

## NATIONAL ASSEMBLY

### OFFICIAL REPORT

Wednesday, 18th November, 1998

The House met at 2.30 p.m.

*[Mr. Deputy Speaker in the Chair]*

### PRAYERS

### ORAL ANSWERS TO QUESTIONS

*Question No.301*

#### OVER-ENROLMENT OF FORM ONE STUDENTS

**Mr. Mwiraria** asked the Minister for Education and Human Resource Development:-

(a) whether he is aware that the Provincial Director of Education, Eastern Province, has recently been directing headteachers to over-enrol Form One students to a point where schools are now being forced to create additional streams for which facilities such as dormitories and classrooms are not sufficient; and,

(b) if the answer to "a" above is in the affirmative, the action he is taking to rectify the anomaly.

**The Assistant Minister for Education and Human Resource Development** (Mr. Awori): Mr. Deputy Speaker, Sir, I beg to reply.

I am aware that due to the high demand for Form One places during the first term of 1998, my Ministry directed all Provincial Directors of Education to instruct secondary school head teachers in their respective areas to admit the maximum number of students allowed in each Form One class or stream. However, I am not aware that any field officer under my Ministry directed headteachers of secondary schools in any province to enrol more Form One students than the available physical facilities which a school could comfortably accommodate.

**Mr. Mwiraria:** Mr. Deputy Speaker, Sir, I brought this Question to this House because I was concerned about the matter. The Assistant Minister states in his answer that the Provincial Directors of Education have been authorised to instruct secondary school headteachers to admit the maximum number of students allowed in each Form One class. Could he tell us under what Education Act, the maximum number of students per class should be? Could he also tell us whether that number was adhered to by schools in Meru North District, such as Meru, Kaaga Girls, St. Marys Igoji and Gikomene Secondary Schools?

**Mr. Awori:** Mr. Deputy Speaker, Sir, under the Education Act, Cap. 211, which was revised in 1980, the maximum number of students per classroom is 45. As regards the schools that the hon. Member has mentioned, indeed, those are very popular schools, where parents tend to pressurise the headteachers to try and increase the number of students. Provided that they are boarding schools and there is adequate room, the Ministry allows them to increase the number of students by creating an extra stream.

**Mr. Mwiraria:** Mr. Deputy Speaker, Sir, certainly, the Assistant Minister is trying to be reasonable. But I have some schools where the Provincial Director of Education (PDE), Eastern Province, ordered the headmistresses to take over 55 students per class. I happened to be the Chairman of the Board of Governors of one of them and I know the number of students in three of its streams. One of the streams has got 59 students and the remaining two streams have got 55 students each. Could the Assistant Minister tell us whether this is included in the instructions the Ministry has issued? If not, will the Ministry instruct the PDE to reduce the number to 45 students per class? There is no room for that number of students in the school I am talking about. We have packed students like in a dormitory like sardines.

**Mr. Awori:** Mr. Deputy Speaker, Sir, I do not doubt the hon. Member, particularly as he was the Permanent Secretary (PS) in the Ministry of Education and he knows all the Acts thereon. This is a "catch 22 situation". Parents find certain schools so attractive that they pressurise headteachers to enrol more students. I would like to consult with the hon. Member and see whether we can get in touch with the heads of those schools, so that we can find accommodation for the extra 10 students per each of those classes. There should be no reason

why there should be 55 students in a classroom. In fact they cannot get the full attention of the teachers.

**Mr. Mutani:** Thank you, Mr. Deputy Speaker, Sir. Is the Assistant Minister aware that after the national intake, the Eastern Province Director of Education has been directing headteachers to admit many students from outside the Province?

**Mr. Awori:** Mr. Deputy Speaker, Sir, I am not aware of that.

**Mr. Munyasia:** Mr. Deputy Speaker, Sir, schools are registered with numbers of streams that they may operate. They require authority to open more streams. Arising from the answers the Assistant Minister has given, could he tell us how many schools in Meru sought his permission to operate more classes than those that they had been registered to operate this year?

**Mr. Awori:** Mr. Speaker, Sir, to my knowledge, no headteacher has approached and requested the Ministry to increase the number of students admitted to Form One in Eastern Province.

*Question No.259*

COMPLETION OF BONDO HOSPITAL PROJECT

**Dr. Oburu** asked the Minister for Health what plans the Ministry has for the completion of Bondo District Hospital whose construction was stopped five years ago.

**The Assistant Minister for Health (Dr. Wako):** Mr. Speaker, Sir, I beg to reply.

The project for expansion of Bondo Sub-district Hospital did not proceed as planned mainly due to poor performance of the consultants, the contractors and lack of adequate funds to meet contractual payment within the then agreed contract period. My Ministry has planned to have the present contractor determined and another one appointed to complete the project. The private consultant supervising the project will also be de-commissioned. Owing to the current economic hardship facing the country my Ministry may not be able to complete the project within its current scope. Available funds will be applied each financial year towards the completion of individual structures.

**Dr. Oburu:** Mr. Deputy Speaker, Sir, this project was abandoned more than six years ago. The contractor there has been determined in more than two projects. He failed to perform in Kapsabet for the Nyayo Wards and in Kausa in Taita-Taveta and his contract was determined. Six years later I would like to know from the Assistant Minister what difficulties the Ministry has in determining the contract of this man and why it takes more than six years for the Ministry to determine the contract of a contractor who has failed? Exactly when is this contract going to be determined because Bondo people are suffering and that is the only hospital serving Uganda, Rarieda and the whole of that region?

**Dr. Wako:** Thank you, Mr. Deputy Speaker, Sir. As we have said, we are going to determine the contractor and appoint a new one to complete the project.

**Mr. Orengo:** Mr. Deputy Speaker, Sir, the Assistant Minister's answers are rather vague. If I can remember very well, there have been answers inside and outside the House about this particular project. Promises have been made about the completion of this hospital. Could he tell us, in specific terms, when this hospital will be built either wholly or in parts so that the people of Bondo and Nyanza as a whole, may get to know what he specifically wants to do in the next financial year and the following one so that we can know the exact date?

**Dr. Wako:** Mr. Deputy Speaker, Sir, as I have said we have actually removed the contractor and put in a new one in the projects that we are retaining. We are putting in the Budget a provision for the hospital every year until we complete it.

**Mr. Ngure:** Mr. Speaker, Sir, I am just surprised that the Assistant Minister comes six years later to say that they have difficulty in determining a contract of a contractor whose signed an official contract which has got a determination clause. It should not be allowed to run for six years. The question is: Why have you let it run for six years when the contractor is not performing? Was the contractor bonded and who is the bond holder? Has the Ministry called the bond holder to provide the finances to complete the project? Did the consultant provide the Ministry with an insurance for professional negligence?

**Dr. Wako:** Mr. Deputy Speaker, Sir, the hon. Member has asked a lot of questions but I can only answer one at a time. The fact remains that the performance of the contractor is part of the problem. The question of inadequate funds is also another problem. That is why we have said that we are removing the contractor and allocating some funds in the Budget until the completion of this particular project.

**Dr. Oburu:** The Minister has said that already a new contractor has been appointed. Could we know who this contractor is and how much money the Government has put in the Budget this year for that contractor to continue working? What is coming in the Forward Budget for next year for this particular project? Could we be told exactly who this contractor is and how much money is available this year and next year for this project?

**Dr. Wako:** We have not determined the name of the contractor yet, but we are putting in a new contractor. We have actually put in the Budget Kshs500,000 for this particular financial year.

**Mr. Ita:** Mr. Deputy Speaker, Sir, I am a bit disturbed by the confirmation made by the Assistant Minister that there is a district hospital in Bondo when in fact the other Members from that area are saying that there is no district hospital. Could the Assistant Minister confirm or deny whether there is a district hospital in Bondo? What I am reading here is that there is a district hospital, but as a matter of fact, there is no district hospital.

**Dr. Wako:** Mr. Deputy Speaker, Sir, what we are saying is that there is a sub-district hospital which we have been trying to put in place. Fifty per cent of the job has been done today. Due to financial constraints, we have actually put funds for the completion in bits every year.

*Question No.629*

UPGRADING OF HEALTH CENTRES IN KISUMU RURAL

**Mr. Ayoki** asked the Minister for Health considering the high population density in Kisumu Rural Constituency what plans he has to upgrade and staff Bodi and Manywanda health centres to serve the local people.

**The Assistant Minister for health (Dr. Wako):** Mr. Deputy Speaker, Sir, I beg to reply.

Manywanda Health Centre was upgraded to its present status but is still functioning as a dispensary due to the prevailing shortage of medical staff in the Ministry. Plans are under way to have a maternity wing and another wing open to serve the local people adequately. Bondo Dispensary does not have a maternity wing and other facilities that can make it to be upgraded to a health centre. My Ministry plans to provide the health facility with more staff when the economic situation in the country improves.

**Mr. Ayoki:** Mr. Deputy Speaker, Sir, arising from the answer given by the Assistant Minister and while appreciating the fact that the economy is still in the ICU, could the Assistant Minister tell the House how much money was budgeted for these two health facilities during this current year?

**Dr. Wako:** Mr. Deputy Speaker, Sir, as I have said, on the question of upgrading of the two facilities, the Ministry has agreed to upgrade the Manywanda Health Centre which has a maternity wing and other wings for the local people to be served. But for the case of Bodi Dispensary, it is actually the lack of a maternity wing which stops us from upgrading it.

**Mr. Deputy Speaker:** The hon. Member asked how much money has been allocated for this financial year and how much has been spent.

**Dr. Wako:** Mr. Deputy Speaker, Sir, I think what we are saying is that we are not talking about funds for Manywanda Health Centre. The facilities are complete and we are only putting in the---

**Mr. Ayoki:** On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister is misleading the House because as we are seating here now, there are no health facilities or health services being provided at the two health centres. Is he in order to mislead the House?

**Mr. Deputy Speaker:** Order! Of course, if he is misleading the House, he is totally out of order. Is there a physical health centre facility at Manywanda or at Bodi or is there not, hon. Assistant Minister?

**Dr. Wako:** Mr. Deputy Speaker, Sir, the hon. Member has said there are two facilities: There is the Manywanda Health Centre and Bodi Dispensary which are already functioning and all he is asking is for us to upgrade them and that is what we are talking about!

**Mr. Ochilo:** Mr. Deputy Speaker, Sir, it is a known fact that one of the regions in Kenya where the death-rate is very high is Nyanza because of lack of medication. There are other areas in Kenya where, if we have famine, we have relief food supplied by the Government to those people. Could this Assistant Minister, in order to help the people of Nyanza, assure this House that medical facilities and hospitals in Nyanza will be improved so that death-rate decreases?

**Dr. Wako:** Mr. Deputy Speaker, Sir, it is the policy of the Ministry to improve the medical facilities throughout the country.

**Mr. Achola:** Mr. Deputy Speaker, Sir, could the Assistant Minister explain to the House what criteria the Ministry uses in deciding when to upgrade a health centre or a dispensary to a health centre status?

**Dr. Wako:** Mr. Deputy Speaker, Sir, the question of this upgrading actually originates from the DDC. It is the local people who will determine whether they need the facility to be upgraded. Then the recommendations from the DDC come to our Ministry, we look at the facility and then we upgrade accordingly.

**Mr. Nyanja:** Mr. Deputy Speaker, Sir, you will agree with me that the Assistant Minister has avoided

answering a question which was very specific; when upgrading, whether there are facilities or staff. A question was asked how much, specifically, in monetary terms, does that upgrading entail? Whether it is in physical expansion or in staff, how much money has been put aside for these two health centres?

**Dr. Wako:** Mr. Deputy Speaker, Sir, I do not know how much money this entails because the fact of the matter is that we are talking of a dispensary where we have already put up the maternity wing and it is only ready for opening. We are only putting in the staff.

**Mr. Nyanja:** On a point of order, Mr. Deputy Speaker, Sir. We know the Government has been going round and creating political districts. There is another one which was created the other day, on Sunday, somewhere.

We have already been told about the death rate in this particular area. Could the Assistant Minister, through you, Mr. Deputy Speaker, specifically talk about money? We want to know how much money is involved so that we can also know what to talk about in our local districts in Kiambu and elsewhere?

If he does not know, he should request for more time so that he can answer this Question because there will be supplementary questions after this?

**Dr. Wako:** Mr. Deputy Speaker, Sir, first and foremost, we have not allocated any money for upgrading of Bodi Dispensary because it does not have any maternity wing at the moment.

For Manywanda Health Centre, the maternity wing is already complete and we are bringing the staff as soon as possible.

*Question No.534*

CLOSURE OF HEALTH CENTRES

**Mr. Mahamud** asked the Minister for Health:-

(a) whether he is aware that Dambas and Khorof-Marar dispensaries have remained closed since the middle of 1997 due to lack of medical staff;

(b) whether he is further aware that no drugs have been delivered to health institutions in Wajir District since February 1998; and,

(c) if the answers to "a" and "b" above are in the affirmative, what urgent measures he is taking to post medical staff to the dispensaries and supply drugs in order to avoid further deaths and suffering.

**The Assistant Minister for Health (Dr. Wako):** Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am not aware that Khorof-Marar Dispensary has been closed due to lack of medical staff. I am, however, aware that Dambas Dispensary which was not operational till the end of August, 1998, due to lack of enough staff in the district, is now operational.

(b) I am not aware that no drugs have been delivered to health institutions in Wajir District since February, 1998. However, I am aware that the drugs are delivered to health institutions in Wajir District on a regular basis.

(c) As I have explained in parts "a" and "b" above, there is no need for further action.

**Mr. Mahamud:** Mr. Deputy Speaker, Sir, I sympathise with the Assistant Minister because he has answered many Questions concerning health.

We would like the Assistant Minister to know that health is a very important aspect and we would like him to give serious answers. We do not want just careless and casual answers. As I am speaking now, it is true that staff have been sent to that dispensary. We have two other dispensaries in the same constituency that do not have staff. One is Wajir Bor Dispensary and the other one is Tarbach Dispensary---

**Mr. Deputy Speaker:** Order! Ask your question!

**Mr. Mahamud:** We still lack staff in the same dispensary. Like Khorof-Marar, we have only one officer who has been away for many months and now he is back due to sickness.

When is the Assistant Minister going to send additional staff both in Khorof-Marar and Dambas because the staff there are not adequate?

**Dr. Wako:** Mr. Deputy Speaker, Sir, I think the hon. Member must appreciate that we have already sent some staff there very recently. As soon as we are able to send some more staff to Wajir District, we will actually send some extra staff to both Khorof-Marar and Dambas dispensaries.

**Mr. Wambua:** On a point of order, Mr. Deputy Speaker, Sir. It has become habit for some of the Ministers and Assistant Ministers to say that they are not aware. If the Assistant Minister is not aware that the Dambas Dispensary was closed, could he tell us whether it is functioning today?

**Dr. Wako:** Mr. Deputy Speaker, Sir, Dambas Dispensary has been functioning and it is functioning

today.

**Mr. Maitha:** Mr. Deputy Speaker, Sir, arising from this Question, it seems as if the Ministry does not have enough staff to post to dispensaries because people from those areas are not trained at the Medical Training Colleges.

Could the Assistant Minister now confirm that this habit of not sending staff to these dispensaries is because nobody has been trained from that area?

**Dr. Wako:** Mr. Deputy Speaker, Sir, it is not because we do not have enough people from that area that we are not sending people to training institutions, but it is because there are shortages throughout the country. So, we are going to consider people from that area for training.

**Mr. Keynan:** Mr. Deputy Speaker, Sir, could the Assistant Minister confirm to this House when the last consignment of drugs were delivered to Wajir and why he did not take enough time to know when these drugs reached the two health centres?

**Dr. Wako:** Mr. Deputy Speaker, Sir, the last consignment was sent on 28th August, 1998.

**Mr. Deputy Speaker:** Mr. Kihoro's Question.

*Question No.669*

RATIFICATION OF PREVENTION AND PUNISHMENT  
OF CRIME OF GENOCIDE CONVENTION

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

(a) whether he is aware that Kenya has not yet signed and ratified the Convention on the Prevention of Punishment of the Crime of Genocide of 1948; and,

(b) if the answer to "a" is in the affirmative, when Kenya will accede to this Convention.

**The Attorney-General** (Mr. Wako): Mr. Deputy Speaker, Sir, I beg to reply.

(a) Yes, I am aware.

(b) Kenya intends to accede to the Genocide Convention soon. In this regard, the necessary procedures have already been initiated by the Government.

**Mr. Kihoro:** Mr. Deputy Speaker, Sir, I do welcome the answer that has been given by the hon. Attorney-General. This Convention is a very important one, that is, the convention on the prevention and punishment of the crime of genocide, of 1948, which came into force in 1961. Unfortunately, Kenya has not acceded to it and what needs to be done now, in the light of the answer given by the Attorney-General, is to deposit the instruments of accession with the Secretary-General of the UN under Article 11. How soon is that going to be done. Also, does the Attorney-General intend to introduce in this Parliament the Kenya Genocide Act that will make sure that genocidal acts perpetrated by any person, institution, or any quarter are going to be properly punished in this country?

**Mr. Wako:** Mr. Deputy Speaker, Sir, it is true that the Genocide Convention came into force on 12th January, 1951 and over 120 states have already ratified it. I confirm that as far as the acceding to the treaty is concerned, a government memo has been prepared for that. As far as changing our law to confirm to that treaty is concerned, we have already received a report of the Task Force on Penal Laws and procedures which has made appropriate recommendations. This will be done by way of amendments to the Penal Code.

**Mr. Nguni:** Mr. Deputy Speaker, Sir, maybe the Attorney-General would like to tell the House why since 1951 to-date the Kenya Government which was existing under KANU as a party, has not acceded to this convention? This is because some of us are of the opinion that, you now want to accede to it because it could now be used in---

**Mr. Deputy Speaker:** Order! Mr. Nguni, when you ask your question, you do not need to go on and lecture the House!

**Mr. Wako:** Mr. Deputy Speaker, Sir, the fact of the matter is that, the Kenya Government, for some time, did not accede to the various conventions, but for the last five years or so, we have made a systematic procedure as a matter of policy, to catch up in acceding to a number of these conventions. So, I want to assure the hon. Member that lack of accession to the treaty does not mean that the Kenya Government does not recognise genocide as a crime against humanity. We do recognise that and we are on record for doing that.

**Mr. Murungi:** Thank you, Mr. Deputy Speaker, Sir. The definition of genocide under the convention is as follows:- "It is any act committed with intent to destroy in whole, or in parts, national, ethnic, social or religious groups".

**Mr. Deputy Speaker:** Order, Mr. Murungi!

**Mr. Murungi:** I am asking my question, Mr. Deputy Speaker, Sir. Could the Attorney-General be honest to this House and say that the only reason why the Government has not acceded to the convention is because at the time we got our Independence, we were fighting the shifta war against Somalis and the Government could not accede to this convention at a time when it was intending to wipe out the Somalis? Could the Attorney-General confirm that the only reason was because we had a war against the Somalis and now that the war is over, the Government could consider acceding to the convention if there is no intention to wipe out another community?

**Mr. Wako:** Mr. Deputy Speaker, Sir, in 1963, after a bitter struggle we "*nyakuad*", as the late President said, our Independence. We were fighting for that Independence in order to ensure greater protection of our human rights. One of those most basic human rights is the right to life. Therefore, until that time, the Government has been very consistent on the issues of human rights. I can confirm that at no time, since Independence has the Kenya Government ever had the intention to eliminate the people of Somali, or the people of any tribe, group, or religious faction.

**Mr. Deputy Speaker:** Next Question. Mr. Cecilio Mwenda.

*Question No.446*

REPAIR OF THANGATHI BRIDGE

Mr. Mwenda not here? We will pass over the Question. The next Question, Mr. Mwangi Kiunjuri!

*Question No.549*

MAINTENANCE OF ROADS IN LAIKIPIA EAST

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

(a) whether he is aware that roads in Diaga, Mukogodo, Tigithi and Irima locations in Laikipia East are impassable during rainy seasons; and,

(b) if the answer to "a" above is in the affirmative, what urgent steps he is taking to ensure that the roads are adequately maintained.

**The Assistant Minister for Public Works and Housing** (Mr. Khaniri): Mr. Deputy Speaker, Sir. I beg to reply.

I am aware that some sections of the roads in Diaga, Mukogodo, Tigithi and Irima locations in Laikipia East became impassable during the rains. The Ministry is planning to grade and spot-patch the roads this financial year. Some Kshs596,000 is set aside for these works.

**Mr. Kiunjuri:** Mr. Deputy Speaker, Sir, we are talking of a constituency which has only three kilometres of tarmac roads. At the same time, we are talking of roads which were gravelled during the colonial era. Since 1963, nothing has been done by the KANU Government under the regimes of Moi and Kenyatta.

**Mr. Deputy Speaker:** Order, Mr. Kiunjuri!

*(Laughter)*

**An hon. Member:** Endelea!

**Mr. Kiunjuri:** Mr. Deputy Speaker, Sir, the Assistant Minister, in his reply, is mentioning some locations like Irima Location which do not exist in Laikipia East.

**Mr. Deputy Speaker:** Mr. Kiunjuri, the longer your preamble the more difficult it will be for Members to have the opportunity to ask supplementary questions. So, go straight to your question. After giving that kind of a background, be brief!

**Mr. Kiunjuri:** Mr. Deputy Speaker, Sir, I wanted to explain this issue for you to know clearly the background of the issue. It is a bit serious. However, he is not even clarifying which rains ruined those roads. Could the Assistant Minister clarify the issue by telling this House how many kilometres of roads are going to be graded and spot-patched using this Kshs596,000?

**Mr. Khaniri:** Mr. Deputy Speaker, Sir, it is 79.2 kilometres.

**Mr. Obwocha:** On a point of order, Mr. Deputy Speaker, Sir. You realise the House is too cold. Outside is warm and yet inside here it is too cold. I am standing on a point of order under Standing Order No.1. If that air conditioner can be switched off for even 30 minutes, we can be happy. We are freezing!

**Mr. Deputy Speaker:** Actually, I am also feeling cold. I am glad to hear that hon. Members are equally affected. But I am assured that it has now been adjusted and it will be warm in due course.

**Mr. Ndicho:** On a point of order, Mr. Deputy Speaker, Sir. We have a very big problem hearing what is being transacted here. There is a problem with the public address system in this House. Could you order that the whole system be overhauled when we go on recess? When we come back we would like to speak from where we are standing not what is there at the moment.

**Mr. Deputy Speaker:** Order! You can raise that issue outside the House. You can go to the Speaker's or the Clerk's offices and raise that complaint because your question is eating up someone else's time.

**Mr. Ayacko:** Mr. Deputy Speaker, Sir, this Government, and particularly this Ministry, is notorious for giving very little money for repair or maintenance of roads. For this particular area, the Assistant Minister has said that Kshs596,000 has been allocated for spot patching and repair of these roads. Could the Assistant Minister tell this House what amount of work or what distance this little amount of money will cover and why inadequate funds were allocated for this area?

**Mr. Khaniri:** Mr. Deputy Speaker, Sir, as for the mileage, I had already stated that it is 79.2 kilometres. I would like to inform the hon. Member that it is not our intention to give inadequate funding to this project. We give what we get from the Treasury and what is approved by this House.

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

**Mr. Deputy Speaker:** Mr. Kiunjuri, you are rising on a point of order on that same Question?

**Mr. Kiunjuri:** Yes, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** But we have already passed it. We are on the next Question.

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

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

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

**Mr. Deputy Speaker:** Order! We have already left that Question. Mr. Muchiri, will you proceed!

**Mr. Muchiri:** Mr. Deputy Speaker, Sir, I do not have the written reply to the Question.

*Question No.677*

EVICITION OF MATHARE RESIDENTS

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

(a) whether he is aware that since 1990 when the Mathare 4A upgrading project was started, the area residents have been complaining of the violation of their constitutional rights, unlawful eviction and demolition of their properties, both by the Provincial Administration and the staff of the project; and,

(b) if the answer to "a" is in the affirmative, whether he could consult with the project management, to ensure that an alternative site is availed for the displaced people.

**The Assistant Minister for Public Works and Housing (Mr. Khaniri):** Mr. Deputy Speaker, Sir, I apologise to the hon. Member and wish to request that this Question be deferred to tomorrow afternoon.

**Mr. Deputy Speaker:** Mr. Muchiri, what is your reaction?

**Mr. Muchiri:** Mr. Deputy Speaker, Sir, I do not want to ask why the Assistant Minister does not have the reply, but I would like him to give me the answer tomorrow morning before 10.00 a.m.

**Mr. Deputy Speaker:** Order! Mr. Khaniri, will you be able to answer tomorrow afternoon?

**The Assistant Minister for Public Works and Housing (Mr. Khaniri):** Yes, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Will you supply enough copies to the Clerk so that he can give one to hon. Muchiri?

**The Assistant Minister for Public Works and Housing (Mr. Khaniri):** Yes, Mr. Deputy Speaker, Sir.

**Mr. Kikuyu:** On a point of order, Mr. Deputy Speaker, Sir. I would like to seek your guidance. Everyday, Ministers are asking for Questions to be deferred. So many Questions are pending in Parliament without answers, yet these Ministers have had these Questions for three to four months. How do they come and ask for 12 more hours to prepare an answer? I think there must be a ruling from you that any Question which falls on the Order Paper must be answered promptly so that they can give a chance to other Questions which are waiting, otherwise, our constituents will think we are not serious.

**Mr. Deputy Speaker:** Order, Mr. Kikuyu! You are not saying anything new. The Standing Orders are quite clear on how Questions ought to be treated. The Chair has repeatedly advised Ministers that when Questions have been delivered to them, answers must be provided in time, and not on time, to enable the Clerk's office to distribute answers to hon. Members. So, kindly take note. When hon. Members are late, their Questions get dropped whereas when Ministers are late, Questions only get deferred. This is a bit unfair. So, you should take

your responsibilities seriously. When Questions are asked, please, come prepared with answers as the Standing Orders require. Mr. Muchiri are you okay with tomorrow afternoon?

**Mr. Muchiri:** That is fine, Mr. Deputy Speaker, Sir.

*(Question deferred)*

**Mr. Deputy Speaker:** Very well! For the second time, hon. Mwenda's Question. He is not here?

*Question No.446*

#### REPAIR OF THANGATHI BRIDGE

**Mr. Deputy Speaker:** Mr. Mwenda still not here? The Question is dropped.

*(Question dropped)*

### QUESTIONS BY PRIVATE NOTICE

#### REGISTRATION CODE FOR INDIGENOUS COMMUNITIES

**(Mr. A. Galgalo)** to ask the Minister of State, Office of the President the following Question by Private Notice:-

(a) Is the Minister aware that certain indigenous communities in Tana River District are having problems in securing National Identity Cards for lack of code (tribal) of registration like Munyo, Yaya and Malakote among others?

(b) Is he further aware that as a result, they are now registering as others, a situation that has caused uncertainty amongst the people?

(c) If the answers to "a" and "b" are in the affirmative, could the Minister order for the establishment of a code for these communities so as to regain their proper identity?

**Mr. Deputy Speaker:** Mr. Galgalo not here?

*(Question dropped)*

#### RECOVERY OF SCHOOL FUNDS FROM FORMER HEADMASTERS

**Dr. Kulundu:** Mr. Deputy Speaker, Sir, I beg to ask the Minister for Education and Human Resource Development the following Question by Private Notice:-

(a) Is the Minister aware that Messrs Samson Wechuli, H.A. Liech and Musa Gimode were each headmaster of Chebuyusi High School between 1989 and 1994?

(b) Is he further aware that they jointly owe the school a total of Kshs700,000 and that two of them are retiring this month?

(c) If the answers to "a" and "b" are in the affirmative, what urgent steps is he taking to recover the money?

**The Assistant Minister for Education and Human Resource Development (Mr. Awori):** Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am aware.

(b) I am further aware that Messrs Wechuli Liech and Gimode jointly owe Chebuyusi Secondary School a total of Kshs700,293.80. Wechuli and Gimode have since retired. It is only Liech who is still in service.

(c) The Board of Governors, in its capacity as the school manager, is taking action to recover the money owed.

**Mr. Kulundu:** Mr. Deputy Speaker, Sir, could the Assistant Minister tell this House what concrete steps the Board of Governors is taking to recover this money from the said gentlemen?

**Mr. Awori:** Mr. Deputy Speaker, Sir, we are pushing them to try and take legal action. Regrettably, I must advise the hon. Member, and this House, that it is very unlikely that this money will be recovered. First of all, the sum is very large. Two of the teachers have since retired and I doubt whether they have got assets that can come to this amount. As to the teacher who is still in service, we have asked the Board of Governors to institute



legal action that will enable them to recover money on a monthly basis, from his salary.

**Mr. Anyona:** Mr. Deputy Speaker, Sir, a school is not a lending institution. How come a headmaster, or headmasters, got money from the school and were unable to pay? Is that not a case of fraud and theft? Why can they not be prosecuted?

**Mr. Awori:** Mr. Deputy Speaker, Sir, I agree with the hon. Member entirely. Nevertheless, the school did not lend the money to these headteachers. They were goods that were supposed to have been purchased by the school. They were never delivered. When the audit was carried out, it is only when we found out that, indeed, there was theft and possibly fraud.

**Mr. Munyasia:** Mr. Deputy Speaker, Sir, this Question follows an audit query report which was made in April, 1996, when only one of the headmasters had retired. The other one, Gimode, had a whole year before he retired. So, the Ministry knew about these thefts by servants. Why had the Ministry, as the employer, not effected those deductions to recover the money from the salaries and pensions of both Gimode and Liech?

**Mr. Awori:** Mr. Deputy Speaker, Sir, taking the last question first, there is a legal problem; that you cannot attach pension. As to the first, indeed, there must have been a delay in action by the Ministry. Indeed, the school is run by the Board of Governors and when the audit report came, the Board of Governors should have taken the action which we are trying to take now. I accept that.

**Mr. Katuku:** Mr. Deputy Speaker, Sir, the issue before the House is common in most of our schools, mainly because of the auditing system whereby school Boards of Governors have problems with Government auditors. Years pass before the audit is done. What is the Assistant Minister going to do to ensure this audit will be done maybe by private auditors or efficiently, to avoid this mishandling of public funds?

**Mr. Awori:** Mr. Deputy Speaker, Sir, the requirement is that the audit should be carried out annually. What we will have to do is to insist that when schools are inspected, one of the first jobs that an inspector has to do is to ask for an audit report for the previous year.

**Dr. Kulundu:** Mr. Deputy Speaker, Sir, if these teachers were agents of the Ministry of Education and Human Resource Development, who is going to bear the cost of this legal action that the Board of Governors is contemplating?

**Mr. Awori:** Mr. Deputy Speaker, Sir, the Board of Governors were running the school and it is them who will have to try and find the money to use as cost for legal action.

**Mr. Kanyauchi:** On a point of order, Mr. Deputy Speaker, Sir. The answer from the Minister is not satisfactory. We are dealing with theft and fraud which is clearly a criminal offence; it is not a civil matter. Why has the Minister not instituted proper procedure to ensure that the culprits, particularly in view of the amount involved, Kshs700,000, are reported to the police and prosecuted accordingly?

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

**Mr. Kanyauchi:** Is it in order for the Assistant Minister to treat this matter as a civil matter, when it is clearly a criminal matter?

**Mr. Awori:** Mr. Deputy Speaker, Sir, we will have to advise the Board of Governors accordingly.

#### NUMBER OF FIRE VICTIMS IN NAIROBI AND KISUMU

**Dr. Ochuodho:** Mr. Deputy Speaker, Sir, although I have not received a written reply, I beg to ask the Minister for Local Authorities the following Question by Private Notice:-

(a) How many lives have been lost, maimed, or injured in Nairobi City and Kisumu Municipality as a result of accidental or deliberate fire breakouts in the past two months?

(b) How much property has been lost or destroyed over the same period for the same reasons, and how much extra burden have these incidences imposed on the insurance sector?

(c) What has been the single major source of these fire outbreaks and what measures has the Minister taken to minimize the frequency, intensity and effects of these fires?

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

(a) Lives lost, maimed or injured in Nairobi City---

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

**Mr. Deputy Speaker:** Yes, hon. Anyona?

**Mr. Anyona:** Mr. Deputy Speaker, Sir, the hon. Member has complained that he has not got a written answer, which is a requirement of the Standing Orders. Should the Assistant Minister not respond to that before he answers the Question?

**The Assistant Minister for Local Authorities (Mr. Sasura):** Mr. Deputy Speaker, Sir, before I rose to answer the Question, I had just explained to Dr. Ochuodho that I have my answer and I expected him to have his.

In any case, I think the procedure is that I do not give the Questioner the answer. It is given through another department. But I apologise for any inconvenience.

Mr. Deputy Speaker, Sir, I beg to reply.

(a) Lives lost, maimed or injured in Nairobi City and Kisumu Municipality as a result of accidental or deliberate fire breakouts in the past two months are as follows: In Nairobi City, on the 2nd of September, 1998, an accidental fire occurred at Mai Mahiu Road, Nairobi West with one fatal injury and non-fatal, nil. On the 9th of September, 1998 an accidental fire started at Kibagare, Kangemi with one fatal injury and non-fatal, nil. On the 11th of September, 1998, an accidental fire occurred at Mukurukwari with nil fatal injuries and one non-fatal. On 21st October, 1998, a deliberate fire occurred at Ongata Rongai Shopping Centre with nil fatal injury and one non-fatal. The total number of casualties in Nairobi were five. In Kisumu Municipality, no life has been lost as a result of accidental or deliberate fire breakouts in the past two months. Three people were injured as a result of a vehicle burning due to an electrical fault.

(b) The amount of property lost or destroyed by fire is as follows; 44 buildings and eight motor vehicles, totalling 52. Total estimated loss by fire is Kshs420 million. The insurance premium cover is estimated to be heavy. In Kisumu Municipality, the loss of property has not been---

*(Loud consultations)*

**The Deputy Speaker:** Order! Order, hon. Members. We would like to hear what the Assistant Minister is saying. Mr. Criticos, you cannot start a long discourse with strangers. Those ladies and gentlemen are strangers in the House and if you want to talk to them, retire to the ante-chamber.

**The Assistant Minister for Local Authorities** (Mr. Sasura): Mr. Deputy Speaker, Sir, in Kisumu Municipality, the loss of property has not been quantified by the insurance companies affected. However, the properties involved are Post Office building, Kenya Matches Factory, a locomotive, several kiosks at Kibuye Market and Bus Park, grass fire at the airport, electrical trunks, house fire at Kaloleni, Kenya Breweries Factory, a section of the loading bay, but three quarters of the Post Office building was saved. The rest were saved before serious damage was done by the Kisumu Municipal Fire Brigade. We have not got feedback from the concerned insurance companies to assess the extraburden imposed on the insurance sector.

(c) The single major cause of these fire outbreaks is electrical fault. I have appointed a monitoring committee chaired by the Permanent Secretary, Ministry of Local Authorities, whose responsibility is to ensure that incidences of fire in the city are closely monitored and also to work out short term plans of management of fire brigade in the urban centres.

**Dr. Ochuodho:** Mr. Deputy Speaker, Sir, the issue of fire outbreaks is a very serious one. More than three weeks ago, I did seek a Ministerial Statement on a related issue and none has been forthcoming. However, ever since 2nd September when the late Permanent Secretary Mr. Sawe, died in a mysterious blaze, there have been several fires. Only about a third of them have been mentioned by the Assistant Minister. On 3rd September, Sylvia Baraza rescued her brothers from fire in Mombasa. The following day---

**Mr. Deputy Speaker:** Order! Order! Ask your question.

**Dr. Ochuodho:** Considering the major loss in terms of human life, jobs and property, could the Assistant Minister consider instituting a Commission of Inquiry to properly establish the accurate cause of these fires, because there seems to be a pattern?

**Mr. Sasura:** Mr. Deputy Speaker, Sir, I have said that I have appointed a Committee chaired by the Permanent Secretary in the Ministry to ensure that incidents of fire in the City are closely monitored and what the hon. Member has said will also be taken into account. As for the Ministerial Statement, it is ready and it can be availed even tomorrow.

**Mr. Anyona:** Mr. Deputy Speaker, Sir, I have been contemplating bringing a question on the same issue. In the Industrial Area, workers are locked in both during the day and during the night and when you have a fire, the lives of these workers are in serious danger. Would the Assistant Minister investigate the goings on in the Industrial Area and make sure that Kenyans are not endangered in this manner?

**Mr. Sasura:** Mr. Deputy Speaker, Sir, as you have heard from my answer, the Ministry is addressing this issue very seriously. However, the question of workers being locked in or out of the factory has got nothing to do with the Ministry. If it has anything related to fire, we shall address it.

**Mr. Sungu:** Is the Assistant Minister aware that in the areas mentioned, that is both Kisumu and Nairobi, emergency fire services are virtually non-existent? In Nairobi, for example, the fire engines that we have do not have the capacity to reach highrise buildings and, therefore, if a fire occurred, it would be a major disaster. In Kisumu, the fire that occurred razed the building because the fire engine could not even take off from its parking. Could the Assistant Minister confirm to the House what steps he is going to take to improve

the situation?

**Mr. Sasura:** Mr. Deputy Speaker, Sir, it is not true that fire fighting equipments are non-existent. However, we are addressing this issue also and we have already ordered extra fire engines from France. As to the measures that we are taking, we are maintaining the fire engines which we have currently in Nairobi and we are thinking of decentralising the fire stations around the City and improving the communication network of the fire brigade. Also, we are reviewing the position of objects like kiosks which have mushroomed in the City which are going to cause obstructions to the fire attendants and might also sometimes be causes of the said fires.

**Mr. Deputy Speaker:** It is now end of Question Time.

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

**Mr. Deputy Speaker:** Order! Look at your watch. It is end of Question Time. Mrs. Beth Mugo!

### POINT OF ORDER

#### MINISTERIAL STATEMENT ON STATE SECURITY

**Mrs. Mugo:** Mr. Deputy Speaker, Sir, I rise to seek a Ministerial Statement on a very serious matter from the Minister of State, Office of the President touching on State Security. Most of Kenyans read with dismay that the Sudanese Warlords have moved their war to Kenya and not really at the border, but to Nairobi itself. In fact, not just to Nairobi but in a police station at Muthangari. We know the seriousness of security in this State at the moment. I am seeking a Ministerial Statement from the Minister as to how this happened that, the warlords happened to penetrate all the way right into Nairobi to fight and how the warlords got in with guns. We know it is the practice that when you enter a State, you are disarmed at the airport. But how did they manage to get all the way to fight in a police station and is our Kenyan sovereignty not at stake, if other States can come to fight here and is the Kenya Government supporting one side of the fighting gangs or warlords?

**The Minister of State, Office of the President (Maj. Madoka):** Mr. Deputy Speaker, Sir, I will make the appropriate Ministerial Statement on Tuesday afternoon next week.

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

### COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

*[Mr. Speaker left the Chair]*

#### IN THE COMMITTEE

*[Mr. Chairman took the Chair]*

#### THE NATIONAL HOSPITAL INSURANCE FUND BILL

*(Clauses 2 and 3 agreed to)*

#### *Clause 4*

**The Assistant Minister for Health (Dr. Wako):** Mr. Deputy Chairman, Sir, I beg to move:- THAT, subclause (1) of Clause 4 be amended-

(a) by inserting the following paragraph immediately after paragraph (d) -

(e) the Director of Medical Services;

(b) in paragraph (i) -

(i) by deleting subparagraph (i) thereof and inserting the following new subparagraph -

(i) one person nominated by the Association of Kenya Insurers; and

(ii) by deleting the words "the Kenya Hospital Association" and inserting "not-for-profit health care providers".

(c) in paragraph (j) by deleting the words "one member nominated by" and inserting "the Chairman of",

(d) by inserting the following new clause immediately after subclause (I) -

(IA) In this section "not for profit health-care providers" means hospitals managed on a charitable basis by religious organisations.

*(Question of the amendment proposed)*

**Mr. Obwocha:** Mr. Deputy Chairman, I think I have a quarrel with this clause in that, there are too many Government representatives. Now, there is a subclause which the Assistant Minister has omitted which is (h), of "one person nominated by the Kenya National Farmers Union "whom we have proposed; that under this one, you delete the whole of that and insert "one member from other key health insurance players in the market".

**The Assistant Minister for Health (Dr. Wako):** Mr. Deputy Chairman, Sir, I think Clause (h) should remain because in the new amendment we have farmer's interests which we want to take care of and therefore, we are saying that Subclause (h) should remain.

**Mr. Obwocha:** Mr. Deputy Chairman, Sir, I thought that the Assistant Minister is agreeable on this, because this is a small matter. When we talk about other key players in the health insurance sector, really it includes a bigger group and I do not think he has given reasons why he wants to maintain only the Kenya Farmers Union.

**The Assistant Minister for Health (Dr. Wako):** Mr. Chairman, Sir, I thought that in our discussion, with hon. Obwocha, we actually agreed that 80 per cent of the country's population are farmers. That is why we have included the Kenya National Farmers Union (KNFU) to represent them.

*(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 4 as amended agreed to)*

*(Clause 5 agreed to)*

*Clause 6:*

**The Assistant Minister for Health (Dr. Wako):** Mr. Chairman, Sir, I beg to move:- THAT, clause 6 be amended in paragraph (a) by deleting the word "purpose" appearing in the third line and inserting the word "object".

*(Question of the amendment proposed)*

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

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

*(Clause 6 as amended agreed to)*

*(Clauses 7, 8 and 9 agreed to)*

*Clause 10:*

**The Assistant Minister for Health (Dr. Wako):** Mr. Chairman, Sir, we are amending Clause 10 so that the chief executive, who is a member of the board, should be a qualified graduate. He should be appointed by the board and, then, approved by the Minister. So, I beg to move:-

THAT, Clause 10 be amended in subclause (i)-

(a) by inserting the words "who shall be appointed by the Minister and who shall" immediately after the word "Board" appearing on the first line; and,

(b) by deleting the word "Board" appearing at the beginning of the fourth line and inserting "Fund".

*(Question of the amendment proposed)*

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

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

*(Clause 10 as amended agreed to)*

*(Clauses 11, 12, 13, 14 and 15 agreed to)*

*Clause 16:*

**The Assistant Minister for Health** (Dr. Wako): Mr. Chairman, Sir, I beg to move:- THAT, clause 16 be amended in subclause (2)(c) by deleting the word "lawful" appearing immediately before the word "deduction" and inserting "statutory".

*(Question of the amendment proposed)*

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

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

*(Clause 16 as amended agreed to)*

*(Clause 17 agreed to)*

*Clause 18:*

**The Assistant Minister for Health** (Dr. Wako): Mr. Chairman, Sir, I beg to move:- THAT, clause 18 be amended in subclause (2)(b) by deleting the part of the sub-paragraph appearing after the word "employer".

*(Question of the amendment proposed)*

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

*(Clause 18 as amended agreed to)*

*(Clauses 19, 20 and 21 agreed to)*

*Clause 22:*

**The Assistant Minister for Health** (Dr. Wako): Mr. Chairman, Sir, I beg to move:- THAT, Clause 22 be amended -

(a) by inserting an amendment immediately after the word "surgical" to read "surgical, dental or medical procedures"; and,

(b) by inserting the words "food and boarding costs" immediately after the word "fees" appearing on the fourth line.

*(Question of the amendment proposed)*

**Mr. Obwocha:** Mr. Chairman, Sir, I am grateful that the Assistant Minister has incorporated parts of our suggestions into his amendment. However, he has omitted the word "eye". We wanted the following words to appear after the words "doctor's fees" in line four: "dental and eye expenses."

**The Assistant Minister for Health (Dr. Wako):** Mr. Chairman, Sir, the eye is a specific organ. So, when we talk of "medical procedures," the eye is inclusive, and that is why we have omitted it. We have added the word "dental" because dental treatment stands on its own as a form of surgery. It can be different from "surgical procedures."

**Mr. N. Nyagah:** Mr. Chairman, Sir, we would like to have some confirmation here on whether surgical procedures include maternity cases where women go through a surgical procedure. We want confirmation that there is going to be a maternity procedure, ocular and dental *per se* so that we do not hide under a very wide cover; surgical procedure. We would like to be told that maternity cases that involve surgery will be taken care of.

**The Assistant Minister for Health (Dr. Wako):** Mr. Chairman, Sir, I agree with the hon. Member. He is thinking of caesarean operation which is a surgical operation. So, when we are talking of surgical procedure, it includes caesarean operation. So, we have already taken care of that. Thank you.

**Mr. Chairman:** Is he asking about ocular operation?

**The Assistant Minister for Health (Dr. Wako):** Ocular operation is still the same. The terms "ocular" and "caesarean" are different, but all these are covered under "surgical operation".

**Dr. Ochuodho:** Mr. Chairman, unfortunately, I am not satisfied with the explanation given by the Assistant Minister. He knows very well that ocular operation includes dental operation. It is serious that he includes them. He does not lose anything by specifically saying "eye and dental". Could he do that?

**The Assistant Minister for Health (Dr. Wako):** Mr. Chairman, Sir, what we are trying to explain and what Dr. Ochuodho is also saying is that we are putting all the surgical operations under one cover as "surgical procedures" instead of being specific. We are giving the assurance that caesarean and ocular operations, which are surgical, have been taken care of by the words "surgical procedures".

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

*Clause 22 as amended agreed to)*

*(Clauses 23 and 24 agreed to)*

*Clause 25*

**The Assistant Minister for Health (Dr. Wako):** Mr. Chairman, Sir, I beg to move:

THAT, Clause 25 be amended:-

(a) In sub-clause (1)-

(i) by deleting the word "ten" and inserting "five hundred"; and,

(ii) by deleting the word "twelve" and inserting "twenty-four".

(b) In sub-clause (2) by deleting the words "twenty" and "two" and inserting the words "five hundred" and "three" respectively;

(c) by inserting the following new subclause immediately after sub-clause (2)-

(2A) Any person who prints and sells stamps in contravention of the provisions of this Act commits an offence and is liable on conviction to a fine not exceeding Kshs1 million or imprisonment for a term not exceeding five years or to both.

(d) in subclause (3)-

(a) by deleting the words "one hundred" appearing in paragraph (i) thereof and inserting "five hundred";

(b) in paragraph (ii)-

(i) by deleting the words "twelve months" and inserting "five years";

(ii) by deleting expression "sixth month" and inserting "twenty-fourth months".

*(Question of the amendment proposed)*

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

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

*(Clause 25 as amended agreed to)*

*(Clause 26 agreed to)*

**The Assistant Minister for Health** (Dr. Wako): Mr. Chairman, in Clause 27, we want to add a new clause 27E which will read as follows---

**Mr. Chairman:** Order, Mr. Assistant Minister! Those amendments you are proposing, first of all, are not on the Order Paper nor am I aware of them. So, you should dispose of them one by one. So, we are going to start with clause 26 and go down the line so that we can take them one by one.

**The Assistant Minister for Health** (Dr. Wako): That is fine.

*Clause 27*

**The Assistant Minister for Health** (Dr. Wako): Mr. Chairman, Sir, I beg to move:-  
THAT, the following subclause be inserted after Clause 27(d):-

(27)(e) Valid claims for payment should be settled within a period of one month from the time of submission of the claim.

*(Question of the amendment proposed)*

*(Q*

*Clause 30*

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

*(Clause 27 as amended agreed to)*

*(Clauses 28 and 29 agreed to)*

**Mr. Obwocha:** Mr. Chairman, on clause 3(3), we had proposed that after the word "Minister", we add "in further consultation with the Chairman". That was the Minister's proposal. In fact, my proposal was: "In further consultation with the Kenya Medical Practitioners and the Dentists Board and the Kenya Medical Association", but since the Assistant Minister agreed that "in further consultation with the Chairman" because this is the Chairman of the two Boards---

**The Assistant Minister for Health** (Dr. Wako): Mr. Chairman, Sir, I beg to move:-

THAT, Clause 30 be amended in subclause (3) by inserting the words "in further consultation with the Chairman" after the word "Minister".

The explanation is that in the Board, the Chairman of the Kenya Medical and Practitioners Board is a member, therefore, before it comes to the Minister, the Chairman of the Kenya Medical Practitioners Board must have agreed with the other Board members to ensure that we are striking out that particular institution or hospital.

Thank you.

*(Question of the amendment proposed)*

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

*(Clause 30 as amended agreed to)*

*(Clauses 31, 32 and 33 agreed to)*

*Clause 34*

**The Assistant Minister for Health** (Dr. Wako): Mr. Chairman, Sir, I beg to move:-  
THAT, Clause 34 be amended in subclause 1 (a) by adding a new clause "in reputable banks" immediately after the word "investment."

*(Question of the amendment proposed)*

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

*(Clause 34 as amended agreed to)*

*(Clauses 35 and 36 agreed to)*

*Clause 37*

**The Assistant Minister for Health** (Dr. Wako): Mr. Chairman, Sir, I beg to move:-  
That, clause 37 be amended:-

(a) in subclause 2(b) by inserting the words "statement of assets and liabilities" before the words "on the last day of the financial year".

(b) in subclause 10 by deleting the words "as soon as reasonable" and inserting "within nine months".

*(Question of the amendment proposed)*

**Mr. Obwocha:** Mr. Chairman, while we agree that there was a misnomer here and that the Board should produce a statement of assets and liabilities, that is not enough. The Board should produce a balance sheet because a balance sheet is not only assets and liabilities; it includes other items like the exceptional items which you cannot put under the assets and liabilities category. I would like to ask the Assistant Minister the reason for pushing the production of this financial statement from six months to nine months. Well, nine months, as you know, is a very long period after the year ends, and most Corporations have misused this facility by not producing their accounts at all. So, six months really will be a strict deadline for them to produce the accounts of the Board. I do not know why the Assistant Minister should not retain the six months he had originally proposed.

**The Assistant Minister for Health** (Dr. Wako): Mr. Chairman, while I agree with hon. Obwocha on subclause 2(b), Clause 37 (10) of the original Bill reads thus:

"The Minister shall lay the audit report before the National Assembly as soon as reasonably practicable after the report has been submitted to him under this section".

Mr. Chairman, Sir, in our amendment, what we are saying is that we are moving from "as soon as reasonably practicable" by specifying the duration. The first proposal was six months but we found that the report would not have passed through all the stages. That is why we are going for the "nine months" duration to ensure that the Minister, by this time, will be able to bring the audit report to the House.

**Mr. Chairman:** Mr. Obwocha, are you satisfied?

**Mr. Obwocha:** Obligated.

**Mr. Chairman:** Thank you.

*(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 37 as amended agreed to)*

*(Clauses 38, 39, 40, 41, 42 and 43 agreed to)*

*(Clauses 44, 45 and 46 agreed to)*

*(First Schedule agreed to)*

*(Second Schedule agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

**The Assistant Minister for Health** (Dr. Wako): Mr. Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of The National Hospital Insurance Fund Bill and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

### **REPORT, CONSIDERATION OF REPORT AND THIRD READING**

#### THE NATIONAL HOSPITAL INSURANCE FUND BILL

**Mr. Omino:** Mr. Temporary Deputy Speaker, Sir, I beg to report that the Committee of the Whole House has considered The National Hospital Insurance Fund Bill and approved the same with amendments.

**The Assistant Minister for Health** (Dr. Wako): Mr. Temporary Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

**The Minister for Agriculture** (Mr. Mudavadi) seconded.

*(Question proposed)*

*(Question put and agreed to)*

**The Assistant Minister for Health** (Dr. Wako): Mr. Temporary Deputy Speaker, Sir, I beg to move that The National Hospital Insurance Fund Bill be now read a Third Time.

**The Minister for Information and Broadcasting** (Mr. J. Nyagah) seconded.

*(Question proposed)*

**Mr. Obwocha:** I have two comments to make. The first one is that we have agreed to pass this Bill on condition that the Ministry of Health does produce a Bill in this House that will cater for the overall health insurance scheme countrywide because this particular one caters for only the National Hospital Insurance Fund. There are other key players in the health insurance market like the Africa Air Rescue, Medivac and so on. So, it is on that condition that we allowed this Bill to go through. The second comment which I would like to make is that

we were not able to push through all the amendments proposed by the professional bodies; that is the Kenya Medical Practitioners and Dentist Board and the Kenya Medical Association, but the bulk of them have been incorporated. We hope that the Minister will go back, consult with these professional bodies and if there are any additional amendments they feel about very strongly that they should be brought, then they can be brought here as miscellaneous amendments.

*(Question put and agreed to)*

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

## **BILL**

### *Second Reading*

#### THE COMMUNITY SERVICE ORDERS BILL

*(The Attorney-General on 17.11.98)*

*(Resumption of Debate interrupted on 17.11.98)*

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, I beg to continue with the submissions which I started yesterday. Yesterday, I did make contribution to the whole concept of crime and punishment. I did refer to the basic minimum standards for treatment of offenders and I did mention that we along with other countries, have fallen short of those standards because of financial constraints. I did state that the United Nations requires that member states should constantly endeavour to meet those standards. It is in that regard that we are bringing this particular Bill to the House. I did give the background of the many symposia, the interim committee chaired by Justice O'Kubasu, what they did and how this Bill has come to the House. Yesterday, I was referring to the actual provisions of the Bill.

Mr. Temporary Deputy Speaker, Sir, clause 2 of any Bill deals with issues of interpretation. We then come to Clause 3. Clause 3 is the most important clause under this particular Bill because it gives the power to the courts to make a community service order. The clause, as it reads, is to the effect that if the courts have found somebody guilty of an offence and it is minded to sentence that person to two years or less term of imprisonment, then instead of that person serving a custodial sentence, the court in an appropriate circumstance may make an order that, that person undertakes a community service.

Mr. Temporary Deputy Speaker, Sir, I understand that in the appropriate committee, they recommended that two years was a bit too low and that this should be increased to three years; so that where a court, after having found somebody guilty of an offence, thinks that it can sentence that person for three years or less, then it can make a community service order. I have no objection to that and, in fact, during the Committee Stage, I will be moving an appropriate amendment to substitute two years with three years. If this Bill goes through, then we will come a long way in decongesting our prison population. Currently, as I stated yesterday, there are 1,600 persons serving what is currently called extra-mural-punishment-employment. As at 1st October, 1998, there were 12,670 prisoners with sentences of three years or below. That is out of a population of 38,000. So, if this Bill had been enacted sometimes ago many of these persons who are now serving a custodial sentence, over 12,670 prisoners, may be serving in a community service order and therefore out of the prison system. That is about one-third of the current prison population. So, that is why this Act is very important.

I will speak very briefly because the rest of the clause really deals with the issue of which type of project a person can serve on. It states that:

"For the purposes of this Act, public work shall include construction or maintenance of public roads, or roads of access, afforestation works, environmental conservation and enhancement works, projects for water conservation, management or distribution and supply, maintenance work in public schools, hospitals and other public social service amenities, work of any nature in a foster home or orphanage, rendering specialist or professional services in the community, for the benefit of the community."

In other words, if a professional is found guilty, the court would have sentenced him to three years or less, the court may now say that he must render service to the community free of charge. Therefore, his knowledge as a

professional will be properly utilised in that regard. So, the type of community service that is given here, is a community service not to serve an individual, public officers, officials or servants on their farms or private houses, but the type of service that must be undertaken is a service to the community. Depending on the needs of that community, we believe that the range of areas where this service can take place, and the type of the needs that we have in every community in Kenya, there should not be any place which cannot afford to give such a person service.

Of course, in undertaking that service, the person who has been found guilty will be contributing immensely to national development. Not in every case that somebody has been sentenced to three years or less will automatically be given a community service order. The courts must weigh this very carefully. Some of the conditions are to ensure that before the sentence is imposed, this particular sentence will be of particular benefit to that particular person. The aim is to reform or to rehabilitate the offender. If it is impossible to reform or rehabilitate the offender, that order will not be given. If that offender will be a danger to the community, and he is a very dangerous criminal, he will be taken away from the community and be given a custodial sentence, rather than staying with the community and undertaking community service.

It is also stated that the offender himself should give consent to the making of the order. The offender may want to go into the custody. Let him go. This is important because if the offender consents to the making of the order, then obviously, that is an indication on the part of the convicted person that he really wants to be reformed and rehabilitated. His aptitude of his mind is towards serving the community and being part and parcel of the community. If he regrets the offence, then he has to render that particular service to the community. The other sub-section deals with technical issues; that if one has committed one or two offences, then just like a custodial sentences can run concurrently, so community services orders imposed by the court can also run concurrently. It is then provided that when the order is made, the court itself must explain clearly to the offender, in a language that he understands, some of the essential points, such as the purpose and effect of the order, and the consequences which are specified in section 5, which are as follows: If he violates the order, the type of punishment that he can get, which ranges from having a caution, or cancelling the community service order entirely and going into the prison to serve a custodial sentence for the remainder of the period.

Mr. Temporary Deputy Speaker, Sir, clause 4 sets out the obligations of the person who is subject to the community service order, such as reporting to the supervising officer, performing the work that has been assigned to him, reporting to the supervising officer of any change of address and such like issues.

In reference to the religion of the person, it is clearly stated that the supervising officer, as far as it is practicable, should avoid giving instructions which will conflict with the offenders religious beliefs. For example, I believe he will not instruct a Christian to work on a Sabbath day, and neither will he instruct a Moslem to work on a Friday, if that particular Moslem does not want to work on a Friday and so on. So, these rules are there to ensure that the offender is treated humanely. I have already touched on Clause 5 which deals with cases of breaching the conditions of the community service order. I do not have to go into it in greater depth.

Mr. Temporary Deputy Speaker, Sir, I now come to part (iii), which deals with management. As I stated yesterday, part of the weaknesses of the current extra-mural punishment-employment is lack of co-ordination between the various organs; the administration on one side, the Prisons Department and the courts on the other hand. What this Bill proposes to do is to improve the administration and implementation of this community service order. It is, therefore, proposed that there will be a National Community Service Committee, which will be composed of a Judge of the High Court, the Director of Public Prosecutions or his nominee - I think for the Judge, you know their role in the whole exercise is appropriate. The Chairman of this National Committee should be an eminent senior person from the Judiciary. There should be the Director of Public Prosecutions because this is part of the criminal justice system. The Director of Public Prosecutions under the Office of the Attorney-General, takes charge of all prosecutions in the country; the Permanent Secretary in the Ministry, for the time being responsible for matters relating to Provincial Administration and Internal Security. This is necessary because at the location, sub-locational and village level where these people will be working, the input of the administration is very important. The input of even the police is very important. The Permanent Secretary in the Ministry responsible for the time being, for matters relating to public works or his nominee is also a member. I have already indicated the type of community service projects that an offender will serve in and, obviously, that falls within the purview of that Ministry. I think they have a very clear idea on which areas need to be done by way of public service. Whether one is talking in terms of construction of roads, or one is talking in terms of putting up public buildings, be they educational institutions, new administrative offices for new districts and so on, it is all within the knowledge of the Ministry of Public Works and Housing. The Commissioner of Police or his nominee is self explanatory. The Commissioner of Prisons or his nominee, the Director of Provisions and the Director of Children Services are quite clear cut. Also, on the National Community Service Committee will be a nominee of

the Council of the Law Society of Kenya. I think that requires no explanation. It is clear why the Chairman of the Law Society of Kenya or his nominee should be a member of the National Community Service Committee. Then, two persons with training and experience in criminal justice system, one of whom shall have the experience in the teaching of law, and the other one a magistrate of First-Class, both appointed by the Chief Justice. Then there will be five members appointed by the Minister from a panel of not less than seven names submitted by the National Committee and of whom two shall be representatives of non-governmental organisations involved in social welfare work and registered under the Non-Governmental Organisations Co-ordinating Act, 1990, for such objectives."

Mr. Temporary Deputy Speaker, Sir, as I stated yesterday, the responsibility for enforcing this is not just for the Government and the institutions. It is important also that the society itself be involved in the implementation of this scheme. It is important that the NGOs who are operating in this area also should have an input in the implementation of this scheme. Indeed, as I explained yesterday, on all the Committees, we appointed quite a number of members who represented serious-minded and committed NGOs operating in this field.

Mr. Temporary Deputy Speaker, Sir, the functions of the National Committee are set out in clause 8 which says:-

"The functions of the National Committee shall be:

(a) to advise the Minister and the Chief Justice generally on the proper implementation of the provisions of this Act;

(b) co-ordinate, direct and supervise the work of community service officers;

(c) collect and collate data on the operations of this Act for the purpose of improving national policy on community service orders."

Mr. Temporary Deputy Speaker, Sir, you must have realised that the National Co-ordinating Committee is a very large committee. But it is our belief that all those people who have an interest in the criminal justice system in this country--- All those organisations, both public and private, who have an interest in the criminal justice system in this country should be members of the National Co-ordinating Committee. Obviously, the National Co-ordinating Committee cannot meet almost on a weekly or monthly basis. It is, therefore, becomes necessary that we have a National Committee which will be a committee of coordinating things. It will be composed of the Chairman, the Vice-chairman, the Director of Probation, the National Co-ordinator and one other member appointed by the National Committee. In other words, the National Committee will appoint a five-member executive committee which will now more or less be in charge of the day-to-day running. It will also work very closely with the National Service Orders Co-ordinator who will be a full-time employee overseeing committees the operations of all these throughout the country.

Mr. Temporary Deputy Speaker, Sir, below the National Committee, we have, at the district, divisional and location levels various committees which are also composed in the same way as the National Committee. In other words, the representation at those levels, as far as practicable, will include officials from the various Ministries represented at the national level right down to the village level.

On the enactment of this Bill, we shall need very many community service officers throughout the country. It is, therefore, proposed that the current Probation Officers, appointed under the Probation Offenders Act, shall be community service officers for the purposes of this Act. But we know that even more Probation Officers will be required. Therefore, the Minister is empowered, under clause 12, to appoint community service officers. Clause 12 says:-

"The Minister may, in consultation with the National Committee, appoint such additional community service officers as may be necessary for the purposes of this Act."

Mr. Temporary Deputy Speaker, Sir, the Bill lays out in detail the functions of the Executive Committee in the first schedule which is quite clear and I do not have to read all that. I believe that the hon. Members who have an interest in this field have read the Bill. But the details of the functions of the Executive Committee is set out in the First Schedule and the duties of the Community Service Officers is set out in the Second Schedule.

Mr. Temporary Deputy Speaker, Sir, part of the duties of the community service officers operating at the local level would be to identify the suitable work placements, oversee the work and progress of the offenders, ensure that community service orders are complied with, apply to court for review of the orders as necessary and facilitate, where possible the reconciliation of offenders and the community. A particular person may have committed an offence in the community which is closely-knit and the community may regard him as an outcast and so on. It will be the duty of the community service officers to try to reconcile that particular offender working in that community with the community to which he belongs.

The community service officers are also there to ensure safety in the work conditions of the offenders. They are also required to undertake the counselling of offenders because, at times, the commission of offences, as I

explained yesterday, can be due to some psychological or psychiatric reasons and so on. Therefore, counselling becomes necessary and the community service officers will be there to do the counselling. If he cannot do it himself, he will have access to the people within the Government who can offer the counselling services to the offenders.

The community service officer will also be responsible for keeping an up date record of the offenders performance from time to time and also submit specific periodic reports to appropriate or relevant Community Service Orders Committees and the Co-ordinator in the respect of the offenders.

Mr. Temporary Deputy Speaker, Sir, I do not want to take too much time. I think I took too much time yesterday. This is the Community Service Orders Bill. I have explained the background of it and I have very quickly gone through the provisions of it. To me, it is a very important legislation in this whole area of administration of criminal justice. I would wish hon. Members to contribute to it, make suggestions for improvement where necessary and let us enact it quickly because prisoners are suffering. I think we must address this problem as a matter of urgency. I will be a happy man indeed if this Bill is enacted before we go for recess so that we can start working on this area which has been a "dirty spot" as far as Kenyan is concerned, compared to other countries consider in the administration of justice.

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

**The Assistant Minister for Home Affairs, National Heritage, Culture and Social Service** (Mr. Marrimoi): Mr. Temporary Deputy Speaker, Sir, may I take this opportunity to thank you for allowing me to second this very important Bill. This Bill calls for a non-custodial sentence where offenders are required to perform unpaid duties to the community. The targeted group are offenders whose term of imprisonment does not exceed two years or those whose terms exceed two years, but for which the court determines a term of imprisonment for two years or less with or without the option of a fine, to be appropriate.

Mr. Temporary Deputy Speaker, Sir, this is a very important Bill. This Bill will go a long way to ease congestion in our prisons. The kind of work that will be performed by the offenders will really assist the community in general. They will construct our access roads, which will serve the community. Really, this is a very important Bill because the offenders will render services to the community.

The other areas that will benefit from this Bill, as mentioned earlier, are afforestation, environmental conservation, enhancement of work, and water conservation, especially in areas where irrigation is taking place. The offenders will assist the communities to dig furrows. Offenders who have got some skills in water and sanitation will always go and provide their services in areas where they are required free of charge. They will also help in maintaining public schools. The offenders who were trained to be teachers will teach students. This is a very important Bill and the offenders will really benefit the country and the community in general. Those offenders who have knowledge in medicine will assist in prescribing drugs for patients. Those are some of the areas that the offenders will assist.

The offenders will also help orphans. They will also help in any work that will benefit the community. The supervisors of the offenders will be officers or persons assigned to supervise the work performed by the offenders in their places of work. The supervising officer will maintain and update the records of actual work performed by the offenders, including the period they will have worked. The supervising officer will be accountable to the community service officer, who will be the probation officer.

Mr. Temporary Deputy Speaker, Sir, the number of hours to be worked will always be given, and the minimum number of hours will be 35. But in an exceptional case, a lower number of hours can be worked, but the period cannot be less than seven hours. The guideline of the hours to be worked is follows:-

<u>Period of imprisonment in Months</u>	<u>Number of hours to be worked</u>
1 - 3	33 - 105
1 - 6	105 - 210
6 - 9	210 - 315
9 - 24	315 - 420

The benefits derived from the Community Service Orders Bill will go to the Government, the community and individual offenders. On the part of the Government, the Bill will help check congestion in our prisons and improve their conditions. It will also help in cutting down on the cost of running our prisons. The Bill will also provide free-of-charge service to the community.

For example, in some schools where the Boards of Governors (BOGs) pay full-time teachers or part-time teachers, offenders who are trained teachers will assist in schools. This will enable the BOG to use the money,

which it would have used to pay the teachers, to provide other essential services. The Bill will assist the families of the offenders, because once one has been jailed, the family will always miss their dear one. The Bill will really assist the community, because the offenders will always be together with their families.

Mr. Temporary Deputy Speaker, Sir, the offenders might retain their jobs where necessary. This is because it will be possible for the offender and the supervisor, or the community service officer to agree on the convenient working hours by the offender. This will give the offenders ample time to do other duties.

There have been a lot of arguments, especially from the other side of the House and human rights bodies, that the prisons are in pathetic conditions. This is a very important Bill in that it will result in cutting down on the expenditure by the Government in the Prisons Department.

This Bill will actually assist our country in general. This tri-partite agreement involved stakeholders, for example, the Attorney-General, who is the sponsor of the Bill, the Judiciary which is the user, and the Ministry of Home Affairs, National Heritage, Culture and Social Services. It will really go a long way in reducing budgetary costs and also assist in crime prevention. The Bill is targeting and requesting the community to participate more in rehabilitation, settlement and social control of the offenders. Community service order is gaining popularity in Europe and also in African countries. For example, in Africa it is already very popular in Zimbabwe and in South Africa. Other countries are in the process of implementing this Bill because it has been found to be popular and it will really assist people. I know that hon. Members will really back this Bill because it is a very important Bill.

With those few remarks, I beg to second the Bill.

*(Question proposed)*

**Mr. Murungi:** Thank you, Mr. Temporary Deputy Speaker, Sir. I rise to support this Bill. I am supporting it in my capacity as the Shadow Attorney-General. The Community Service Orders Bill of 1998 is a step in the right direction because we feel that comprehensive penal reform in this country is overdue. Our prison system is a cruel and inhuman system. Section 74 of the Kenya Constitution recognises that all Kenyans - prisoners are also Kenyans - are human beings and that they should not be subjected to inhuman, degrading or cruel treatment. I think our prison system exists in contradiction and in violation of Section 74 of the Kenya Constitution. We support the principal aims of this Bill which has introduced non-custodial sentences in order to decongest our overcrowded prisons and to offer more humane punishment to offenders in this country. We also support the Bill because it will make it possible for the offenders in the country to contribute to the development of this country. We have huge agricultural projects like the Mwea Irrigation Scheme which was established by the Mau Mau offenders and a system introduced by the colonial Government. We see this as an opportunity for us to use the offenders to clean up our city. We see it as an opportunity for the offenders to be used to open up rural access roads. We also see it as an opportunity for them to assist us in establishing afforestation and environmental conservation projects and also maintenance of public institutions like some of our hospitals which are very dirty and we expect that the offenders will be used in cutting grass, fencing and cleaning those public institutions.

We expect some kind of a revolution through this Bill in introducing a new system especially in Government offices where documents now lie under heaps of dust. I would like to talk briefly on the history and rationale of this Bill. Prisons in this country are part of our colonial legacy. Before the British arrived, and officially colonised the country on 12th August, 1897, there were really no prisons to talk about in Kenya. The only good prison then was Fort Jesus which was established as a prison in 1895. Before the White men arrived our traditional systems of justice did not have any conception of having prisons and custodial sentences. We were talking about burning witches something which is still practised in parts of this country. We were also talking about rolling thieves in bee hives down the cliffs. In some communities we were talking about compensation even for serious offences like murder. That was our system of justice. Imprisonment and custodial sentences are part and parcel of colonialism. The first Commissioner of Prisons was not appointed in this country until the year 1914. In 1933 the colonial Government established a Commission to find out how effective the prison system was as a deterrent.

The Bush Commission of Inquiry reported that the prisons were not an effective deterrent to the natives because even after coming out of prison the natives bore no stigma. In the rural areas nobody thought that they had done anything wrong. The colonialists saw that the natives were well fed in the prisons, that they were well-clothed and that they were well housed. They felt that the only problem the natives had in the prisons was that they were deprived of beer and tobacco and that there was enforced silence. They could not talk to each other as they wanted. The prisons under the colonial system did not rise into prominence until the Mau Mau War of 1950. During the 1950s you will find very rapid and enormous increase in prison population in the country. Between 1951 and 1953 the prison population rose from 16,673 to 42,581. By 1955 this population had increased

dramatically to 86,634. Following the release of the Mau Mau activists the prison population again fell dramatically in 1963 to only 13,000. I remember there was a massive release of prisoners on 12th December to mark Independence Day. This helped us to reduce the prison population to 13,000 prisoners.

Mr. Temporary Deputy Speaker, Sir, it is also remarkable that in terms of institutional facilities, we had a decrease in prisons. In 1963, we had 86 prison institutions in the country, but in 1996 we had only 78 prisons left. So we reduced the institutions by eight. At the same time, while the 86 prisons had 13,000 prisoners in 1963; 78 prisons in 1996 had 39,000 prisoners. So, these fewer institutions were carrying three times the capacity of the prisoners that they were carrying at Independence. So, what has happened?

As a result of this reduction in prisons and increase in prisoners, we have very serious over-crowding in our prisons. Apart from this overcrowding, we also notice a certain attitude on the part of the Government. There appears to be criminal neglect, reckless disregard of the welfare of prisoners and prison staff in this country. In fact, the living conditions of the prison staff is not different from the living conditions of the prisoners. If anybody does not agree with me, he should go to Industrial Area Remand Prison in Nairobi where he will find prison officers living in slums; mud houses thatched with cartons and this kind of thing. So, this is a very shameful, embarrassing and very deplorable situation. Because of that demoralisation of the prison staff there has been a lot of inhumanity and cruelty meted by them to the prisoners. Almost all the prisons in the country are filthy, dilapidated and "unfit for human habitation". Even facilities for basic hygiene and sanitation are lacking. There are no bathroom facilities to talk about and human faeces is still disposed of in buckets and pots in some of the prisons in this country.

Due to these very poor hygienic conditions, many prisoners have died of preventable diseases. Some have died of cholera, others of dysentery, tuberculosis and other communicable diseases. As we are talking now, AIDS has become a major killer in our prisons.

For one to be sentenced to prison today, he is being virtually sentenced to death. About a fifth of those admitted to our prisons do not come out alive. This is a very serious situation.

Given this intolerable condition, it is also very surprising that there has been very little prison reform since Independence. In fact, we are lucky because the Prisons Act which we have, was enacted in 1962 and it contained the current progressive thinking on prison reform as at that time. So, in fact, the laws we have were very progressive when they were enacted in the 1960s because they carried the current thinking of the day. But a lot of things have happened since the 1960s and they are not incorporated in our laws.

We have numerous violations of prisoner's rights which we officially recognised under the standard minimum rules for treatment of prisoners. There have been various UN documents the recent one being around 1990. Our prisoners have been imprisoned in oppressive, barbaric and backward conditions. The society has come to treat prisoners as lepers. We do not know who has got tuberculosis when they come out of the place. So, even if they are our relatives, we do not want somebody to come from Kamiti to our houses because they might infect our children.

The prisoners have become outcasts; people of little social value. A whole prison system seems to be at variance with the basic purposes of a prison which is basically to reform and rehabilitate the offender. Instead of playing this important function, our prisons have become training schools for hard-core criminals. Prisons themselves, although they are Government institutions, have become institutions which are dangerous to our society.

It is for this reason that we in the Opposition, are supporting this Bill because it provides some hope from these "pockets of colonialism and dark ages" in this country.

With regard to the specifics on the Bill, I am a member of the Committee on Administration of Justice and Legal Affairs of this House and we have been studying the Bill. I must say that on the whole, the Committee - whose Report will be given by the Chairman - supports the Bill. We are happy about clause 3 of the Bill and in the process of our deliberation we had very useful information given to us by two retired directors of probation in this country. I would like to take this opportunity to thank them immensely, a Mr. Benjamin Maiyo and a Mr. Joseph Gitau. They told us that they had experience in the workings of the community service Orders outside this country and they were very impressed by the experience especially, in Zimbabwe, where the community service orders have been used to clean up the cities in that country. Garbage collection has been one of the greatest headaches not only in Nairobi, but also in our major towns like Mombasa, Nakuru, Kisumu and even small towns like my own local town Nkubu. There is a lot of rots and smells and all that. Garbage has never been collected since 1948!

We have an opportunity because we have prisons in all these towns, now there will be no excuse. So, we are asking the mayors and chairmen of the town councils to make use of this Bill to make sure that all the towns in Kenya are clean.

We have also problems with "village roads". In the old days, the chiefs used to mobilise people and wananchi used to do roads during the colonial period using agricultural implements. We have an opportunity now to improve our rural access roads again using prisoners. I would appeal to the Ministry of Public Works and Housing to look into possibilities of organising this new force of prisoners to make sure that our roads, especially in the rural areas, are passable.

I talked about the Mwea Irrigation Scheme which was opened by the Mau Mau activists, but since Independence, although the prison population has increased, you cannot show us any agricultural project which has been opened up using prison labour. We hear there are problems in Nyando area with the water which we cannot control and Bura Irrigation Scheme. This country needs food sufficiency. So, instead of concentrating this population at Kamiti and Naivasha and creating a burden for this country, let us use their hands. Let us use that labour to increase food production in the country.

Again, I am happy the Minister for Agriculture is around and I am sure he is going to make use of this labour to increase food production in this country. In fact, the prisons themselves can be self-sufficient if they can use this labour to grow food even for the other prisoners.

Mr. Temporary Deputy Speaker, Sir, we note that the Bill does not indicate how long, or how many days in a month or so, the offender is going to serve in prison. Now, it is quite clear that the offender will be eating his own food at home, so the Government will not be feeding him, and it is only reasonable that he be allowed some time to fend for himself and his family. So, if the Community Service Order requires him to serve for six months, it is only reasonable that he be given, at least, 15 days in a month to cater for himself and his family and then the other 15 days, he can go and serve his sentence. So, we need to look at the maximum number of days which an offender will be required to serve in a month. Otherwise, it will be impossible; he will be a burden to the community if we do not give him time to grow his own food and look after his family.

The other issue which arose is that, we are dealing with symptoms. Our prisons have become overcrowded. Why have they become overcrowded? Unless we ultimately go to the root of that problem, then we shall not have solved it. We are having what they are calling a crisis of "truncated institutions" in this country. What is happening is that, the police, the courts and the prisons are individually working as separate and self-contained organs of the State. There are no forward and backward linkages within these institutions. When the police arrest people and bring them to court and oppose bail, they are not aware of the institutional problems that they are creating. This is because the Commissioner of Police does not know how many places are available in the prison for these people to be remanded. So, immediately the people are arrested, and the police bring them to court, they think that their role is finished and they go back and arrest more people. So, the more people they arrest, the more efficient we as the community think the police is. Then for the courts, their job is to dispose off cases and it is almost routine that, when they appear we grant them bail with two sureties of Kshs10,000, or Kshs20,000 without knowing whether this man has the means to meet the bail conditions or not. So, most of the people who come to court end up in remand prisons and then the magistrate does not check with the remand prison to ascertain whether they have enough facilities to accommodate these people. So, the prison, in this system, is on the receiving end because whatever population they are given, they have to use their wits to find out how these people are to survive. That is why you find a cell which was intended for 10 people is now accommodating 30 or 40 people. We are not expanding the institutions because there are no forward and backward linkages in these institutions.

The main problem is that we do not have a centralised administration of justice system in this country. In other countries, where there is a Minister for Justice, he will be the vocal point for dealing with the police, the judiciary and the prisons. So, in this case, the lack of a Minister for Justice is creating a lot of problems because you find the police are under the Office of the President, the Judiciary is independent and the prisons are in the Ministry of Home Affairs, National Heritage, Culture and Social Services and there is no co-ordinating function. So, we discussed this matter in our committee and we felt that it is high time that the Government of Kenya was restructured so as to introduce a Ministry of justice and Legal Affairs in this country.

Mr. Temporary Deputy Speaker, Sir, as presently constituted, the Office of the Attorney-General has been trying to play that role but you know the Attorney-General is a civil servant and he has his own limitations. So, what we need is a politician; a Minister for Justice and Legal Affairs to whom the AG, the Commissioners of Police and Prisons report to, and all this system will be better addressed. So, we need to create that comprehensive framework for dealing with the problem.

The other issue that I wanted to raise is about pre-trial detention. We will not be able decongest the prisons, especially the remand prisons, unless we handle this issue of bail. Most of the offenders in the remand homes are petty offenders and when they show up before a magistrate, he says: "You are granted bail with a surety of Kshs10,000." But really, for a hawker to get a person with title deeds, motor car log books or payslips to



support the Kshs10,000 is almost impossible. So, we have to relax the bail conditions if we are going to clear our remand prisons. That is why we are recommending that, for any person charged before a court with an offence whose punishment is imprisonment not exceeding two years, that person should be granted automatic bail. That person should be released on his own bond without any surety. That way, we will be able to clear all the remand prisons in this country.

Mr. Temporary Deputy Speaker, Sir, there is also the issue of corruption. The prison officers in this country are paid such meagre salaries that they cannot afford to live from the 1st to the 30th day of any month. So, there is a lot of petty trade going on in prisons. For example, there are cases where prison officers assist inmates to buy cigarettes, *mira* and such things. We understand that a packet of cigarettes in the prisons costs as much as 10 times its cost in the shops. So, there is a lot of trade and that is how these prison officers are surviving. Unless we improve the terms and conditions of the prison officers in this country, and that of probation officers who are going to administer the new law, it is not going to work. Somebody will be given "kitu kidogo" then he will sign that you worked on a community project when you did not work.

Somebody will just give "kitu kidogo" and he will be getting the administrative records of how the system is working whereas as a matter of fact, it is not working. So, we are making an urgent plea that now that the prison population is going to be reduced, there is no point of having too many prison officers hanging out in the prisons and doing nothing. Let them be deployed either in the field to deal with these offenders out there or they are retrenched. Then, when we have that manageable prison establishment, let us increase their package, let them live well and let us build good houses for the prison staff. In fact, because the prison staff is there and all the prisoners are there, they can bring sand and make bricks within the prison using prison labour and invest a little in iron sheets and make some decent accommodation for the prison officers. So, we do not know why there is no imagination or commitment to improving the lives of the prison staff in this country. We are saying, until we improve those conditions, then even this system is going to be sabotaged and we will not succeed.

Mr. Temporary Deputy Speaker, Sir, lastly, regarding some specific amendments to the Act, we find the imprisonment for a term exceeding two years inadequate. If we really are serious about decongesting the prisons, let us increase this to three years. I see the Attorney-General is nodding, which is very good. I think three years is reasonable. Then even for some of the offenders who have been imprisoned for more than three years, we feel that the magistrate should be given some discretion where there is a good case, for a person imprisoned for say, three years and 10 days or three-and-a-half years, to consider the harm of that person to society. And after receiving reports from the Probation Officers, he should be able to send that person on community service. So, we feel clause 3 should be amended to include that kind of amendment. It should also be amended to provide for bail for petty offenders even before their conviction.

Mr. Temporary Deputy Speaker, Sir, clause 3, subsection 3 states:-

"Where a court determines that a Community Service Order should be made, it shall before making the order direct to a community services officer to conduct an inquiry into the circumstances and report their findings to the court".

We feel that this is another system which is going to be used to continue detention of the same offenders whom we want to send out to do community service. This is if we say that the court must get the report before it can make the order, then it would be like bail. The people would be kept for a long time with the magistrates waiting for reports to come from the Probation Officers. So, we would like to change the word "shall" to "may", so that in most of the cases, the courts should be able to send a person straightaway to community service without receiving any report. But in cases like where a person is a habitual offender, the magistrate can exercise discretion and ask for a report. But it should not be automatic in every case that the magistrate must receive a report. With the experience we have with the current system, there are very many accused persons who keep on reporting to the courts waiting for the Probation Officers' reports so that sentences can be passed. Sometimes, it takes a whole year before a report is brought. So, let us not tie our system to the receipt of this report before an order can be made. Let us make it discretionary.

Mr. Temporary Deputy Speaker, Sir, clause 3, subclause 5, beats logic. When you are punishing a person, you do not require his consent, otherwise, nobody would like to be punished. The subclause reads:-

"A court shall not make an order under this Section in respect of an offender unless the offender is present and consents to the making of the order".

We find it ridiculous. Consent of the offender should not be required. We do not ask for consent of the offender when we are ordering corporal punishment. We also do not ask for consent of the offender when we are fining him. We do not ask for consent of the offender when we are sending him to hang. So, requiring consent of the offender for this punishment is contrary to practice and it should be removed.

Mr. Temporary Deputy Speaker, Sir, I think, apart from those comments, more detailed comments will be

brought in the report by our Committee, and I do not want to waste time on it. But on the whole, I think this is a very, very good Bill, subject to those amendments and it should be supported by all the hon. Members of this House, because it is going to bring positive difference; it is going to make a positive change in this country.

With those few remarks, I beg to support.

**Mr. W. Ruto:** Thank you Mr. Temporary Deputy Speaker, Sir, for giving me time to make my contribution and, indeed, that of the Committee on the Administration of Justice and Legal Affairs, a Committee established under Standing Order No.151 of this House.

Mr. Temporary Deputy Speaker, Sir, the Community Service Orders Bill, 1998, basically seeks to establish two things: One, to decongest our very heavily congested prisons, and secondly, to make better the prisons and to make offenders better Kenyans than they were before being convicted. Our Committee went into great lengths of to discuss the intricacies of this Bill and I must, on behalf of the Committee, sincerely thank the Attorney-General for giving his very useful advice and help during our deliberations. We would also like to register our appreciation, as a Committee, to the two gentlemen; Mr. Benjamin Maiyo and Joseph Gitau for their role in putting this Community Service Orders Bill together.

Mr. Temporary Deputy Speaker, Sir, on the whole, the Committee agreed to a great extent to the work that had been done and had been put into this Community Service Orders Bill. The Committee wishes to record that, there are several amendments that we proposed, to make this Bill better as already mentioned by a very able hon. Member of the Committee, hon. Murungi. But I would also like to mention that we proposed that in clause 3(1) of this Bill, to be able to decongest the prisons, and the remand prisons being an even greater part of the prisons now, persons who have committed offences whose punishment does not exceed two years, be given an automatic bail. We have included that to be part one of clause 3. Clause 1 should now be made clause 2.

That will help to alleviate the suffering in our remand prisons now, where most offenders wait for two to three years before they are sentenced or their cases are heard. We believe very strongly that this will decongest our remand prisons which, for all practical purposes, have now become breeding grounds for hard-core criminals and have also given the Judges and Magistrates a leeway to hold people for many years, using all kinds of excuses. We are proposing that it becomes automatic for all executions of personal bonds without surety--- This is because many Kenyans cannot realise, as the hon. Member has said, logbooks, title deeds and many of these other items normally demanded by courts. Therefore, we are suggesting that sections 1, 2 and 3 of the Criminal Procedure Code be amended accordingly.

Mr. Temporary Deputy Speaker, Sir, my Committee also recommended that clause 3(2)(c) be inserted to give magistrates or the High Court or other supervisory bodies the supervisory capabilities so that, even persons who have commissions of more than two years, as stated by this Bill, can still apply to be considered under this Community Service Orders Bill; if they have a good reason or good cause and if that good cause can be established by a court of law.

Mr. Temporary Deputy Speaker, Sir, my Committee also recommended that clause 3 (v) be amended to remove the mandatory provision that a report be obtained from the probation officer before a Judge can invoke the Community Service Orders Bill. We believe very strongly that, making it mandatory that a report be obtained on an offender before the Community Service Orders Bill is invoked will bring a situation like the one we have with the remand prisons now. We have heard of cases where magistrates and judges have talked of waiting for a report from the probation officer for years, while these petty offenders are waiting in remand prisons whose conditions are known to all Kenyans as very appalling.

Mr. Temporary Deputy Speaker, Sir, those are the specific recommendations made by my Committee on the administration of justice and legal affairs and a copy of this report is available for Members to have a look at. I wish, once again, to thank my colleagues for their committed effort to the deliberations that we made on the Community Service Orders Bill.

With those few remarks, I beg to support the Bill.

**Mr. Kihoro:** Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to contribute to this very important Bill. It is my hope that Parliament is going to enact it. I am one of those who were yesterday called by the hon. Attorney-General former guests of the State and I must say I have got an inside view of what happens in some of Kenya's penal institutions. I have been a guest of the State at Shimo la Tewa Prison, Manyani Prison, Kamiti Maximum Security Prison, Industrial Area Prison, and Naivasha Maximum Security Prison for a long time and I know what it takes to live in prison. My view of this Bill is that, it is going to bring some humanity to a very important institution in this country, that must be there whether we like it or not.

*(The Temporary Deputy Speaker*

*(Mr. Musila) left the Chair)*

*(Mr. Deputy Speaker took the Chair)*

There are certain people who will offend the community and after due trial, not by a kangaroo court, and I know the Attorney-General is very consistent on the due process of law, but after being proved guilty, it is only fair that such persons find the inside of prison and serve a prison sentence. But on the recommendations of what is suggested now by this Bill, it will be possible for some of these people to serve a period outside prison which is going to be beneficial not only to them, but also to the community. There is a certain cost that is incident on being in prison. A person who is in prison is clothed, fed and accommodated by the State. The State has also to employ a 24-hour guard to make sure the person does not escape. So, after offending out there and being convicted, this person now continues to feed on the community because the community has got to do all these things for him. The present figures of the prison population at 38,000 which I think is a complete under-estimate, is one that is stretching the scarce resources at the hands of the State. So, it is, therefore, imperative that a way be found of making sure that the offenders are going to do some work that is going to be beneficial to the community and in so far as possible, these people will continue clothing, feeding and accommodating themselves. Because of the stringent measures that will surround a breach of a community service order, ensure that these people will be delivering themselves back to do some community work on a daily basis. So, there is going to be a saving all round by adopting the recommendations that have been put in this Bill. We must continue insisting on lowering taxation in this country and if we can be able to calculate and be accountable in arithmetics, we would be certain that if this Bill is going to be introduced, it should reflect on taxation in this country, however minimal. We can be scientific about it and say that somebody, even if it is an individual, who was yesterday being clothed, fed and accommodated by the State, can take charge of that, there should be a certain reflection in terms of taxation. So, when we talk about 38,000 prisoners and maybe, 25 per cent of them could all be on community service orders, it means that maybe we are going to reduce that population to around 20,000 and that will be a saving on taxation.

Mr. Deputy Speaker, Sir, for the taxpayers, I think this Bill also means that they are too overburdened by taxation and it is going to reduce the amount of money that is going to be spent by the State on these offenders. The offender should live on his sweat. There is nothing beautiful or fantastic about this offender being fed by the State. He should continue living on his sweat like many of us do and there is no reason why after offending, that is the time when you become a guest of the State. I mean only those people who have really offended society are the people who should continue living on their sweat; that is, clothe themselves and feed themselves and there is nothing phenomenal about they having committed an offence. They should continue living as they have lived before. I am alluding to this fact that maybe, our prisons should not be hotels. That is very clear. Nobody, I believe, has got any intentions of ensuring that because we are going to reduce numbers, we are going to convert our penal institutions into some hotels. That, I know, is far from it. I know presently that our penal institutions are very overcrowded and myself with my own eyes, have seen people living in prisons naked without any clothing and it is very shameful. Whatever offence has been committed by these individuals, I think they are still entitled to their humanity and there is no reason why just because they cannot be able to go beyond the four prison walls, they should be kept in such conditions.

Mr. Deputy Speaker, Sir, it is important to humanise our prisons as we proceed to get some of the people outside prison but it is important that those people who eventually must be incarcerated, be given minimum conditions that relate to every human being and that goes to clothing and basic foods with all the ingredients. That is very important because when they have offended us or they have offended the community, they should eventually be treated with the minimum humanity that every human being deserves. That is my view about it and I think that should never be taken away. However, as it is now, especially in the Industrial Area Prison, some of the people who have been there have seen some of the prisoners there going almost naked and it is very important that this should be sorted out. Minimum humanity is important.

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

**Mr. Kihoro:** You have not been in prison, Mr. Marrimoi and, therefore, I think you cannot comment on this.

**Mr. Deputy Speaker:** Are you standing on a point of order?

**The Assistant Minister for Home Affairs, National Heritage, Culture and Social Services (Mr. Marrimoi):** Yes, I am on a point of order. Mr. Deputy Speaker, Sir, the hon. Member is misleading this House because the Government is using a lot of money on uniforms. He is cheating this House.

**Mr. Deputy Speaker:** Order! Firstly, members do not cheat and secondly, you are not rising on a point of order. Instead, you are giving him information and he did not ask for it.

**The Assistant Minister for Home Affairs, National Heritage, Culture and Social Services** (Mr. Marrimoi): Thank you, Mr. Deputy Speaker, Sir. He is misleading this House.

**Mr. Deputy Speaker:** But members do not cheat. Remember that!

**Mr. Kihoro:** Thank you for that information, but I can tell you that it is not correct. I have seen with my eyes and I know what I am talking about is true. I have also been to King'ong'o Prison, if you want an additional prison where prisoners are going basically naked; maybe, with shorts but they do not have any vests. Certainly, that is a stranger to prison in this country. You find that a vest which is worn off or an underwear that is worn off is what is worn by these prisoners, without anything on top of them except maybe, for shorts that are in tatters. That I know, is a fact and it is important that basic humanity, that relates to every human being in this country, is going to be respected and I believe this Bill is going to do something about alleviating the conditions of some of the people who have been denied some of the basic necessities of life in prison because of the overcrowding in our prisons.

Mr. Deputy Speaker, Sir, the point was also as admitted by the Attorney-General yesterday in his contribution to this debate, that the physical facilities in our prisons are only there for about 30 per cent of people who are in prison today. Therefore, by reducing the numbers, that is going to improve on the condition that is there in the prisons. I believe our prisons might not become four star hotels, but the basic humanity must always be preserved.

Mr. Deputy Speaker, Sir, one aspect that is going to be an incidental benefit of this approach to people who have offended society serving their terms outside prisons is that, some of them are quite young people and we do not want them getting in prison and being influenced in the wrong direction. There is a lot of bad influence. You might find that some people have actually spent 15 to 20 years in prison and when young people aged between 18 to 20 years are taken into prison, they are subjected to some of the most horrendous experiences that they have known and there is nothing that they can do. They go to serve their sentences and in the process, they get morally corrupted and physically abused and this Bill is going to make sure, and I know that is something that the judges will consider, that young people are better off outside prison because they are not going to be corrupted by some of the bad influences of some of the jailbirds we find in some of our prisons.

Mr. Deputy Speaker, Sir, another incidental benefit is the labour that is going to be derived from those people who are going to be on community service. It is true that the labour of those young people is going to be used in doing community work that is going to benefit this country. In his contribution, the Shadow Attorney-General indicated that Mwea Irrigation Scheme was built using community labour during the emergency period and I know fighting for freedom is no crime but these days, offenders can have their labour employed in advancing the economic and social welfare of a community. In that respect, I am being reminded by hon Ita that, Jomo Kenyatta International Airport was also built using such labour. There was a lot of work that was done during the emergency period, even in the villages through this community effort and even though it was forced then, I know that at this time, it would be

very useful that some of these offenders who have not gone out of their way to offend the community, some of them are only out there to serve maybe two year terms and there has been a recommendation for three years but even if you spend two years, that means another 400 days of labour that is going to be contributed by these people to the welfare of the community--- Therefore, this is an incidental benefit that is going to be very beneficial in terms of building roads, afforesting this country as has been proposed in the Bill.

Mr. Deputy Speaker, Sir, it is also important that some of the young offenders live under the control of the community or the society that they work in. The communities should retain certain control over the prisoners, so that they live under community orders. The communities, I believe, will be better teachers in terms of rehabilitating the offenders, as opposed to what would have come out if the person found his way to prison. So, in that respect, this semi-control, that the society is going to retain of the offenders, is going to be beneficial not only to them, but also in terms of the long-term reshaping of the lives of such persons, so that they do not get out of control. They can be rehabilitated and brought back into the community. One aspect that might come out of the provisions that are contained in this Bill when it is enacted, could be that some people might also find that, they could benefit from the labour and I think there should be a provision in this Bill that the labour must at all times be used for the welfare of the community as opposed to some people feeling that they might be able to exploit some free labour and especially the rich and the powerful. They might find that there is some free labour for them and personal advancement. So, it is very important that, the labour that is going to be available arising from this Bill, is not going to be abused.

So, Mr. Deputy Speaker, Sir, it is very important that the labour that will be available as a result of this Bill is not abused. It should be used for the benefit of the community. There are many homeless young boys and

girls in society today. It might be necessary to subject some of them to community service orders in due course. Their number in Nairobi has been increasing for the last 10 years. The law courts may be handicapped in making community service orders against a person who is homeless. So, this aspect must be considered to see whether it is necessary to make a companion order for homeless persons to stay in remand homes when they are subjected to community service orders. This aspect should be incorporated into this Bill to take care of undesirable elements, especially in Nairobi. Such elements are also found in other municipalities like Nakuru, Mombasa, Nyeri, *et cetera*.

Mr. Deputy Speaker, Sir, to ensure that when the Bill is enacted these provisions are effected, we should have a very good inspectorate system to ensure that those who become subjects of these orders provide service to the community for the full period of time they are supposed to serve. It will be a very bad start if, in due course, there will be laxity in implementing the Bill's provisions. The inspectorate system I am suggesting must be very stringent in performing its duties. Otherwise, the system will fall apart, and those people who are supposed to be imprisoned will find their way back into the civil society and continue offending people. If the inspectorate system will not be upto date, then you can be sure the new approach to crime prevention will not work at all.

Another important suggestion is that those people who will be subjected to service orders should be allowed some time to fend for themselves. As I said earlier, one should feed, cloth and accommodate himself. So, the provision that he does community work should not be effected in such a manner that it eventually becomes impossible for him to feed and cloth himself. In this respect, therefore, I would suggest that there should be provision for one to fulfil the requirement of the order by serving half a day, so that one can use the other half of the day to do personal work. However, once convicted, one should serve the community continuously for the full period of his sentence. Although such a person will be overworked, he will be paying for the offences he will have committed against the community.

Lastly, I would like to point out that some of the people who may be given the service orders may become unwell, and unable to keep up with the requirements of the order. Therefore, there should be provision for such individuals to be exempted from work for the period they may be unwell. However, each case should be supported by a medical certificate from a qualified doctor.

Mr. Deputy Speaker, Sir, some people have died while serving jail terms far away from their home areas. For example, people would be sentenced at Nyeri, and later on the Prisons Department would find it necessary to transfer them to Eldoret or Shimo la Tewa in Mombasa. Some of them have actually died while serving sentences in far away prisons. I have had three such cases from my constituency this year. When this happened, the families of the deceased were left alone to transport the bodies home since they wanted to bury them in their home ground. The costs of doing so were very high.

Mr. Deputy Speaker, Sir, one would not have been contributing anything to the family, but would die, say, 400 kilometres away from home, and then the family is left to transport the body home for burial. I think when one dies away from home while still in prison, his body should remain the property of the Prisons Department until it is returned to its family for burial. I do not think that it would be fair for the Prisons Department to leave the body of a person who has served in prison for, say, seven years to his family to transport it back to its home. Doing so would amount to punishing innocent family members, who will have to meet the expenses of burying the body. I would like to wind up my contribution by saying that this Bill is a wonderful contribution to penal reforms in this country.

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

The Bill will enable us to return the humanity that has been lost in many of our penal institutions.

With those few remarks, I beg to support the Bill.

**Mr. Deputy Speaker:** Order! Hon. Kajwang', you must remain seated until the hon. Member on the Floor resumes his seat. Proceed!

**Mr. Kajwang:** I apologise, Mr. Deputy Speaker, Sir. Thank you very much.

Mr. Deputy Speaker, this Bill is good in many respects. Firstly, it seeks to introduce non-custodial sentence. It says: "As a serious alternative to imprisonment---" Why have the words "serious alternative" been introduced in this Bill? It is because, although there have been provisions for non-custodial sentences, magistrates have never taken them seriously. Magistrates believe that an offender must go to jail. That is the bottom line and the tragedy. If one commits an offence like non-possession of a national identification card, being drunk and disorderly, or malingering, the magistrates at the law courts ensure that the offender is given a custodial sentence ranging between five and 14 days. Custodial sentence is what is in the minds of our magistrates. I do not know how much they are trained, if they are trained at all. I wonder whether they attend seminars, or whether they go

visit prisons themselves. I would like to suggest that before one is given the job of a magistrate, he should go to jail for two weeks to experience the prevailing conditions there.

*(Laughter)*

But if there is another alternative, you will say, "I saw it with my own eyes; I ate the same food, I stood at a corner and relieved myself in the same room". The Attorney-General should be imprisoned for two weeks so that when he comes here--- I was suggesting before the Attorney-General arrived---

*(Applause)*

**The Attorney-General** (Mr. Wako): On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member in order to say that when he knows that the Attorney-General of the Republic of Kenya has, maybe, more than other person in Kenya visited prisons all over the world; Latin America, the Middle East, Africa, including Kenya, Uganda and so on?

**Mr. Deputy Speaker:** Order! I think the Attorney-General is quite right. He has visited them, but he has not stayed in them!

*(Laughter)*

**Mr. Kajwang:** Thank you for protecting me, Mr. Deputy Speaker, Sir. The Attorney-General is theoretical, he sees the prisons through the window. He has not gone into the prisons to see the conditions in there. But I am suggesting that the Attorney-General and the magistrates should be imprisoned without even them knowing why they have been arrested; just arrest them and take them to prison for two weeks---

**Mr. Raila:** On a point of information, Mr. Deputy Speaker, Sir. The Attorney-General has told his learned friend that he has been to very many prisons. Probably, he is also aware that one of the magistrates recently released a very famous Kenyan on the basis that the courts were not holding grounds and that the Kenya prisons were overcrowded; but two days later, he sent five other Kenyans to those very same prisons which are overcrowded. Thank you.

**Mr. Kajwang:** Thank you for that information. There is a lot of bias in this respect. But our magistrates inside their brains, I do not know whether it is out of their training, but I think it is some assumption that when you come out of the Kenya School of Law and you become a magistrate; you think your job is to show the people how big you are and that you must go in. Most of them now are women and they want to deal with men, so they ruthlessly send them to prison. I want to urge the Attorney-General to inform our lady magistrates not to deal with men ruthlessly.

**Mrs. Seii:** On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member in order to discriminate against women whereas women are the most merciful and the men are the ones who send others to jail? Is he in order to discriminate against women?

**Mr. Deputy Speaker:** Order! The Member is not in order because to the best of my knowledge, the court system only has magistrates, they do not call them women or men or whatever. So, Mr. Kajwang, you should refer to them as magistrates not women. You should not distinguish between men and women.

**Mr. Kajwang:** Thank you, Mr. Deputy Speaker, Sir. I will accommodate my learned friends. What I was trying to say is that, whether they are magistrates, their gender is there; they are still women and men. They sometimes use courts to deal with us ruthlessly. That is with a light touch.

Prison conditions in Kenya are appalling and I think this is why the Attorney-General has brought this Bill. They are appalling terms of health care because, if your relative is jailed today and you do not provide him with medicine, he will die of a simple disease like malaria because health care is not provided. On food, I have just been advised that these days *uji* is served in the morning at 6.00 a.m. At about 9.00 a.m. they are given lunch which is made of *sukumawiki* and *ugali* and most of the times, there is not much *sukumawiki*; it is just a few leaves and some water in it, which is called soup. Between 1.00 to 2.00 o'clock, a prisoner is given super which consists of *ugali* and beans. I am addressing the Attorney-General very seriously because these are serious matters. Then, they are locked upto the next morning. A prisoner is not even entitled to sunshine, that is how serious the prison conditions are. I think that is why the Attorney-General brought this Bill here.

Mr. Deputy Speaker, Sir, our prison conditions are so cruel that you can be deprived, first of all, your liberty and you are isolated. Of course, you do some little work without pay and then, you do not eat properly. You are locked up for many hours in one day. These are the real conditions in our prisons. With regard to congestion,

as my learned friend, hon. Murungi, had already said, nobody seems to know the data. The magistrates do not know how many people are in remand homes here. So, every day they send people to the remand homes as if they are conveyor belts. They do not care what happens at the end so that the remand homes cannot budget for the number of people they will have. They do not budget for the stores, food and the other facilities. In one day, you might find you have 100 people, take them to court and hope that today you are lucky because 100 people have gone away, but in the evening you receive 300 people. You did not plan for their food and stay. That is the kind of tragedy we have. This happens because this country does not have a Minister for Justice. There was one famous Attorney-General who was in this country immediately after Independence who demolished the Ministry of Justice. Why? I suppose because he did not want to share his powers with anybody else who also knows something about law. But it is a tragedy. For example, the Ministry which is in charge of the prisoners and probation is under the Ministry of Home Affairs, National Heritage, Culture and Social Services. Then, the Ministry which is in charge of the Police Force is the Office of the President. We are not sure which Ministry is in charge of the courts because the Attorney-General is a prosecutor. He is not the head of the court. The head of the court is the Chief Justice. But there is no Ministry which deals with matters of judges and other matters which arise from the courts so that when we want to ask a question pertaining to the administration of justice in the courts, we do not know whom to address. Who has brought this Bill to this House? If you look at it, it seems like it has originated from the Ministry of Home Affairs, National Heritage, Culture and Social Services under the Probation Department because they are the people who seem to see the problems of the prisons.

If a probation officer invites a police officer and a magistrate to a seminar to discuss about these problems, the magistrate may say that he is busy and the police officer says, "My boss does not think it is important." We need a Ministry which will deal with the Police Force because they are the originators of these problems. They are the ones who arrest the people and deal with the courts. All our problems, which relate to the administration of criminal justice in this country, are under one umbrella. The Attorney-General now seems to help, but he does not seem to have authority over anybody. He does not have authority over the courts, although he tries; he does not have some authority over the police except for investigation. He does not have authority over the prisons so that in those movements from the police cells to the prisons, there are so many conflicts of interest, but the person who suffers ultimately is the prisoner. So, we are suggesting that the Office of the President today relinquishes its authority over the Police Force so that the police can come under the Ministry of Justice. In fact, the Office of the President is overburdened with work. I said just the other day, that it has 43 departments and I suggest that the Office of the President must now relinquish its authority over the Department of Police so that it can be handled by the Ministry of Justice; so that the Chief Justice can find a Minister of Justice to handle the Probation and Prison Departments. Then, we shall have co-ordination in this country, so that when there is a problem with prisoners, then they can sit together as a Ministry and deal with it. Right now, nobody seems to know how to deal with the problems of prisoners.

Mr. Deputy Speaker, Sir, I know that during the colonial days, we had categorization of prisoners. There were the natives, who were categorised as group A, then we had the Arabs and Somalis, who were categorised as group B, we had the Asians categorised in group C, and the Whites under group "D". The purpose for this categorisation was to create different scales for meals for each category so that the African would have the lowest quality of meals, followed by Arabs, Asians and Europeans in that order. When it came to accommodation, it was the same thing. The natives were given a pair of blankets, but the Whites, of course, had beds, mattresses, and sheets. This was discriminatory and it was because we were in the colonial days.

Mr. Deputy Speaker, Sir, now, that we are independent, 35 years later, why should this discrimination continue? If you go to the prison where Mr. Pattni was the last time, he was sleeping on a bed with a mattress, blankets and sheets. Some of our boys who were in jail with him had to sneak into his room and beg him some of his food because he was not eating beans; his food was coming from outside. There is discrimination in prisons!

Mr. Deputy Speaker, Sir, the problem is that when the prisons conditions were rationalised, they were only rationalised at the bottom. If you look at the prisoners, with the cold weather conditions in Naivasha, Kamiti and Nyeri prisons, you will find that they cannot survive in that uniform. The prison authorities should ask them to come with their jackets if they can find some from their homes, instead of subjecting them to that kind of cold, and consequently sickness, and most probably death.

Mr. Deputy Speaker, Sir, this Act is good, but I would like to tell the AG that he has omitted three most important issues from this Bill. First, in clause 3--- Mr. Wako, if you could just look at the Bill, in clause 3 Subsection three, part 2, on page 5---

**Mr. Mwakiringo:** On a point of order, Mr. Deputy Speaker, Sir. Since we have deliberated on this Bill for a very long time, and since we have more important Bills to deliberate on, could be called upon to reply?

**Hon. Members:** No, Mr. Deputy Speaker, Sir!

**Mr. Kajwang:** Mr. Deputy Speaker, Sir, we have not even debated this Bill!

**An hon. Member:** This is the third speaker, so far!

**Mr. Deputy Speaker:** Order! Order, hon. Members! Hon. Mwakiringo, I do not think you have correctly gauged the mood of the House. Hon. Members still want to debate this Bill. So, Mr. Kajwang, proceed.

**Mr. Kajwang:** Mr. Deputy Speaker, Sir, in fact, I am the third speaker contributing to this Bill; after the Mover and the Seconder. So, we have not even started debating this Bill.

Mr. Deputy Speaker, Sir, I was suggesting to the Attorney-General to look at the provisions in clause 3 subclause 3 which provides thus:

Where a court determines that a Community Service Order should be made, it shall, before making the Order, direct a community service officer to conduct an inquiry."

The key word is "shall", which means that if the magistrate was to make his or her mind that; "I am going to jail you for two or even seven days", then he or she must first of all, ask a probation officer to go and look at your records, and bring back the report which might take a month or two. When the report comes, he or she will then jail you for two or three days.

Mr. Deputy Speaker, Sir, I think the Attorney-General has already noted it, and maybe he will change from "shall" to "may" so that he or she has a discretion of whom to send the probation officer to investigate and whom they can release.

The Attorney-General should have brought this Bill together with an amendment to the Criminal Procedure Code, especially Section 123. Section 123 provides for bail, but when you go to ask for bail, you are refused because investigations are not complete, as they usually say. I do not know why this is given as a reason, because if investigations are not complete, they should not arrest anybody. You should only arrest somebody when you are satisfied that he has committed the offence and you take him straight to court and you can either give him bail or not. But in certain cases somebody stays in remand because he could not raise a surety of Kshs100,000 and his parents do not have title deeds or a logbook worth that amount. So, the amendment should be that anybody who is likely to be jailed for three years should be granted bail automatically. You enter a court, look at your offence and you realise that it will either be two or three years or less, then you should be given bail automatically without the need for a surety. If you asked me today to provide a surety for Kshs2 million, I will just stay in remand until my case is heard after five years because I do not have a relative who can raise a property worth Kshs5 million or a relative who can have a logbook worth Kshs5 million. When my case is heard eventually, I may even be acquitted or sent back to my community to work. More people today die in remand than in real prisons. The remand conditions in this country are worse than in real prisons. So, Mr. Attorney-General, make bail automatic and tell your magistrates to make bail automatic for anybody who is likely to be jailed for less than three years unless there is a real reason for refusal.

**The Attorney-General (Mr. Wako):** On a point of information, Mr. Deputy Speaker, Sir. Of course, this Bill deals only with the Community Service Orders. It could not deal with bail. But I can assure the hon. Member that a Bail Bill has already been drafted and it is touching on those very points that you are mentioning and I hope that this House will debate it.

**Mr. Kajwang:** Thank you very much, Mr. Attorney-General for that information. I wish we could look at them together so as to compare and pass them together. We do not know whether you will ever bring that Bill here, otherwise, I would just want to say once again that I do not know whom to address because the Chief Justice who gives orders to his magistrates does not have a Minister who represents him here. The Attorney-General, of course, appears before the same Chief Justice to prosecute. So, sometimes it is difficult to address these matters to the Attorney-General. But please, talk to him because you are in the Department of Justice to tell the Magistrates via a circular not to think of custody every time. They are wasting our resources, there is no food and there is no money to keep those people there. They are killing too many people there and we do not have money for medicine and all these facilities. I hope our prisons will be decongested, cleaner and there will be enough food for those who will remain there. Prisons should remain open for those people who must really go to prison.

With those few remarks, I beg to support.

**Prof. Anyang'-Nyong'o:** Mr. Deputy Speaker, Sir, I beg to support this Bill, but I also beg to draw the attention of the Attorney-General to some issues related to our prison conditions, and some issues relating to community service as envisaged by the Bill. We all know that up to this day, community service has been abused by the Government. Most of us are aware of the fact that many people in political power have quite often used prisoners to work in their farms. Those prisoners have been working in those farms performing free labour without necessarily, being given the freedom, privileges or the advantage that comes with the community service.

In this Bill, I would like the Attorney-General to ensure that as stated in the Bill, that once this Bill becomes law, the normal prisoner who is imprisoned under custodial terms, should not be used as a community



server in those properties, and for those works that benefit people, either in the Judicial system, private sector or in the Government itself.

That, notwithstanding, should any member want to hire prisoners for labour, there should, indeed, be some laws and regulations in the Prisons Department stating how much a prisoner is worth, when they perform labour. We are aware that when you go to the Prisons Department, you buy furniture and works of art that are made by the prisoners. They are very good works of art. The quality of the prison's furniture and handcraft is very good. We do hope that when we buy these works of art, furniture and so on, the money so raised goes into improving prison conditions or improving the lives of the prisoners in the prison. It is not appropriated by the Government as a source of revenue that goes into the common kitty to serve other areas. That is why I think it is important that there should be a policy clearly stating that when prisoners are used to perform labour in people's farms, it should be known how much this labour is worth. Secondly, there should be very clear records that when people go to prison, like those who make handcrafts and so on - there are different skills and their values are different, and as prisoners go to perform labour in people's farms, the value of that labour is not the same. So, I think that apart from accepting the fact that we are passing this Bill for reasons that hon. Kajwang' has very clearly stated, again, we should not abuse our prisoners that way.

The second point that I would like to raise is that community work should also be used, not as a aperitive, but as a way by which those people performing community work should improve themselves. In the United States of America (USA), if you are imprisoned, you are allowed opportunities to read. There are people who have got degrees in prison. We do not even need to go to the USA. We know that here in Africa, Robert Gabriel Mugabe received about three or four degrees when he was in prison. This is because in the old Rhodesia, it was possible that when you are in prison, you could read and improve yourself. You are being punished enough by being kept away from the society. That is punishment enough. But your mind should not be imprisoned so that when you are there, you become a vegetable. I think our prison system in this country, if we leave alone this community service business, is very terrible, in that the Government does not realise that the reason why people go to prison is that they should get an opportunity to improve themselves. We want the person to come out a better person. But if you make prison life to be so miserable, people come out more hardened criminals. It is like the old detention days before multi-party came in. You were sent to those Nyayo dungeons, kept there for six weeks, visited by all kinds of inhuman treatment, intimidated and told how terrible you are, and how terrible the Government is and that it can finish you in one day and so on. They thought that, that was frightening you. But you came out a more determine person. I remember in one of those experiences, I came out and walked about six miles to my home, determined to show that I still have the soul to keep on going on. The same is true with thieves. You should take them to prison and you do not use the time when they are in prison to teach them to be good citizens, they come out more hardened criminals. You have seen that in this town. For example, a man like Wakinyonga. He came out and went and dug his own grave and said: "Now, I am going to steal even more and the day you will kill me, it will not be a big deal because I have accepted I am going to die. My grave is right here. So, I have done half the job for you."

Now, I think it is important to use prison as a way of improving prisoners. I remember, for example, when I was a student in the University of Chicago, one day I was caught for a traffic offence and I was taken to court. When we were in court the judge told us that all offenders caught with traffic offences to move on one side. Then we were ushered into a room. The room we were ushered into, they were showing us a movie on how to be good drivers in Chicago. And then somebody came and gave us his own story, how he was a bad driver and he was showed the movie and improved himself. Later the magistrate gave us tea and coffee. He told us to go back to Chicago and be good drivers. I have never committed any traffic offence after that. That is the kind of improvement we are talking about. This is not luxury. There is what is called achievement psychology. If you really show the prisoners the good side of life, they begin appreciating that breaking the laws is something that they should depart from. But if you make prisons to be so miserable, torturous and so on, they become counter-productive.

Mr. Deputy Speaker, Sir, it is in that spirit that I think this Community Service Orders Bill should be introduced. Once offenders are doing community service, do not make that community service painful. Let them do it, but also use that community service as a way of improving them. I was saying that other services should be added to community service. For example, somebody should be told: "Fine, you will not be imprisoned, but you maintain your home and every Monday from 8.00 a.m. to 4.00 p.m. you will go to Kabete University farm and record yourself. You will milk cows and do other activities relating to agriculture."

Mr. Deputy Speaker, Sir, then also there should be a way by which somebody from the Prisons department who is qualified goes and talks to these people and explains to them why they have been subjected to community service and not prison. Let them be subjected to some kind of education. That kind of education will

help to improve the mentality of offenders in becoming better citizens after serving in community work as a way of punishing them.

Fourthly, Mr. Deputy Speaker, Sir, I think it is important that the Attorney-General, the Prisons Department should consider introducing some literature about prisons, crime and punishment. The Government is acting as if it is still operating in Stone Age or colonial times, where a Government is so divorced from its people and that it treats its citizens with trials and tribulations. The Government is not part of the people, trying to make sure that even prisons are abolished.

There are sections of the society which say that as you progress, all these things like prisons become irrelevant because people are progressing to be better citizens. In fact, in the final analysis, socialism says that, finally, the Government itself becomes irrelevant because everybody will have known that they can safely regulate themselves. The Attorney-General is the person who, in my school, gave me the first lecture on communism. I remember he gave me the first literature on communism, saying that as people progress, finally Government itself becomes irrelevant. But by their very laws, they do not seem to be conscious of the fact that they should become irrelevant one of these days.

**The Attorney-General** (Mr. Wako): On a point of order, Mr. Speaker, Sir. While it is true that I gave the hon. Prof. Anyang'-Nyong'o lectures on marxism, communism and so on, and while it is true that we did say that according to that theory, the State withers away; is he in order to say that this Government should begin behaving that way when he knows very well that the theories of Marxism and Communism are now out of date and have collapsed?

**Prof. Anyang'-Nyong'o**: Mr. Deputy Speaker, Sir, I do not know very well whether these theories have collapsed, but I know very well that I want this Government will withers and disappear from the face of the earth because Kenya will be a better place if they do so. A lot of prisoners who are dying like flies today would also like this Government to withers because, if it withers, I am sure that we will have not only no prisons, but perhaps, a better life in this country.

Mr. Deputy Speaker, Sir, that notwithstanding, what I am trying to say is that the importance of this Bill should be that the community service should be accompanied by some forms of other remedial services to make people better citizens. I strongly believe that crime followed by punishment is based on the theory that punishment should remove you away from crime. If punishment does not remove you away from crime, it does not meet its logic or goals. That is why it is very important--- I do not know how the Attorney-General is going to do it, but I went through the Bill and found those elements missing. I think they are extremely important to make the Bill meet its noble goal.

#### ADJOURNMENT

**Mr. Deputy Speaker**: Hon. Members, it is now time for the interruption of business. The House is, therefore, adjourned until tomorrow Thursday, 19th November, 1998, at 2.30 p.m.

The House rose at 6.30