

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 3rd December, 1998

The House met at 2.30 a.m.

[Mr. Speaker in the Chair]

PRAYERS

ORAL ANSWERS TO QUESTIONS

Question No.742

INCREASE OF RAPE CASES IN NAIROBI

Mr. Speaker: Mrs. Mugo is not in? We will come back to that Question later. Next Question, Mr. Shidie.

Question No.437

PAYMENT OF GRATUITY TO MR. HASSAN'S FAMILY

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

(a) if he is aware that the family of the late Administration Police Constable, Dalal Hassan, P/No.211120, have not been paid his gratuity and other benefits; and,

(b) if the answer to "a" above is in the affirmative, whether he could urgently pay the above family.

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

(a) Yes, I am aware.

(b) The gratuity and benefits will be processed as soon as the family of the late Hassan furnishes the Director of Pensions with declaration and pay points forms which were sent to the widow on the 14th of March, 1998.

Mr. Shidie: Mr. Speaker, Sir, while appreciating the Assistant Minister's response, could he expedite this matter because the family used to depend on the deceased for their livelihood? I will furnish him with all the documents necessary. Therefore, could he assure this House that once I bring the documents, he will undertake to expedite this payment?

Mr. Sunkuli: Yes, Mr. Speaker, Sir. I will comply and do so. We do not have the address of the lady and even where she has been staying. The forms were sent to her some time ago, and so if the hon. Member can help up us trace this lady, then she will have the gratuity paid to her.

Question No.254

HIPPOTAMI MENACE IN SIRONGO BEACH

Mr. Speaker: Very well. Dr. Oburu, I have just got information that the Minister for Natural Resources is out of town, and also that the Assistant Ministers are not here. So, could I defer your Question to next Tuesday?

Dr. Oburu: Mr. Speaker, Sir, that is all right. Nevertheless, that question was deferred last week with the promise that it would be answered before the end of the week. Again, right now, it has not been answered and it has been postponed to next Tuesday.

Mr. Speaker: I am actually very sorry. Honestly, I am sorry, but I am directing that it be put on the Order Paper on Tuesday. Hopefully, they will be able to answer then.

(Question deferred)

Next Question, Mr. Kiminza.

Question No.738

INTRODUCTION OF ELECTRIFICATION
PROGRAMME IN KITUI SOUTH

Mr. Speaker: Mr. Kiminza is not here. Next Question, Mr. Ayoki.

Question No.633

RESIDENT DOCTOR FOR CHULAIMBO HOSPITAL

Mr. Speaker: Mr. Ayoki is not here? Next Question, Mr. Anyona.

Question No.570

FOREIGN CURRENCY EARNINGS FROM MILLED COFFEE

Mr. Anyona: Mr. Speaker, Sir, this question was deferred last week and the Minister requested to be allowed to answer it this week. But, unfortunately, it was not placed on the Order Paper early enough. So, the Ministry officials say that when they were informed later in the evening, the Minister was already out of town and the Assistant Minister is in a meeting this afternoon. So, they have requested me to request you to defer the Question again.

Mr. Speaker: Well, I accede to your request.

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

(Question deferred)

Mr. Speaker: Next Question, Dr. Awiti.

Question No.744

REHABILITATION OF ROAD D219

Mr. Speaker: Dr. Awiti is not here? Next Question, Mr. Munyao.

Question No.732

REPAIR OF KALINGALE BRIDGE

Mr. Speaker: He is not here? For the second time, Mr. Munyao!

Question No.732

REPAIR OF KALINGILE BRIDGE

(Question dropped)

Mr. Speaker: For the second time, Dr. Awiti!

Question No.744

REHABILITATION OF ROAD D219

(Question dropped)

Mr. Speaker: For the second time, Mr. Ayaki!

Question No.633

RESIDENT DOCTOR FOR CHULAIMBO HOSPITAL

(Question dropped)

Mr. Speaker: For the second time, Mr. Kiminza!

Question No.738

INTRODUCTION OF ELECTRIFICATION
PROGRAMME IN KITUI SOUTH

(Question dropped)

Mr. Speaker: For the second time, Mrs. Mugo!

(Mrs. Mugo hurriedly entered the Chamber)

(Laughter)

Mrs. Mugo: Mr. Speaker, Sir, I wish to apologise. I was unable to be punctual because my vehicle broke down and I had to look for a taxi, and I also could not find a driver. So, I am very sorry.

Question No.742

INCREASE OF RAPE CASES IN NAIROBI

Mrs. Mugo asked the Minister of State, Office of the President:-

- (a) if he was aware of the increasing rape cases in Nairobi especially in Dagoretti and in the Eastlands Estates of Majengo, Shauri Moyo, Kaloleni, Jericho, Makadara and Maringo;
- (b) if he was further aware that the Police Force has been compromised to facilitate the freedom of rapists; and,
- (c) if the answers to "a" and "b" are in the affirmative, what action he has taken to protect women from this agonizing crime and to ensure that the culprits are brought to book.

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

- (a) I am aware.
- (b) I am not aware.
- (c) Rape cases which are reported to the police are investigated. For those cases where the culprits are known and there is sufficient evidence, they are arrested and charged accordingly before courts.

Mr. N. Nyagah: Mr. Speaker, Sir, one of the problems which we notice from these rape cases is that the relatives of the suspected rapists tend to corrupt the officers. Could the Assistant Minister consider meting out stiff penalties to those who bribe the police in such matters? Could he also get rid of the 200 prostitutes currently based in Majengo and deport them back to Zanzibar and Tanzania?

Mr. Sunkuli: Mr. Speaker, Sir, whenever cases of corruption are reported, that matter is taken seriously. It is important that the police do consider taking that issue seriously. The second aspect of hon. Nyagah's question is interesting. Indeed, that has become the case. There is an increase of women in parts of the city and some of them do come from outside Kenya. The hon. Member should be aware that the Government has, in fact, taken this case seriously. Just very recently, the Provincial Commissioner of Nairobi had occasion to address that issue.

Mrs. Mugo: This is why we are appealing to the Chair to allow us to bring our handbags in here so that we do not miss our glasses.

Mr. Speaker, Sir, I am not at all satisfied with that answer. We all know how prevalent rape cases are in Nairobi and, indeed, in the country, and they are on the rise. I am in particular worried about a rape case that took place last year, where a lady was raped in the presence of her husband. Later on, the woman and her husband were able to identify the rapists at Jogoo Road Police Station. This culprit was let loose somehow, and the case thrown out by the court for lack of evidence, even though the complainant and her husband were able to identify the rapist.

Could I request the Assistant Minister to, at least, tell this House what the Office of the President is doing to protect women from this very inhuman act, which continuously happens and the police throw away the cases? We know that most of the time, they are the culprits. The case number for this particular one is 5357/97 and I have documents here, which I would like to table. These documents contain a lot of correspondence between the police, the CID and the husband.

(Mrs. Mugo laid the document on the Table)

Mr. Sunkuli: Mr. Speaker, Sir, I have not had occasion to read what the hon. Member has just tabled, but it would appear that in this particular matter, the case arrived in court and the matter thrown out at Makadara Law Courts. A trial was held and the magistrate found that there was insufficient evidence. The hon. Member must appreciate that once the police have arrested a person and taken him to court, the duty of the police ends there, after they have adduced evidence. There is absolutely nothing else the police can do. It is now up to the court to judge the person and find him guilty or not guilty. As to what the Government can do, it is trying as much as possible to ensure that there is security, but I would like to urge the hon. Member to encourage ladies not to walk along dark alleys at night so that they do not contribute to this problem.

Mr. Shill: Mr. Speaker, Sir, many women who are raped find it hard to report to the police because the police mistreat them. Could the Assistant Minister, through the Commissioner of Police, issue stern warnings or circulars that complaints from women who have been raped should be treated with the highest confidentiality, so that women can be encouraged to report these cases to police stations?

Mr. Sunkuli: Mr. Speaker, Sir, that should be the case. I will remind the Commissioner of Police.

Mrs. Mugo: Mr. Speaker, Sir, the woman raped, together with her husband, identified the rapist. What other evidence is beyond identification by the person raped and her husband? She was not walking alone in the night, her husband was escorting her.

Mr. Speaker: Just a moment, Mrs. Mugo. Are you asking the Assistant Minister to overturn the judgement of the court?

Mrs. Mugo: I am informing the Minister that the police were compromised and the person tried to give the husband Kshs10,000 in order to withdraw the case. I would not be surprised if this money ended up with the police. That is why the police were not in court to give evidence. When the case came up, the police were not there to give evidence. It is a very serious complaint, and the Assistant Minister should not treat it casually.

Mr. Sunkuli: Mr. Speaker, Sir, unfortunately, the Question which appears on the Order Paper does not indicate that this was a specific case. So, I was not aware of those facts. Unless I peruse the proceedings, I do not know why the case was thrown out.

Mr. Speaker: So, would you like to look at the proceedings and then come back to the House with a proper answer?

Mr. Sunkuli: I would really appreciate that.

Mr. Speaker: Then I will defer it to Thursday.

(Question deferred)

QUESTIONS BY PRIVATE NOTICE

DEATHS OF PRISONERS AT BUNGOMA PRISON

(Mr. Wafula) to ask the Minister for Home Affairs, National Heritage, Culture and Social Services:-

(a) Is the Minister aware that some eight prisoners died mysteriously at Bungoma GK Prison during the month of October, 1998?

(b) If the answer to "a" above is in the affirmative, what caused these deaths and what action is the Minister taking to have the cause of the deaths investigated?

Mr. Speaker: Question by Mr. Wafula will be deferred to Tuesday, next week.

ALLOCATION OF SCHOOL LAND TO HOMA GROUP

Mr. Sungu: Mr. Speaker, Sir, I beg to ask the Minister for Lands and Settlement the following Question by Private Notice.

(a) Is the Minister aware that land belonging to Kibos Primary School has been allocated to a private developer known as Homa Group?

(b) If the answer to "a" above is in the affirmative, under what circumstances was this land allocated to Homa Group in 1998, when it was donated to the school by the local community in 1963?

(c) Is the Minister aware that the land is now about to be auctioned by Delphis Bank who are holding the title deed as security for a loan given to Homa Group?

(c) What urgent steps will the Minister take to return the land to the school?

Mr. Speaker: Anybody from the Ministry of Lands and Settlement? They are not here---

Mr. Sungu: Mr. Speaker, Sir, I may just say that---

Mr. Speaker: Order, Mr. Sungu! I do not expect Members to stand up like that. There are rules in this House on how you will intervene. Can we have that strengthened up? Members are warned not to take liberties. Very well, what was your problem?

Mr. Sungu: Mr. Speaker, Sir, I have asked this Question twice since it is a very serious matter where school land is going to be auctioned because some private developer went and grabbed the land. The Minister for Lands and Settlement and his two Assistant Ministers have consistently been away. Today, I was supposed to be travelling to Kisumu to prepare for a Presidential visit to my constituency. Given the circumstances, what are we going to do?

Mr. Speaker: I have heard your sentiments and I will inform the Minister accordingly. He must be here on Tuesday to reply to your Question.

Mr. Sungu: Mr. Speaker, Sir, on Tuesday, the President is coming to my constituency.

Mr. Speaker: So, he should answer it when?

Mr. Sungu: On Thursday.

Mr. Speaker: Very well.

Mr. Anyona: On a point of order, Mr. Speaker, Sir. As you can see, the Front Bench on the other side is empty and even if you call out these Questions, we are not going to get answers. Is the Government taking this Parliament seriously? Where are the Ministers? They are supposed to be here to answer Questions! What can we do? The Front Benches are empty!

An hon. Member: Move a vote of no confidence!

Mr. Anyona: Yes, we may have to move a vote of no confidence!

Mr. Speaker: Let us try again.

POSTING OF DOCTORS TO MBEERE

DISTRICT HOSPITAL

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

(a) Is the Minister aware that doctors have been posted to work at Mbeere District Hospital (Siakago) and hardly any one of them has stayed at Siakago which is the district headquarters?

(b) Could the Minister confirm or deny that the doctors posted at the above mentioned hospital do not stay and work there due to frustration by the Medical Officer of Health who is stationed at Ishiara District Hospital, 35 miles away from the district headquarters?

(c) In view of the above and the fact that Mbeere District Hospital (Siakago) has been without a doctor for quite sometime, could the Minister order the posting of a qualified doctor to stay and work at the said hospital and ensure that the doctor posted is not frustrated by the Medical Officer of Health, Mbeere District?

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

(a) I am aware that Dr. Gacuki was posted to Siakago Health Centre in August, 1998. I am, however,

not aware that Dr. Gacuki does not stay in the health centre.

(b) I am not aware that the Medical Officer of Health stationed at Ishiara is frustrating Dr. Gacuki stationed at Siakago Health Centre.

(c) Dr. Gacuki is getting full support from the Medical Officer of Health, Mbeere District, and Provincial Medical Hospital in Embu.

Mr. Ita: Mr. Speaker, Sir, I am grateful to hear that the Assistant Minister is aware. In fact, when the Government voted money for this district hospital six months ago, it did it with the intention of sending a doctor to Siakago. But as we stand here today, there is no doctor at Siakago. People are dying of malaria and typhoid. Can the Assistant Minister assure this House that he will check whether the doctor he has named here is at Siakago? I just came from there yesterday and he was not there. Why are you telling us that he is there?

Mr. Criticos: Mr. Speaker, Sir, this came from the Provincial Medical Officer, and this is information that I have received from the ground. Maybe, when the hon. Member went there, the doctor had a day off or something.

Mr. Ita: On a point of order, Mr. Speaker, Sir. The Provincial Medical Officer of Health is on leave; so, I do not know where you got your information from. In any case, I come from there and there has not been a doctor from January. The Government voted money for six months and yet, there is no doctor at Siakago Health Centre.

Mr. Criticos: Mr. Speaker, Sir, I will disagree with the hon. Member on this issue. This is because we know we have a doctor there by the name of Mr. Kasuki. He has reported to the health centre. That is the information which I have from the Deputy Provincial Medical Officer.

Mr. Ita: Mr. Speaker, Sir, I would like your guidance here. Can you allow me and the Assistant Minister to go to Siakago tomorrow? This is because we are adjourning Parliament today. Can we go there with the Minister tomorrow to ascertain whether the said doctor is there?

Mr. Speaker: Mr. Ita, if you are seeking my permission, permission granted!

Mr. Ita: So, Mr. Assistant Minister, you go with me tomorrow to Siakago to check this doctor.

AWARD OF TENDER TO M/S BULK MEDICAL LIMITED

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

(a) Could the Minister state why tender for drugs awarded to M/s Bulk Medical Limited by the Ministerial Departmental Tender Board on 8th and 22nd May, 1998, worth over Kshs95,434,908, and paid for on 30th June, 1998, have not been delivered to date despite the supplier having committed himself in writing that the drugs were ex-stock?

(b) Why was it necessary to raise various payment vouchers on diverse dates to pay different amounts but all on the same day?

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

(a) It is not true that M/s Bulk Medical Limited was awarded the supply of drug items by the Departmental Tender Board in its meeting held on the 18th May, 1998, and 22nd May, 1998, worth of Kshs95,434,908. It is also not true that the supply was paid for on the 30th of June, 1998. On the contrary, M/s Bulk Medical Limited, in a Departmental Tender Board held on 18th and 22nd of May, consecutively, was awarded a tender worth Kshs47 million, and no payment has been passed to the firm to date, as alleged by the hon. Member. With regard to the tendering of the drugs in question, the supplier has only made part deliveries, and has been given up to 4th of December, 1998, which is tomorrow, to fulfil his obligation.

(b) With regard to the various payments vouchers raised on the diverse dates, I would like to state that the vouchers are normally prepared according to the LPO numbers, and in this case, each LPO was for a particular drug item, hence, the need for the various payment vouchers to supply.

Mr. Ojode: Mr. Speaker, Sir, it is, indeed, quite often that we get such an answer. This is a scandal and Kshs95 million has been pocketed by three people only from the Ministry of Health.

Mr. Speaker: Stop the long story! Ask your question!

Mr. Ojode: Mr. Speaker, Sir, I have the details here. Bulk was given an order and he said that he had got the drugs in stock on 22nd, when the tender was finalised. They paid Bulk Kshs95 million on 30th of June.

Mr. Speaker: Order, hon. Ojode! Read Standing Order No.37. A Question shall not be made a pretence for a debate. It is Question Time. Put all those things to the Assistant Minister, and he will reply 'yes' or 'no'.

Mr. Ojode: Thank you, Mr. Speaker, Sir. Why did the Ministry of Health pay Bulk Kshs96 million before the delivery of drugs? That is question number one!

Mr. Criticos: Mr. Speaker, Sir, I am not aware.

Mr. N. Nyagah: Mr. Speaker, Sir, I would like to give the cheque numbers to the Assistant Minister before I ask him a question. On the 30th of June, 1998, Cheque No.003731 for Kshs9,994,100 was paid to Bulk through Paramount Bank. Again, on the same date, just before the end of the financial year, Cheque No.040491, amounting to Kshs37,723,354, was paid to the same company. Again, on the same date, Cheque No.149401, amounting to Kshs47,717,454, was paid to the company. Therefore, the total amount paid to Bulk through Paramount Bank amounted to Kshs95,435,908. The Paramount Bank gave the guarantee that once the deliveries had been done, this could be done.

My question is: Only after I went public on Sunday, with the current headline in *Business Africa*, did Bulk try to give the drugs to the Central Coordinating Unit. Can the Assistant Minister explain why this amount was paid from Recurrent and Development Expenditure, without using the normal trend of using the Central Tender Board?

Also, there were no drugs because the samples that were given were subsequently rejected because they were sub-standard. I would like the Minister himself, who has not answered any Question this year, to come and answer this question.

Mr. Criticos: Mr. Speaker, Sir, I am very well of what is happening in the Ministry. However, could the hon. Member tell me why he found this information? This is because according to us, there is no such thing in the Ministry. The reply that I gave reflects the situation on the ground.

Mr. Ojode: Mr. Speaker, Sir, the Assistant Minister should come out and tell the truth. The vouchers are here. We have voucher number 3518 for Cheque No.149567, amounting to Kshs37,723,000. Voucher number 8494 against Cheque No.149401, amounting to Kshs47,717,000. Voucher No.0909 against Cheque No.149566, amounting to Kshs9,994,100. Why should the Assistant Minister continue telling untruths in this House and, yet, Kshs95 million was paid? We know that the Minister is involved. The Permanent Secretary, Mr. Mbova, is involved. Mr. Wachira, the Chief Supplies Officer, is involved. I would like to officially lay the documents on the Table for the Assistant Minister to peruse.

I wish to table the vouchers and cheques paid, plus a letter which authorised the payment in advance, written by Mr. N.N. Wachira, Chief Supplies Officer. The letter reads in part:

"ADVANCE PAYMENTS FOR M/S BULK MEDICAL

We have examined the attached payment voucher to M/s Bulk Medical and has found it to be in order in all ways. Please, authorise the voucher."

That is Kshs9,994,100. Let me lay the other one on the Table. That is why they are driving big cars. There is another one here for Kshs37,723,354, and another one of Kshs47,717,454. It is also authorised by the same fellow. I hereby lay them on the Table.

(Mr. Ojode laid the documents on the Table)

However, it is against Government procedure for tendering to pay for any services or equipment in advance. I will also---

Mr. Speaker: Will you, please, put your question?

Mr. Ojode: Mr. Speaker, Sir, before I ask the question, let me just prove to him that the payments were received by the three fellows in the Ministry of Health. This is a letter which was written from the Office of the President, where I am the Shadow Minister. It says:

"All Provincial Commissioners
All Heads of Departments

MISMANAGEMENT OF PUBLIC RESOURCES

It has come to my notice, through audit queries, that the following financial and accounting malpractices, amongst others, are taking place".

I will just go to (ii), which says:

"Payments for goods not received and for services not rendered."
I do lay the same on the Table.

(Mr. Ojode laid the document on the Table)

Could the Assistant Minister come up and tell us why Kshs95 million was paid and not a single drug has been delivered? The people in my constituency are dying!

Mr. Criticos: Mr. Speaker, Sir, I do not deny that the M/s Bulk Medical Limited are to be paid Kshs47 million through Paramount Bank when they deliver the drugs. That is what I am aware of. I would like to look at these documents before I can comment further.

Dr. Kituyi: Mr. Speaker, Sir, can the Assistant Minister now vary his reply? There are two fundamental problems; the evidence availed to him now shows that between 25th June and 30th June, there was a payment of Kshs95 million. The Assistant Minister seems not to have known this. His superiors did and that is, partly, why they shied away from answering the Question themselves. But could it not be in order that we request the Chair to give the hon. "miserable" Assistant Minister an opportunity to go find out why they are giving him misleading answers after they have "eaten"? He seems to be innocent and he does not know that these things are happening. But now that we have given him a chance to see that they are happening, would it be in order that he requests for more time until next week so that he can come with a more competent reply to this Question? This is because all the information here is different from what he came up with from the Ministry.

Mr. Criticos: Mr. Speaker, Sir, first of all, I would like to take issue with the hon. Member. I am not a "miserable" Assistant Minister. We have to mind our parliamentary language because, last week, from that corner, hon. Members used unparliamentary language against me.

Please, Mr. Speaker, Sir, could you protect us from this unparliamentary language?

Mr. Speaker: Order! I expect hon. Members to behave with decorum and to treat each other as hon. Members. May I warn this House that any hon. Member who will use foul or undignified language against another will be dealt with firmly by the House. I will not allow this House to degenerate into a name calling institution.

The Minister for Home Affairs, National Heritage, Culture and Social Services (Mr. Nassir): Tell them!

Mr. Speaker: Order, Mr. Nassir! I would not like to set you as an example, but you had better behave.

Dr. Kituyi, did you call an hon. Member "a miserable" Assistant Minister?

Dr. Kituyi: Mr. Speaker, Sir, from my understanding of the English language, he is an honest and decent hon. Member, and I have called him that. He is an honourable and decent Member of Parliament, but he is deliberately given misleading information. When the House shows that they have misinformed him and we want to give him a chance to acquit himself well, would that not make you miserable if they misled you?

Hon. Members: No! No!

Mr. Speaker: Dr. Kituyi, there is a difference between asking me whether I have been made miserable by your own reply to me and calling me the "miserable" Speaker.

Dr. Kituyi: Mr. Speaker, Sir, the import of what I said is that the persons who are deliberately misinforming the Assistant Minister make him look miserable here. If I made any suggestion that he is a miserable person, I withdraw that. But could the hon. Assistant Minister seek an opportunity to stop those officers from making him look miserable in Parliament?

(Laughter)

Mr. Criticos: Mr. Speaker, Sir, I will attempt to do that.

Mr. Ojode: Mr. Speaker, Sir, I have only one more question to the Assistant Minister. Even though the Assistant Minister is denying that it was Kshs95 million--- Let us agree now that it was Kshs47 million, as he is saying. What guarantee was given to the Kenya Government that if they did not supply those drugs then the payment would be made through which banks? What would be the impossibility in making the supplies, yet M/s Bulk Medical Limited signed an agreement and wrote a letter stating that they had all these drugs in store?

Mr. Criticos: Mr. Speaker, Sir, in the light of the evidence which I have before me, I would like to peruse through these documents. I request the Chair to give me time until Tuesday, next week, so that I can answer this Question satisfactorily.

Mr. Speaker: I do give you more time. The Question is deferred.

(Question deferred)

COMMUNICATION FROM THE CHAIR

INVESTIGATIONS OF PRIVILEGES COMMITTEE

Mr. Speaker: Order! Hon. Members, I have the following communication. On 27th October, 1998, in response to a point of order, I alluded to the fact that the Committee of Privileges will be sitting to delve into the allegations made by some hon. Members and some sections of the Press, that during the debate on the Motion of no Confidence against the Government of Kenya on 15th October, 1998, some hon. Members were bribed and intimidated to vote against the Motion.

I wish to notify the House that the Committee met on 25th November, 1998. The initial discussions by the Committee took into account provisions of Section 10(4) of the National Assembly Powers and Privileges Act which states as follows:-

"The Committee of Privileges shall either of its own motion or as a result of a complaint made by any person, inquire into alleged breach by any Member of the Assembly of the code of conduct issued under section 9 or into any conduct of any Member of the Assembly within the precincts of the Assembly other than the Chamber, which is alleged to have been intended or likely to reflect adversely on the dignity or integrity of the Assembly or the Members thereof or to the contrary to the best interest of the Assembly or the Members thereof."

Given that the issues that the Committee will be investigating touch on the integrity and dignity of this House, the Committee will deliberate on the complaints referred to it expeditiously. The Committee shall, after inquiry, report its findings to the House together with such recommendations as it deems appropriate. In due course, witness summons will be issued by the Committee to all hon. Members and strangers who have in the past made statements that would indicate that they are privy to some information that would assist the Committee in its deliberation.

Hon. Members, may I, therefore, appeal and request all those who will be summoned to co-operate and assist the Committee in its investigations and to volunteer all the necessary information and support in order for it to get to the heart of the matter. This way, we shall uphold and maintain the integrity and honour of this House. Thank you.

(Applause)

Mr. Nyagah: On a point of order, Mr. Speaker, Sir. I would like to request for a Ministerial Statement from the Minister for Health. I hope that the substantive Minister will take this matter seriously. I would like him to explain to this House the circumstances which led to purchase of drugs through a direct quotation that was floated. The purchase was purportedly done on emergency basis and, therefore, it did not go through the normal Ministerial Tender Board, which is the normal practice. The eight companies, namely, Europa Health Care, Carestore Health Care and six other companies, were paid Kshs87 million besides the companies we have just talked about. Could he tell this House how this money was paid out for a quotation accepted on an emergency basis, while, to date, the drugs have not been received by the Ministry? Could he also explain why the Ministry found it prudent, on 3.6.98, to utilise both the recurrent and development accounts in paying the above amount?

Thank you.

POINT OF ORDER

MINISTERIAL STATEMENT: DEREGISTRATION OF MUSLIM NGOS

Mr. Wehliye: On a point of order, Mr. Speaker, Sir. I rise to seek a Ministerial Statement from the Minister of State, Office of the President. Following deregistration of some Muslim non-governmental organisations (NGOs) after a bomb exploded in Nairobi on 7.8.98, and the subsequent appeal by the Muslim community that the NGOs be re-registered, I would like to seek a Ministerial Statement from the Minister on the fate of these NGOs after the court ruling, which allowed them to operate. I would also like the Minister to tell us the findings of a Government-appointed committee, which was to look into this issue.

Thank you.

BILLS

Second Reading

THE COMMUNITY SERVICE ORDER BILL

(The Attorney-General on 17.11.98)

(Resumption of Debate interrupted on 18.11.98)

Mr. Speaker: Prof. Anyang'-Nyong'o was on the Floor! Is he in this House so that he can continue?

Prof. Anyang'-Nyong'o: Mr. Speaker, Sir, I am still on the Floor.

Mr. Speaker: Order! Order, Prof. Anyang'-Nyong'o. I do not think it is professor-like to take the Chair casually as if the Chair and the hon. Member are of the same rank! Proceed, Prof. Anyang'-Nyong'o!

Prof. Anyang'-Nyong'o: Mr. Speaker, Sir, thank you for pulling rank on me. When the House adjourned last time, I was contributing on the Community Service Orders Bill. I said that this is a very constructive Bill. I also said that it should be strengthened and was long overdue. It will ease congestion in our prisons. It will make imprisonment serve the cause it is meant to serve, not as a punitive action but as a corrective measure.

However, while doing that, we must think of ways and means of preventing people from having to suffer going to prison for what I call "very petty offences", for which this Bill is meant. Most of these petty offences occur as a result of poverty in our country. So long as poverty is increasing at its current rate, and making it possible for a large section of our population to seek ways and means of eking out a livelihood through what might appear as illegal channels, then, indeed, not even the Community Service Orders Bill, when it will become a law, will be effective in controlling the number of people who will commit such crimes. There is a large section of our population, like the young, the fatherless and the motherless, who will find the Bill useful when it becomes a law. We know for certain that the petty crimes committed in African cities, let alone our own cities, are committed by street children.

I would like the Attorney-General (AG) to look at this Bill in conjunction with one of the working committees that he has established, to look into the problems on the plight of street children in our nation. He should find out whether, indeed, the street children, who commit petty crimes will be effectively catered for by this Bill. In my own opinion, since we know that the majority of culprits will be street children, it will not address the problem of petty crimes committed by them. I think the problem of petty crimes which are committed by street children will be addressed best by establishing better run approved schools, like those ones that were established during the colonial time at Owe and other places. It is unfortunate that the number of approved schools in our nation has not increased since Independence. Some of the institutions that started catering for poor children by giving them education have systematically been taken over by better-to-do families. An example of such institutions is Starehe Boys Centre.

Mr. Speaker, Sir, if you look at this Bill in terms of dealing with petty crime and making offenders not to crowd prisons, you will find that the large group of Kenyans, who at the moment are victims of petty crimes, are street children from poor families. Having read the Community Service Orders Bill, I would like to say that its scope is limited, and it might not be able to effectively deal with the problem of the largest section of our population, who are always prone to committing petty crimes, which it seeks to address.

Further, I would like to reiterate another point that was hinted at by a Question raised by hon. Mugo today, regarding rape. Our laws and judicial system are very biased towards women, especially when they are victims of crime, particularly rape. I have followed a particular case where a man raped his cousin. He was arrested and taken to a police station where he was locked up for some time. After three weeks the man was released because permission to prosecute him had not been received from the AG. When the officer commanding police station (OCS) was asked why the man was released he said, among other things: "Even though the AG has not given consent to prosecute the culprit, the man had "eaten" from his own home." I think that sentence is enough to have such a police officer jailed and caned for being disrespectful to women, and for looking at the law in a very callous manner.

In many cases where women are victims of crime and injustice, they end up being victims of the same judicial system that is meant to seek redress for women. They also end up going to prison for offences which they themselves never committed but were committed against them. I think that our judicial system should be more

sensitive to such cases. It should not let such cases be prosecuted by men, or be presided over by judges who have not been trained to be gender sensitive about such issues, and who have not changed their mentality to suit modern times, and to know that what we have inherited as a system of justice is steeped in certain culture, which is male-oriented and gender insensitive. That means that even though this Bill will become a law, it must be emphasised to the AG that the bulk of the judicial officers who will implement this law should be women. The bulk of the magistrates going to implement this particular law should be women because a lot of people, as I said, from the data that we have seen from the research done on petty crimes, will be young people and from the female sex.

Having said that I would also like to add another important item particularly with regard to the implementation of this law. Kenyans must be educated about the law. They must be made aware of their rights under the law on the obligations of the judicial system towards them. They cannot be made aware of their rights and obligations of the judicial system towards them unless the mass media itself engages in this system of education. At this point in time, we are operating in a mass media which is very unevenly developed and controlled. It is only the print media that has opened itself to substantial freedom, where there is substantial competition in the market place of ideas, and where Kenyans, finally, now, have an opportunity to receive information that is guaranteed and enshrined in the Constitution under the Bill of Rights. When we come to the electronic media where it is very important, in all aspects of our democratisation process, that we move, with speed to liberalise and democratise the electronic media. If that media was indeed liberalised, many Kenyans would have access to information and education on laws like this.

I remember at one time there was a programme on KBC called the 'radio lawyer', which was very interesting because the radio lawyer, who, I think, was Mr. Etemesi, for quite some time, did educate Kenyans about what their human rights are, what their legal entitlements are and so on. But KBC cannot do the whole thing single-handedly and effectively. We need more radio stations, private stations, regional stations and, town-based stations; stations which can cover the whole country and which will indeed engage in this task of educating Kenyans about their human rights and about the law. It is in that regard that we would appeal to the Government and the Attorney-General to expeditiously move towards liberalising the airwaves and making sure that this is implemented as fast as possible, so that it also becomes important in the process of debating the Constitutional Review process and such laws as the one we have in front of us. Mass and public education also goes hand-in-hand with education in our schools. A lot of time can be prevented by a process we call socialisation. If people are socialised early in life, from kindergarten, primary to secondary schools, because those are the formative ages of a human being, to be responsible citizens and to be aware of the obligations they have in society as well as the rights that these obligations entail, you will find that the judicial system is not burdened by too many people appearing before it, who have broken the law.

Therefore, I would hope, in the process of passing this Community Service Orders Bill, that the law itself of community service will be accompanied by an educational process initiated by the Attorney-General in little booklets that make people aware of their obligations to the society, and the laws under which they come when they do, indeed, break a law. Here, we are talking of preventive measures which are as important in law as they are in medicine. One of the most up-to-date sciences in medicine today is not so much in curative medicine, but in preventive medicine, where doctors say that if you eat well, drink clean water, exercise yourself and live a life that is reasonably balanced, then you have a much more natural defence against diseases. This will cut down on the amount of resources that society outlays for curing diseases when men and women who are citizens of a nation take such necessary preventive measures. The same is true in law and in law enforcement. Our legal system should move more rapidly towards a preventive regime of law or a preventive culture of living under the rule of law rather than a culture that is primitive. I think the Community Service Orders Bill has behind it a philosophy of being serviceable or useful to a preventive approach to law enforcement. That is why I would like to reiterate something that I said last time when I was contributing, that the places where people go to perform community service should be places which are, indeed, public places. They should see themselves as contributing to the public good and not in any way contributing to the interest of particular individuals, whether those individuals be people in political power or people who are hiring out the services of these people.

We have enough demand for public service in this country to the extent that people doing community service will not be enough in contributing to improving things in the public sector. For example, the City of Nairobi alone, it is a shame to the extent to which it has become dirty. There is garbage everywhere. You find it even within the precincts of Government Ministries, in the courtyard. Police stations are even worse. When you go to police stations, you find vehicles that were parked there after breaking down maybe, 10 or 20 years ago, and within that "cemetery" of vehicles, all council rubbish and squalor have been accumulated. People who are meant to be keeping law and order live in an environment which is so disorderly that it defeats the purpose of thinking

that they can have any mentality of keeping law and order. In such places, the police will not go too far to use people who have committed petty crimes to do the community service, even in police stations, to clean those stations and make them look more orderly and more livable. I am emphasising that the Attorney-General and law enforcement agencies should concentrate, as indeed it is said in the Bill, more specifically in areas where these people will do public service. I am glad that within the definition in the Bill on how they will be supervised, all kinds of individuals from civil society, including people who have studied criminology, sociology, the clergy and, women's organisations have all been included in the Board that is going to look after this Bill. It is important that from that Board or group of people, we do get individuals who are properly trained in preventive crime, who will go around to supervise where the work is done by the people doing service under the community services order law, and that they will have the science of how to interact these so-called outside inmates in a way in which they will help in educating them to become good citizens and not in seeing community service as a punishment.

One other thing that should be so important when somebody is even in prison is for that person not to see imprisonment as punishment. I know it is very difficult for some of us who have been under those conditions. The conditions are so bad and the officers are so cruel, and the State is so inconsiderate that our whole approach in colonial times up to now is to see prison as a place where you are really tortured, harassed and dehumanised. We should get away from that. If, indeed, the spirit of Community Service Orders Bill is anything to go by, then, indeed, the prisons are a long way towards making those areas reform centres rather than punitive centres. I have been in police stations, under custody in Nyayo House and all these places, and I think our psychology and attitude as a state towards those who we think have broken the law is probably backward and should be modernised. We should move much more rapidly towards seeing such institutions as reformatory and corrective centres, rather than centres of punitive action and of reducing individual human beings to sub-human entities.

With those few remarks, I beg to support.

Mr. Ngure: Thank you, Mr. Speaker, Sir, for recognising me to contribute to this Community Service Orders Bill. As far as I can remember, as a young man in my home village and home town, the community service existed but it existed at the level of chiefs and was really misused. Now that it is being brought here as a Bill, I think it is not going to be misused.

First of all, I start by recommending that people who should serve under community service should go up to people with option of a fine or who, have to serve for four years. I am not recommending this because I am seeing that people who are going to serve for four years will be of any use, particularly in community service, but this is in the mind of alleviating the congestion in our jails the remand homes.

Again, I think while conceiving the community service, we should - when we are talking about services that fall under community service - allow the committee to consider seriously some community service that would be of benefit to the community; such that some reputable persons who, maybe, would have been able to pay for specialised fields like carpentry and masonry, and they are constructing within the community with proper supervision, should be allowed to pay for these specialised people, who, otherwise, have served under community service; so that this money can go into the kitty and develop the community facilities which are run down, like health centres, nursery schools and some hospitals which are lacking even blankets. That was, we are going to attract money.

Mr. Speaker, Sir, this is an area which needs proper supervision and where the committee charged with the duty of seeing who ever supervises community service is somebody of integrity; somebody who is not going to receive bribes, or one who is not going to just stamp a card that anybody serving under community service has performed the duty, whereas he has only paid and walked back home.

Mr. Speaker, Sir, these people should be of integrity; people who can understand the limits of community service. I remember in my constituency, chiefs have always had the tendency of even committing people, petty criminals and *chang'aa* brewers, to community service within the chief's camps. I know one of over-zealous chief ordered that while somebody is serving under community service, he should be strictly the way he would have been in prison and should not even share a bedroom with his wife because he would not have been doing that if he was in jail. This is a misuse of power, and I think if this is not properly spelt out, we are going to have some of these community supervisors misusing their powers.

Mr. Speaker, Sir, I think this is one thing that is really going to help this country and reduce the rate of crimes. Knowing our people, a lot of petty criminals will feel so shy that they will be known within the village that they are serving under the community service and are criminals within the community. This might even help the Government detect the accomplices because while they are going to be supervised, we might now find out who their accomplices were in the petty crimes that were committed.

Mr. Speaker, Sir, when we look at this, we see a situation where the Attorney-General should consider making this readily available on personal security for this country, because it will be nonsensical for a person who

is going to serve under community service to be in remand home for a year or be sentenced to two years and serve community service outside when he has already lingered in remand home for a whole year. I do not see why in this country we find it very difficult to bail out an African. We are finding it very difficult to bail out somebody who has no land or title deed, whereas most people we know have title deeds from grabbed land. When this person becomes a criminal, he is able to deposit that title deed and walk out on bail. He is depositing stolen property to bail himself out of another crime!

(Laughter)

Bail should be availed to the ordinary Kenyan who is not even able to cross the border because he is so poor.

There is always this reason that he will disappear; where to? This person cannot even afford a passport. Then where would he disappear to? This person, for any reason, has only visited his home town just before he was arrested. Otherwise, a person has never set foot in a town like Kisumu and he is now remanded because, maybe, he does not have a logbook, a title deed or a relative who is worth, maybe, Kshs0.5 million.

Mr. Speaker, Sir, as we are now moving into community service, we want to see a situation where Kenya citizens are not condemned before they are found guilty. This afternoon, some young men are being released from Kamiti for having participated in Saba Saba which has now brought a change, and is going to bring a change to this Government and this country.

Mr. Speaker, Sir, there should be a change in this country's prisons because people have been lingering in jail for no crime at all. That is because they ask for their own rights. These are fellows who should have been bailed out. Of what use is it for the Government to keep them in the prisons? Of what benefit has it been to the Government when they have lingered in remand prisons for all this time? We should not just consider putting people on community services, but even bailing them out at the police stations and making it easier for them to get police bonds at police stations. This will reduce the menace of policemen rounding up citizens during Monday holiday so that these people can linger around in the prisons from Saturday to Monday, and eventually go to court on Tuesday. It is only the Patnis of this world that can be tried on a Saturday and even be afforded bail. But if bail is readily available, some of these policemen will not take bribes to punish people in remands. I do not see why you are scared of our citizens.

I do not see why we are now debating the Community Service Orders Bill in order to subject Kenyans to community service. Even for being drunk, somebody has to be kept in a police cell for a whole weekend whereas he was just staggering to his own home. He is collected when he is knocking at the door of his house only to be told by the police: "You are drunk! Tutaenda na wewe". If he does not have money in his pocket, the man will be taken round and round, particularly on Friday and end up in a police station, only to be released in the court. And if he does not get bail in court, he will be remanded for being drunk. This man was not drunk; he had just taken liquor and he was walking to his house.

To stop these malpractices, bail must be readily available now that we are debating community service. There is no need to talk about community service when somebody has been sentenced for relieving himself by the roadside and you cannot even give him bail. You tell him: "Maliza twende". We are wasting our time putting some of these fellows in the cells. These are catchments of bribes and they are not corrective measures at all.

Mr. Speaker, Sir, this is now going to shed light into this country; that, once somebody is convicted, he is not a criminal for ever. He can still live within the community and serve the community and his family. We are now moving to the position where this so-called detention without trial is of no meaning at all. It does not even help to clean the name of Kenya; it does not help Kenya to grow economically. It does not help Kenya to industrialize. We cannot claim that we are protecting our position by putting people in detention. If anything, it has tarnished the name of this country. It has ruined the economy because most of our independent-thinking people are still serving in overseas countries, because they think that within this country, if they come back as professors, they will only talk about teaching. They will not be required to give public lectures on something like community service. This is one stage that we should go out of and teach our community that once you are convicted for a crime, you are not condemned to life within prisons.

Mr. Speaker, Sir, personally I have lost three relatives in the remand prison at Kodiaga because of the diseases that they contracted there. This is because a cell that is required to contain 10 people and which was constructed by our biggest enemies, the colonialists, is now having 100 inmates. This is the same cell owned by an independent Kenya Government, 30 years down the line, after independence. If those same conditions exist in our prisons, I would even say that anybody serving prison sentence should serve it outside because those are conditions that you do not, if you are in a sane mind, condemn your fellow citizen to. You cannot condemn your fellow man to the conditions that exist in the Remand Prison in Industrial Area, Kamiti and Shimo la Tewa. They

are inhuman! We are even asking the Ministers that, instead of wasting time on Harambee, building schools and churches, they should hold Harambee to renovate prisons because that is where they are likely to go next. They are not going to school anymore.

(Laughter)

These fellows should visit those places and see that the conditions there are as comfortable as they should be, because that is where any politician is likely to go; not to a nursery school, or a secondary school. If I had powers, as I have said, I would recommend community service in this country for any convict until the prisons are renovated and made habitable, in order to serve as corrective institutions. Those institutions have produced hard-core criminals. Why is crime increasing? Why is it that in Nairobi, when a bank robbery is committed and the robbers are arrested, you will read that these are the same fellows who had been imprisoned for life two years ago and they are now out in the streets robbing? This is because even the fellows in there are corrupt and are sick of those conditions, and would take money to release anybody. Crimes are increasing because we have not made our people understand that you can commit a crime because of the economic conditions that have been imposed on you by the mismanagement of the Government; the conditions that have been imposed on you by the looting that goes on in this country, and because research land has been grabbed. The research stations cannot employ research students anymore. These are conditions that will drive a university graduate, because he cannot get a job, to kidnap an Indian who is equally a conduit for the robbers of the system. We must view these things in their perspective. Why should somebody go to university and get a degree only to go and kidnap? We have to realise that all this was an exercise in futility. We want to see a situation in this country like what happened in America, where the son of Francostello was caught in the street with a gun trying to rob and his father told him:-

"My boy, you do not need that gun; go to school, become a lawyer, you will rob 10 times more with a briefcase in your hand".

So, let us educate people that there are other civil ways of earning an honest living. Let us educate our people that in this country, they can be free and have a vision. Right at the moment, we cannot go back to our constituencies and preach about education because the moment you talk about education, a young man confronts you and says: "Mheshimiwa, you are telling me to study hard up to university, but my three elder brothers have got degrees and are sitting at home jobless". Where is the impetus for education? Where is the impetus for hard work? We have made it nonsensical and we must look at ourselves and see that some of these crimes are a creation of a system that we have systematically over the years developed. A system where young Government has the comfort of a governor state house. We must read ourselves inside, and like Mahatma Gandhi, think seriously about what a young nation can afford in terms of luxury.

I remember Mahatma Gandhi asking Lord Mountbatten to be the first High Commissioner for India at Independence, but Mahatma Gandhi told him: "We will want you to be our High Commissioner here, but realise that we will not afford the luxury of this Viceroy building because the young India cannot afford it". There is no way a young country, like India when it got its Independence, can afford the luxury of a Queen's residence. I remember Lord Mountbatten went back home and told his wife: "Do you know what that man in pyjamas has asked me? And she replied: "No, I do not know". He said: "He has told me to remain the High Commissioner, but I should move into a flat and wash my own plates". And they really laughed about it. That is nothing laughable, but the realities of a young country struggling to create employment. These are the hallmarks of what we talk about every day as hard work. It is not a question of hard land. If we encourage this community service, these fellows will serve the people, and we have good counselling within the community. We are going to take an example and show them that, after all, if somebody steals chicken, they can still work hard and repay the chicken.

Mr. Speaker, Sir, these are the things that, when we are conceiving this Bill, we must conceive seriously. Some offences like stealing a goat might call for a seven-year sentence, because it is stock rustling. But is the goat really worth the seven years? Can those offences also not be included in the offences that can be included in the community services? Let us consider those, because those were colonial laws. If somebody steals Kshs1 million, he is set free, because the argument is that, he should be released so that he can put back the money into circulation. I wonder why stolen money should be put in circulation. We must become a serious nation, because the majority of the people who have been in the Civil Service and in the parastatals still remain uncondemned, whereas they have looted the system. They have run down most Government assets and yet they are free people. These people are just as good as doing community service. They must be made to learn that if they can steal and bring down parastatals, and go scot free, what about that person who has just stolen a goat? I think this is one Bill that I support, but we must consider it seriously when we are talking about the fellows who are going to do community service.

With those few remarks, I beg to support.

Mrs. Seii: Thank you, Mr. Speaker, Sir. I would also like to say a few words with regard to this Bill. First of all, I think the Bill is quite gender blind. There is need to replace the areas which talk of chairman, vice-chairman and so on. I am sure the Attorney-General is quite familiar with that. And that appears throughout the Bill.

[Mr. Speaker left the Chair]

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

Secondly, Mr. Temporary Deputy Speaker, Sir, I would like to also look at the issue of community service as the best option for prisoners, especially for women. You must have perhaps read what was written in the newspapers, where some lady was describing the conditions in the prisons for women. It is extremely appalling. This is not to mention women who are taken to prison for the crimes they have committed, but they along with their infants serve the prison sentence, and the infant in this case, has not committed any crime. So, community service for such people is most appropriate.

Mr. Temporary Deputy Speaker, Sir, there are also women who give birth to babies in prisons and they end up staying in prison with their infants, not to mention the circumstances in which they give birth in the prison, with no suitable facilities, if any at all. I was horrified, especially, to learn that when the prison doors have been closed in the evening, they do not open until morning. You can imagine what happens when a woman goes into labour in the prison and there is no facility of any kind and the doors will not open until morning. Some of these babies that have been born in these prisons have survived by God's grace. So, community service was a well-thought-out method for rescuing such innocent victims of our appalling prisons.

Mr. Temporary Deputy Speaker, Sir, I would also like to raise the issue of the supervision of community service in the community. Perhaps, in the urban area, this works very well because the distances are not long. Also, it is possible to move easily from one area to another for the purpose of supervision. If you take the countryside, for example, the distances are wide apart and there will be a supervisor per prisoner. So, I wonder how this is going to be implemented because in some areas, you may have a prisoner about 10 kilometres away from another one. How practical is this? Is it possible to supervise them? If the place of the community service that they are supposed to work is far away from the home of the convict, how is the transportation going to be facilitated? I think that is a detail that, if it is not looked into in this particular Bill, will not work at all. This is because the convicts will be walking from morning towards the place of community service and might take many hours before they get there. By the time they get there, they start working and the question of what they are going to eat and so on will arise. This is not going to bring effectiveness to the community service. Instead, it will just exist in words; that, somebody is doing community service, but spending a lot of time, perhaps, walking to the place where the road, bridge or the school is being repaired, and spending a lot of time on the way. In that way, the community service is not going to be effective.

Mr. Temporary Deputy Speaker, Sir, I must also say that, community service is only going to work if there is elimination of corruption. In supervising these individuals, whom I believe will be in their hundreds in the whole country, how is one going to ensure that the supervisors cannot be bribed, or they may be relatives of these convicts and they will not do effective supervision of these convicts? In so doing, these people will be back in their villages, even after they have been taken to court and committed to community service, and the villagers might resort to mob justice. I think that is a possibility, if it becomes apparent that the community service is not going to work, perhaps, because of the logistics such as supervision and details that cannot be worked out for the supervisors to carry out supervision of community service.

Mr. Temporary Deputy Speaker, Sir, I think it is important that all the crimes that have been committed be classified, so that when a person comes back to the community, he will not have vexed the community enough for it to think of lynching him. If a person, for example, had committed arson in that particular village and he comes back to the village on community service, he will require somebody to guard him from the villagers because it will look like the villagers have arrested this person, taken him to court and he is back into the village to serve on community service. Then, they will think that the action is not effective and they might resort to punishing the wrongdoers themselves, rather than handing them over to the authorities. So, I want to suggest that the crimes committed must be very well classified, so that it does not bring up another problem within the villages. In this case, it will be like turning prisoners back to the villages and the community will not appreciate this, and this will be at the expense of the community. Perhaps, it may be easier to improve the conditions in the prisons, so that they become corrective areas where people will disappear from the villages and come back as technicians, carpenters,

or with whatever skills they will have learnt in the prisons.

I know people who have come from prison to start a job within the community. Perhaps, we may also need to think very seriously of improving these prisons, rather than turning the convict back to the community as the communities are used to somebody being arrested and committed to prison, regardless of whatever punishment they get. When he comes back, he receives forgiveness from the community, because the community looks at him as somebody who has been punished and forgiven, and he will be accepted back into the community. I think the supervisors will face a lot of problems while implementing this. This is because, in one station, the convict can go back to court without necessarily informing the supervisor and renegotiate his release. I do not know why this should be so. This is on page eight. I hope the Attorney-General is taking interest in such a situation, where the convict can go to court without necessarily telling the supervisor about it. If this happens, it undermines the authority of the supervisor because he would not know what negotiations have transpired between the offender and the court. It goes on to say that: "The supervisor may apply to the court and summons be issued for the convict to be re-arrested." We are simply doubling work and, perhaps, a supervisor may not be bothered to go to court to report the offender, so that he is re-arrested. This will still continue to congest the courts.

Mr. Temporary Deputy Speaker, Sir, I think it can be made simple. If these cases are believed to be minor, then, there should be a way in which the community service is made workable so that there is no repetition of re-arresting, warrants being issued and also going back to court. The supervisor needs to be enabled, both by way of transport to reach all the offenders, and by way of effectiveness in carrying out his work. I also noted that some of these community service jobs are jobs that are normally performed by the community through Harambee. We all know very well that during the days agriculture in schools was used as punishment, it created a negative attitude for the students and they never wanted to do farm work again. I hope this will not be the case with this community service. This is because noble activities like afforestation, environmental conservation, water projects, construction and maintenance of roads, which have been done in the past by the community, will now be done by these offenders. I hope that by getting these offenders to work on such activities, a good job will be done and, at the same time, it is not going to bring a bad impression about these jobs and for the people to think that they do not need to do any more Harambee for this, because convicts are there to do it.

Mr. Temporary Deputy Speaker, Sir, another thing, which also needs careful examination, is the question of somebody who may have been committed to prison because he has perhaps, beaten his wife. If the man is returned back to the community, this is going to cause a lot of tension in that family, because the same person who was committed to, perhaps, one year's jail sentence is taken back to the community, eating food that is being cooked by the same wife that he beat. He is not going to be successful and this also applies to people who are committed to prison because of family or clan feuds and they are brought back to the community to do community service. So, I think there are a number of details which, if they are not looked into at carefully, this community service will not work as well as it is expected to.

Mr. Temporary Deputy Speaker, Sir, I also want to advocate for the education of the community. The community needs to be educated before there are changes in our laws like in this Bill. This is because the community may not understand why the same person has come back to the community, apparently being punished and, perhaps, not effectively experiencing the punishment. So, we need a lot of public education, so that the community can understand why it is happening now when it did not happen before.

Mr. Temporary Deputy Speaker, Sir, also, some of these offenders may have committed some crime which is not within their capability to resist. It could be that somebody is a debtor and because he was not able to pay the debt, he is sentenced to jail and returned to the community to do community service. I think this also has got an aspect of degrading this person. If, for example, this person is in his own village and he is made to work on a road where his family and people see him working every morning, I think such people should actually be set free or be left to work in a different area, because some of these punishments are degrading. As you know, in our country, today, there are people who owe much and it can even create a lot of bitterness, if a small man has been punished for a very small debt which he owes and cannot pay while those who owe more are walking free in our streets.

Mr. Temporary Deputy Speaker, Sir, I would also want to say that this community service must be carefully worked out when it comes to women doing community service because the supervisors might take advantage of the women by harassing them and there will be no other supervisor to supervise the supervisor. So, in this case, these women will be completely disadvantaged. They may be taken advantage of in the course of doing community service, or some of them even may be mistreated by the supervisor. That is why I support what hon. Prof. Anyang'-Nyong'o said; that, many of these supervisors should be women. That is, in the case of a woman being supervised, let another woman supervise her although, of course, that doubles the number of supervisors. In the long run, you will find that there are so many people who are supervising individuals in various areas of the

community, and it will not be cost-effective at all.

Mr. Temporary Deputy Speaker, Sir, finally, as I said earlier, that I am not going to contribute much on this issue, I would like to look at the composition of the committee which does not taken into account the gender balance. At this day and age, we are thinking of gender balance and I would suggest that the committee specifically states the numbers of members of the committee, and a certain percentage be women instead of leaving it as just members. This is because, since these members are drawn from heads of departments, we know what will happen eventually if there will be no woman in that committee and all the decisions that will be made will be completely out of balance. I would like to say that we should be looking at corrective ways of bringing these offenders back into the community and accepting them back into the community, rather than punishing them and making them feel very bitter towards the system.

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

Mr. Muite: Thank you, Mr. Temporary Deputy Speaker, Sir, I support wholly the spirit and philosophy behind this Bill, which is that, instead of sending people to prisons for punishment, we look into ways of rehabilitating them. I believe that is the philosophy behind this Bill, and to that extent, I fully support it.

Mr. Temporary Deputy Speaker, Sir, I would like to say that if we are going to achieve that philosophy, we need to recognise that the only time that people can be sent to serve on community service is after conviction, and if we are going to be rehabilitating these people, and if the spirit or philosophy behind the Bill is rehabilitating them, that is not going to be achieved unless we look into what happened between the period of arrest and the time they were convicted. This is because community service, as a form of punishment or rehabilitation, only commences after conviction. However, remember that there are people who stay for years before their cases ever come up for trial. They are held in remand prisons and, therefore, if you are going to be rehabilitating those people in the spirit of this Bill, we are losing the opportunity of encouraging them or setting them on the road to rehabilitation, if we subject them to inhuman conditions. What I am saying is that, if the philosophy of this Bill is going to be achieved and realised, we need to be humane from the moment we arrest people.

Mr. Temporary Deputy Speaker, Sir, otherwise, at the moment, the conditions in the police cells are absolutely inhuman. There is hardly any police station in this country with a working toilet or with water. I do not know whether the hon. Attorney-General is aware of this. The stench is absolutely repulsing. There is no water; the cells are not cleaned; they are overcrowded and dirty. It could be a very good idea if, in fact, it was possible to agree that each of these Cabinet Ministers spends a weekend in police cells, so that they know what we are talking about; the horrid conditions, and they might begin to make those conditions a little bit more humane. Go to prisons and specifically the remand homes and even without spending any extra money, we can improve on the conditions of our prisons and our remand homes. For example, if it is *ugali*, why can the Government not take steps to ensure that *ugali* is properly cooked? It is always half-cooked and I speak from experience. I was asking in Kamiti Maximum Prison: "Why do you not cook *ugali*?" I am not suggesting that they should use *jogoo* flour since *unga* number three is quite adequate but for heavens sake, cook the *ugali* so that, it is properly cooked. It is always half-cooked as a form of punishment. The philosophy and the attitude is that you have been arrested, and before you have even been convicted, you are a criminal who ought to be punished. It is inhuman treatment.

Mr. Temporary Deputy Speaker, Sir, so, if we are going to achieve the objectives and philosophy behind this Bill of rehabilitating people rather than turning them into criminals, let us start from the moment of arrest. Let us start with the police stations and the conditions in the remand homes and then, by the time that the magistrate has found one guilty and found that this particular accused person is a suitable person to be sent not to prison but for community service, the person has been treated from the moment of arrest as a human being in accordance with human dignity, and in that way, we will achieve the objectives of this Bill.

I would also like to make another point, Mr. Temporary Deputy Speaker, Sir. The courts should apply the law uniformly. Justice should be a blind maiden. It should be applied equally to the rich and the poor. Criteria should be set up and applied irrespective of the social standing of the particular person who may appear before a court. In other words, we must not use these provisions to selectively give community service to offenders who should be going to prison. I know that the spirit is rehabilitation, but what I am saying is that once the criteria are laid down, they should be applied in a non-partisan manner.

Mr. Temporary Deputy Speaker, Sir, I would like to say that the courts of justice in this country are the ones which are bringing themselves into disrepute because of making orders that are absurd. Even ordinary people have got brains. When they see that there is selective application of justice, then the courts and the administration of justice bring themselves into disrepute. There are absurd orders that are being made selectively in favour of certain individuals. This is what is bringing the administration of justice in this country, including the Judiciary, into disrepute. It is the Judiciary that is to blame. It must apply justice blindly in the sense of not recognising who is before the court.

For example, we are not quarrelling about the principle of bail being granted over the weekend. It is the application of it that we are quarrelling about. If it is desired that Kenyans should have access to bail on Saturdays, Sundays and public holidays, I support that. But let us lay down the criteria. Let the courts come up with practice rules to show the conditions on which one can apply for bail on a weekend or public holiday. The courts should let us know the duty judge between January and March.

These should be matters of public knowledge among the lawyers and members of the public, so that we can know the judge or magistrate to whom we can go on a Saturday or Sunday. However, it can not be right for only some people to get judges from their houses on a Saturday to go to court and be granted bail. I can understand an order of *habeas corpus* being granted. This is where a court orders that a body be produced, so that one can have the opportunity of justifying why he is holding somebody. That is a known procedure in law. I can understand other cases where a person suspects that he might be arrested for a specific offence. Such a person may go to court in advance and get bail before arrest in relation to a specific offence. Again, that is a procedure which is known in law. But as a lawyer, I know of no case where a court can order the release of a suspect without knowing the offence for which that person has been arrested, and do so on a Saturday! This is selective application of justice. If this Bill must achieve its objectives, the courts must do away with this selective application of justice.

Mr. Temporary Deputy Speaker, Sir, I want to say that I am the person who laid the Goldenberg issue on the Table of this House and arranged for the scandal's serialisation in the *Daily Nation*. Soon, I will be laying documents on this Table to show that the total amount involved in the Goldenberg scandal is, in fact, Kshs68 billion. What Kenyans are asking is: "Is there a connection between this amount of money and the fact that the individual involved appears to have had orders made in his favour by our courts in the last six years?" These are issues which, we, as elected representatives of the people of Kenya are being asked by the people we represent.

The Attorney-General (Mr. Wako): On a point of order, Mr. Temporary Deputy Speaker, Sir. I would just like to caution the hon. Member on the Floor. He is talking about Kshs68 billion, but these are matters which may very well be in court and also, because they are under consideration by the Attorney-General.

Mr. Muite: Mr. Temporary Deputy Speaker, Sir, that is information which I welcome. I was not talking about the case that is in court. The case in court involves only Kshs5.8 billion. But I am happy to hear that consideration is being undertaken by the Attorney-General. If that is so, I might assist him by laying the documents on the Table of this House. I was talking about an amount of money which is not a subject matter of any case that is in court today.

So, with those few remarks, I do support very strongly the passage of this Bill. Thank you.

Mr. Katuku: Thank you, Mr. Temporary Deputy Speaker, Sir, for according me this chance to contribute to this important Bill. First of all, I would like to thank the Attorney General and the people who drafted this Bill, a job well done. This is a Bill which has, of course, been well thought out and which is timely. Before I go into the details of the Bill, I would like to say that it has come at a time when most of our courts, police cells and prisons have problems. There is no co-ordination at all between the judges, who send people to jail, and those manning the prisons. Judges do not know the capacity available in the various prisons. I would like to urge our judicial system, the prisons and remand homes to co-ordinate their work. Before a judge sends one to prison or remand, he should know whether there is enough room to accommodate the victim.

Mr. Temporary Deputy Speaker, Sir, it is time our officers in this system, namely, the police, magistrates and the judges, changed their attitudes. We have very negative attitudes among our magistrates. Immediately he sees an accused person in the dock, he rules: "Go in for this period," or "pay such an amount of money for cash bail with sureties of a similar amount". Maybe, you are required to produce a title deed, a log-book, or, maybe, a lot of money. Most people, especially in some areas, do not have title deeds to produce in court in order to be granted bail. This is a very important aspect the Government must look into to avoid congesting police cells and Government prisons. Some people stay in there because they cannot afford to meet conditions for grant of bail.

I would also like to comment on the abuse of this Bill. It is a good Bill, but there are chances that it may be abused the same way the extramural scheme was abused. We had cases where people were being sent to work under the supervision of chiefs. This is the situation envisaged by this Bill. We will have supervising agents, who may be chiefs, institutions and others. There are chances that this might be abused. It is high time the Attorney General and the people who will supervise the implementation of this Bill made sure that it is not abused. We may have cases where a person will be sent to do some community work doing the work at his home. He may do the work for the benefit of the individual who will be supervising him.

Mr. Temporary Deputy Speaker, Sir, it is very important that the supervising agents--- As far as this Bill is concerned, Section 13 is not very clear on these supervising agents. It only says that there will be supervision of the offenders by a committee. In so doing, the officer in charge may not be able to get in touch with the supervising officer, therefore, the offender may fail to work at the individual's farm. So, it is high time that the

would-be supervisors got down to define clearly, and especially in Clause 13, who the community service agencies are. If it is in a hospital, the supervisor in charge of that area needs to be given a thorough in-service course on how to conduct that supervision.

I would also want to touch on the commitment of the Government in implementing this Bill. It is the practice of this Government that in most cases, it does not give programmes that affect our society the necessary concern that they deserve, especially in allocation of funds. Community service programmes are given minimal funds and this is a very expensive programme to implement. My fear is that this programme may not be given money, and it may fail. This is a Bill which has cost this Government a lot of money to draft, according to the information from the Attorney-General that a committee was sent to seek views from outside this country for comparison purposes. This was taxpayers' money, and it would be a very bad thing if it fails. That is why I am saying that the Government must commit itself to fund this programme so that we can reduce congestion in our prisons.

Mr. Temporary Deputy Speaker, Sir, much has been said about the pathetic situations in the police cells and prison remands, but I want to repeat that the attitude of the police must change. They have developed a tendency, especially on Fridays, of arresting people and taking them to remand and they expect to be bribed so as to release these people. This is happening in most police stations, whereby they organise to arrest people and take them to prison so that they can be bribed. This is a very bad practice. You will find so many people in police cells and prison remands over the weekend because they cannot afford to get bonds. It is high time that the police gave minor suspects free bonds to avoid this unnecessary congestion.

Mr. Temporary Deputy Speaker, Sir, I would like to refer to Clause 3 of this Bill, which states: "Where a court determines that a Community Service Order should be made, it shall, before making the order, direct for..." I would appeal to the Attorney-General to consider deleting that clause or replacing the word "shall" with "may", whereby a magistrate can, or in consideration of the situation, may bond this person without awaiting reports from the probation officer. It is required that before somebody is put under the Community Service Orders, a report comes from the ground. I think it may also bring a problem because a suspect may stay in the cells for so long awaiting this information. I would suggest to the Attorney-General that if he replaces the word "shall" with "may" in Clause 3, we will have less problems with people staying in prisons or remands awaiting to be placed under this order.

Mr. Temporary Deputy Speaker, Sir, I want also to refer to Clause 4(2) where the Bill states: "A supervising officer shall, as practicable, avoid giving instructions under this section, which conflict with the offender's religious beliefs." This is a question which needs to be looked into, especially by those who will be enforcing this law. That is why I am saying that there is need to sensitize those who will apply this law because some offenders may be abused. They might be forced to do something against their religious beliefs; that is why it is very important to have the supervising agents on the ground to look at it seriously. Again, Clause 13, which talks about supervising offenders, is not clear on this. I had the opportunity of talking with some of the probation officers and this may not work because of lack of communication and funding. The supervising agents may lack money to travel and supervise the agents, but it is important that this law is implemented because if it fails, we will still have congestion in our cells. As it has been said here before, this problem has caused a lot of problems, for example, people dying in prisons and police cells. In my constituency, for the last six months, I have got a report of about six people who have died in prisons and police cells because of the dehumanising conditions in those prisons. It is high time the Government improved the conditions in our remand and cells.

It is also important that those prisons are opened up to the public. If somebody is sent to Kamiti Prison, a visitor cannot be allowed to talk to that person as is required. Prisons should not be treated like places of death; we should open up our prisons to visitors and relatives. We should give the prisoners a chance to also communicate with relatives and their parents. We have cases of people in jails who stay there for years and years and when they come out, they cannot adjust in the community, because they have not been getting information on what has been happening out there.

I would also want to touch on the issue of two years; the Bill says that those who will have the opportunity to be placed under the Community Service Order are those who will be serving less than two years' sentence. I would be comfortable if this was extended to three years to give an opportunity to as many people as possible, because statistics have shown that most of the prisoners are serving between one to three years' sentence. It will be very important to have this amendment if we want to decongest our prisons. Some of the offenders who are sentenced to three years may get an opportunity to work in the community. I would suggest that within that period, the individual who is placed under the Community Service Order is also consulted, to find out when he would be available to render the services because he is rendering services to the community, but is not being fed by the Government. We should have a programme to allow persons who will be placed under these orders to work in

the morning to earn a living, and then, in the afternoon, they can work for the community. This Bill is not clear on this, and it is very conflicting to ask persons placed under this order to work for the Government while they have nothing to eat. One may be forced by circumstances to commit an offence because of lack of food. In view of the situation that this individual has a duty to look for his own daily bread, there should be a programme between the supervising agent and the offender, to give him an opportunity to decide on what time he would be able to work for the community, to allow him time to do his work to earn a living.

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

Mr. Kathangu: Asante sana, Bw. Naibu Spika wa Muda. Mswada ambao upo mbele yetu wakati huu umenigusa roho sana kwa sababu mimi ni kati ya wale wachache katika Bunge hili ambao wamekuwa kwa jela kwa miaka mingi. Jela za Kenya, hasa jela kubwa kama vile Nyeri, King'ong'o; Manyani, Kamiti, Kibos na Shimo la Tewa, nimewahi kukaa kule. Kwa hivyo, ninaelewa mambo yanayozungumziwa katika Bunge hili na ninajua kwamba maisha ya jela si maisha mtu yeyote angetarajia. Kwa muda ambao nimekaa jela, nimeshuhudia vijana ambao hawakufanya kosa lolote. Mle ndani watakuambia ukweli, lakini hapa nje hawana nafasi ya kusema ukweli kwa sababu hakuna mtu yeyote ambaye yuko tayari kusikiza ule ukweli, aidha polisi, hakimu ama jaji. Kwa hivyo, wale wengi ambao wako jela ni watu ambao hawakutenda kosa lolote, lakini utawakuta wako kule ndani na shida yao ni kwamba ni lazima wamalize vifungo, wakati mwingine vya miaka mingi.

Bw. Naibu Spika wa Muda, Mswada ambao upo mbele yetu unatuuliza tubadilishe ili wale washukiwa ambao watafungwa vifungo chini ya miaka miwili waweze kumaliza vifungo vyao nyumbani wakifanya kazi ya jamii.

Moyo huo huo unatakiwa pia kuletwa kwa wale ambao wamehukumiwa kifo au maisha kwa sababu tunawahurumia wale wafungwa ambao wamefinyana kule. Lakini utaona wote wako huko ndani. Kazi yao ni kulia na kuhara ndani ya seli kila siku. Kuna wengine ambao wamewekwa kwa miaka mingi baada ya kuhukumiwa kifo. Wanakaa zaidi ya miaka kumi wakingoja kama watahurumiwa na Rais. Unaweza kufikiria kisaikolojia vile yule mtu anateseka kwa miaka hiyo kumi. Kuna wale ambao wamekaa jela miaka 20 au 30 wakingoja kwamba labda siku moja Rais ataamuka na kuwaachilia. Lakini kwao ni kilio kila wakati, wakingoja siku hiyo. Tunapongea mambo ya seli, jela ya Kamiti ilitengenezwa ili iwe na kiasi cha wafungwa 800, lakini sasa hiyo jela ina wafungwa zaidi ya 1,600 kila siku. Kwa hivyo ile jela imekuwa ndogo sana mpaka watu wanafinyana. Katika hiyo jela ndiko kuna kinyonga. Jamaa wale ambao wamehukumiwa kunyongwa ni wengi zaidi na wanakaa sehemu moja ambayo inaitwa "G". Hiyo sehemu ina seli 59 na wafungwa ni zaidi ya 400. Seli moja inakaliwa na wafungwa zaidi ya saba. Lakini hii seli inatakiwa iwe na watu watatu pekee. Kwa hivyo, inaonyesha ya kwamba hata wale ambao wamehukumiwa maisha, kifo na vifungo chini ya miaka kumi, hawa pia wako na shida kubwa sana.

Bw. Naibu Spika wa Muda, yale ambayo mimi nilikuwa nataka kuyasema kwa sababu ya Mswada huu ni kwamba pamoja na kuunga huu Mswada mkono, ninafikiri marekebisho ya tabia kwa wale ambao wameonekana wakiwa na tabia mbaya ni shida ambayo imeletwa na nchi yetu hii. Tabia mbaya inawafanya waibe, wapigane na waue. Kuna watu ambao wanasema kwamba kuna makosa ya kisiasa, ya kiuchumi na ya kijamii. Yaani, kuna wale wataenda makosa kwa sababu kwao hakuna chakula, na tumeona haya. Kwa mfano, mama mmoja ana watoto kumi au wanane katika vijiji vyetu hapa Nairobi. Kijana wake wa kwanza ana umri wa miaka zaidi ya kumi na mitano na yuko pale na watoto wa mamake ambao wana umri chini ya miaka hiyo kumi na mitano. Kwa vile huyu mama anashinda vijijini na mjini akitafuta chakula kwa hawa watoto, akirudi nyumbani, anamuuliza yule kijana: "Hata wewe uko hapa ukingoja chakula na watoto wenzako hawana chakula?" Hilo swali linamgusa huyu mtoto ambaye ana umri wa miaka kumi na mitano. Baadaye, utakuta huyu mtoto akiondoka mara moja na kwenda kuona kama anaweza kukutana na mtu mmoja ambaye anaweza kuwa na fedha kidogo ambazo zinaweza kununulia watoto wa mamake chakula. Na yeye anaenda anapigana na wengine kwa sababu ya shida ya roho, na baadaye ataenda nyumbani na unga ngano au mahindi. Hii ni kwa sababu nchi imedhoofishwa na wezi na wale wenye kujipenda.

Sisi wenyewe ambao tuko Bunge hili; wale watu ambao wanasimamia mabenki na wale wamechukua mashamba, ndio wanafanya Kenya hii iwe Kenya ya maovu. Kwa sababu hizi, ni lazima vijana wadogo waibe ili watoto wa mama zao wapate vyakula; ili wao wenyewe waweze kuvaa na nyumba yote iweze kuwa na malazi. Lakini kwa wakati huu, tunapofikiria mambo ya makosa yanayofanywa na vijana, na kuzungumzia mambo ya jela, tunafikiri ya kwamba kuna wale ambao wamezaliwa wawe wakiwa jela; eti sisi tunawahurumia sana na hivyo kwa sababu wako kule, tupunguze miaka yao ya kuwa ndani ya jela ili watoke nje. Lakini, mimi ningalitaka Jumba hili lijue kwamba kama kuna watu ambao wanafanya makosa yatendwe zaidi katika nchi hii, ni Bunge hili la Kenya. Hii ni kwa sababu Wabunge hawafikirii ya kwamba makosa yanaletwa na sheria, uchumi, na tabia ambazo zinakuwa katika jamii. Tunapozungumzia vijana ambao wako jela wakati huu, wakihesabiwa idadi yao ni kama 75,000. Serikali hutudanganya ya kuwa ni 20,000 au 30,000. Mimi nasema ya kuwa 'jela' ni kusema approved

school, borstal institutions, main prisons na medium prisons. Utakuta hawa watu wote wako pale ndani. Pia kuna wale ambao wako kwa vituo vya polisi na wamewekwa huko zaidi ya miezi miwili au mitatu, ati wanangoja kupelekwa kwao nyumbani kwa sababu walikutwa mijini wakitapatapa bila fedha, au wanasemekana hawakujua kwao ni wapi. Hawa watu wote wanawekwa katika kituo cha polisi na idadi yao wote ni 75,000. Kati ya hawa, ukienda kuangalia kwa makini, utaona ya kwamba ni 5,000 peke yake ambao wameamua ya kuwa wataishi katika "crime", na watafanya makosa ili wapate chakula au fedha.

Bw. Naibu Spika wa Muda, jambo ambalo nimegundua ni kwamba kila jela ya Kenya inawafanya wafungwa wapya kuwa hata wabaya zaidi. Watu hawa huhusishwa kwa mazungumzo ya wale wafungwa ambao wamezoea maisha ya jela. Kumpeleka kijana jela ni kufanya makosa sana kwa sababu unampleka kwa wahalifu mashuhuri ambao wanamfunza mambo mabaya sana. Hivi ni kumpeleka kwa walimu wa dhambi. Mara nyingi, mimi hufurahia sana mwito wa mhe. Mbunge mmoja ambaye amekuwa akisema kwamba ingefaa sana kwa kila mhe. Mbunge katika Bunge hili kuzuiliwa katika jela hata kama ni kwa muda wa wiki moja. Kwa njia hii, atakuwa ameshuhudia mambo ambayo yanatendeka kule jela. Au kama si hivyo, tunastahili kuandaa safari ambayo itaongozwa na wazee wa Bunge kama vile mhe. ole Ntimama, ila waone hali ilivyo katika jela zetu. Tukifanya hivyo, tunapozungumzia hapa mambo ya magereza yetu, kila mtu atakuwa anaelewa tunasema nini. Siku moja, na ningependa Wakenya wakumbuke, Waziri wa Mambo ya Ndani miaka kadha iliyopita alijikuta yuko katika jela nambari mbili kule Block "E". Jela nambari moja ilikuwa ya askari wa kulinda usalama usiku. Yule mtu alisimama kwa muda wa masaa 20 akingoja aletewe kitanda, godoro, blanketi na shuka ili alale. Alipiga kelele sana kwa sababu hakupatiwa vitu hivi na alipouliza ni kwa nini alikuwa hapati vitu hivi, askari mmoja alimwambia: "Excuse me, Sir, when you were out there, you knew that we did not supply or give beds to our prisoners. How come you, who was the Minister for Home Affairs, did not know that?". Hii ni kusema kwamba sisi ambao tuko katika Bunge hili siku moja huenda tukajikuta tuko kule ndani. Huu ndio wakati wa Bunge hili kuona kwamba magereza yetu yanasimamiwa vizuri, na pia kuona kwamba yale ambayo yanatakiwa kutendewa wafungwa ni yale ambayo tungependa kutendewa.

Kwa muda ambao nimekaa katika jela hakuna wakati kumekuwa na chakula mara tatu kwa siku. Chakula hutolewa mara moja tu kwa siku. Ukingoja uji, unapata maji moto; ukingoja ugali, unapata uji, na ukingoja mboga na nyama, unapata sukumawiki na maji yaliyo na chumvi. Viwanda ambavyo viko chini ya magereza yetu vinaleta pesa nyingi lakini haijulikani hizo pesa zinatumiwa namna gani, wala ni akina nani wanazitumia. Mara nyingi, utapata kwamba wale wafungwa ambao hufanya kazi katika viwanda hivi wanatengeneza vitu vya wakubwa wa jela, Mawaziri wa Serikali, wasimamizi wa polisi, na kadhalika. Kwa hivyo, hakuna wakati Serikali inapata pesa kutokana na viwanda vya magereza yetu.

Utapata kwamba Serikali yetu inawafunga watu wengi sana ili walime mashamba yao. Utapata kwamba shamba la mtu fulani linapatiwa wafungwa kiasi fulani kila asubuhi, na hata nyumbani mwake pia anapata kiasi fulani cha wafungwa. Mashamba ya magereza yanakuza chakula ambacho kinapewa akina fulani kwa sababu wao ndio wasimamizi wa jela. Ninaweza kujitolea kuwapeleka Wabunge kuwaonyesha ni wapi nimehusika na ni akina nani wanahusika. Haya tumeyaona na tumeyasimamia. Tunafahamu kwamba asilimia zaidi ya 60 ya fedha ambazo zinatokana na jela hazitumiwi kutengeneza jela, bali kutengeneza mambo mengine. Katika shamba la Kamiti Horticultural Land, utapata kwamba matunda yanauziwa watu kila siku kwa bei ambayo haifai. Kwa hivyo, utaona kwamba jela imekuwa kiwanda cha kuwatajirisha watu wachache na kwa hivyo, kuwanyanyasa wafungwa.

Ukienda katika jela ya Kamiti, utapata kwamba katika Block "E", wafungwa wanakufa kila siku. Kila siku hawa watu hufa kutokana na magonjwa kama tuberculosis, hypertension, HIV/AIDS na kadhalika. Huu ugonjwa wa HIV/AIDS umetokana na maovu ambayo tuliyazungumzia hapa kwa kifupi siku nyingine. Utakuta kwamba wafungwa wengi wanakufa kwa sababu ya ukosefu wa chakula. Kwa hivyo, Mswada huu unafaa kuungwa mkono.

Katika jela ya Industrial Area, utapata kwamba wengi wa wafungwa hufa hapo sana. Mtu wako akiingia katika Industrial Area Prison, huwezi kujua kama atatoka akiwa hai. Chumba ambacho kinaweza kuchukua kiasi cha watu 30, kinachukua watu 150. Ninapooonea hapa, ninaongea juu ya jela ambazo nimepitia. Hizi ni jela ambazo nimefungiwa ili niache siasa, lakini Mola wetu naye ana sababu zake. Sijabadilika! Ninashukuru pia kwa sababu wiki mbili au tatu zilizopita, niliachiliwa chini ya Kifungu cha 87(A), na ninamuona Mkuu wa Sheria hii. Nilimuuliza kama huenda nikashikwa tena naye akaniambia: "Kwenda poa huko, kwa sababu, Kathangu, unapenda kwenda jela sana". Mimi si mtu wa kutaka kwenda jela. Tarehe nane, mwezi wa nane, mwaka jana, mimi na vijana 20 tulishikwa na tukapelekwa jela ya Embu. Katika hiyo jela, kwanza, tuliingia katika chumba ambacho kilikuwa na watu 250. Hata juu ya choo, watu walikuwa wanalala. Mambo ambayo niliyaona katika Embu huwezi kufikiria ni mambo ambayo yanaweza kutendeka katika nchi yetu; nchi ambayo imekuwa huru zaidi ya miaka 30. Watu wanalala kwa upande mmoja. Kama mtu mmoja amechoka na anataka kugeuka, ni lazima kila

mmoja ageuke. Tunasema kwamba chumba ambacho kinaweza kuchukua watu 30 kinachukua watu 250.

Bw. Naibu Spika wa Muda, nimesikia kutoka kwa Mawaziri mbali mbali kwamba seli za polisi ni nzuri. Lakini ukiangalia shida ambazo zinaendelea sasa katika nchi yetu, itakuwa kwamba huu Mswada una maana. Una maana siyo tu kwamba wale watu ambao wamefungwa chini ya kifungo cha miaka miwili watumikie nyumbani, bali wazee na akina mama wahusishwe katika kurekebisha tabia ya vijana wetu. Sioni maana ya kijana kuchukua fimbo ya mtu, na anaenda kusema kwamba jembe lake liliibiwa. Kwa sababu ya fitina, kijana yule anatiwa jela. Tutakuwa tumempoteza yule kijana maisha, kwa sababu tunajua atakuwa mtu wa kuiba. Mama mmoja anashikwa jioni na polisi--- Tunajua vile wanavyofanya katika nchi hii; wakikutana na akina mama, kabla ya saa mbili jioni ama hata baada ya saa mbili, wanasema kwamba hao akina mama ni malaya na wanatoka kwa mabaa, na wanashikwa na kupelekwa kwa kituo cha polisi. Kutoka hapo, asubuhi, wote wanapelekwa kortini na kupigwa faini ya kati ya Kshs200 na Kshs300. Hapo sioni pakiwa na haki. Tunapozungumzia vile tutabadilisha hivi vifungo, ili watu wawe wanafanya kifungo cha nje, mambo yanayohusiana na dhulumu tuwache. Ikiwa watu wanatembea jioni, hii ni nchi yao. Kwa nini tutake kujua wanatoka wapi? Kama hakukua kosa ambalo limefanyika hapo, kuna sababu gani ya kuuliza fulani ametoka wapi na kumkamata? Wakati mwingine, vijana wanatembea usiku wakitoka kucheza kandanda, dansi au michezo mbali mbali, na polisi wako pale na lori lao. Wanawajaza kwa lori na kuwapeleka. Kesho asubuhi, vijana wanapigwa faini. Ni lazima tubadilisha mawazo katika nchi yetu ili tuweze kubadilisha tabia ya vijana waliopotoshwa.

Bw. Naibu Spika wa Muda, mimi nasema kwamba ni lazima kuwe na kundi la wazee vijijini. Kabla ya kupeleka watu jela ama kwa polisi, vijana ama waliokosa wapelekwe kwa wazee. Wale wazee ndio watasema ikiwa hao watu wako na tabia mbaya. Baada ya hapo, wapelekwe kwa polisi hadi kortini.

Bw. Naibu Spika wa Muda, kuhusu wizi wa kutumia mabavu, ni lazima sisi kama Wabunge tuwe tunakumbuka kwamba, mwaka wa 1975, katika uwanja wa Kamukunji, ilikuwa siku ya giza kubwa, wakati iliposemekana kwamba wale ambao wanaiba kwa fujo, fitina, mangumi, visu na bunduki ni lazima wanyongwe. Mimi nikijua wale vijana ambao wako jela sasa, wale ambao wanangojea kinyonga saa hii ni wengi sana. Utakuta fitina za polisi katika nchi hii zinafanya watu wetu wamalizike; kwamba, yule ambaye anashikwa na polisi ni mwizi. Huyu kijana ama mzee alienda kuiba na kumwambia mtu: "Sikiza, usiponipatia Kshs100, nitakunduka na hiki kisu!", na anapatiwa. Huyu katika korti, anahukumiwa kifo. Katika kitabu cha Mungu, inasemekana kwamba usiue. Katika Bunge hili, tunaongozwa na Wakristo. Katika nchi hii pia, tunaongozwa na Wakristo na wanajua kwamba kuua ni kukiuka amri ya Mungu. Yule ambaye amehukumiwa kifo, jambo la kwanza yeye mwenyewe hajaua bali alitisha. Na kutisha sioni kama ni kuua. Ni vibaya sana kuchukua damu ya watu. Itakuwa vibaya sana kwetu kwamba tutaua vijana na wazee ambao hawajaua bali walitisha. Hicho kitu kimefanya madhara makubwa katika nchi hii. Hii ni kwa sababu tunafanya hata wale ambao hawanguewa na wezi wauawe, ndipo kusipatikane mashahidi huko kortini. Kwa hivyo, mwizi anasema nini? Anasema akimwacha mtu hai, atakuja kutoa ushahidi kortini "ndio mimi niuawe". Kwa hivyo, kitu kizuri ni kwamba, kwa vile mimi nimeiba, ni kuua ili na mimi niponyoke.

Bw. Naibu Spika wa Muda, ninaona sheria inahitaji marekebisho. Ndiyo maanake ninasikia nikistaajabika sana kwa sababu sisi tunaleta Miswada mingi sana katika Bunge hili, wakati bado tunajitayarisha kurekebisha Katiba. Urekebishaji wa hii Katiba utatufanya sisi wenyewe kuanza kufikiria ni sheria gani tutabadilisha. Naona kwamba huenda kukawa na jambo ambalo limefichwa pahala; kwamba, tutaleta Miswada tupitishwe, halafu baadaye, Katiba yetu ishindwe kurekebishwa. Mimi napeana hoja kwamba ingawaje hii Miswada ina maana, ninaona hakuna maana kubwa sana ya kuleta Miswada mingi katika Bunge, tupitishwe na tungojee Katiba ili tuipitishwe baada ya miezi 15. Naona kuna maana, Mkuu wa Sheria, wakati tunafikiria urekebishaji wa Katiba, Bunge hili lijiunde kwa kamati fulani, ambayo inaweza kukaa chini ili iangalie sheria zote za nchi hii, ili tuone zitaambatana namna gani na Katiba yetu. Nasema haya nikijua kwamba kama hiyo sheria ya mauaji kwa wezi wa mabavu, ama sheria ambayo ni ya kurandaranda; ama sheria inayohusiana na polisi, na sheria zozote zinazohusiana na Penal Code na mashamba, zinatakiwa kurekebishwa, ili baadaye tuweze kukubaliana na Katiba.

Bw. Naibu Spika wa Muda, tunajua kwamba makosa ni mengi sana, na singetaka nizungumzie mambo hapa ambayo yatahitaji kufikiriwa sana. Lakini leo, nimejua kwamba kule katika Idara ya Forodha, utakuta kwamba kuna watu wa forodha wanaokagua mizigo ambayo iko kwa container. Baadaye, kuna watu ambao wanaenda huko tena, kuvunja zile container kuangalia kilichomo tena, wakisema kwamba walitumwa kutoka Ikulu ya Rais. Kuna mambo mengi ambayo nikiangalia, naona ni kosa kubwa. Hatuwezi kuwa tunafanya kazi mara mbili. Maafisa wa forodha wako na kazi yao ambayo wamepewa na Serikali yetu. Na sisi tunawapatia hiyo kazi waende wakaangalie vile visanduku, waone ni mali gani iko ndani, vile inachungwa, na ni kodi gani zinalipishwa. Kumeundwa kampuni ambayo inaitwa Swipco, ambayo inavunjavunja hizo containers tena na

kuangalia ni nini kiko humo ndani. Mwisho kabisa, unakuta kwamba yule ambaye anatakiwa kulipa kodi, pesa zake zinaongezwa na kampuni kama hii, ambayo hatujui iliundwa na nani, na kwa sababu gani. Kama tunaweza kufunga watu miaka miwili au mitatu, mimi naona watu kama hao wanatakiwa wafungwe miaka mingi, na vifungo vya ndani ya jela. Hii ni kwa sababu wanatusumbua sisi.

Bw. Naibu Spika wa Muda, yangu ni kusema hivi: Sababu kwetu kule Embu tunasema yule ambaye ameweza kunywa kilicho chungu ndiye anajua ladha yake, wakati ninapoenda kuketi chini, ningesema kwamba zaidi ya watu ambao wako jela 50,000 wanaweza kufanya kazi katika nchi hii na kurekebisha Kenya kimaendeleo, bila kuwa ndani ya jela. Nimeona katika Mswada huu kuwa wafungwa wetu hawatalipwa chochote kutokana na huduma zao katika jamii. Wafungwa hawa ni watu wetu kama vile watu wengine wanaohudumia jeshi letu, makarani au kila mtoto mwingine yeyote katika nchi hii. Ikiwa tutawalazimisha wafungwa wetu kufanya kazi ya jamii kwa muda wa miaka miwili badala ya kuwafunga jela, basi ni lazima tujue ya kwamba wafungwa hawa watahitaji chakula, malazi, matibabu na kadhalika. Sioni ni sababu gani wafungwa zaidi ya 50,000 watalazimishwa kuweka maji vijijini, kujenga barabara, daraja, hospitali, shule na kadhalika na ile hali hawatalipwa chochote.

Kwa hayo machache, Bw. Naibu Spika wa Muda, nashukuru.

Mr. Mwiraria: Thank you, Mr. Temporary Deputy Speaker, Sir. I will be fairly brief because a lot has already been said. But let me state from the outset that I fully support the Bill before the House.

Mr. Temporary Deputy Speaker, Sir, this Bill has a long history. I think it was first mooted in 1982 when we had the attempted *coup d'etat* and, overnight, the prison population more than doubled. It strained, not only the resources, but also their accommodation. So, in a sense, the Bill is intended to meet several objectives, one of which is to decongest our prisons and our remand prisons in particular, and also to reduce the cost of imprisoning people to the Government.

Mr. Temporary Deputy Speaker, Sir, I am not sure of what the position is today, but in 1982, prisons which were built to accommodate 500 prisoners were forced overnight to have a population of over 33,000 prisoners. Since then, I am sure these figures are much higher and, maybe, they are accommodating more than 50,000 prisoners. We have already heard a lot about the number of deaths in our prisons. Since so much has been said about this Bill, I have only one concern about Section 3 of the Bill, which is dealing with the type of persons who should get community service orders. Really, I would like to ask the Attorney-General how he will deal with it. One of the biggest problems is that when you arrest people, you put them in remand prisons where they are over-congested, and many of them are dying of contagious diseases and starvation. The proposal I would like to make is that if people are arrested for offences which are bailable, then they should, perhaps, get automatic free bail so that they do not spend time in remand prisons because that is where, as one hon. Member said, young men learn how to do evil things. You pick somebody who is completely innocent and put him in prison or remand prison with hardened criminals. By the time, he leaves, he has already learnt a few bad things, and this way, we will develop a lot of criminals.

Mr. Temporary Deputy Speaker, Sir, the other question that arises is that today, we have a lot of problems with chiefs, DOs and their, askaris, who arrest people for petty offences, lock them up in impromptu cells in chiefs camps and DO's offices. They then form a kangaroo court, fine these people and then release them without even taking them to court. Quite candidly, this is an issue that ought to be looked at. The sooner we devise ways and means of making sure that our people are not arrested by the askaris, who lock them up and also threaten them, the better. They tell them, "If you go to court, the fine will be Kshs5,000. So, pay Kshs1,000, and we let you go." This is going on today without any restriction.

Mr. Temporary Deputy Speaker, Sir, the other point I want to mention here relates to Section 3(vi), which says:-

"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 and the court is satisfied..."

Surely, if you are punishing somebody, why do you want him to consent to it? I do not think it has ever happened anywhere, and I would really suggest, in all seriousness, that this be amended by deleting the section that requires the consent of the offender.

The last point I want to mention relates to the success of this whole programme. The programme can, and will only succeed, if there is adequate supervision. As things stand in this country today, this kind of supervision can only be effective if the selection of the locational, divisional and district community service orders committee is proper. If this is not done, we will have what hon. Kathangu mentioned; people working in chiefs' shambas and in other people's places. This kind of punishment will be resented. I know that community service is a more effective punishment than ordinary jails because nobody in the Kenyan society wants to be seen, and known to be a criminal. Once you have these people conspicuously working out there and carrying out

community service as a punishment, this will, perhaps, deter more criminals and will force people to improve.

Finally, I would like to say that for each area, the selection of the community service concerned must be beneficial to the area. Therefore, it must be carefully selected. The Bill is very clear on what kind of services can be offered. Some parts of Meru Central District which used to be grazing land have now been settled on. Deforestation is taking place, and we are likely to get desertification in the area. If offenders are asked to plant more trees to afforest the land, then we will do away with the problem of desertification.

Mr. Temporary Deputy Speaker, Sir, there was an earlier suggestion by hon. Katuku that one should consult the convict about the best hours for him to serve. Certainly, I object to his suggestion. I feel that if it is a punishment, it has got to be imposed, strict, and accepted by whoever is serving it. There should be no question of negotiating whatsoever with the convict.

I would like to ask the Attorney-General to consider what should be done to remand prisoners, particularly those whose offences as conceived by police officers are likely not to result in longer sentences than proposed in this Bill. I will be happy if they are given free bail, so that they attend court without having to go to remand prisons, whose conditions are unbearable.

Finally, I would like to agree with those who have suggested that we should extend the prison term to three years. This looks reasonable because there are a lot of people who are dying in our prisons today. These people are serving a jail term of three years or less. Normally, if one is of good conduct, he will only serve two-thirds of his term. Therefore, the three years will end up being two years. Perhaps the Attorney-General could also consider increasing the sentence for community service, so that we can really reduce the number of prisoners in our prisons to the barest minimum.

Mr. Temporary Deputy Speaker, Sir, I happen to have served as a Permanent Secretary in the Ministry of Home Affairs and I know how difficult prison conditions are. Although we have been told here by a Minister, I think it was hon. Lotodo, who is not here today, that the Government provides sheets, beds and everything else in our prisons, anybody who has been to prison knows that if you get a mat to lie on, on the floor, then, you are very fortunate. So, it is much better to have few prisoners, whom we can really look after well, and for whom we can introduce corrective punishment in our prisons. If we will separate the hard-core criminals from the petty offenders who find themselves in prison---

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

Mr. Mwakiringo: Thank you, Mr. Temporary Deputy Speaker, Sir. I just want to take some few minutes to contribute to this important Bill because it has come at the right time, when the Government has no money.

I would like to talk about my experience when I was once put in a remand cell for about nine hours because of committing a traffic offence. The nine hours I stayed in the cell were just like years to me. That room was meant for only 10 people, but we were 55 people in it. What I experienced was not good for one to be in that chamber. Hard-core criminals say many things there. If you went there because you committed a minor offence, you can still be encouraged to commit a serious offence when you get out. This is because there are some people in the cells who can advise you on how to lodge an appeal and argue in court successfully.

Mr. Temporary Deputy Speaker, Sir, the current cells were meant for the colonial time, when the population of this country was very low, but it has increased now. I would like to give an example, which I am bitter about. The example is that prisoners in Voi and Wundanyi Prisons are living in very unhygienic conditions. Prisoners in Wundanyi Prison help themselves in a river, which flows through Wundanyi Town. This is because the buckets which they use as toilets are all leaking and, therefore, they cannot be used in the cells. Therefore, they are allowed to go out and relieve themselves in the river, which flows through Wundanyi Town. The situation is pathetic and yet most of the prisoners there are actually imprisoned on petty offences. This problem will only be solved if this Bill goes through.

I am of the opinion that before prisoners are sent to prison, they should be counselled by spiritual leaders, so that if the offenders can mend their ways before they are taken to court, then they can be left to serve the community instead of being sent to the cells. In my view, congestion in police cells are caused by some police officers themselves. If police officers can counsel the people who have committed petty crimes by advising them, then the culprits can mend their ways immediately. Therefore, police officers should assist in advising offenders of petty crime. But, here again, the police are fond of charging people in court because of corruption. If you do not part with "something small," definitely you will be taken to court where you will be charged.

According to the figures which we were given at a seminar held in Lamu Town, AIDs is also spread through homosexuality, which is rampant among prisoners. If the Community Orders Service Bill is passed, it will help ease congestion in our prisons. This will, in turn, get rid of homosexuality in our prisons.

Mr. Temporary Deputy Speaker, Sir, while the offenders will help in community-based activities, they should also be used to put up schools and toilets in some chiefs' offices, which do not have the facility. They

should also be asked to repair Government houses, some of which are going to waste because of non-maintenance. Offenders, who will serve the community, should be hired by people who will carry out construction work and other works, so that at the end of their term, they will be paid something small to keep them going.

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

Mr. Ita: Thank you, Mr. Temporary Deputy Speaker, Sir. I do not have much to say, but I will be very brief but in directing these remarks to the Attorney-General. As we speak now, there is a very heavy congestion in our prisons and in our remand homes. There are very many unworthy people there and it would be a good sign, and an act of goodwill, if the Attorney-General could really begin to instruct the police or even send a signal to the police, prisons and the courts, that they should be able to release some of these people. That is the language I hear, that there are too many prisoners already. Can we have some goodwill through the office of the Attorney-General and the Office of the President, and reduce this congestion now as we pass this Bill?

The second point that I want to make is that it does not mean that when a human being is being taken to prison, he is reduced to an animal. The kind of language that the prison warders use on prisoners might surprise some of you because you have never been there. But those who have been there, and those who have heard the stories of how prisoners are treated, know the language used there, and that prisoners are counted by use of a stick. In the evening, the counting can be done by about seven warders using sticks on the heads of the prisoners. A warder normally uses one, two, three, four, five, up to ten, and then another one comes again hitting the prisoners. Prisoners are human beings and they should not be reduced to living under inhuman conditions. What I am trying to suggest here I do not think it is provided for is that prison warders should be retrained. I do not know what kind of training they undergo. They should be re-trained on how to treat prisoners as human beings. They are some of the most primitive people that we ever had. The language and the way they live has made them "prisoners". It is important that a training programme be developed for the prison warders, so that they become human and reduce the abuse on prisoners.

With those few remarks, I beg to support.

(Nassir Stood up in his place)

Dr. Kituyi: Jambo la nidhamu, Bw. Naibu Spika wa Muda. Ulimuona mhe. Shariff Nassir akisimama na alipoona unataka kumtambua, akaketi haraka sana? Inafaa kufanya hivyo? Au alikuwa anajaribu kuwadanganya watu kwamba unataka kuongea?

The Minister for Home Affairs, National Heritage, Culture and Social Services (Mr. Nassir): Bw. Naibu Spika wa Muda, jina langu halijatajwa katika Bunge wiki hii, kwa hivyo---

The Temporary Deputy Speaker (Mr. Imanyara): Nafikiri sasa utangoja Bw. Mwenje kwanza aongee.

Mr. Mwenje: Thank you, Mr. Temporary Deputy Speaker, Sir. I just want to mention a few words about this Bill. In the first place, I want to support this Bill wholly. Indeed, I want to say that this is one of the brightest ideas that any Attorney-General has ever come up with. We all know the state of our jails today. We all know how congested they are. Everybody has mentioned that. I have been wondering why no other Attorney-General has never come up with this kind of Bill because we really need to relieve our jails of these people, who are kept there not because they have committed serious crimes, but just because there is no other alternative that is given to the judges or magistrates. The Bill says that a magistrate or a judge may make a certain order, but I would have asked the Attorney-General to amend that section and use the word "shall". The moment you leave this discretion to the magistrate, then this House is not really doing its job. If we are making laws, and we would want anybody who is supposed to be kept in for two years, or who is sentenced or imprisoned for two years, at least, to serve in the community service, then we should use the word "shall" and not "may". We are leaving it very open for the magistrate and this can be effective if we do not leave this discretion to them. We are the people who represent the people from the grassroots and we know precisely how they should be treated.

Those of us who have never entered remand or prison may not know what is happening in that place. It is terrible, serious and very bad. You would not want to imagine how it is inside these places. I would suggest to the Attorney-General that we amend this immediately so that it becomes a rule that if we you are going to be imprisoned for two years or under, then one should serve in the community service; otherwise, this discretion that is being left to the magistrate or to the judges can be misused. Let us treat everybody equally. The situations in our jails are pathetic. As many have said before, the fact that you are kept there does not mean that you are inhuman. In fact, in some jails abroad, you are even given a mattress or a bed. Some are even given televisions and radios to listen to. Here you are kept as if you are an outcast. When Britain amended their laws to say that nobody should be hanged even if you commit murder, everybody would have expected that murder cases would possibly go higher.

But if anything, crime committed regarding murder went even much lower than what it was at that time. It will be more shameful for anybody to serve that sentence than being put inside there. I have noticed that these jailbirds who are there never improve. If you are taken there several times, you will meet worse criminals who will train you to become even more criminal.

I once stayed in a remand home and I learnt there were others who train other people how to commit crimes or who, for instance, tell you, when you go to court, to ask this or that question. So, you end up training more criminals than reducing them.

Dr. Kituyi: On a point of order, Mr. Temporary Deputy Speaker, Sir. Hon. Mwenje is being very transparent with us, that he has been there. But he is saying that when you go there, you become a worse criminal than when you arrived there. Is he suggesting that he is worse than when he arrived there?

Mr. Mwenje: Mr. Temporary Deputy Speaker, Sir, I was not in jail. I was only kept in remand just because I said that KANU was a very bad party although I was in KANU at that time. That was the only reason. It was political. I finally came to realise that when they started playing around with me. It was not a serious crime. My political opponents were trying to paint out a KANU office and then, during the night, they would wipe out that paint and say that it was done by me. It was sabotage. Of course, I am a much better person and I was not involved in those things. We need to be very careful when we send people to jail.

Mr. Temporary Deputy Speaker, Sir, our jails are terrible and maybe, I believe that is why the Attorney-General has come up with this brilliant idea. I thank him so much, because we used to have an Attorney-General here who could not even see such things. He could not even answer our Questions. Now, I can see we have an Attorney-General whom we can rely on, and who is coming to the rescue of those who are being punished, not because of the faults of their own, but for other reasons.

I do not want to say much. There is much that we should say, but the last thing I want to say on this Bill is that, when these prisoners are taken to do community work, we should be careful so that they are not taken into some private people's property to do that work. We need to be very careful on that. The Bill says clearly that it should be public work and it should not be some persons who should take them to their farms, schools or other places to do that kind of work.

I hear that in places like China, prisoners were brought here to do some work for commercial purposes. This should be for public purposes and should never be mistaken so that some people take advantage, either judges, magistrates or any other person of that nature, to take them to their own companies to do this work on their behalf while everybody will tend to believe that they are doing public work.

Sir, I hope that this Bill will be passed as quickly as possible and get its assent as quickly as possible, so that by January, it is implemented, and we should see it being implemented.

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

Mr. Leshore: On a point of order, Mr. Temporary Deputy Speaker, Sir. We have discussed the Bill for too long. Would I therefore, be in order to call upon the Mover to reply?

The Temporary Deputy Speaker (Mr. Imanyara): I think we have had sufficiently long time, and I will now put the question.

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

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, it is my pleasure to reply to this important Bill, and to thank all those Members of Parliament who have contributed to this Motion. In fact, apart from the Mover of the Bill, 15 Members of Parliament have contributed. They have all supported it and have also suggested ways and means in which this Bill can be amended and strengthened. I want particularly to thank those Members who contributed, and who have gone through the "mill", as it were, in particular, hon. Wanyiri Kihoro and hon. Kathangu, who have actually experienced the prison conditions as they are, and not just in one prison, but in prisons all over the country.

Sir, I would also like to thank my colleagues, the advocates, who, because they are involved in the administration of justice, have also come very close to knowing how the conditions in prisons actually are. Also, people like hon. Mwenje, who have had a short stint in the remand prison. I thank you all.

Sir, just to reply briefly to the various concerns, the first one was by hon. Mwenje, in Clause 3(1), when he said that the court should not have a discretion in the matter, but it should be mandatory that any person who the court would have sentenced for two years should serve community service orders. I think the way the law is now is better; the court must always have the discretion so that it can take care of the type of examples hon. Sei

mentioned. For example, there could be somebody who has committed an offence of a violent nature or committed, for example, arson, and whose community would not like to see him in that community, at least, for some time. Therefore, for such people, the court may very well feel it would be no use sending them back to the community, where they could even be lynched, but they are better protected in custody. So, that discretion on the part of the court is important and I, therefore, I would propose to leave the law the way it is.

Sir, a number of Members of Parliament have said that we should increase the term of imprisonment from two years to three years. I agree with that proposal and I shall, at the Committee Stage, be proposing an amendment. Indeed, when you look at the figures, when we increase it to three years, it means more people are going to benefit. A number of hon. Members have expressed concern that the community service should not be there to serve the interests of private individuals or companies. I once again state that the definition of the community service is that it must be public work which benefits the community, and the type of community services are set out in the Bill. Therefore, nobody is going to use a person who has been found guilty of an offence, and has been given a community sentence order, to do his private work. In fact, if that person does so, that will be an unlawful activity.

Sir, a number of Members particularly, Prof. Anyang'-Nyong'o, Paul Muite and quite many others, have expressed the view which I support, that part of the problem is the courts not giving bail in all appropriate cases, which leads to remand prison being overcrowded. Therefore, we ought to deal with that issue. I believe the courts, maybe, have not been as generous with bail because this option of a community service order has not been clearly set out in the law. I believe that now that Parliament is going to enact this Bill, it will be very clear to the Judiciary that the community service order is now a very important option. Consequently, I am sure the courts will, in all applications for bail, grant bail because they will know that at the end of the day, even if the man is found guilty, he is not likely to be given a custodial sentence; he is likely to be given a community service order.

Therefore, the ripple effect of passing this Bill on the Judiciary is going to be felt. I can also inform this august Assembly that the Task Force on the laws relating to Penal and Criminal Procedures, which has already submitted its final report, has actually drafted what we call a "Bail Bill" Early next year, I will be introducing to this Parliament a comprehensive Bail Bill which will guide the courts on matters of this nature. Sir, at the moment, all I can do is to appeal to the Judiciary that on the passage of this Bill, they should be more forthcoming in granting bail in appropriate cases.

Sir, Prof. Anyang'-Nyong'o also referred to the issue of approved schools. That is going to be dealt with under the Children's Law. The Task Force on laws will be starting the children's task, and they will be submitting the final Children's Bill, which will take care of approved schools. It may even allow not just the Government having approved schools, but they may even privatise some of the approved schools for the entrepreneurs who may want to go into that field.

Prof. Anyang'-Nyong'o also mentioned the issue of liberalising the airwaves. It is only last Friday that I received a report of the Task Force on Press Law, which included a draft Bill on this particular issue. I have already forwarded the report to the Ministry of Information and Broadcasting, and as soon as it has been discussed, it is our intention, again early next year, to introduce the Bill in this august Assembly; so, that again, when we start the constitutional review process, everything will be moving in a proper direction.

Sir, the other amendment Mrs. Seii, of course, talked about are the difficulties of supervision and so on. That is why this Bill envisages that there will even be community service orders committees at locational levels. In other words, we are decentralising the entire process from the national level to the community level, so that problems such as supervision, transport and so on, are minimised.

Sir, hon. Ita referred to the retraining of prison warders. I have it on good authority; the Minister for Home Affairs, National Heritage, Culture and Social Services is here, and he has informed me that prison warders are not only being trained currently, but they will also undergo retraining courses. So, I wanted to inform hon. Ita about that.

Mr. Temporary Deputy Speaker, Sir, on the issues raised by hon. Mwakiringo, already under this Act, we are saying that the Community Service Order officer must also have some rudiments on counselling. This is because one of the functions of that officer is to counsel persons who are under his jurisdiction. Apart from increasing the time of imprisonment from two to three years, the other amendments that I will be moving during the Committee stage are under Section 51, Clause 3, Subsection (iii), where it says that: "When a court determines that a Community Service Order should be made, it shall..." In other words, it is making it mandatory for the court to get a report from the community service officer. Many Members have expressed fears, which are genuine, that if somebody is going to be in prison for six months, some of the probation reports and, therefore, the Community Service Order reports that we may wish to have may not be available for quite some time. It takes time to have that report. By the time that report is ready, the six months are over. I will be proposing at the Committee stage to

make it discretionary on the part of the magistrate to decide whether or not he requires a report before he can make the order.

Mr. Temporary Deputy Speaker, Sir, hon. Mwiraria and hon. Murungi also mentioned the issue of why an offender should consent to the making of the order. I do see sense in that one, and I will be deleting that requirement; that the offender must consent to the order.

Mr. Temporary Deputy Speaker, Sir, I thank all the Members for supporting this Bill. I can only alert my colleague, the Minister for Home Affairs, National Heritage, Culture and Social Services, to alert his officers that this Bill is, indeed, going to be passed and, therefore, they should now start making the necessary administrative arrangements to implement it. This is because there are heavy administrative problems involved. The sooner they start working on those administrative problems, the better, so that, when the Bill is passed, at least, it can be implemented as soon as possible.

With those few remarks, I beg to move.

(Question put and agreed to)

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

Second Reading

THE NATIONAL INTELLIGENCE AND
SECURITY SERVICE BILL

The Minister of State, Office of the President (Maj. Madoka): Mr. Temporary Deputy Speaker, Sir, I beg to move that the National Intelligence and Security Service Bill be now read a Second Time.

The background to the intelligence service has been clearly spelt out in the draft Bill. I wish to make very brief comments. As we are aware, the present director of Security Intelligence operates under a Presidential Charter which was established in 1970, under the late President Kenyatta, and it was renewed in 1979 by President Daniel arap Moi. The Special Branch, as it is commonly known, has people seconded from the Kenya Police and they operate like policemen. Although the Special Branch operates differently from the police, they are still linked to the police force. The powers and functions of the Special Branch are not very clearly defined by a statute, and hence the purpose of this Bill is to provide for the establishment of a National Intelligence Service with functions and powers clearly defined. We also need to have an independent unit which will act independently from the police. The need to have the Special Branch delinked from the police was first recognised or considered viable by the Ndegwa Report, and later in 1988, by Prof. Ominde's Report. The IPPG also recommended the de-linking of the Special Branch from the police to afford it the autonomy it deserves, to ensure the independence of its operations.

In the past, the Special Branch was known to have a very notorious record. I am sure Members from both sides of the House, especially those who have been through it will, maybe, even find a stronger word to use instead of just "notorious". We acknowledge that they have in the past used some of the most unorthodox methods of extracting information from individuals. They have been known to violate some of the very basic human rights, and they have got away scot free. Because of this, and in this day and age, we need to have clear limitations of their powers and functions. These can only be established if we do have something in the form of a Bill as we introduce it now. This Bill clearly defines the powers of the Special Branch or the Directorate of Security Intelligence (DSI).

Mr. Temporary Deputy Speaker, Sir, it is a common practice in most Commonwealth Countries and others as well, like Canada, United Kingdom, New Zealand, Nigeria, Zambia, Zimbabwe, Uganda, Tanzania and many others, to have independent special branch units, de-linked from their police units. Similar independent Acts have been established. For example, our neighbours, Uganda and Tanzania, have de-linked their special branch from the police. So, in fact, in this respect, we are lagging behind our neighbours.

Mr. Temporary Deputy Speaker, Sir, there has been much secrecy about the Special Branch and hence the very negative attitude of people towards this service. From the onset, it is important, therefore, that we get a public understanding and acceptance, which will be an essential ingredient in the creation and effective functioning of a civilian security intelligence service in Kenya. The security docket, which has been part of the police, will be removed and established under an independent non-police service, whose mandate will be to gather intelligence bearing on threats to the security of Kenya. This new service will be directly accountable through the

Attorney-General and the Minister in charge of internal security, to Parliament. Also, this legislation will significantly enhance the role of the police in the area of security-related law enforcement. In an age of increased threats to security, the National Intelligence and Security Service, Bill will have the powers to ensure that it will be effective. All details of the services operations in protecting the national security will necessarily remain classified. However, its existence, functions and general powers must be known. At the same time, it will be subject to a structure of new controls and new safeguards to ensure that its powers are not abused, and that the rights and privacy of individuals are protected.

The duty of the State is to protect its secrets from espionage; its information from unauthorised disclosure; its institutions from subversion, and its policies from clandestine influence is indisputable. What are matters for dispute are the organization and procedures established by the State to meet this responsibility in an area which can touch closely upon the fundamental freedoms of the individual. The problem of balancing the need for accurate, effective security intelligence, with the need to respect democratic rights and freedoms has been fully addressed in this Bill.

Mr. Temporary Deputy Speaker, Sir, people keep on asking if there is a need for the National Intelligence and Security Service. There is a need. The National Intelligence and Security Service, will be a civilian security agency built on the foundation of the current directors of Security Intelligence, to inform the Constitutional Government of the day, of all threats to public and national security of Kenya. It will investigate those threats, analyze and interpret the information collected, and advise the Government. It will be advisory and non-executive. It will not have any powers to arrest. It will not have any powers to enter and search premises or houses without properly executed search warrants.

Mr. Temporary Deputy Speaker, Sir, it is Kenya's responsibility to protect its classified material from unauthorised disclosures. These obligations will require the protection of accurate and timely intelligence on activities of individuals, organizations or groups who may be responsible for such threats of our security. The National Intelligence and Security Service will provide that intelligence or advance information on these threats as they develop, enabling the Government to anticipate problems and prepare effective, careful and considered responses. It will also be responsible for the economic, scientific, commercial and technical intelligence.

Mr. Temporary Deputy Speaker, Sir, through the District Security Intelligence, which has evolved on the police Special Branch, its style of work and main thrust has always been different. The police is concerned with gathering of evidence of crimes and their prosecution before the court and is, therefore, executive. The intelligence, as I have already said, is advisory, and more importantly, with multiparty democracy, it is envisaged that the establishment of the National Intelligence and Security Service by an Act of Parliament will underscore the need for commitment to accountability and transparency with regard to matters affecting national security.

Mr. Temporary Deputy Speaker, Sir, in these days when we have a multiparty system, the security personnel will not be able to operate as they did when we had a single-party State. During the single-party State, they wasted a lot of time on trivial matters; eavesdropping on individuals' discussions and so on. With this multiparty system, when we set up a system like this under this Bill, then it would be able to work more efficiently.

Officers recruited into the National Intelligence and Security Service will of necessity have attributes suited to its specialization. The Service will be free to recruit from anywhere. They may require economists, scientists *et cetera*. Therefore, they will have a free hand to recruit from wherever they want so that they can get these specialised people in the Service, who will be able to perform the duty that they are now going to perform.

Mr. Temporary Deputy Speaker, Sir, there is the question of what will happen to those in service at the moment, and who do have the police background. The intention is that, once we establish the Service, those in the police force who will not be able to measure up to the new requirements will be required to go back to the police service. And those who will be found to be suitable will continue to serve in the Service. But, certainly, they will be looking for very qualified people to be able to play their new role.

Mr. Temporary Deputy Speaker, Sir, with this Service, they will still pass on intelligence to the police, who will effect their law enforcement functions. But the police will also have a Criminal Intelligence Unit which will be separate from the Special Branch. They will have this unit to be able to get intelligence, for them to be able to prosecute the criminals. The question is: How different will this new Service be from our present Special Branch? First, it will be the first time in our history that we have a Security Intelligence Service, legislated, mandated and vested with powers defined by the statutes. We will have a Complaints Commission to listen to complaints of any abuse or misuse of powers. I think this maybe the highlight of this Bill. In the past, those people who have been through the the Special Branch have been mistreated; they have had cases that they would have wanted to bring up for complaint, but they have not had a forum to bring out these complaints. We will, therefore, have this Complaints Commission, and it will be properly established. So, those people who may feel aggrieved will be able to bring up their complaints. Since it is important, I would like to particularly highlight what the

Complaints Commission will be required to do. Section 24 of the Bill states:-

"Any person aggrieved by anything done by the Director-General or by a director, officer, or other members of staff of the Service in the exercise of the powers or the performance of the functions of the service, under this Act, may make a complaint in respect thereof to the Commission, in such manner as may be prescribed".

Mr. Temporary Deputy Speaker, Sir, this Commission will be established, and in the Draft Bill, we said that members of this Commission will be appointed by the President. But after discussions with the Parliamentary Committee, we agreed that the President will only appoint these members on the advice of the Judicial Service Commission. The requirements for members to sit in the Commission are:-

"The Chairman, who shall be a person who holds or has held or is qualified to hold office as a Judge of the High Court, or of the Court of Appeal. Four other members whom, one shall be an advocate of not less than seven years' standing, and one shall be a religious leader of national repute".

Mr. Temporary Deputy Speaker, Sir, I am highlighting this because I think it is important that with this new Bill, people will be free to lodge complaints if they feel the Service has misused or abused their powers. In addition, a Committee outside the Intelligence Service, for setting Kenya's national intelligence requirements will be set. We will have a National Security Council which will advise the Director-General of the Service on how to operate and control the administration, and help in setting up the policies. With this, there is also the worry that, will the Security Service be a secret police? The answer is no. It will not be a secret police for the Government. Any policing function will be the responsibility of the Commissioner of Police. The National Intelligence and Security Service activities will generally be limited to collection, analysis and reporting of information and intelligence. The Attorney-General and the Minister in charge of internal security will be accountable for the National Security Service to Parliament. By passing this Bill, we are, in fact, ensuring some political supervision of our civilian intelligence service.

Mr. Temporary Deputy Speaker, Sir, I want to take this opportunity to thank the Parliamentary Committee for having gone through the Bill and making some very useful recommendations, which have helped improve this Bill. We did agree on most clauses, but there are two clauses where we had a difference of opinion. The first one is on the title of the head of the service. We have recommended that the title be that of Director-General. People felt that it is giving him too much authority. But what is there in the title? It is the body of the Bill or the limitations that are set out that will really determine how this individual works. But more importantly, the Tanzanians and Ugandans have a Director-General and since there is this co-operation, and since these people frequently meet, we feel that they should meet and feel that they are at par and hence, our recommendation that the job title remains that of Director-General.

The other clause where we had a difference of opinion was the question of vetting of the Director-General. We agree in principle that there should be vetting of the Director-General. But what we are saying is that at this stage, we have not yet set up a committee properly constituted. We have not laid down the requirement or the criteria under which the vetting will be done. There is evidence that with the new constitutional review, certain jobs will obviously be vetted and I am sure the Director-General's post will be one of them. They will consider most likely, the Chief Justice's position, maybe the Commissioner-General of the Kenya Revenue Authority. Here it comes again; Commissioner-General, Director-General. So, we are saying we feel that when the entire constitutional review process has been done, and it has been decided who will be responsible for that vetting, this will automatically fall in place. I am sure, in many other Acts as well, where the powers of the President may be limited, again, we are sure that other Acts will change automatically.

Mr. Temporary Deputy Speaker, Sir, I know that Members from both sides of the House who have passed through the Special Branch may have some bitter memories. But I am saying: Let us turn a new immaculate leaf. Let us forget the past and start a new intelligence service; a civilian service which will---

Mr. Muite: Mr. Temporary Deputy Speaker, Sir, is it in order for the hon. Minister of State to appeal to those of us who have been subjected to gross humiliations by the Special Branch to forget under a new chapter, without telling us whether, for example, the man who was in charge of Nyayo House torture chambers, Mr. Opiyo, is still there? Is he still there or have you sacked him before you appeal to us to turn a new chapter?

The Minister of State, Office of the President (Maj. Madoka): Mr. Temporary Deputy Speaker, Sir, I am saying: Let us forget the past, and we are starting a new service; we are not discussing individuals. So, I am appealing that, let us look at this new intelligence service, an intelligence service which will be prepared to use its brains rather than its brawn in their quest for information.

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

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, I beg to second this Motion. This

is a very important Bill. As you know, all over the world, in the past, security intelligence organisations have always operated in very secretive and mysterious manner. In fact, somebody said of the CIA, that everything begins in a mystery and ends in intrigue. I recall an incident in the early 1960s, when Robert F. Kennedy, the then Attorney-General of the US ordered that the sign board on the road showing where the CIA headquarters was, should be put down because the offices of a secret agency are not supposed to be known. So, security intelligence services all over the world have operated in a manner in which the human rights have actually been violated. One has only to read what the Mossad, the FBI and the CIA have done in the past, to know that the security organisations everywhere have really been violators of human rights. This is because they operated on the principle that the end justifies the means. If the means involve torturing and even killing, then, they did it.

Mr. Temporary Deputy Speaker, Sir, all security organisations all over the world are now re-appraising themselves, and we in Kenya should not be left behind in that evaluation and hence, this is a very important Bill, which will make the security intelligence organisation here to be transparent, accountable and operate with due respect to the human rights of the individual; and also operate in a new environment where we require not only information, but also a proper analysis of that information to enable the democratically elected leaders to make decisions. This Bill goes a long way to fulfilling those particular objectives. If we are talking about transparency and accountability, they are. If we are talking about the security intelligence organisation being enabled to hire the right calibre of people, this Bill will do it.

Mr. Temporary Deputy Speaker, Sir, security intelligence organisations all over the world actually hire the top brains from the universities. They are able to attract the best from the universities, be they in the legal profession, economists, scientists and so on. The best brains are captured by these security intelligence organisations to be at the service of their country. We also want our own security intelligence staff to be of the same calibre, and we want our security intelligence to be able to attract the best brains from our institutions.

Mr. Temporary Deputy Speaker, Sir, when you talk about transparency and accountability, let me just refer you to a few clauses here. If you look at page 389, paragraph A, what is the definition of a threat to the security of Kenya, it states: "The threat to the security of Kenya does not include any lawful advocacy, protest or dissent not performed in conjunction with any of the activities afore-mentioned." Therefore, the days of the past, where lawful democratic expressions of views, be they by speeches, demonstrations in the streets, when that was considered to be a threat to national security and therefore, invoked the powers that be, are gone, and the security intelligence should not consider those to be threats to national security.

Mr. Temporary Deputy Speaker, Sir, page 29, paragraph (4), if you look at the definition on Clause 7, which talks about the duties of the Director-General, you will find that the Director-General has a duty to take all reasonable steps to ensure that all the information which is gathered by the service should be necessary for the proper performance of his duties and--- That is when somebody may have somebody in the Security Intelligence and uses that person to harass people, inform people, authorities and so on, and people suffer as a consequence; those days are gone. The information that is to be gathered must be information that relates purely to security situations.

Mr. Temporary Deputy Speaker, Sir, the Director-General under paragraph (b), is also under duty to ensure that no act is performed that could give rise to any reasonable suspicion that the service is concerned in furthering, protecting or undermining interests of any particular section or population, or of any political party or other organisations in Kenya. Therefore, gone are the days, if we embark on this legislation, where the security intelligence can be used to further the interest of any one person, one group of persons, any one political party and so on. That is, in fact, declared to be unlawful if the organisations that we are going to have after the enactment of this Bill engage in such action.

Mr. Temporary Deputy Speaker, Sir, on page 395, under paragraph 10, officers who will be employed are only under duty to obey lawful directions. Therefore, if the officers are given any directions which are unlawful under this Act, the Laws of Kenya and so on, will be right to disobey those directions. They are only under a mandate to obey lawful directions. Under page 397---

Mr. Mwenje: On a point of order, Mr. Temporary Deputy Speaker, Sir. I do not want to waste the Attorney-General's time, but is he really in order to say so, when we know that, they will also **[Mr. Mwenje]** obey orders from the President, despite these being not in the Bill?

The Temporary Deputy Speaker (Mr. Imanyara): The hon. Attorney-General, continue. You must have finished, unless you anticipate.

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, this is what I anticipate. At page 397, Clause 15, it states:

"No officer of the service shall engage in activities of any political party or act as an agent of any such party".

So, one can see that, this Bill will bring everything on a proper legal footing.

With those few remarks, I would wish the Bill to get the proper support and endorsement of this House. I beg to second.

The Temporary Deputy Speaker (Mr. Imanyara): Maj. Madoka, I am not sure that I will be able to forget when they removed my nails, but nevertheless, I will propose the Question.

(Question proposed)

Mr. Maore: Thank you, Mr. Temporary Deputy Sir, for the opportunity to make some remarks, regarding this very serious Bill being enacted by this Eighth Parliament.

Mr. Temporary Deputy Speaker, Sir, I did note the word used by the Mover, and for those of us who are Christians, there is a part in the Bible referred to as "Sermon on the Mount," and the admission that the behaviour of the Special Branch has been notorious should be taken as a point whereby we begin the healing process. The Mover did request the House and the nation to have understanding and acceptance of a new intelligence service in this country. When we talk of a civilian security intelligence, we would like to agree that, it will be a new service, but they are not going to deliver the services diligently and efficiently if the only people they are going to be responsible to are the President, the Attorney-General and the Minister. That is not enough.

Mr. Temporary Deputy Speaker, Sir, on the formation or the allusion to a National Security Council that has been proposed in the amendment, it calls for a separate Act. So, it would have been very important if, at the time when the Bill was being drafted, they brought the two Bills at the same time, so that we could be able to pass them at the same time. We are facing a defining moment in the history of this country. It is a moment whereby we might be heading into new Jerusalem, or a moment where we could be heading into some deliberate confusion that is created by the current

institutions. We are aware of a time when the Special Branch had been used to collect opinion polls about the popularity or unpopularity of KANU in certain areas, just before an election. We are aware of a time when the big man used the Special Branch as his *mbwa kali* against those whom they are in competition with for power. We are not amused by the admission that a whole Government has been using a section of public servants as agents of torture, humiliation, harassment, extortion, blackmail and all those nasty words that you can ever use. We would have wanted to hear from the Minister that: "We admit all these and we are sorry and let us begin a new chapter".

Mr. Temporary Deputy Speaker, Sir, we want a new security intelligence in a new age. The current Special Branch is full of baggage people who may not be able to qualify to cross into the new millennium. We could say that they are not going to pass through the year on December 31st, 1999, because the millennium bug will not allow them to cross over. The reason is that the CIA we are talking of in 1998, the Mossad and the FBI and all the other intelligence organisations, not forgetting the MI6 and MI5; all of them, have the highest calibre of individuals who would be able to analyse data to do economic espionage, industrial espionage and all those things which would make a country prosper and not those who want to prosper and prop up a dictator; because, the formation and foundation of the Kenyan Special Branch, when it was done by President Kenyatta, was by a Presidential Charter and one of the most nasty remarks in that charter says: "You will report to me". It does not talk about an institution. When you begin with that kind of preamble, and for 28 years, they have been reporting to him; we would like to know whether they have been reporting about the clashes, Goldenberg scandal and the looming banking crisis "to me", and what was done.

Mr. Temporary Deputy Speaker, Sir, while we want to support this Bill to legislate and make the intelligence service a legal entity, we would like to echo the words of the Mover and the Seconder. We want the words "discretion of the President", which give the President discretionary powers over who to appoint, clarified. We have seen some discretionary powers abused; one such abuse is the President's discretion to appoint a Vice-President (VP). Twelve months have passed now since the last general elections, but the President has not put to use his discretionary powers to appoint a VP. We would like to have institutional mechanisms which we can depend on. We do not want to be depending on the whims of an individual, but those of an institution.

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Maore, you may continue with your contribution on Tuesday next week. It is time for Zero Hour, and we have one request from Mr. Adolf Muchiri.

MEMBERS HALF-HOUR STATEMENTS

FAILURE TO RECORD STATEMENTS:
MURDER OF S.M. MAINA

Mr. Muchiri: Thank you, Mr. Temporary Deputy Speaker, Sir. On 3rd June, 1995, Councillor S.M. Maina was shot in the streets of Nairobi. It is now two years since then, but the police have not recorded statements despite the fact that they arrested some people whose case was terminated. Could the Minister of State, Office of the President, give the public an explanation as to why that has not been done?

The Minister of State, Office of the President (Maj. Madoka): Mr. Temporary Deputy Speaker, Sir, I will do that next week.

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Imanyara): Very well. Hon. Members, it is time to interrupt the Business of the House. The House therefore stands adjourned until Tuesday, 8th December, 1998, at 2.30 p.m.

The House Rose at 6.35 p.m