agree with one hon. Member, who earlier said that Kenyan society is a polygamous society, and so a polygamous husband, therefore, will be required to pay extra for the extra wives which will be under part three, Section 20(i).

The Board is mandated to make regulations in respect of voluntary contributions or contributors discussing the manner of making such contributions, the procedure to be followed and the terms to be used. The extended family falls under the same category of special and voluntary self-employed contributors. It does not have a limit as to the number of children that one covers; child or step children, adopted children and any child that the contributor is responsible for its welfare. A child is covered up to the age of 18 and up to the age of 21 or until such a child finishes university or college, has no income or is mentally or physically handicapped. The informal sector is represented directly by NGOs and indirectly by COTU, Kenya National Farmers Union (KNFU) in case of farmers, co-operative members and employees of certain organisations like the FKE, COTU and KNUT. We have also taken into consideration that during the previous years we have discovered that the previous penalty of five per cent was grossly inadequate. But, part three of Section 18 of the current Bill sets the penalty at five times the amount of the contribution for each month or part of the month for which the contributions remained unpaid.

We feel that this is enough deterrent and NHIF has the capability of imposing this. We are also aware that there have been many fraudulent claims which, in many occasions, we had to de-gazette hospitals, and we would like to stress that we have set systems in place to minimise cases of inappropriate claims. It has been made possible to computerise and, through a closer bed surveillance of the hospital, to deter this past experience of de-gazetting of various health institutions and hospitals. Furthermore, through the existing rules and regulations, there is a criteria to be met by a hospital before accreditation to the NHIF. There is a report to be compiled from each health facility by my Ministry and the NHIF Inspectorate. This report once compiled, will be forwarded to the Board for discussion and approval. Furthermore, there were a lot of hon. Members who contributed to this Bill and

their main concern is the investment of the money of the NHIF. We have come up with a formula that NHIF should only invest in Government securities, banks and institutions with a trustee status. These include Treasury Bills and Central Bank approved bonds. This is in strict compliance with the Treasury regulations.

On claims to the NHIF, we will pay all legal claims for all NHIF accredited hospitals, furthermore, approved hospitals which meet the said criteria and applying care for hospitals in the process of being accredited by the NHIF. We feel that with the computerisation of printing cards, which in the past took six months, it is now a matter of a few minutes. One can now access information about contributors' details with a touch of one button on the keyboard. The Fund can also detect inappropriate claims using the computers since all relevant information is now available and could be easily accepted.

I would like also to point out, like hon. Anyang'-Nyong'o, --- I think he pointed out that under the new Act, it is possible for an independent audit firm to be appointed to audit the NHIF books of accounts. This will be done. In respect to benefits, the Fund is working towards a total cover for the contributors in the future. This will be done in various stages: The actuarial study to determine the viability and ability to undertake the task is currently in place. This will however take into consideration the ability the majority of the NHIF members have to afford the contributions. Modalities are also in place to cover the contributors above the age of 60 brackets which other insurance firms or policies do not cover. An elite package, the provisions for graduated contributions which entitle contributors to cover commensurable with the premiums of the NHIF contributors who can afford very high premiums, will be part of the study already in place which may cover members for full hospitalisation and overseas treatment where necessary.

Mr. Temporary Deputy Speaker, those were the various comments and I beg to move.

(Question put and agreed to)

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

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

Second Reading

THE COMMUNITY SERVICE ORDERS BILL

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, it is my pleasure to move that this important Bill on Community Service Orders be read a Second Time. This is an extremely important Bill in the area of administration of criminal justice. As hon. Members may be aware, the area of administration of criminal justice is at the heart of the promotion and protection of human rights. Therefore, the Bill that I am moving this afternoon is a Bill which I hope hon. Members will take a very keen interest in. A Bill which I hope that all those departments and institutions which are in this area of administration of justice will take a keen interest in. This is a Bill which I hope the Kenyan community and society as a whole will take a keen and positive interest in because all these have a positive role to play in ensuring that the administration of criminal justice in this country is efficient and meets the objectives for any criminal justice in the world.

Criminal justice, of course, begins with a report to the police that a crime has been committed. How that report is taken by the police is important. The seriousness with which they deal with that complaint is important. The seriousness with which they thoroughly investigate the complaint to find out if an offence has been committed is very important. After the investigations, if there is sufficient evidence which discloses that a particular person has committed the offence, then that person is charged before the court. Therefore, the whole process of the criminal trial is important. It is important because we believe that nobody is guilty until found guilty after the due process of the law in court. Everybody as you know, is presumed innocent and therefore the criminal process gives every right to the accused person, not only to get a counsel of his own choice and to prepare for his defence but also a chance to cross-examine any of the witnesses that may be arraigned in court before the accused person. Once the process is complete the court has to make a decision as to whether a person is guilty or not. Now, if that person is found guilty, then the court gives an appropriate sentence to fit the crime that has been committed. It is now at that stage that this Bill will become very important.

Mr. Temporary Deputy Speaker, Sir, we are saying that when it comes to the stage of sentencing, the courts should seriously consider alternative forms of sentencing. We are saying that custodial sentencing is not in itself a must in every case where somebody has committed an offence. In fact, in most cases the custodial sentence

may have a negative effect for the intended purpose. Therefore, this whole area of crime and punishment is an important area worthy of study. When we consider punishment we know that even in our own traditional societies there were ways of imposing punishment against any deviant member of that society. In most cases, in fact, it was not just that particular individual, but the punishment went out to the entire family or even to the entire clan in appropriate cases. Organised societies throughout history have always had a form of punishment in one way or the other. Punishment is in fact a way in which the society retains its state of equilibrium. In other words, criminals, it is believed, have to be punished so that the society can be protected. That is one way of looking at punishment. You punish those members who have infringed or violated the norms which the society feels should not be violated and which hold the society together. You punish them in order to protect the rest of the members of that society.

Of course there are other people who also feel that the so-called criminals are, in fact, victims of circumstances; that there is a sense in which the society actually creates criminals. For example, when people say that the economic and social conditions in a given country are hard, people always say the crime rate goes up. If the society is doing well, people say that the crime rate goes down. So, there is a sense in which certain persons can be forced to commit offences for survival. Therefore, in that sense one can say, the society creates criminals, deviants and so on. If you follow that line of reasoning, then the persons who are guilty of committing offences are persons who should be treated compassionately and that, in fact, the society has a moral responsibility to ensure that the punishment that is being imposed on that criminal is a punishment which does not dehumanise that particular person. It is a punishment which will deter the person from committing further offences. It is a punishment which will help that person reform and be rehabilitated back into the society.

There are others who say that some people commit crimes because of their very nature. They were made that way, their make up, their DNA and so forth is one which makes them commit the offences and, therefore, appropriate ways and means of dealing with those type of offenders should be found. If it is psychiatric treatment or psychological treatment, that should also be gone into. So, we have various methods of punishment to fit the crime committed. Overall, the aim of punishment is to reform the criminal. You want to impose a punishment which will hopefully lead to the criminal being reformed so that he can leave his criminal behaviour and be a good law abiding citizen.

Mr. Temporary Deputy Speaker, Sir, the other aim of punishment is to rehabilitate that criminal, particularly if he has committed that offence because of economic circumstances or because he does not have any particular skill which he can use to earn income. One has to try to give criminals those skills and rehabilitate them back into society so that they can earn a decent living. Therefore, to be able to achieve these objectives of punishment which are to reform and to rehabilitate the criminal, it is essential that the punishment must be one which respects the inherent dignity of the criminal. The criminal does not cease being a human being with inherent dignity and respect of a human being merely because he has become a criminal. He is still a human being and must still have that respect and inherent dignity which is in every person. Because of this, the United Nations has brought what we call the minimum standards; the basic minimum rule for treatment of offenders. I am giving this background because the Act that this Parliament is going to consider is one that will help this country go a long way in meeting the basic minimum rule for the treatment of offenders. These basic minimum rules for the treatment of offenders are recognised by the UN basic human right, that this are not standards which every society at all times can achieve. That is recognised because it depends on economic and social development of a country at any given time. Countries cannot achieve it at all times, but countries should constantly endeavour - that is the key word - to progressively achieve these minimum standards. The minimum standards cover a very wide area. They cover areas such as accommodation. For example, they say:-

"Where dormitories are used, they shall be occupied by prisoners, carefully selected as being suitable to associate with one another in those conditions. There should be regular supervision at night in keeping with the nature of the institution".

Mr. Temporary Deputy Speaker, Sir, they cover issues of personal hygiene of the prisoners. They cover issues of clothing and bathing of prisoners. They also cover issues of food for prisoners. They say:-

"Every prisoner shall be provided by the administration, at the usual hour, with food of nutritional value, adequate for health and strength of wholesome quality and well prepared and served. Drinking water shall be made available to every prisoner whenever he requires it".

Mr. Temporary Deputy Speaker, Sir, they cover issues of medical services, discipline and so on.

I think I will be truthful and say that, Kenya along with many other countries have fallen below the minimum standards for the treatment of offenders. Therefore, it becomes imperative that we seek alternative methods of punishment. It becomes imperative in the words of the United Nations basic rules for minimum treatment of offenders. In those words, it becomes imperative that we constantly endeavour to improve the state of

prisoners in our country. To the extent that we have fallen below these minimum standards, it cannot be said that we are reforming or rehabilitating offenders.

Mr. Temporary Deputy Speaker, Sir, one of the major obstacles in our falling below the standards required is the issue of over-crowding. It is a recognised fact that our prisons are grossly over-crowded. The current prison population is slightly over 38,000 prisoners, whereas the fiscal facilities that we have today, if we have really to follow the basic minimum standards required, should only accommodate one third of the 38,000 prisoners. So, our prisons are two thirds over-crowded. Therefore, because of that one can imagine the fact that the physical facilities are over-stretched to the limit with very bad adverse consequences which have an impact on nearly all the areas of the minimum standards that are required.

Mr. Temporary Deputy Speaker, Sir, the state of congestion leads, of course, also to inadequate care, unhygienic conditions, diseases, promotes infection of serious diseases and so on. Although we are saying that prisons are not hotels, we are saying that our prisons should be such that whoever is there, at least, is treated as a human being; as a person with minimum comfort that must appertain to their status as people. Therefore, because of that, we are not only falling below the standards, the overcrowding cannot lead to successful programmes of rehabilitation of the prisoners after they have served their sentence. They are just too many.

Mr. Temporary Deputy Speaker, Sir, in this country, 75 percent of the prison population are young persons, mostly young adult males who are newly married and have young children. In most cases, they are the sole breadwinners in their families. Therefore, when they are in custody, their families are left unattended and that can have a ripple effect of the children growing in a manner which will slowly by slowly, drive them into criminal activities. A number of the prison population of these young people are also young mothers. So, the question then arises, particularly as far as these young people are concerned; young people who are just starting out in life. The question arises as to whether a custodial sentence--- Most of these young people have committed what one would call petty offences. The question, therefore, arises as to whether a custodial sentence for these young people who are also mostly petty offenders, integrates them into society after the sentence? Can it really take them back to the society or that custodial sentence in fact, integrates these young people into the criminal society? You are putting the young person in prison with experienced criminals, jail-birds and so on; he is, therefore, mixing with them and he may at the end of the day, not only learn the skills of the hard-core criminals, he will feel more at home in that criminal society and really forget to function in a normal society. In that manner, we are, in a very important way, failing because the custodial sentence is leading the young persons to be integrated into a criminal society rather thereafter, leading those young people to be re-integrated into the normal society. It is also, in fact, a breeding ground for criminals. After they have served their sentence, they do not readily adjust to the normal society. If they have been there for five years, the society they left behind is a changed society; they find it very difficult to adjust; they have to look for their former inmates who have also been released and get back into criminal activity and back into prison. So, custodial sentence in itself, particularly with these over-crowded conditions, does not achieve the aim of punishment which is reformation and rehabilitation.

Mr. Temporary Deputy Speaker, Sir, we cannot also leave aside the large costs involved in the large prison population that we have which is a cost to the Exchequer. In fact, part of the over-crowding is the fact that, because of financial constraints, the number of prisons built is not commensurate with the rise of prisoners population. The Government has tried its best. I know that in 1990, for example, in Eastern Province, a prison was started in 1990 and completed in 1996. In Nairobi Province, the Nairobi Remand Prison expansion was started in 1990, but it is still incomplete. In Nyanza Province, the Siaya and Migori Prisons are still on-going. They are taking a long time to complete because of lack of financial resources. In Western Province, the Busia Prison again is still on the drawing board, whereas really, it should be ready. Ideally, each district ought to have a prison. All the newly created districts ought to have prisons. But we all know that because of the financial constraints and limited resources that the Government has, we cannot ever hope to build prisons which can accommodate all the prisoners meeting the standards that are required. We cannot.

While not condoning crime, we must, therefore, look into other methods of sentencing which will achieve those prime objectives of reformation and rehabilitation which will particularly establish in the convicted person, the will to lead a law-abiding and self-supporting life after their release and, therefore, a way which will fit those prisoners into the normal life in the society. How can we achieve this? We need to have a type of punishment which will enable ex-prisoners to be law-abiding and lead self-supporting life after their release and which will also enable them to adjust and fit into the society. The solution is to reduce the level of prison population to acceptable levels. Therefore, one of the major objectives of this Bill is to help this country achieve the twin purpose of reducing the prison population to acceptable levels, but at the same time, enabling people who have been found guilty of an offence, to remain in the society and not to feel that they can no longer fit into the society which they are made to feel, when they come out of prison. It is in this endeavour to find alternative methods of

punishment that, my office organised a symposium on extra-mural penal employment which was held from 14th to 15th December, 1995. I am glad to say that the participants at that seminar included well-recognised NGOs such as the African Network for the Prevention and Protection against Child Abuse and Neglect and Penal Reform International, which is based in Paris. We also invited experts from those countries which have carried out these type of punishments successfully. We had Miss Anne Mace from Great Britain who told us of the experiences not only of her, country but also nearly all the European countries.

Mr. Temporary Deputy Speaker, Sir, we had Justice Ngbaye who is the chairman of the Community Service in Zimbabwe. We had of course, all the representatives from the police, prisons, judiciary, probation sector and from my office. The topics which were discussed at that seminar included the concept of crime and punishment vis-a-vis the social goals of rehabilitation, the benefits of community service, the factors required for the functioning of an effective community service programme, the community service as an instrument for de-penalisation and de-criminalisation. The objectives of the seminar were to deliberate on the effective implementation of the extra mural punishment employment in Kenya, with the ultimate goal of reducing prisons population. It was also the objective of the seminar to determine the agencies that could effectively assist in implementing extra mural punishment employment in Kenya. It was also to identify the areas of collaboration between criminal justice agencies, church, religious organisations, the NGO and the community in the implementation of the extra mural punishment employment.

Mr. Temporary Deputy Speaker, Sir, this is to emphasise that really, the responsibility of rehabilitating people who have been found guilty of committing crimes is not just the Governmental institutions but also the non-Governmental institutions. Also, the society as a whole all must come together if we are to achieve the purpose of rehabilitating the deviant members of our society. The purpose objective of the symposium was also to have a clear definition of the extra mural punishment employment which here, we call community service and particularly, to have in place an enabling legislation and an effective machinery to implement the skills. This was felt necessary because we have had extra mural punishment provisions in our statute books. I recall in 1991 and 1992 under the Statute Law Miscellaneous Amendments Bill, we sort of widened the bill; that is, the scope of the extra mural punishment employment. However, there were major weaknesses in the implementation of that scheme. First of all, the judiciary itself did not use the scheme as often as it ought to have used. I think they were more used to sentencing people to custodial sentences, rather than give extra mural punishment employment to petty offenders and therefore, it was not as much used as it ought to have been used.

Mr. Temporary Deputy Speaker, Sir, currently of course, we now have 200 extra mural punishment centres and about 350 prison officers involved but it has not been used. Secondly, even in the limited area where it was used involving very few people, the supervision of the scheme lacked where the magistrate sentenced somebody to extra mural punishment employment but there was really no follow-up. No one really knew whether that person did some community service and so on, when the whole thing ended. So, there were a lot of loose ends and therefore, the objective of this seminar was to see that maybe, the solution lay in having a separate act to heighten the importance of this type of punishment.

Mr. Temporary Deputy Speaker, Sir, the symposium recommended the appointment of the task force or interim committee on community service orders and there are many, particularly in the media world, who have not really moved and known what the various task forces have achieved and they speak the language that was spoken in 1992 and 1993 when we were setting up these task forces to review important areas of our law. They are still using that language, but they have forgotten to keep pace with the recommendations of the various taskforces, which have helped this House to pass various legislations. They have also forgotten that the recommendations by these taskforces made the work of the Inter-Parliamentary Party Group (IPPG) easier. We could not have done the voluminous drafting that we did within a week last year if the taskforces had not made recommendations and produced some draft legislations.

Mr. Temporary Deputy Speaker, Sir, we know that this House has enacted the Auctioneers Act pursuant to the recommendations of the Task Force on Auctioneers. Also, with the assistance of the recommendations of the Taskforce on the Status and Management of the Kenya School of Law, this House has passed legislation on the Council for Legal Education Act. On the recommendations of the Taskforce on Children, the Bill is ready. I am expecting to receive the recommendations of the Taskforce on Press Law this week. In due course a proposed legislation will be brought to the House to reflect the wishes of the media industry, which was represented in the taskforce.

So, people should not talk and write as if we are still in 1992/93, when the taskforces were appointed. Then, everybody thought that the appointment of the taskforces was a mere public relations exercises. This made it difficult for the taskforces to begin work properly initially. However, that language is over. Despite the initial difficulties faced by the taskforces, I am proud to say that they have now done very useful work. In fact this

Parliament has already considered some legislations which emanated from the taskforces. It will shortly consider more legislations emanating from those taskforces and, particularly, that of the Taskforce on Criminal Law, which has made very sweeping recommendations on the Criminal Procedure Code. The Taskforce on the Laws of Disabilities, to which I have now appointed hon. Sinyo as secretary, has made recommendations and drafted a bill, which the House is also going to debate. The overwhelming majority of those who drafted the Bill are persons with disabilities.

So, as I have said before, we are in the era of constitutional and legal reforms. This important Bill has also come from a taskforce which I appointed. That symposium recommended the appointment of the taskforce. I appointed one under the chairmanship of Justice Emmanuel O'Kubasu. Its other members were Joseph Gitau, who was the Director of Probation Services; Mr. J.K. Kimutai, Deputy Commissioner of Police; Eng. C.F. Kiranga, Senior Superintendent of Engineering, Roads; Mr. A. K. Githinji, Under Secretary, Ministry of Home Affairs, National Heritage, Culture and Social Services; Mr. D. K. Maiyo, Chairman, National Housing Corporation, and former Director of Probation Services; Dr. Selista Onyango, Chairperson of Ancan, Africa Region; Rtd. Justice Bena Luta; Mr. S. M. Mwaliko; Solomon Wamwayi, Chief Magistrate; John B. Thuku, Deputy Commissioner of Prisons; Mr. Horace Okumu, Senior Principal State Counsel; F. Simbiri Jaoko, Senior Deputy Registrar, High Court; and, Justice Richard Kuloba, Judge of the High Court.

Mr. Temporary Deputy Speaker, Sir, this is not the only Bill that has emanated from the taskforce. We have got many others which are yet to come. That is not the first one, they have drafted more. I have read out the names so that the Members of this august House can know the seriousness with which we took this particular exercise. So, this Task Force was immediately appointed after that symposium. I launched it thereafter and they set out to work. They worked very hard and within one-and-a-half years, they produced a report. Not only did they produce a report, but they had produced a draft Bill which this House is going to debate. This Task Force made visits throughout Kenya and went beyond Kenya and visited other jurisdictions where the Community Service Orders Scheme has been successfully implemented. The members of the Task Force visited Britain, the European Union, Zimbabwe, Uganda and South Africa in the course of their work. After they had made all the visits, they made this draft and they called another workshop where all the interested groups; the NGOs, the various arms of the Government; the Judiciary, the Attorney-General's Chambers, the Police, Prisons Department, Provincial Administration, Children's Department and other interested groups were invited again, not just local, but also international. All the experts again came to consider and refine this Bill make sure that the Bill can be made and can work in Kenya.

Mr. Temporary Deputy Speaker, Sir, I would, therefore, like to put on record my appreciation to the various people who attended the various symposia, workshops and so on, to consider not only the concept of the Community Service Orders Bill, but also to consider the provisions of the draft Bill. I would like to put on record that Justice O'Kubasu with members of his team put in tireless and long hours to this work. They were very committed to produce an excellent draft for consideration by the Government and ultimately by this august House. The Penal Reform International is an international NGO with offices in London and Paris and it is mainly concerned with the reform of penal laws and penal procedures throughout the world. Through Penal Reform International, we were able to access a lot of information from those countries which the Committee was not able to visit. They made that available. Through the Penal Reform International, we were also able to make available to the Committee international experts who are well known and who have a reputation in this particular area.

I would also want to put on record that the FORD Foundation also supplemented the Government's efforts financially and otherwise to enable this particular Committee to successfully undertake its work. The Government, of course, with the limited financial resources was able to chip in a bit in the working of the task force. But I am glad that in spite of the initial difficulties, even the international donors were able to come in and without strings attached, they were able to assist the Task Force complete their work both in financial resources, expertise and assistance of knowledge in those areas which the Task Force had been mandated to work on. After the final workshop, the matter then went to the Cabinet where the Bill was approved as drafted by the Task Force. Here, again, I would like to clear the image of the Task Force. The record of the Government, so far has been this: We have accepted in *toto* what the various Task Forces have approved and recommended. Therefore, the work of the Task Forces is not in vain. It is a work which the Government views very seriously because the entire membership of these Task Forces are not Government officials. Normally, the membership of these Task Forces are people in the industry itself. If it is a Task Force on Press Law, the people from the media industry themselves are its members. If it is a Task Force on disabilities, the disabled people are the members of the Task Force while if it is a Task Force on Companies Laws and so on, it is the entrepreneurs, workers, and employers who are represented in the Task Force.

Mr. Temporary Deputy Speaker, Sir, if you have Task Forces well formed like that, with experts in those

areas who go out to look for views from other countries and *Wananchi* throughout the country, and they come up with recommendations, the Government takes those recommendations very seriously. That is why, up to now, the Government has always accepted in *toto* the recommendations of the Task Forces. Therefore, for the two or three Bills which have already been submitted, I am quite sure they will be processed through the Government and come to this House. The same applies to the many more Bills which are coming. I think I should explain the background of this document to the hon. Members in order to inform them that it is a long product, and its input is top level from the experts all over the world. The experts have gone through this Bill and have recommended that, "it is the best that we can have in Kenya."

Mr. Temporary Deputy Speaker, Sir, having said that, I personally look forward to the debate on this Bill because we always look forward to ensure that the Bill is properly refined. I know a number of hon. Members are interested in this Bill, and I personally welcome any views from hon. Members which will make this Bill a better Bill. Therefore, I am looking forward, in the next few days, to getting very constructive suggestions which will come from the Floor of this House. I particularly look forward to hearing from members of my profession who are in this House and who I know have practised a bit before the courts, and have also gone into those prisons; some to see clients and others as the "guests" of the Government and so on. I am looking forward to their contribution to this particular Bill.

Mr. Temporary Deputy Speaker, Sir, having gone into the background of what is crime and punishment; the needs for seeking alternative methods for punishment; the background of how this document came about, let me now turn to the provisions of the Bill. I would invite hon. Members to look at the memorandum of objects and reasons which is at page

16. It states:

"The principal object of this Bill is to introduce a non-custodial sentence option for the courts as a serious alternative to imprisonment and for a coordinated and efficient implementation system."

There are two objects here: One, a serious alternative to imprisonment because of the reasons I told you, where the courts have tended to automatically award custodial sentences. Therefore, we want them to seriously consider this alternative method of sentencing. The other object is; "for a coordinated and efficient implementation system". This is because of the weaknesses which are apparent and obvious in the current system that we have today.

The Bill proposes that offenders be sentenced to perform community work or service. It seeks to enjoin courts sentencing persons convicted of offenses for which the punishment will be two years imprisonment or less, to consider making community service orders instead. It is intended that this will lead to the reformation and social rehabilitation of the offenders, benefit the community and ease the pressure of the prisons which are currently overcrowded.

ADJOURNMENT

Mr. Temporary Deputy Speaker (Mr. Imanyara): Order! Hon. Members, it is now time for the interruption of business. The House is therefore, adjourned until Wednesday, 18th November, at 9 a.m.

The House rose at 6.30 p.m.