

**NATIONAL ASSEMBLY**

**OFFICIAL REPORT**

**Wednesday, 4th October, 2000**

The House met at 9.00 a.m.

*[Mr. Deputy Speaker in the Chair]*

**PRAYERS**

**NOTICES OF MOTIONS**

**SESSIONAL PAPER ON RETRENCHMENT  
OF PUBLIC SERVANTS**

**Mr. Ojode:** Mr. Deputy Speaker, Sir, I beg to give notice of the following party-sponsored Motion:- THAT, in view of the fact that the retrenchment of public servants under the on-going Public Service Reform Programme has tremendous adverse financial, psychological and social impact, and noting that the Government lacks a legislative initiative, this House urges the Government to introduce a Sessional Paper detailing criteria for retrenchment, financial package and retraining of the retrenched public servants.

**A BILL FOR INCREASED PARTICIPATION  
OF WOMEN IN PARLIAMENT**

**Mrs. Mugo:** Mr. Deputy Speaker, Sir, I beg to give Notice of the following party-sponsored Motion:- THAT, this House do grant leave to introduce a Bill for an Act of Parliament entitled the Constitution of Kenya (Amendment) Bill to provide for increased participation of women and other marginalised groups in Parliament by at least one-third.

**MEASURES TO CURB DISRUPTION  
OF PRIMARY EDUCATION**

**Mr. Donde:** Mr. Deputy Speaker, Sir, I beg to give notice of the following party-sponsored Motion:- THAT, taking into account that the Government is committed to, and guarantees free education in all its primary schools; aware that the child education in Government schools is frequently disrupted by non-payment of charges unrelated to tuition fees, this House resolves that child education in Government primary schools will not be interrupted for reasons of any monies being demanded from the child, and that the payment of such monies should be the responsibility of the community of the school.

**COMPULSORY VOTING FOR ADULT KENYANS**

**Mr. Gatabaki:** Mr. Deputy Speaker, Sir, I beg to give notice of the following party-sponsored Motion:- THAT, considering the critical importance of Presidential, Parliamentary and Civic Elections in the democratisation process and in sustaining and enhancing a democratic society, this House urges the Attorney-General to introduce an Amendment Bill to amend the Constitution of Kenya to provide for compulsory voting for all Kenyans aged over 18 years.

**ORAL ANSWERS TO QUESTIONS**

*Question No.384*

GOVERNMENT ASSISTANCE TO MR. KISOI MUNYAO

**Mr. Deputy Speaker:** Mr. Kalulu not here? We will leave his Question until the end.

*Question No.437*

PAYMENT OF COMPENSATION TO MR. ISSACK

**Mr. Deputy Speaker:** Is Dr. Ali not here? We will come back to his Question.

*Question No.195*

COST OF ORGANIZING AGRICULTURAL SHOWS

**Mr. Munyao** asked the Minister for Agriculture:-

- (a) whether he could give an estimate cost of organizing a national Agricultural Society of Kenya Show; and,
- (b) whether he could justify such expenditure.

**The Assistant Minister for Agriculture and Rural Development** (Mr. Khaniri): Mr. Deputy Speaker, Sir, I beg to give the following reply.

- (a) The Agricultural Society of Kenya (ASK) spends, on average, Kshs11 million to organise a national show.
- (b) The bulk of the funds goes into meeting the society's expenditure which includes arena events, casual wages, meals and entertainment, livestock maintenance, freight, transport and travelling, printing and stationery, repair and maintenance of the show ground, water and electricity bills. Other areas of expenditure include judges' fees, prizes and medals, gates stewards/NYS, show officials' expenses and hiring of other essential services. It is necessary for the ASK to ensure continued high standards of these shows, if the objectives are to be achieved.

Agricultural shows have, over the years, provided an important forum for advancing agriculture. In recent years, shows have been diversified to include aspects like industrial, manufacturing, commerce and marketing. This diversification is in line with our current policy of making Kenya an industrialised nation by the year 2020.

**Mr. Munyao:** The other day we were ranked the eighth most corrupt country and the Government said, "we are only No.8". This is another statement; "that only Kshs11 million is spent on organizing a show". That is a lot of money. Does the Ministry have a department to follow up what comes out of those shows? The intention is, perhaps, to help agriculturalists or farmers.

**Mr. Khaniri:** Yes, Mr. Deputy Speaker, Sir, the Ministry has such a department. However, it is important to note that the Agricultural Society of Kenya does not receive funds from the Government to stage the shows. The Society's shows are self-financed mainly through the trade, rents from exhibitors, gate collections and membership subscriptions.

**Mr. Munyao:** Mr. Deputy Speaker, Sir, if the Government has a department to follow up what happens in the shows, and if what the Assistant Minister has said has got any substance, like now we have a show--- All the livestock farmers of Kenya have got their livestock in the Nairobi International Show Ground, a few kilometres from the City Centre; and yet, the City Centre is flocked by cattle from all over and they are not even vaccinated. Is he taking care of the farmers who have brought their livestock here? Some of the cattle which are roaming around are very dangerous.

**Mr. Khaniri:** Mr. Deputy Speaker, Sir, that has been taken care of. I want to assure the hon. Member that the cattle at the Show Ground are safe.

**Eng. Muriuki:** Thank you, Mr. Deputy Speaker, Sir. If the Government is spending as much as Kshs11 million for one show and every time we have shows at the provincial and district levels we have to do harambees, could the Government consider financing the shows at the provincial and district levels, so that we can reserve the funds for other activities in the districts?

**Mr. Khaniri:** Mr. Deputy Speaker, Sir, I stated earlier on that those shows are supposed to be self-financing. The Government does not finance any show, be it the Nairobi International Show, or the Mombasa National Show.

**Mr. Gatabaki:** Mr. Deputy Speaker, Sir, could the Assistant Minister tell the House why there has been a persistent decline in show attendance by farmers, the Kenyan public and also international participation? There has been a persistent and continuous decline

in show attendance. There may be no more shows. This is an indication of corruption in the Kenya Government which we are seeing. It is time we called on this Government to decamp and go back to seek a fresh mandate!

**Mr. Khaniri:** Mr. Deputy Speaker, Sir, I am not aware of the continuous decline in show attendance. Unless the hon. Member can give us the data, I am not aware of that. As far as we know, the attendance is up-to-date.

**Mr. Munyao:** Mr. Deputy Speaker, Sir, the Assistant Minister has said that they have a department which follows up what is happening; we have seen all over the country and even now, the on-going Show, there is a farm to demonstrate to farmers how best to grow food. How is it that, consistently, the more we have got, 36 shows since Independence, the more we are declining in food production? What benefits do we get out of those shows? We are getting more famines than ever before.

**Mr. Khaniri:** Mr. Deputy Speaker, Sir, I must start by correcting the hon. Member. We have held 15 shows and not 36. As to what we benefit from---

**Mr. Munyao:** I meant 36 years since we started those shows.

**Mr. Khaniri:** As to how we benefit from the shows, they encourage high standards of agriculture and food related industries. They act as a centre for collection and dissemination of relevant information for the agricultural community. The exhibitions provide a forum for indepth discussions of agricultural policies through meetings and conferences. Lastly, to provide and maintain auctioning or sale of top quality livestock.

*Question No.133*

ENROLMENT IN PUBLIC/PRIVATE UNIVERSITIES

**Mr. Achola** asked the Minister for Education:-

- (a) how many students were enroled in all the public and private universities in the country in 1998/99;
- (b) how many Kenyans were studying abroad during 1998/99 and approximately how much forex was dispensed; and,
- (c) in view of "b" above, if the Government could consider establishing more public universities to cater for those students in order to save the country's meagre forex.

**The Assistant Minister for Education, Science and Technology** (Dr. Wamukoya): Mr. Deputy Speaker, Sir, I beg to reply.

(a) During the academic year 1998/99, the number of students enroled in public universities was 39,477 and those enroled in the then chartered private universities was 4,181. The total number of students enroled in both public and private universities was 43,658.

(b) According to records held by my Ministry, there were a total of 17,219 Kenyan students studying abroad during the year 1998/99, which included the figure of those who were studying there in 1998. The forex dispensed by the Kenyan Government on those students in four years amounted to Kshs18,177,800,000.

(c) Despite the current unfavourable economic situation in the country, the Government is committed to expanding access to university education. Recently, Maseno University College was elevated to a fully-fledged university and a Bill to that effect is awaiting deliberation and formalisation by this august House. Jomo Kenya University of Agriculture and Technology has also gone ahead to establish constituent colleges at Bandari College, Kenya Science Teachers' College, and Loreto Convent Msongari, which is specifically for female students.

In addition, the Government is encouraging entrepreneurs to establish private universities, all of which will go a long way to save on the country's forex.

Thank you.

**Mr. Achola:** Mr. Deputy Speaker, Sir, I would like to thank the Assistant Minister for that comprehensive answer. But he has not answered part "c" of the Question, which specifically asked how many more universities the Government will establish in view of the fact that we are spending Kshs18 billion in forex. Elevating Maseno University College to a fully-fledged university does not increase the number of admissions. So, we are not solving any problem at all. Could the Assistant Minister specifically tell the House what the Government is intending to do in order to increase admissions in our local universities?

**Dr. Wamukoya:** Mr. Deputy Speaker, Sir, in the first place, by increasing public universities by such a small number that we already have in Maseno University and the constituent colleges, we have already reduced the number of students going abroad from 20,000 to 17,000 in 1999. As far as public universities are concerned, it is not possible to increase them by large numbers so quickly because of the economic constraints we are facing. I have also mentioned that in the last one year alone, we have had Maseno University upgraded and we have established three constituent colleges. As time goes by, we are sure the Government is going to introduce more universities. We are also urging private entrepreneurs to help. We already have 13 private universities. Five of them are chartered already and eight of them are operational but not yet chartered. I think at that rate, we are going to be able to receive as many students as possible.

**Mr. Angwenyi:** Mr. Deputy Speaker, Sir, as you realise, Kshs18 billion is the total amount of money we earn through our coffee exports and that amount of money is being given out as "invisible items" in the balance of payments. Also, by exporting that amount of money, we are exporting jobs. Could the Government, as a matter of urgency, expand public universities and also influence private universities to cater for the 17,000 students who go abroad?

**Dr. Wamukoya:** Mr. Deputy Speaker, Sir, I am sorry if my colleague understood this to mean one year's fees. This figure covers four years, and I would like to give him a break down of it as follows: In 1994, Kshs4.1 billion; 1997, Kshs2.8 billion; 1998, Kshs5.2 billion; 1999, Kshs5 billion; and, for this year, we have an estimate. So, this brings the total for the four years to Kshs18 billion.

**Dr. Omamo:** Mr. Deputy Speaker, as the Assistant Minister said, it is true that, of late, there has been a shortage of money for the establishment of universities. However, if you draw a line within a radius of 100 miles from Nairobi, you will find that over 90 per cent of all the universities, both public and private, are found within that radius. Considering the fact that universities are an investment in human resource and general development, could the Assistant Minister assure this House that, in future, when the Government gets money to establish a new university, it will be established farther away from the 100-mile radius?

**Dr. Wamukoya:** Mr. Deputy Speaker, Sir, the hon. Member was my Principal at Egerton College, I think that university is not within the 100 miles radius described by the hon. Member; it is outside this area. Also, Baraton, Moi and Methodist Universities, and Maseno and Bandari University Colleges, are all more than 100 miles away from Nairobi. All I can say is that we radiated from Nairobi, going outwards, and I would like to assure the hon. Member that the next university may be established in Mander District.

**Dr. Ochuodho:** Mr. Deputy Speaker, could the Assistant Minister tell us what he is doing, really? We will also be in power one day. That notwithstanding, I do not believe that expanding and creating new universities will reduce the number of Kenyans who go to study overseas. That can only be achieved when we improve the quality of university of education in this country. Probably, only one or two of the Government Ministers in this House have their children studying at our local universities. Most of them have sent their children abroad.

**Mr. Angwenyi:** On a point of order, Mr. Deputy Speaker, Sir. Could the hon. Member substantiate his insinuation that the quality of education in our public universities is poorer than that in overseas universities?

**Dr. Ochuodho:** Mr. Deputy Speaker, Sir, I will proceed and ask my question. Could the Assistant Minister tell this House when we will have a university in every province? Having in mind the question asked by Dr. Omamo as well as the Government's district focus agenda, when are we going to have a university in each province?

**Dr. Wamukoya:** Mr. Deputy Speaker, Sir, first, I must say that the Government is a living thing, and we do not know the definite time it will end. So, whether those on the other side of this House will be in Government or not, as of now, I am speaking for them regarding the future. Secondly, the quality of education in Kenya is very good; it is very well accepted overseas. Even if you go to the United States of America (USA), you will find that people who have acquired their degrees from this country, such as Dr. Ochuodho---

**Mr. Deputy Speaker:** Mr. Assistant Minister, could you answer the question that has been put to you? Do not waste time responding to the hon. Member's remarks.

**Dr. Wamukoya:** Mr. Deputy Speaker, Sir, I am not in a position to say whether or not we are going to establish a university in every province. However, I have already said that we are going to expand the existing universities appropriately and accordingly.

**Mr. Deputy Speaker:** Could you ask your last question, Mr. Achola?

**Mr. Achola:** Mr. Deputy Speaker, Sir, could the Assistant Minister tell this House whether he is satisfied with the current cut-off point for admission to public universities? Initially, the cut-off point was mean grade C+, but that has since then been raised to mean grade B. As a result, we are leaving out many students who could easily pursue university education without any negative effects. What is the Government now going to do about the many students who have been denied university education for lack of adequate university facilities in this country? In fact, only 1 per cent of those who qualify for university admission get admitted to universities. What is the Government doing about the remaining 99 per cent who do not get admitted?

**Dr. Wamukoya:** Mr. Deputy Speaker, Sir, the cut-off point for university admission is mean grade C+. However, currently, public universities admit a minimum number, which can be catered for with the available resources. Also, there are tertiary colleges such as polytechnics, technical colleges and other training colleges, which admit those students who do not meet the cut-off point for university admission. I do not think it is necessary that everybody who completes Fourth Form should go to university. Other institutions of learning are also important; those who graduate from those institutions are also offered very useful professional jobs.

*Question No.482*

## TRANSFER OF MR. NYAGA'S LAND

**Mr. Muchiri** asked the Minister for Lands and Settlement:-

- (a) whether he is aware that a piece of land belonging to Karaba Nyaga, INO1/Thaita/108, was on 27th March, 2000, illegally transferred to Messrs Job Mureithi Waweru, ID. No.9186208 and Aurehis Ngali Karathi, ID. No.6091757 by the Land Registrar, Kirinyaga;
- (b) whether he is further aware that the family is being evicted by the newly registered owners; and,
- (c) what action he is taking against the Land Registrar concerned.

**The Assistant Minister for Lands and Settlement** (Mr. Sudi): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am aware that a piece of land, INO1/Thaita/108, belonging to one Karaba Nyaga, was transferred on 27th March, 2000, to one Job Mureithi Waweru, ID. No.9186208 and Aurehis Ngali Karathi, ID. No.6091757 by the District Lands Registrar, Kirinyaga.

(b) I am not aware that the family is being evicted by the newly registered owners.

(c) There is a case in the High Court over this piece of land. Therefore, I do not intend to take any action against the District Lands Registrar until the matter is heard and determined by the court. In the meantime, the Ministry has placed a restriction on the title deed of the said piece of land, pending the outcome of this case.

**Mr. Muchiri:** Mr. Deputy Speaker, Sir, the Assistant Minister is evading the Question. I have asked him whether he is aware that the said piece of land was illegally transferred to its new owners, and the answer should be either "yes" or "no". Otherwise, I will table documents here to prove my case. Could he now say whether the said piece of land was illegally transferred to its new owners or not? His answer should be either "yes" or "no". In response to part "b" of my Question, the Assistant Minister said that he is not aware that the family of Mr. Karaba is being evicted from the said piece of land. Has he, of late, investigated whether that family has already been evicted or not? The matter has been reported in the Press.

**Mr. Sudi:** Mr. Deputy Speaker, Sir, I said that I am aware that the said piece of land, which belonged to Mr. Karaba, was transferred to its new owners, but I am not aware that the family of Mr. Karaba is being threatened with eviction. However, Mr. Karaba Nyaga sold the said piece of land to Messrs. Waweru and Karathi against the wishes of his family. The land was sold for Kshs600,000, and the sale was consented to by the local Land Control Board in August, 1999. The family members have filed a dispute in court over the said land, and the matter is yet to be heard and determined. In the meantime, the District Lands Registrar has placed a restriction on the title deed, pending the outcome of the court case. The District Lands Registrar did not break any law, as he acted within his powers when he registered the transfer of the said piece of land to Messrs. Waweru and Karathi as the District Land Control Board had consented to the transaction. This is a family dispute. Therefore, the matter can best be dealt with by the court, where the aggrieved parties can argue out their case in court. The Ministry has already taken the initiative to restrict the title deed until the case pending in court is heard and determined.

**Mr. Mwenda:** Mr. Deputy Speaker, Sir, armed with that information, and knowing too well that the land had already changed hands, from the original owner to the new owners, what has the Government done to ensure that the family is not eventually evicted from that land, pending the determination of the case in court?

**Mr. Sudi:** Mr. Deputy Speaker, Sir, that is why I said that as far as I am concerned, I am not aware that the family is being evicted by the newly registered owners. However, it is very clear that the case is in court, and until the case is heard, determined and verdict delivered, then, the owners have no rights to evict the family members.

**Mrs. Mugo:** Mr. Deputy Speaker, Sir, could the Assistant Minister assure this House that the KARI land in Kabete area - which is a public utility - being threatened to be grabbed by the Member for Westlands, hon. Fred Gumo, in order to reward KANU supporters, will not be taken away?

**Mr. Sudi:** Mr. Deputy Speaker, Sir, I think that question is not relevant to this Question. Please, I am not in a position to answer that.

**Mr. Deputy Speaker:** Yes. That cannot be a supplementary question to this Question.

**Eng. Muriuki:** Mr. Deputy Speaker, Sir, the Assistant Minister is saying that, that land was transferred after the Land Control Board had consented, and then, members of the family went to court. As far as I know, the land board's regulations require that the members of the family should have been in that land board. Were they there, or were they not?

**Mr. Sudi:** Mr. Deputy Speaker, Sir, usually, in the Land Control Board, both parties - the seller and the buyer - have to make a consent. I think in that case, going by the regulations of the Land Control Board, both parties must have been there and must have agreed, and in case there was any dispute which came up, that is what was referred to

court.

**Mr. Keriri:** Mr. Deputy Speaker, Sir, the Assistant Minister says that he is not aware that the family has been evicted from that particular piece of land. He has been made aware by the Member for Kasarani that, in fact, the family has been evicted. What will the Ministry do to make sure that the family stays on that land?

**Mr. Sudi:** Mr. Deputy Speaker, Sir, I am told that the family is being evicted; they have not been evicted yet. According to the Question, the process of evicting them is on, but according to my information, since the case is pending in court, the family is supposed to stay on the land until the case is determined because that is a family dispute.

**Mr. Deputy Speaker:** Mr. Sudi, do not speculate. Is the family staying on that land, or is it supposed to be on that land? Give us a specific answer, and more importantly, you have admitted under part "a" of your answer that you are aware that the land was illegally transferred. So, how can you explain about the rights of the family to stay on that land?

**Mr. Sudi:** Mr. Deputy Speaker, Sir, I said that I am aware that the land was illegally transferred through collusion by some family members. In that case, I would want not to speculate, but since the case is pending in court, let both parties who are involved have their case heard and determined so that a verdict is issued.

**Mr. Muchiri:** Mr. Deputy Speaker, Sir, that land was transferred when the matter was pending before the Land Control Board at the provincial headquarters, Central Province. At the same time, there was a right of appeal, within 30 days, but the family members were not called, and they have been evicted. Could the Assistant Minister assure this House that he will cancel that title deed and ensure that the family goes back to that land? These are the proceedings of the court and the document pertaining to that land which I will table.

*(Mr. Muchiri proceeded to lay  
the documents on the Table)*

**Mr. Deputy Speaker:** What do you think you are doing?

**Mr. Muchiri:** Mr. Deputy Speaker, Sir, I want to lay the documents on the Table.

**Mr. Deputy Speaker:** Which documents?

**Mr. Muchiri:** Mr. Deputy Speaker, Sir, these are the documents---

**Mr. Deputy Speaker:** What is in dispute? There is nothing in dispute! The Assistant Minister has accepted that the land was transferred illegally. There is no dispute as to the facts as stated by you and admitted by the Assistant Minister.

Mr. Sudi, do you want to confirm that the family will not be evicted before the case is heard and determined?

**Mr. Sudi:** Mr. Deputy Speaker, Sir, my Ministry is very transparent as far as land matters are concerned, and we will do anything possible to make sure that the family which is occupying the land at the moment is not disturbed until the case, which is pending in court, is heard and determined.

**Mr. Deputy Speaker:** Thank you very much. Next Question, Mr. Ngure.

**Mr. Ngure:** Mr. Deputy Speaker, Sir, I must say that I have not received a written reply from the Ministry.

*Question No.532*

TERMINATION OF MRS. OKELLO'S EMPLOYMENT

**Mr. Ngure** asked the Minister for Labour:-

(a) why Mrs. Judith Anyango Okello of Central Bank of Kenya, Kisumu, has not been paid her full entitlement following her termination of service in October, 1996 and;

(b) whether he could inform the House why Mrs. Okello's employment was terminated.

**The Minister for Labour (Mr. Ngutu):** Mr. Deputy Speaker, Sir, I am sorry I am not able to answer this Question this morning, and I was going to request you to allow me to answer it on Wednesday next week because according to the Order Paper, it was to be answered by the Minister for Finance. I have just been told that a message on the same subject had been brought to my office in July, but it appears that it had not been communicated to me.

**Mr. Deputy Speaker:** Well, Mr. Ngure!

**Mr. Ngure:** Mr. Deputy Speaker, Sir, since I know the performance of the hon. Minister, I will give him time.

**Mr. Deputy Speaker:** If the Minister has no answer, he cannot answer you; can he? So, it is deferred to Wednesday next week.

*(Question deferred)*

*Question No.486*

EXPANSION OF SUSTAINABLE  
LIVELIHOODS PROGRAMME

**Mr. Obwocha** asked the Minister for Vocational Training:-

- (a) what criteria was used to select Makueni, Bungoma, Buret, Isiolo, Kilifi, Murang'a and Suba rural districts for the Employment and Sustainable Livelihoods Programme and Nairobi, Mombasa and Kisumu urban centres for the same programme; and,  
(b) whether he could consider expanding the scope of this programme.

**The Minister for Vocational Training** (Mr. Ruto): Mr. Deputy Speaker, Sir, I beg to reply.

(a) The pilot rural districts and urban areas comprising Makueni, Bungoma, Buret, Isiolo, Kilifi, Murang'a and Suba and Nairobi, Mombasa and Kisumu were selected for inclusion into the pilot Employment and Sustainable Livelihoods Programme on the basis of their poverty ranking level nationally, financial resources availability, existence of mobilised community and geographical spread across the country.

(b) The Programme will be spread out to the rest of the country after the on-going 18 months pilot project expires. The pilot projects commenced in July, 1999.

**Mr. Obwocha:** Mr. Deputy Speaker, Sir, I think the Minister is not being fair to this House. The criteria he said they used, that is of the most poor districts and the poverty ranking level nationally, is erroneous. He cannot say that some of those districts are poorer than Turkana, Pokot and North Eastern Province districts which are not here. I think the Minister needs to be honest. I can give him a caption of that Paper. It is a good programme. It is meant to improve access to livelihood resources and services in those areas; provide and enable quality environment for the development of both the private sector and public enterprises, improve availability and accessibility of quality goods at the household level and, finally, implementation of community and district level activities.

It is a programme that can alleviate poverty in this country. The way the Minister has selected the districts---

**Mr. Deputy Speaker:** Order, hon. Obwocha! Ask your question!

**Mr. Obwocha:** Could the Minister include more districts in this programme? Let him tell this House who is managing the Fund and how much is allocated under this programme.

**Mr. Ruto:** Mr. Deputy Speaker, Sir, I know the hon. Member does a lot of research on Press coverage for some Members of Parliament and on who leads which delegation. I do not think he can beat my officers in research on poverty---

**Mr. Obwocha:** On a point of order, Mr. Deputy Speaker, Sir! Is it in order for this Assistant Minister who keeps on throwing stones at other Ministers to insinuate that I keep---

**Mr. Ruto:** I am not an Assistant Minister!

**Mr. Obwocha:** Is he a Minister these days? Is he in order to insinuate that my work is to play the role of covering other Members of Parliament? This is the first time I am hearing this. I am an old fellow here. Could you caution him? Answer the Question; this is a serious Question!

**Mr. Deputy Speaker:** I thought the Minister said you do your homework very well.

*(Laughter)*

**Mr. Ruto:** Mr. Deputy Speaker, Sir, I was just acknowledging his excellence in that other area. It was not meant to, in any way, belittle him because that is a fact. I wanted to indicate that I did not say it is the ranking, in terms of poverty levels alone. This is a composite exercise of all the indices which include the number of households below the poverty line, malnutrition, infant mortality rate, school participation rate, accessibility to basic health services and existence of a mobilised community. All these factors were taken into consideration in selecting the spread of this particular programme. I had indicated to him that we will roll out this particular programme across the country at the expiry of the 18 months. As regards the money that has been set aside for this, for now we have only Kshs10 million spread over these districts. We have asked for more money and we expect to roll out the programme to other deserving districts.

**Mr. Keriri:** Mr. Deputy Speaker, Sir, the Minister has read out to us the criteria that was used to select the districts. Could he tell us which of those points he has mentioned disqualifies Turkana from being included in this programme because Turkana surpasses all of them?

**Mr. Ruto:** Mr. Deputy Speaker, Sir, Turkana will be included in the next stage.

**Mr. Munyao:** Mr. Deputy Speaker, Sir, I am hearing of this Employment and Sustainable Livelihoods Programme for the first time. Makueni is included and I come from Makueni. Could the Minister tell us how it is being implemented because we do not know anything about?

**Mr. Ruto:** This is well known to elected MPs. Nominated MPs do not have the ground feel.

*(Laughter)*

**Mr. Obwocha:** I think you need to caution the Minister to be a bit civil. A Member of Parliament is a Member of Parliament, whether nominated or elected.

**Hon. Member:** Or even rigged in!

**Mr. Obwocha:** Let me ask my question. Could the Minister tell us whether this programme is being implemented by the Government or UNDP?

**Mr. Ruto:** Mr. Deputy Speaker, Sir, it is being implemented by the Government. UNDP is one of the financiers.

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

**Mr. Mwenda:** Mr. Deputy Speaker, Sir, before I ask my Question, may I raise my complaint that I have not been given any written reply by the Minister so far.

*Question No.389*

#### IMPLEMENTATION OF WATER PROJECTS IN THARAKA

**Mr. Mwenda** asked the Minister for Water Development:-

(a) how much money the Ministry spent in water projects in Tharaka in the last five years; and,

(b) what plans are in place to supply Marimanti Trading Centre, the headquarters of Tharaka District, with clean drinking water.

**The Minister for Water Development** (Mr. Ng'eny): Mr. Deputy Speaker, Sir, I beg to reply.

(a) My Ministry has spent a total of Kshs168,899,000 on various water projects in Tharaka District through Tharaka Water and Sanitation Project in the last five years.

**Mr. Kihoro:** On a point of order, Mr. Deputy Speaker, Sir. Two Ministers rose up with an answer to the Question. Unfortunately, the Questioner had requested for a written answer and he pointed that out. Could the Questioner be given an answer by one of the Ministers?

**Mr. Deputy Speaker:** Proceed, Mr. Minister!

**The Minister for Water Development** (Mr. Ng'eny): I am sorry, Mr. Deputy Speaker, Sir. We did send this answer about three days ago. I do not know how it happened that the hon. Member has not received the answer. However, he has agreed that I go ahead and answer the Question. So, I will go ahead and answer the Question.

(a) My Ministry has spent a total of Kshs168,899,000 on various water projects in Tharaka District through Tharaka Water and Sanitation Project in the last five years. Over 330 water points have been completed and are in operation.

(b) The following plans have been envisaged to supply Marimanti Trading Centre with clean drinking water.

1. Hydrological surveys have been carried out at the site to sink two boreholes which will serve as an immediate source of water for Marimanti Trading Centre.

2. My Ministry has identified a suitable site for construction of a water supply comprising of intake, pump house and treatment works. However, the land on which the construction is to take place is owned by the Methodist Church. Negotiations are going on between the Church and the leaders of Tharaka District to acquire the two acres of land.

There are plans to provide treated water to Marimanti Market, from Kathita River, which runs across the market. Costs for that project are still being worked out. The project is supposed to be given priority by the District Development Committee (DDC), since Marimanti is the District Headquarters.

**Mr. Mwenda:** Mr. Deputy Speaker, Sir, I am shocked by the amount of money that the Minister has mentioned, when I am fully aware that not a single water project has received funding from the Ministry. The 300 boreholes were sunk by the Swedish International Development Agency (SIDA) and not the Government. Now, how much has the Government given for water projects in the District in the last five years? There is none! Could the Minister tell this House how much money has come from the Government, apart from the funding from SIDA?



**Mr. Ng'eny:** Mr. Deputy Speaker, Sir, I am surprised that hon. Mwenda is not aware that all donor-funded projects are funded by the Government.

**Mr. Magara:** Mr. Deputy Speaker, Sir, I think there is a crisis of water supply in this country. If you go along Karen Road, you will find five lines of people stretching for a kilometre each, waiting to be provided with water. Recently, the Minister said that all donor-funded projects are also funded by the Government. Also recently, the World Bank representative said that the World Bank had stopped funding water projects simply because the Ministry is full of corrupt officers! It is corrupt from top to bottom! Actually, a new charge against the Minister was filed in court recently! What are we doing to ensure that Kenyans are supplied with this basic commodity by sacking such Ministers who are misappropriating funds?

**Mr. Ng'eny:** Mr. Deputy Speaker, Sir, first of all, I cannot comment on matters before a court of law. I thought there is a rule that, when matters are before a court of law, nobody should comment on them.

However, I would like to absolutely and completely deny that there is corruption in the Ministry! With regard to the long queues in various places, we are all aware of the current situation in the country. Water and other sectors of the economy have been affected. For the last three years, both short and long rains have failed. In fact, as I speak now, we are all aware that we badly need the short rains to relieve the country of this shortage of water. The queues will be completely eliminated as soon as rains come.

**Mr. Murungi:** Mr. Deputy Speaker, Sir, it is very interesting that the Minister has talked about drought! The real problem, which the Ministry has not been able to address, is the whole question of planning and water harvesting! It is only recently that we had the *El Nino* rains in the country! I have just come from London. While there, we asked them whether they have any water shortages in their City. We were told that they have stored enough water to supply the residents of London for one year! Could the Minister consider constructing huge storage facilities to store water in the country? We cannot rely on rains. We do not know when God will send the rains. Could the Minister consider constructing adequate storage facilities in all towns in this country to last our people at least one year, even when there are no rains?

**Mr. Ng'eny:** Mr. Deputy Speaker, Sir, I would like to agree with the sentiments raised by the hon. Member. We need to plan. For the last 40 years, we have never experienced such long a drought. So, we were not experienced. Now that we have the experience to go by, I am sure the Ministry is already undertaking that exercise, to make sure that in future, such a occurrence will not recur!

**Mr. Deputy Speaker:** Order, Mr. Minister! The question that hon. Murungi asked was: What plans do you have to supply the country with water, but not through the rivers! This is because rivers have seasons! When there are no rains, the rivers dry up! Do you have any plans to supply all Kenyans with water?

**Mr. Ng'eny:** Mr. Deputy Speaker, Sir, in the final analysis, water has to come from the rivers. This water also comes from rains. There is only one method which we can use to get water. That is from the sea!

**An hon. Member:** What about under ground water?

**Mr. Ng'eny:** Even under ground water will eventually dry if there are no rains! So, we depend entirely on rains for water, either in rivers, dams, boreholes and elsewhere.

**Mr. Ngure:** Mr. Deputy Speaker, Sir, could the Minister assure this House that the money that was given in the Ministry's Vote for de-silting boreholes in preparation for the long rains is diverted and used for the supply of water? This is because you cannot prepare boreholes for the long rains!

**Mr. Ng'eny:** Mr. Deputy Speaker, Sir, no money has been diverted from one Vote to the another!

**Mr. Mwenda:** Mr. Deputy Speaker, Sir, the Minister has talked about water, rivers and rainfall. I wish to inform the Minister that, one of the largest rivers in Meru District, that is Kathita River, cuts across Marimanti Town, which is the District Headquarters. Why is the Minister not making money available to tap water from Kathita River, to supply the residents of Marimanti with clean and safe drinking water?

**Mr. Ng'eny:** Mr. Deputy Speaker, Sir, I said earlier that, plans for supplying water to Marimanti Market are at an advanced stage. In fact, the only thing that is hindering that process is the availability of land for the intake works.

**Mr. Deputy Speaker:** Mr. Minister, while you are on the Floor, your written reply to that Question was received this morning at 9.35 a.m., and not three days ago! Anyway, I wanted to set the records straight.

*Question No.512*

CONSTRUCTION OF DAMS IN TURKANA

**Mr. Munyes** asked the Minister for Water Development how many water dams have been

constructed in Turkana District for livestock use between 1990 and 2000.

**The Minister for Water Development** (Mr. Ng'eny): Mr. Deputy Speaker, Sir, I beg to reply.

My Ministry has constructed a total of four dams and several water supplies, including boreholes in Turkana District for both human and livestock use between 1990 and the year 2000. However, there are plans to construct additional dams as well as desilting existing structures in the next three financial years, namely, 2001, 2002 and 2003 in Turkana District for both human and livestock use. Under Arid Lands Resources Management Programme, there are plans also to construct pumps in Riet in Lokorio Division.

**Mr. Munyes:** Mr. Deputy Speaker, Sir, I would like to say that the Minister has not supplied me with a written reply, but nevertheless, I would like to say that I do not know of any four dams in Turkana District constructed between 1990 to the year 2000. I would also like to say that the current problems in Turkana District, namely, starvation and famine, have resulted in rampant insecurity and loss of livestock. They have also made pastoralists move into other countries. I would like to say that over 15,000 head of cattle from Turkana District have been moved into Uganda, because we do not have enough water in Turkana District. The pastoralists have moved into neighbouring countries because we have no dams and the countries that border Turkana District have constructed dams for use by livestock. What will this Ministry urgently implement in order for the Turkana people to get enough water for their livestock?

**Mr. Ng'eny:** Mr. Deputy Speaker, Sir, Turkana is one of the districts which have a water deficit and I sympathise with hon. Munyes in his effort to provide water to his people. The Ministry is very keen to provide water not only for Turkana District, but for other districts in the country which are faced with a water deficit. In the Ministry, we now have an elaborate programme which we hope will improve the water situation through construction of dams of various sizes and exploitation of underground water. That is the most convenient and effective way of providing water in such districts.

**Mr. Angwenyi:** Thank you, Mr. Deputy Speaker, Sir. I had a chance to go to Turkana recently for the first time. I discovered that Turkana District alone is more than twice the size of Western, Nyanza and Central Provinces combined together. I also learnt that 40,000 head of cattle have died in that district.

**Mr. Deputy Speaker:** Order! Mr. Angwenyi, you have stood to ask a supplementary question.

**Mr. Angwenyi:** Mr. Deputy Speaker, Sir, what I am asking is this: Could half of the amount of money that has been allocated for famine relief food be channelled to Turkana District to drill boreholes and construct dams because it is a dry district, as a matter of urgency?

**Mr. Ng'eny:** Mr. Deputy Speaker, Sir, in fact, this issue is being taken as a matter of urgency. Probably, this House will know the programmes we have in trying to alleviate the water problem in the country very soon.

**Mr. Ndwiga:** Thank you, Mr. Deputy Speaker, Sir. The Minister has said that they have constructed four dams since 1990, and the Member of Parliament from that area says that there are no dams. Could the Minister tell us now where the four dams, which have been constructed since 1990, are and where he is going to construct the additional dams in the next three years?

**Mr. Ng'eny:** Thank you, Mr. Deputy Speaker, Sir. The four dams which have been constructed in Turkana District in the last two years are Songot, whose capacity is 12 million litres.

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

**Mr. Deputy Speaker:** No! Ask your last question, Mr. Munyes!

**Mr. Munyes:** Mr. Deputy Speaker, Sir, the four dams the Minister is talking about are not there. In fact, Nalapatui Dam that he is talking about is a dam which the Oxfam, UK was just trying to experiment but it never worked. The Songot and Nanam Dams he has talked about are not there. I took hon. Members of Parliament to Nanam the other day and there is nothing there. I do not know why the Minister has decided to mislead the House and give us an answer for the sake of giving us an answer.

**Mr. Ng'eny:** Mr. Deputy Speaker, Sir, as I said before, there has been no rain for nearly three years. Even if you construct a dam, particularly in that area where there is high evaporation rate--- Most of the dams, even in areas like Kitui and Machakos, are drying up simply because of lack of rain.

**Mr. Raila:** On a point of order, Mr. Deputy Speaker, Sir. We are talking about a very serious matter because lives of people and livestock are concerned. In view of the fact that the hon. Member of the area insists, and his insistence has been confirmed by hon. Members of Parliament whom he took to the area, could the Minister be asked to go back and do a thorough investigation and come back with a more appropriate answer?

**Mr. Deputy Speaker:** More appropriate, I think the Minister should go with the hon. Member to the site. So, Mr. Minister, can you do that?

**Mr. Ng'eny:** Thank you, Mr. Deputy Speaker, Sir. As I said earlier on, those dams were constructed, but if you go there now, you might not find any water. The fact is that they were constructed. Nonetheless, I would be glad to

visit Turkana any time.

**Mr. Deputy Speaker:** Mr. Kalulu's Question, for the second time!

*Question No.384*

GOVERNMENT ASSISTANCE TO MR. KISOI MUNYAO

**Mr. Deputy Speaker:** Mr. Kalulu still not here? His Question is dropped.

*(Question dropped)*

**Mr. Deputy Speaker:** Dr. Ali's Question, for the second time.

*Question No.437*

PAYMENT OF COMPENSATION TO MR. ISSACK

**Dr. Ochuodho:** Mr. Deputy Speaker, Sir, Dr. Ali is out of the country. Can I appeal that the Question be deferred?

**Mr. Deputy Speaker:** But, Dr. Ochuodho, you were here when I called out this Question at first.

**Dr. Ochuodho:** Mr. Deputy Speaker, Sir, when you were on it, I was just walking in.

**Mr. Deputy Speaker:** Where is Dr. Ali?

**Dr. Ochuodho:** Mr. Deputy Speaker, Sir, he is travelling from the United Kingdom (UK) to the United States of America (USA).

**Mr. Deputy Speaker:** Is he on parliamentary business?

**Dr. Ochuodho:** I think so, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Well, I will have to investigate that. However, I will give him the benefit of doubt and defer the Question to next week.

*(Question deferred)*

### QUESTION BY PRIVATE NOTICE

REPAIR OF SIGIRI FERRY

**(Mr. Wanjala)** to ask the Minister for Roads and Public Works:-

(a) Is the Minister aware that Sigiri Ferry in Budalangi Division, Busia District on River Nzoia, which connects the Northern and Southern Bunyala, has broken down making communication in this flood prone division impossible?

(b) What urgent steps is he taking to repair the ferry to ease communication on this busy ferry?

(c) Could the Minister consider constructing a bridge on the river to replace the ferry which frequently breaks down?

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

**Hon. Members:** He is not here!

**Mr. Deputy Speaker:** He was not here when this Question was called out yesterday and it was deferred to this morning to accommodate him, and now he is not here. I think I will have to drop it.

*(Question dropped)*

### POINT OF ORDER

KILLING OF PRISONERS AT KING'ONG'O

**Mr. Kihoro:** Mr. Deputy Speaker, Sir, I rise to seek a Ministerial statement on what happened at King'ong'o Maximum Security Prison on 4th September, 2000, when about eight prisoners were killed. The circumstances of this

incident where some Kenyans, whom we have been told were on death row or could have been convicted, but certainly were imprisoned, have been very dubious and the information we have received has only come from the Press. The Department of Prisons and the Ministry of Home Affairs, Heritage and Sports has remained dead silent for a month. I am requesting a statement from the Minister for Home Affairs, Heritage and Sports, who is also the Minister in charge of prisons, on the status of those people who were killed and whether anybody escaped. Why has there not been an inquest a month after, even though the prisoners died when in a protected area?

There has also been an alleged linkage between the King'ong'o incident and the killing of Father Kaiser. This is an opportunity for the Minister to tell us if there was that kind of linkage.

**The Assistant Minister for Home Affairs, Heritage and Sports** (Ms. Wamwachai): Mr. Deputy Speaker, Sir, we will respond next week because this issue needs a thorough investigation and answer so that the House can be satisfied.

**Mr. Deputy Speaker:** Okay, you will respond on Wednesday next week.

### MINISTERIAL STATEMENT

#### SELECT COMMITTEE TO NOMINATE CONSTITUTIONAL REVIEW COMMISSIONERS

**The Minister for Information, Transport and Communications** (Mr. Mudavadi): Mr. Deputy Speaker, Sir, the following have been appointed to be hon. Members of the Select Committee to recommend appointments of persons to serve in the Constitution of Kenya Review Commission pursuant to Section 9 of the Constitution of Kenya Review (Amendment) Act 2000.

1. Hon. Dr. Bonaya Godana, MP
2. Hon. Prof. Sam Ongeru, MP
3. Hon. Joseph Kamotho, MP
4. Hon. Ziporah Kittony, MP
5. Hon. Isaac Ruto, MP
6. Hon. Julius Sunkuli, MP
7. Hon. A.A. Ekirapa, MP
8. Hon. Musalia Mudavadi, MP
9. Hon. Kalonzo Musyoka, MP
10. Hon. Mathew Adams Karauri, MP
11. Hon. Fred Gumo, MP
12. Hon. M.A. Affey, MP
13. Hon. Darius Mbela, MP
14. Hon. Mathias Keah, MP
15. Hon. E.B. Shill, MP
16. Hon. Felix Nyauchi, MP
17. Hon. Otieno Kajwang, MP
18. Hon. Raila Odinga, MP
19. Hon. John Munyasia, MP
20. Hon. George Anyona, MP
21. Hon. Rashid Shakombo, MP
22. Hon. Marriam Matano, MP
23. Hon. Gitobu Imanyara, MP

### MOTIONS

#### INTRODUCTION OF FREEDOM OF INFORMATION BILL

**Dr. Kituyi:** Mr. Deputy Speaker, Sir, I beg to move the following Motion:-

THAT, this House do grant leave for the introduction of a Bill for an Act of Parliament entitled the Freedom of Information Bill for the purposes of nurturing information resources as a tool for development.

At the start of the 21st Century, and as our country attempts to find a way of anchoring herself to face the challenges ahead of us, some of the historical mistakes that we have made and the weaknesses in our laws have to be

addressed, if we will make sense in nurturing information in the development of a democratic society.

Mr. Deputy Speaker, Sir, the Motion that I am moving now seeks to get the consent of this House for the introduction of a Private Members' Bill for a law which provides for free access to information, and which excludes distortions in the current laws that inhibit free access to information. In moving this Motion, I will mention some of the problems with the law as it exists today and some of the opportunities that can be provided for a more information-driven and open society as pre-conditions for proper democracy, if the law that I am proposing to bring before this House is passed.

For a long time, the attitude of Kenyan leadership towards the citizenry of the country has been grounded in the colonial attitude towards Africans. The leadership has anxiety and fear that people will be treacherous and difficult to rule if they are informed. It has been an unstated, and sometimes often a stated fact, that the citizens are easier governed when they are uninformed, and that the people who are informed are a threat to the authority. These statements are written into the laws of the land. For a long time in the colonial period, any African who appeared informed was treated worse than a goat. One of the best examples of this was in the period in the run-up to the emergency, when Africans who had served in the colonial expedition during the Second World War were treated as a threat to the State because they knew some things which the State feared they would let the other Africans know. The best example was the rounding-up of Kikuyu artisans and petty traders outside Central Kenya by the colonial State at the start of the emergency, for the reason that they might have been informed about the vulnerability of the colonial authority and they would have inspired others to know the vulnerability of the State. Beyond that, the culture of this country is governance since Independence has been a culture of great scepticism about persons wanting to be informed.

Mr. Deputy Speaker, Sir, as evidence to this, one has to just look at the contents of the Penal Code in the sections dealing with criminalisation of free speech, the range of definitions of criminal riders in Cap.63 of the Penal Code, and the definitions of alarming publications. I will come to this in a moment but, first, let me say the following:

Any Kenyan who has attempted to do research in this country will tell you the agony of getting official clearance to do research. If you are doing a proposal about bio-technology or physics, you will have to send your application with money to the Office of the President for clearance. You can stay for one full year waiting for the Office of the President to clear you even if you want to measure the level of the titanium mines of Kwale, or the impact of the destruction of a forest on the ecology of the Tana River, for example. There is this obsession with control and anxiety about excluding information which is grounded in our historical past, but which has absolutely no justification in a modern society. We have come to a time when it is necessary that the pursuit of research should be something that the officialdom facilitates and encourages, instead of scrutiny and prevention.

Mr. Deputy Speaker, Sir, the Official Secrets Act is another of those instruments that have been used to defeat the pursuit of an informed society. We have come to a time when we have to re-define the limits of the Official Secrets Act. To a large extent, even very banal daily information in this country is treated as official secret. The purpose of this may have been to suppress knowledge in the colonial period. But in a society where we want to build a society based on knowledge, it becomes relevant that the Government facilitates access to information instead of falling on irrelevant legislation that denies access to such information.

Mr. Deputy Speaker, Sir, the Motion I am moving seeks consent of the House for the relevant Bill to be brought to this House to redefine the limits of the Official Secrets Act, in such a way as not to make it an impediment to access information as a critical resource in the development of our country. Similarly, we have to redefine the limits of the rules of defamation. Although some people may have abused defamation laws, it is not acceptable that there is a spacious definition of what is defamation to the extent that officialdom can manipulate it to get at persons not desired or persons wanting to be punished by the Government.

Mr. Deputy Speaker, Sir, the principle thing I am driving at is this: That if Kenya has to enter the information stage, get onto the information highway and benefit from the fastest growing industry in the world today - IT - we must have a redefinition of the official attitude and official practice to what is citizens' right to know. The right of the citizens to know must not be mediated by the desires of others to gag information.

Mr. Deputy Speaker, Sir, you have seen how the Film Censorship Board in this country has been ambiguously applied; broadly utilised to gag local initiative. Apart from controlling pornography, the Film Censorship Board has been used to gag the development of theatre in Kenya. One of the most celebrated evidence of this gagging local initiative is what happened in the late 1970s and early 1980s to a theatre that was evolving around the Kenya National Theatre and around Kamirithu. At a time when we show such cultural barrenness, the new attitude of responsible leadership in this country should be to define how to encourage the development of a thriving theatre and information flow in our country and not how to scrutinise to see those who might say things that some people in Government may not like very much. This has been predominantly the attitude in this country at this moment. The Motion before the House is to seek consent of the House that I bring the necessary legislation to facilitate that

transition in defining information as a tool and not as a threat to the development of our country.

Mr. Deputy Speaker, Sir, recently, we have seen some very anxious moments in the practice, utterances and actual implementation of policy in this country *vis-a-vis* radio and television stations. We have a situation where Government tells us they want to liberalise the airwaves; government wants information to freely flow across the country, and then the same Government erects high hurdles for some groups and low hurdles for others. I congratulate Kenya Television Network (KTN) for going to Mombasa. I wish them well and hope they can go to the whole country. Compared to the Kenya Broadcasting Corporation (KBC), they are miles away. But you ask yourself: Why is KTN allowed to go to Mombasa and the Nation Television is not allowed to go to Nakuru? Why should the right of media houses to exercise the traditions of a liberalising free society to spread alternative beacons of information be subject to the whims of individuals in Government or be subject to an instrument of measuring political correctness? Up to now, there has never been any clear statement from Government as to why they have been dragging their feet in the application of Nation Media Group to have nationwide television, and even let the radio station to be nationwide.

Mr. Deputy Speaker, Sir, one of the phenomenon that has come with Nation FM radio station is the growth of public awareness; that they have the capacity to also express their opinions about the critical issues of the day through the programme "The Daily Dilemma". Hon. Members will appreciate that we have had to eat humble pie over the astronomical increases of the travel allowances because of the capacity of Kenyans to express their opinion about that. That is not a bad thing. That is the challenge that we have to prove that we deserved that because we are working for the citizens of this country who are paying us that money. The capacity of Kenyans to express themselves cannot be enhanced unless free media houses are also allowed the chance to spread to the whole country. The Nairobians are now able to discuss every morning the goings-on in the country. Why should people in other parts of this country be denied that?

Mr. Deputy Speaker, Sir, apart from this, the growth of a free Press should be so objectively defined that investment that may be the lifeline of individuals, companies and families are not vulnerable to the personal whims of those in power. I am talking about Kameme FM, which has been a very interesting and important development in the media in this country. Rose Kimotho has been very enterprising in finding a niche in a liberalising media industry. But all of a sudden, the President of Kenya announces that we should ban vernacular radio stations because they are spreading tribalism. I thought this was a very unfortunate, ill-advised, uninformed statement from President Moi. Tribalism in Kenya is not spread by the fact that a Kikuyu can listen to a radio station in Kikuyu. Apart from Kameme FM, the only other station of a vernacular nature has been a Kalenjin station based in Eldoret for preaching the word of God in Kalenjin language. There is no threat to the interests of the Pokomo, the Kuria and the Bukusus in the fact that Jesus' message is being conveyed in Keiyo language in Eldoret. The national interest of Kenya has to be founded on cultivating and galvanising the energies of our diversity. The ethnic diversity of this country is part of the mosaic of our history. It should be part of the contribution to our cultural and theatrical development. Those who see the fact that Kikuyus would like to listen to a radio station in Kikuyu as a threat to them are the main threat to a modern society. We should create conditions where Kameme FM is not dependent on the personal whims of a President. People have put in their life savings; why should it be vulnerable to the desires; and the single individual's opinions which he just comes up with at a public rally? This is part of the problem that we have to deal with if we have to develop the country with a culture and commitment to harnessing information resources as a tool in national development

Mr. Deputy Speaker, Sir, similarly, the vulnerability of being dependent on individual contracts and understanding has brought the crisis that is bedeviling the Citizen Radio and Television Station today. When S.K. Macharia was dressed all in "cocks" and looking like the best cockerel; KANU *damu*, it was so easy for him to get consent that he could even use relay stations and beacons of KBC for Citizen Radio and Television. But once he changed the language and was not singing words for KANU, problems started arriving. The crisis bedeviling Citizen Radio and Television is that the man who seemed to be diehard KANU is now using his media houses to say things that are not necessarily generous about KANU. The need for a modern society is to have objective criteria. Once you satisfy the objective criteria you are not beholding to the whims of individuals in Government. Nobody will seriously risk all livelihood savings; invest in expensive equipment, if the survival of the enterprise is going to be totally vulnerable to the whims of individuals in Government. I hope that Government can also see that we have reached a point in our development as a nation when personal whims, the desires of small "kitchen cabinets", the whims of personal business threats for individuals in Government are not going to be the driving force in the allocation of public resources, development of public policy and exercise of citizen rights. Increasing legislation should be based on, how do we hem in the excesses of individuals in Government? How do we allow greater space for the citizens of the country? How do we reduce control and make Government an instrument of regulation and not control of the citizens?

Mr. Deputy Speaker, Sir, I did mention that I wanted to come back to the provisions that exist in the laws of this country, which have to be amended, and which I propose to amend in the Bill that I intend to bring to this House as a way of developing a modern informed society. Some of the most obnoxious provisions in our laws that stand in the

way of the development of an informed society, that have to be mediated in the Bill that I intend to bring before this House, are contained in the Penal Code, Cap.63 of the Laws of Kenya. I wish to just mention some of the examples of some components of the Penal Code, which I intend to propose that this House abolishes, through the Bill that I intend to bring to this House, if this House gives consent through this Motion.

If you look at Section 52, Cap.63 of the Penal Code, that provides the power to prohibit publication, you will find some thinking that principally belongs to the McCarthy Era in America, witch-hunting communism; the threat of communist ideas written into the law, where a Minister is given the power, if he considers it to be in the public interest, to ban or to declare illegal, the publications of a person which have not been written.

If I think that the thinking of Dr. Kituyi is bad, I can publish in the Kenya Gazette to ban all the publications that Dr. Kituyi will write in the future. This is how it is written in the laws of Kenya:

"If it appears to the Minister that it is necessary, in the interest of public order, to health or morals, the security of Kenya, the administration of justice, or the maintenance of the authority and impartiality of the Judiciary, so to do, the Minister may, by order, publish in the Kenya Gazette and, subject to such exceptions and conditions, if any, as may be specified in the order, prohibit the importation of any publication, or in the case of periodical publications, any past or future issues thereof, or any past or future publications of any person specified in the order."

The Minister is given the authority to publish in the Kenya Gazette, banning from importation into the country or production locally, present, past and future publications of any person. How can we, at the start of the 21st Century, have the scientific capacity to predict that what hon. Joab Omino thinks and writes ten years from now will be against the interests of Kenya and, therefore, we should publish in the Kenya Gazette to banish him from publishing anything in Kenya in the future?

Mr. Deputy Speaker, Sir, similarly, there is a second section which states that:

"If it appears to the Minister to be reasonably required in the interest of defence, public safety, public order, public morality or public health, and to be reasonably justified in society; the Minister may, by order in the Gazette, and subject to such exceptions and conditions, if any, as may be specified in the order, declare any publication to be a prohibited publication. Or in the case of periodical publication, to declare any or past or future issues thereof, to be prohibited publications and may be declared to be prohibited, any or all past or future publications of any person specified in the order, not being a person who is ordinarily carrying out publications for profit or reward, the trade or business of a publisher."

Mr. Deputy Speaker, Sir, the fundamental thing which I am saying here, and which is repeated in the definition of alarming publications, falls under Section 66 of the Penal Code or Libel and Section 194 of Cap.63. This is the very primitive cold or era legislation, which gives overwhelming powers to the Minister, to deny Kenyan citizens the right to information, and negates the national interests because in the information age today, it is the responsibility of all leaders to create conditions under which citizens can, as much as possible, access critical information; or as much as possible get into the information highway. But if you give the Minister the capacity to prohibit certain websites on the highway because you think that the future publications from such websites might be a threat to national interests of Kenya, we are falling into the trap where certain orthodoxy in the acceptable thinking is domiciled in the head of the Minister.

Mr. Deputy Speaker, Sir, there are Ministers in this country whose opinions---

## QUORUM

**Mr. Sajjad:** On a point of order, Mr. Deputy Speaker, Sir. There is no Quorum in the House!

**Dr. Kituyi:** How does that help you, Mr. Sajjad?

**Mr. Deputy Speaker:** Yes, indeed, there is no Quorum. Ring the Division Bell.

*(The Division Bell was rung)*

**Mr. Deputy Speaker:** Order! We have a quorum now. You may proceed, hon. Dr. Kituyi!

**Dr. Kituyi:** Thank you, Mr. Deputy Speaker, Sir.

In concluding, I want to say the following: This Motion is not about carrying out something against the Government. This Motion is not about one section of the House getting upmanship over another. This Motion is about finding a way of working together like we have done on other things before. This Motion seeks to develop a new law that will facilitate what is good for this country, and for a country that has started the 21st Century, there cannot be anything that is better for it than greater access to information for its citizens as an agent for new development.

With those few remarks, I beg to move and request the hon. Dr. Ochuodho to second the Motion.

**Dr. Ochuodho:** Mr. Deputy Speaker, Sir, I stand to second this Motion. Information is a basic need, but often we take it for granted. Indeed, the Government in particular has never believed that information is a basic need. When they talk of water, food, education and the like, they forget that some of these problems could be alleviated or lessened by developing proper information systems. A Nobel Prize winner did say that: "Information is the oxygen for democracy". Going by that phrase, no single democratic country in the world can ever have famine of the proportions that we are experiencing in Kenya. By the definition of that gentleman, Kenya is not a democratic country. This is because he does argue that wherever there is freedom of flow of information, you cannot have famine of the kind of proportions that we are experiencing. Take the example of when famine first hit Ukambani. Some of the Ukambani Members of Parliament, especially those on the Front Bench, did deny that there was famine even when we knew that famine was looming. However, that is part of what we expect or what you find in a secretive society like the one that we have here.

*[Mr. Deputy Speaker left the Chair]*

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

Mr. Temporary Deputy Speaker, Sir it is in this regard, that I am delighted that my good friend here, Dr. Kituyi, has brought a very timely Motion and hopefully we will be working on the Freedom of Information Bill. Article 19 of the UN Charter to which Kenya is a signatory, states:

"Everyone has the right to information of opinion and expression. This right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

Mr. Temporary Deputy Speaker, Sir, in this country the conscience and the freedom of the mind is something that we would love to kill. The proposal to bring a Bill to expel Members of Parliament who are considered to be rebels is a clear testimony of our inability to accept diversity of opinions. People are expected just to follow. In Dholuo, we would call them *Owili Gom*. That is, you are told: "Go this way to the left", and you obey or "Go to the right", and you obey, even when it is not right to go right. The freedom to express your opinion is enshrined even in the respective sections of our Constitution; I guess Sections 78 to 82. These are the various freedoms of assembly, expression and so on and so forth.

Mr. Temporary Deputy Speaker, Sir it is a bit frightening that as we are talking, only about 60 per cent of the Kenyan land that can claim to receive good KBC signals. In terms of newspapers, it may be surprising to some Members of the House that hardly 5 per cent of Kenyans read newspapers. I go by considering the highest circulation newspaper which is the *Sunday Nation* which, I guess sells about 250,000 copies on a good day. I can estimate that to be 300,000 copies a day. Even if I assume that each paper is read by five people, we are talking of 1.5 million Kenyans who read papers. 1.5 million people out of a 30-million population is only 5 per cent. How do we feel upon knowing that only 5 per cent of our people have access to newspapers? The majority of Kenyans, that is 95 per cent, never have access to newspapers; they never read them. This is the kind of situation that we find ourselves in.

Mr. Temporary Deputy Speaker, Sir, I may, therefore, be right to claim that Kenya is a closed society and yet the Government is talking about industrialising by the year 2020. How do we industrialise when you do not put information on top of your development agenda? I dare say that the Government has not put information on top of its agenda because if it did, we would be having an information policy. Today, 40 years after Independence, this country has no information policy to talk about. We have got no broadcasting policy. As Mr. Temporary Deputy Speaker, being a journalist, knows, the Minister for Information decides at his whims to issue a licence. That is, if you are "correct" you get a licence and if you are not "correct" you do not get a licence, but there are no written rules of the game to go by. That is a reflection of how little seriously we take information in this country.

Mr. Temporary Deputy Speaker, Sir, but I could even go further. If you are talking about computers, faxes or internet, our own Head of State is on record at some stage, about 15 or so years ago in Nakuru, to have said that computers are going to take away jobs. I am glad that over time, President Moi has turned round and is now saying that computers are useful and is even soliciting for some and donating them to schools.

Mr. Temporary Deputy Speaker, Sir, we have also gone through a phase whereby faxes were kind of almost banned because they were considered to be used for clandestine information and even the internet. Being one of the people involved in bringing internet for the first time into this country, we were at one point considered to be criminals for bringing it. That is the situation where we are coming from. That is the kind of Government or country that we are talking about - a closed society. A society that even when you meet people and ask for their names, post office box



numbers or phone numbers, they are too scared to make them known and yet this is already public information. We must do something to open up and instil an information culture in our people.

Mr. Temporary Deputy Speaker, Sir, with regard to the freedom of expression, again we do pride ourselves in being a free nation and yet we deny people the chance to express themselves. If we were, the Government would have registered all the trade unions, beginning with the Civil Servants Union because the civil servants deserve a right to put their case through, via a collective movement. Then, if we are talking of freedom of expression, why do we not register the Matatu Welfare Association, the University Academic Staff Union (UASU) and several others that the Government has failed to register?

Mr. Temporary Deputy Speaker, Sir, I would have thought that when the Government spends public money on a commission, immediately the work is completed they would make public the findings of that commission. For five years, we have been waiting for the Press Task Force Report. Even committees here have written to the Attorney-General seeking to get copies of the report, but this is a silent Government. That is the Government that assumes not to hear. So, you find the Press Task Force Report has never been made public. The Akiwumi Commission on Ethnic Clashes Report has never been made public. There are several others even in the cases of the 8-4-4 Educational Report and the Devil Worship Report, but we do know how much time we have to wait. I do not know whether the Government was still doctoring the report or not, but the Government seems to be scared of making information available to the people. I want to assure this Government that it is easier to govern an informed society than one that is not informed.

Mr. Temporary Deputy Speaker, Sir, let me also take issue with those senior Government officials, who may be holding huge amounts of money in foreign banks. Kenyans deserve to know how much of our resources are being held in off-shore banks.

Mr. Temporary Deputy Speaker, Sir, on the issue of vernacular radio stations, it was ironical that one week after the President had launched a Giriama Bible, he issued a decree that vernacular radio stations should be shut down. The Communications Commission of Kenya Act (CCK) gave the CCK absolute powers. In my view, this was direct interference in the independence of the CCK. It is very unfortunate that we are trying to muzzle the vernacular media houses. A language is just a channel. It all depends on the content of what is being relayed through that media. It is the content that matters, but not the medium.

Mr. Temporary Deputy Speaker, Sir, the Government should be obliged to make public information that is of public interest. I have in mind the Musikari Kombo Report. I know many people, who have been going to the Government Press to get copies, but they cannot get copies of the said Report. It appears as if there is a deliberate attempt by the Government to make sure that few copies of that Report go out. Although the House expunged the "List of Shame", the original document with the "List of Shame" should have been made available at the Government Press so that one could choose which one to take. The Government has ensured that, that document is out of print so that Kenyans cannot have access to it.

Mr. Temporary Deputy Speaker, Sir, we should not be talking about the Freedom of Information Bill alone. We should be talking about a Media Bill. I challenge the Minister for Information, Transport and Communications, together with the Attorney-General, that if they do not bring a Bill to this House within five months from now, we are going to bring it so that we can truly liberalise the airwaves for the benefit and interest of this country.

Mr. Temporary Deputy Speaker, Sir, I am glad that this House in its wisdom did pass a Motion on the live coverage of the proceedings of this House. That is one way of opening up. But we have been misusing the disclosure clause in our laws. There should be a requirement stating that if the benefit of disclosing that information far outweighs the harm, then we should disclose it even when it is supposed to be a secret. I have in mind the case of the bad debts in the banks. Presently, the disclosure of those who have accumulated a lot of bad debts in our banks is of great public interest.

With those remarks, I beg to second.

*(Question proposed)*

**Mr. Kihoro:** Thank you very much Mr. Temporary Deputy Speaker, Sir, for giving me the opportunity to contribute to this very important Motion.

Mr. Temporary Deputy Speaker, Sir, this Motion is going to enable the Kenyan people to get information that is very vital in nation building. It is essential because this country is emerging from a monopoly that had been exercised for a very long time by the Kenya Broadcasting Corporation (KBC). Sometimes it is difficult to imagine how much Kenyans will benefit from accessing that information. The Freedom of Information Act, will put to rest the persistent and perennial rumour-mongering that has become part of the Government in this country.

Mr. Temporary Deputy Speaker, Sir, the important thing is to accept that people need information. Without

information, they are bound to speculate. They will continue speculating until they have access to the information that they need. We all remember what happened about two years ago when the Nation Radio and Television were set up. The Nation Media Group had to find ways of getting a licence to be able to operate. They had to buy a licence from an individual! This ended up being a saga for ages on end in this country.

Mr. Temporary Deputy Speaker, Sir, it is important to accept that giving information to the people of this country as they require it and as they demand it is very vital. I am not saying that all the information in the Government should be made available. We have got a country to protect. We should only deny people information if it is injurious to the good of the country. However, that should be subject to review by the courts of this country. If information is not going to be made available to the citizens of this country, then that should purely be on the basis of national security.

Mr. Temporary Deputy Speaker, Sir, other countries have moved in this direction because they have the Freedom of Information Act in place. The Government belongs to the people and the people should have access to that information at all times subject to national security considerations. Everything else should be done across the board.

Mr. Temporary Deputy Speaker, Sir, after 37 years of Independence, Kenyans have not been able to access information. I have in mind the crisis in the Government between 1963 and 1967, leading to the fallout between Kenyatta and Jaramogi Oginga Odinga; the formation of Kenya People's Union (KPU) and the purging of all those national heroes from Bildad Kaggia to Jaramogi, and their resurrection subsequently because they were right in very many respects. What is important is to make this information about the Government since 1963 up to the present moment available to researchers without being licensed to do so. We should legislate to make this information available to any Kenyan who has got the desire to find out. How come that when I was in Britain for seven years, I could go to a public records at "Q Garden" and carry out my research on what has happened in this country? Information about this country is more available outside the country than one can get it in this country! It is a pity that information about our country cannot be accessed here while the same can be accessed easily outside the country. Let no one assume that he loves this country more than we do. We have got the interest of 30 million Kenyans at heart. These are the people who have got to tell you what to do.

Mr. Temporary Deputy Speaker, Sir, information should not be kept in secret and used at will by a few at the expense of the majority of the people in this country. I know that there are classified documents worth being kept secret. I know that the proposed Bill will take care of these aspects that are genuinely of concern to the country. But whatever information should be made public should be made available without any licence or prodding from any individual. That is the mark of civilisation that we must build in this country and allow our children to ride on it. We cannot struggle for 37 years and end up in a more worse position than we were in 1963.

Mr. Temporary Deputy Speaker, Sir, we would like to know what is being said in the Cabinet of this country. There must have been a Cabinet discussion on the murder of Pio Gama Pinto in 1965. We would like to know what was said or what was not said. We would like to write thrillers about relationships in the Cabinet. That is information which should be made available without any hindrance. We would like to know what happened after the murder of Tom Mboya in 1969. That information is available in this country and we should be allowed access to it. We should not leave the newspapers to speculate for ages on end like what happened in March this year. The newspapers had to speculate on what happened after the killings of Kungu Karumba in 1974 or J.M. Kariuki in 1975. We had a lot of information in March this year, but a lot of it was based on speculation. We would want to know for certain, the exact role of the Government in the elimination of those people and the Robert Ouko saga. All these are things that are of interest. Until you clear our consciences on these matters, we will continue demanding answers.

Mr. Temporary Deputy Speaker, Sir, in 1990 when you started *the Nairobi Law Monthly*, you were one of those also who were on the receiving end of this country, not having the freedom of information Act. You were harassed and you found yourself in detention for a period. What you did was a patriotic duty to your country and it should have been done without you being threatened or put in prison. That is true and it is common knowledge. What I am saying is that the Freedom of Information Act is a very important step in creating legitimacy in Government; that the Government should not be Government by secrecy. It is only the necessary information that will be kept in secret. This is because we love our country and we do not want to expose it to any danger. Beyond that, we do not want people to have information to protect themselves. We want to change a President, a Prime Minister or a Minister as they fall by the way side. We got sufficient replacements in this country to be able to serve in all those roles in the future. The Freedom of Information Act becomes very important because some of the information that has been kept in secrecy would make half of the Cabinet not to serve again, if you only made that information available. How come that we can be able to know what was said in a Cabinet meeting in U.S.A or United Kingdom? Yet, in this smaller country that has only found occasion to change the President once in the last 37 years, we cannot know what goes on in those meetings. The USA has changed their Presidents for more than 40 times. It is the greatest country in the world and they can change the President and not fall or decline. In about four decades, they have been able to do it, eight times and during the same period, we have been able to do it once. Why is it not possible to do it peacefully? The

Freedom of Information Act becomes very important because today, some of those who are serious contenders to become the Presidents of this country tomorrow are not worth their while to become Presidents if you only could be able to do the proper research and expose them for what they are. This is because secrecy has become an Act in this country. That is what we want to change. You can see how far we have declined as we continue peddling archaic and medieval laws that should not be honoured in this country. What I am saying is that this is a very commendable Bill and an Act of Parliament that should come up for posterity, so that we start doing it on a systematic basis. We should do away with all these sedition laws that have prevented Kenyans to speak their mind.

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

**Prof. Anyang'-Nyong'o:** Mr. Temporary Deputy Speaker, Sir, I rise to support this Motion that seeks to introduce a Bill in the National Assembly that will ensure that a Freedom of Information Act is in existence in this Republic. I will do so by first reminding the House of one basic premise on which this Motion is very important. This Motion is very important because the policy of the Kenyan Government from colonial time to the present; whether we are talking of the Government of Sir Evelyn Baring or his predecessors, or Government of Mzee Jomo Kenyatta and his successor, Mr. Daniel arap Moi, has been based on denying access of information to the people, so that they can control and govern them. This is what is called authoritarianism as opposed to democracy. This is because in an authoritarian regime, you can have a government, but it is not necessarily elected by the people like the colonial one. If it is elected, people have no control over it, nor do they have rules of the game that make them have free choice in electing competitors. The denial of this choice is based on denial of information.

Mr. Temporary Deputy Speaker, Sir, just today, if you read a copy of the *Daily Nation*, you will realise that the Permanent Secretary in the Ministry of Information, Transport and Communications, Mr. Naikuni, said categorically that the Government is going to bring a Bill to this House to ensure that there is a legal framework for licensing TV and radio stations. This is because, in his opinion, the TV and radio stations so far licensed seem to be mimicking each other and you can more or less tell what the content of what broadcasting is going to be in a new TV or radio station by listening to those that already exist. Perhaps Mr. Naikuni is right, but that is not the basis to think of having a draconian measure to control freedom. I would accept Mr. Naikuni's proposal if, indeed, he was concerned about laying down a legal framework that would ensure that liberalisation and privatisation in all sectors is done in a context that would enhance democracy. If, indeed, it is approached in that angle, I would have supported it. But this Government has had a knack of initiating what is called liberalisation and privatisation without paying any attention to a proper legal context. To that extent, there is no law governing privatisation and hence, the importance of hon. Dr. Kituyi's Bill to have a law that is initiated by this House, governing freedom of information that would then direct Mr. Naikuni to what he is supposed to be doing. I am not quite sure whether Mr. Naikuni was moving to preempt what hon. Dr. Kituyi is doing, but I do hope that the Bill that he will come up with will complement on hon. Dr. Kituyi's Bill and not to compete with it.

Mr. Temporary Deputy Speaker, Sir, freedom is exercised using certain machinery. An individual citizen cannot exercise freedom if he is not capable of using some machineries to exercise that freedom. Such machineries are usually called means of communications; like newspapers, TVs, radios and, indeed, associations among people. You cannot inform if you do not hear. So, freedom of information is no good to you if you cannot hear. Secondly, you cannot make use of what you hear if you do not understand. So, freedom of information is not useful to citizens if there is no universal education to increase the level of understanding of people to make use of their freedom of information and what they hear. Further, you cannot make good use of what you hear if you cannot communicate and associate. So, having freedom to establish radio and TV stations and newspapers is an aspect of freedom of information that makes it possible for people to communicate freely and effectively. In that regard, the Government must, and it should, support hon. Dr. Kituyi's Motion because in seeking to bring a Bill in this Parliament to introduce a law that regulates communication, the regulation of communication must be based on the understanding that there must be a proper legal framework for information.

Further, Mr. Temporary Deputy Speaker, Sir, we will be deceiving ourselves if we have laws governing communication and information, if our people cannot associate with each other freely. By communicating, you seek to associate so that you can share the ideas that you have for purposes of having a better life on this earth. All these things are inter-connected. I do hope that the basis of all these is having a viable and useful constitutional order that will ensure that freedoms are exercised to the maximum.

Mr. Temporary Deputy Speaker, Sir, in Kenya, it is extremely difficult for an ordinary Kenyan today to make use of the most advanced forms of communication that we know; that is, the mobile telephone. If you go to Zanzibar, if you have your mobile set; you only need Kshs1,500 to get a Simu Card from Vodagol or Vodafone in Tanzania. With Kshs1,500, you fit your Simu Card and then, you can buy air time as much as you like. You buy air time by walking into a grocery store or a shop and purchasing a card that will buy you air time. You punch the number of that card into your mobile phone and it will tell you whether you have air time worth Kshs2,500 or Kshs4,000. It is upon you to use

that air time as much you like. But in this country, as I speak today, the cheapest Simu Card available from Kencell--- First, you have to pay a deposit of Kshs10,000 which does not exist in Tanzania, and then you begin buying your air time. Here you need a minimum of Kshs2,500 which is Kshs1,000 above the Tanzanian rates.

Mr. Temporary Deputy Speaker, Sir, we pride ourselves as being richer than Tanzania and yet, in having access to the modern forms of communication that would make us communicate and be in touch with each other, we seem to be very stingy or backward. But why are we stingy? We are stingy because the Government has refused to implement Section 51 of the Kenya Communications Act of 1998 which was passed by this National Assembly and prohibited the Government from privatising telecommunications under the basis of monopoly and duopoly. That section of the Act is still suspended. It is not being implemented because Kencell and Safaricom want to exercise duopoly, to make communication expensive to Kenyans. This is why we are saying that although we have multiparties and so on, we are still essentially living under an authoritarian regime which can decide not to implement important sections of a law passed by this Parliament, to satisfy certain entrenched economic interests in this nation.

Mr. Temporary Deputy Speaker, Sir, freedom of information goes hand in hand with economic liberation. A poor person cannot afford a shortwave radio which will make it possible for him to hear what is happening in the nation. These days, those radio sets are very cheap for those of us who have incomes, but they are very essential for making sure that our people exercise their democratic rights. They are also very important for our people to have the basic need of intellectual communication with other Kenyans. In that context, it is extremely important that where we are taking measures like privatisation and liberalisation to enhance economic growth of this country, this should not be looked at in elitist terms. However, they should be looked at in terms of how much impact they will have to the ordinary maker of wealth in this nation. The maker of wealth is that peasant toiling away in the rural areas, or that worker walking from Kibera to the Industrial Area to create wealth for this nation.

With those few remarks, I beg to support.

**Mr. Khamasi:** Thank you very much, Mr. Temporary Deputy Speaker, Sir, for giving me an opportunity to contribute on this Motion.

I think we need to thank Dr. Kituyi for bringing this Motion and in my view, we should already have had a Bill from the Government so that we can enact it in this House. It is the responsibility of this Government to make sure that its citizens have got free access to information. To deny citizens of any country access to information is literally to impoverish them. Without the necessary information, whatever sector we are talking about, people cannot do well. We read history and we know what happened in Romania. In Romania, that bad man by the name of Ceausescu made sure that the Romanians did not have worthy information on any subject at all. They were impoverished and manipulated. But at the end of the day, we know how they got out. We know how he was jettisoned.

Mr. Temporary Deputy Speaker, Sir, civic education is very important in this country and we know what this Government has done whenever anybody or any donor has tried to conduct civic education, for example, on constitutional review for people to be aware about what is contained in the current Constitution; on how people should expect to conduct themselves when they are discussing the Constitution. Many a times, we have had those seminars dispersed very violently by the Police Force. This means that this Government does not want its citizens to be educated and to have access to information.

Mr. Temporary Deputy Speaker, Sir, with regard to radio and television stations that are there, we have read quite a lot about how the Government is feeling about them. The Government wants to force even people not to speak their own languages. In this country, the official language is English and Kiswahili. We have certain parts of this country where people cannot even speak Kiswahili. Indeed, even when the Head of State is going around, he speaks in Kiswahili and there is a translator there to translate in the local vernacular language for those people to be able to understand. When you turn round and say you cannot have any radio station broadcast in a vernacular language, that completely beats common sense.

**The Assistant Minister for Labour and Human Resource Development (Mr. Ethuro):** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. Member to mislead this House that even when the His Excellency the President goes around the country speaking in Kiswahili, we need an interpreter? Where is that?

**Mr. Khamasi:** Mr. Temporary Deputy Speaker, Sir, probably he has not got his memory right. I know even in his own place, where he comes from, I think that was in 1988 or 1989, the Head of State was speaking in Kiswahili and there was somebody translating into one of the local dialects.

*(Laughter)*

**Dr. Kituyi:** On a point of information, Mr. Temporary Deputy Speaker, Sir. I wish to inform hon. Khamasi that two weeks ago, I was addressing a rally in Lokichogio in Turkana District and the local Member of Parliament had to translate into Turkana what I was speaking in Kiswahili.

**Mr. Khamasi:** Thank you very much, Dr. Kituyi.

**The Assistant Minister for Labour and Human Resource Development (Mr. Ethuro):** On a point of order, Mr. Temporary Deputy Speaker, Sir. I think my point of order was very clear. I was asking about a situation where the Head of State was speaking in Kiswahili and somebody was interpreting the same into a local dialect. I was not asking about where Dr. Kituyi was speaking and there was interpretation.

**Mr. Khamasi:** That is not a point of order, Mr. Temporary Deputy Speaker, Sir. All I am saying is that there are certain parts of this country, where even in our own national language like Kiswahili, people cannot be able to communicate. So, every Kenyan has a right to establish a radio station and broadcast in the language that his target audience can understand, so that people can have access to information.

On the question of licensing radio and television stations, and other mass communication facilities, I would say that I think the legal regime is very poor. This is because we are at the mercy of the Minister for Information, Transport and Communications, who decides when to license one who wishes to start a station, and how many kilometres' radius your broadcast should cover. Thus, the majority of Kenyans are left to be served by the Kenya Broadcasting Corporation (KBC) only; the "K" in the name of this Corporation stands for very many other things. The KBC broadcasts nothing other than the ruling party's propaganda. So long as we have that kind of regime in place, where people across this country can only access news and other broadcasts through the KBC, the KANU Government will continue doing what it wishes and manipulating Kenyans for as long as it is in power. We should, therefore, encourage radio stations to broadcast in whatever languages their respective target audiences understand.

Mr. Temporary Deputy Speaker, Sir, you realise how enthusiastic Kenyans are in buying and reading the many publications that are displayed on the streets daily, notwithstanding the fact that some of them contain very misleading information. This shows how informed Kenyans would like to be. All we need to do in this case is put in place a legal regime that would make those publications responsible. The many copies of those publications bought on a daily basis is a clear testimony of Kenyans' high demand for information.

Banning of certain publications should be a thing of the past in a society such as Kenya's. We should not continue having a situation where the Government bans the circulation of certain publications. When the production and circulation of a publication is banned, people will ordinarily look for copies of that publication and read them. More often than not, even people who may not have wanted to read that publication, will have the urge to read that particular publication and find out what is contained therein.

Mr. Temporary Deputy Speaker, Sir, it is important that when we discuss Motions seeking the introduction of Private Members' Bills, Government officials note whatever is debated here. We have very often discussed such issues without any action being taken thereafter. I know that as soon as we finish debating this Motion, which I am sure will be passed, nothing will be done about it. The paper containing this Motion will be put on a shelf and left there to gather dust, unless hon. Kituyi spends some money to get some support to bring a Bill to this House. Let the Minister assure us that, as soon as this Motion is passed, he will bring a Bill here for us to legislate into an Act of Parliament, so that Kenyans can be entitled to the freedom of information.

With those few remarks, I beg to support.

**The Assistant Minister for Tourism, Trade and Industry (Mr. Ekirapa):** Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity. I rise to support the Motion.

Mr. Temporary Deputy Speaker, Sir, perhaps, when the Mover replies to this Motion, he will clarify the particular Act we are dealing with. We have in place the Communications Commission of Kenya (CCK) Act, which is already operational. Perhaps some hon. Members are unhappy that some Sections of the CCK Act have not been implemented as quickly as they would have liked. Maybe, the implementation of that Act has been slow. Probably, Kenyans expect that by now, everybody should afford a mobile phone and a telephone line in his house as a result of the competition that was expected following the liberalisation of the communications sector that was envisaged by the CCK Act. Kenyans do not expect to find themselves in a situation where telephones in their houses remain dead for many weeks without being repaired. Perhaps, Telkom Kenya is doing very little about it. I would like to agree with those hon. Members that, that area has actually not improved; that fact is acknowledged by everybody since each of us has had his share of experience.

Then there is the issue of the Books and Newspapers Act, which covers the publication of newspapers, books and other reading materials; this has been in place for a very long time now. I believe that the Minister for Information, Transport and Communications has told this House that a Bill on the Media is being prepared, and that it will be brought to this House for debate and enactment into an Act of Parliament. If I am right, then, perhaps, we are confusing debate on three very different areas, namely, the CCK Act, the Books and Newspapers Act, and the issue of introducing the Freedom of Information Act. I would understand the sentiments raised by an hon. Member on the need for Kenyans to know about things that happened in the past. In other words, Government offices have certain information which is classified. We have people who write reports, among which are Cabinet Papers. In other

countries, such classified information is de-classified after a certain number of years, when that information is released to the public, who then use it for whatever use they wish to put it into. However, we do not have an Act which makes such a provision in Kenya. An hon. Member has rightly asked when Kenyans will be told about certain incidents that took place more than 30 years ago. I think, in the Bill being sought by this Motion, we should debate this issue and decide how long certain information should remain classified before it is released for public consumption to know exactly what happened. There are people who need to do some research into the history of this country, with a view to establishing what happened at certain times. If there was a certain crisis at a certain time of the country's history, such researchers would like to establish the specific details of that crisis. So, I think the particular Bill will, probably, determine how long the Government can keep certain information as classified and the rights of Kenyans to have access to that information after a certain time.

However, even in countries where a similar Act exists, for security reasons, it is important that Governments do not release certain information until, really, it is felt that the release of such information does not pose a security risk to the State. Therefore, in supporting this Motion, I hope that the Mover will be very clear and state the exact areas we should address. If we accept the Press Law Bill from the Minister, which I understand is being prepared, then we should not confuse that with a Freedom of Information Act, unless we want to bring all the relevant provisions under one Act.

Mr. Temporary Deputy Speaker, Sir, when the Bill that resulted in the CCK Act was introduced for debate here, hon. Members were concerned about lack of information, and the slow speed at which information was received. An example of the areas we have covered is the freedom to publish newspapers. In this area, we have gone a very long way to-date to the extent that we have all kinds of publications in the streets, some of which are referred to as "gutter press". However, I think we are slow in covering the area of television broadcasting. I hope that the advertisement that was made regarding the establishment of, at least, regional television stations, will be debated. So, I am supporting this Motion to the extent that certain classified information on incidents that happened before some young Kenyans were born - such as the Mau Mau Movement - should be released for public consumption; some Kenyans do not have the details on that movement. So, I think such information should be released to the public, so that Kenyans can read and understand what, really, happened.

I agree that if people want to seek leadership, perhaps, their past should be disclosed, but I do not believe that, that past can always be disclosed through this kind of Bill because that information should be available everywhere. If newspapers are free to publish that information, then, it would be available to all Kenyans. I think we are saying that the newspapers and television and radio stations should be available to as many Kenyans as possible, and if people are free to read, listen and view them, then, they would also be free to make informed decisions.

Mr. Temporary Deputy Speaker, Sir, I will now digress because I want to talk about the freedom to have information. I have already agreed that, that will be important, and we should support the Motion so that as many Kenyans as possible who need to know about anything should have that freedom. But there is also the need to protect the freedom of other people. Because I enjoy reading newspapers, I have been reading from what some people refer to as "gutter press" very interesting stories about some personalities, but when you relate the story to the individuals concerned, you wonder whether those things are happening. Perhaps, would it not be possible, by deciding that information must be free to all our people, that there must also be some restrictions about the people who create that information? The requirement should be that the information should be accurate. It is important to know that when we allow all kinds of freedom for people to be free and broadcast and print information through radio, television and newspapers respectively, there must also be responsibility attached to that freedom so that people's names are not tarnished just for the fun of it because that information would affect them. As our country develops, there is going to come a time when if you want to be a leader, people will look at your past. In my view, it is wrong for people to pick some newspapers which talk about a certain person and when that information is not correct, and because a long time has passed, it will not be possible for that individual to stand up and say: "Look, that was wrong!" I think the Bill must provide for restrictions; that people who propagate information that is untrue must not be allowed to do so, but the freedom to publish accurate information should be allowed. Therefore, with those few remarks, I would like to support the Motion.

**Mr. Maore:** Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me the opportunity to contribute to the Motion. The essence of granting leave to introduce Bills in this House is gaining momentum. It is a clear signal that there is inadequacy with the regulations and procedures of the House as well as that of the Attorney-General because in the past, hon. Members have been urging the Government to introduce legislations. In most of those occasions, the Attorney-General goes to sleep, and he does not bother to bring legislations to the House for various reasons. It is not easy even for the Government to bring those kind of legislations. I would like to give an example of the latest Private Member's Bill which was published, but it is not easy for the Government to address the issues the Bill addresses.

I also want very quickly to underline the importance of information as power. Those who withhold

information withhold a very powerful tool; it is about the capacity to withhold information and release it as conveniently as possible or use it for their own convenience. When we talk of the freedom of the Press and association, that is not what is intended in this Bill. The freedom of information refers to those events that need to be recorded and released to the public for history and posterity. A very good example is the Cabinet meetings that not even Assistant Ministers know what happens there. You have a very small clique that runs the country, and you do not know whether they run it well or badly, and for years you will never know what it was. That is how you get the phrase of "Siri Kali" instead of "Serikali." In the "Siri Kali" of Europe and other democracies, there is a period of de-classification whereby after a certain period of time, when you know that the people in the Government are either dead or out of office, you can release their misconduct and criminal past when they were in the office, or whatever briefings that happened in the Cabinet meetings. But in Kenya, we are having a *lacuna* which we are hoping will be filled by this Bill. We want to create some order in the process of information, and I want to give a very good example of anarchy in our system. In the United States of America (USA), the Central Intelligence Agency (CIA) budget never appears in their Budget. It is in their Budget, but it is classified as "secret". So, it is not known what amount they get every year, but there is a special committee in Congress that regulates what they get and how they spend it, and so it is not stolen. But in Kenya, you will find that our National Security Intelligence Service's (NSIS) Vote appears in the Budget - of about Kshs1.9 billion - and many naive people who do not know what kind of money runs such an organisation run all over wondering why they should be getting that kind of money. I am saying that let us have some order, and an item like that should not be in the Budget, but we should have a way of regulating what they should be spending.

The proliferation of what is referred to as "gutter press," that hon. Ekirapa seems to enjoy like many other Kenyans, is a freelance solution; a way of looking for solutions to those issues that are not addressed by the mainstream media. For example, you should have seen that the *Daily Nation*, for specific reasons or for unknown reasons, has been publishing about the recent increment of allowances of MPs. It appeared almost ten times in their editorials, but they have never mentioned in their editorials about the power rationing that is costing this economy more than Kshs8 billion every month because of some business interests and personalities involved. They would not want to highlight the mess of the Kenya Power and Lighting Company (KPLC) on this economy. We want to have information recorded systematically and properly, even though we may not want to use it now, but we will use it in future. We would want to have---

**Dr. Ochuodho:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is my good friend in order to cast aspersions on the *Daily Nation* by linking it with the powers that be in KPLC without elaborating?

**Mr. Maore:** Mr. Temporary Deputy Speaker, Sir, as I was stating, the issue of knowing or getting information is very important. When such information is released, we would want those people who have given it to be protected. Ninety-nine per cent of those witnesses who gave evidence during the Ouko Commission of Inquiry have disappeared prematurely.

At the end or the sunset of the Nyayo era we have a proliferation of commissions like the Njonjo Commission and the Akiwumi Commission. What guarantee do we have that those people who give evidence that is injurious to some powerful personalities in the Government will be protected once they have given that information? What guarantee do we have that when the police are looking for information, very sensitive files and issues, they are not doing so in order to destroy the information?

We want to state that the Information Bill that we would like to see, brought before this House is one that protects the freedom of expression as explicitly as possible as it is intended in the Constitution, Sections 78-82. When we have the freedom of expression it does not go without responsibility. There are those libel clauses in our law. There are defamation clauses which state that you cannot write anything you want to write about everybody because you have the space and the pen. Our legal process is flawed just like the administrative process is flawed at the moment. There are very many people who have been stating that the Kenyan Constitution has served the country well. The problem has been the implementation. There are those who cannot have faith in the laws because they know how they have misused those laws. Even though there is that fear of implementation not being there or being misused, we need to have this information Bill brought before this Assembly, deliberated and then passed into law. That way we will have joined the democratic nations of the world and the information age just like the rest of the human society. We will have clear guidelines on how to preserve information and not just leave it hanging like the official secrets that are never made public at any time. We would wish to protect all the information, and every event recorded, passed on and preserved well.

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

**The Assistant Minister for Information, Transport and Communications** (Mr. Keah): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to contribute to this Motion. I support this Motion in its totality. I would only have liked the Mover to say that this House do grant leave for the introduction of a Bill for an Act of Parliament entitled: "The Freedom of Correct Information Bill". I say "correct information" because while I cherish

the freedom of information, it is the incorrect information that I do not support. Unfortunately, in our society we dwell so much on incorrect information which goes to defend people, which is really libelous. Unfortunately, the Press in particular seems to be having their own field day when it comes to defamation of people's character. In contributing to this Bill, I abhor in totality the freedom being misused by a certain section of the Press to provide incorrect information, and therefore, distort the situation and to also provide biased information. A lot of time is spent on giving information that distorts the truth. That is not what is covered by this Bill. We would like to see information which is correct. I want to emphasise the part of correctness. I am sure the Minister can give me two minutes.

**The Temporary Deputy Speaker** (Mr. Imanyara): Although it is now time for the official Government respondent, I understand the Minister has no objection to you continuing for another two minutes.

**The Assistant Minister for Information, Transport and Communications** (Mr. Keah): Thank you, Mr. Minister. I have instances which I can quote. Sometime early this year, the *East African Standard* Newspaper had on its headlines: "Keah Grabs Hospital Land." I protested strongly. I even got a lawyer to follow it up. They admitted that this was incorrect information, but my name had been read throughout the entire world, that Keah had grabbed Malindi hospital land. The correction was a tiny little caption that was typed on some obscure page six of the *East African Standard* Newspaper which was not on the front page headline. I have since objected and sued. The lawyers want something like Kshs200,000 to go to court. I cannot afford that. That is a typical example of misuse of freedom of the Press. My name has been damaged. I cannot really redeem myself and that is what we do not want to have; biased information.

The other day we were at a Harambee function in Kilifi with hon. Maitha. The headline read: "Keah and Maitha debate Coast politics." There was no debate. If there was anything at all, it was Maitha's points and none of mine. Is that really debate? While I support this Bill in totality the understanding is that we emphasise on correct information.

With those few remarks, I beg to support.

**The Temporary Deputy Speaker** (Mr. Imanyara): Mr. Minister, do I understand you are also giving Mr. Ethuro three minutes?

**The Minister for Information, Transport and Communications** (Mr. Mudavadi): That is correct.

**The Assistant Minister for Labour and Human Resource Development** (Mr. Ethuro): Thank you, Mr. Temporary Deputy Speaker, Sir. I requested for time so that I would really give my contribution and support to this Motion brought by hon. Dr. Kituyi. I am particularly pleased to see hon. Dr. Kituyi bring this kind of Motion on the Floor of the House rather than seeing him at Afraha Stadium. Freedom of information is critical for a technologically-advanced country like Kenya. When we talk of freedom of information, there are areas in this country that have no information. I am not referring to Lorgur, I am referring to Turkana District, where we have a whole district that cannot receive even what our friends on the other side call propaganda. I think we need that propaganda because we are in KANU. If KBC is KANU propaganda, we want to receive it because we are in KANU. The Minister promised this House three years ago that by the year 2000, Turkana will be able to receive at least KBC transmission. I just want to remind this House that the year 2000 is here with us and it is almost reaching sunset and I am yet to see KBC in Turkana. I want to encourage that in these days if we want to be on the cutting edge we need that information. When people are talking about the "E-Word, "E-Commerce" and E- Mail", I want my country, Kenya, to be on the cutting edge. The only way for us to compete and remain on the cutting edge and not on the "Watchman" column but on the real edge of development is for us to go this way.

I would like to associate myself with the sentiments raised by my colleagues that, there are people who have taken advantage of the freedom of information to damage the reputation and names of senior people in the Government and Members of this House. I want to say that there is "yellow journalism" in the mainstream.

In February, one writer from Nation Newspapers was taken to Turkana. For three consecutive days, he wrote nothing else but cooked up stories. On Sunday, he wrote that Kshs10 million was contributed by some foreign Members of Parliament. The next day, he wrote that food was not reaching the schools under the World Food Programme. The third day, he wrote that Members of Parliament had stolen money given for relief food transportation! For three consecutive days, a reporter who was hired by our political opponents wrote what was not correct! I cannot agree more with hon. Keah. We need to emphasise correct information and people's names should not be misused.

With those few remarks, I thank the Minister for affording me some time to remind the House of its commitment that, Turkana District will receive the Kenya Broadcasting Corporation (KBC) television by the end of the year, 2000.

**The Minister for Information, Transport and Communications** (Mr. Mudavadi): Thank you, Mr. Temporary Deputy Speaker, Sir. I stand here to support the Motion by Dr. Kituyi. While saying so, I just want to draw the attention of the House to a certain few points.



First, I think the gist of Dr. Kituyi's Motion is slightly being derailed. We have ended up dwelling more on issues that relate to the media per se, in terms of regulation, editorial policy and how they write their articles. We are also kind of down-playing the full gist of Dr. Kituyi's Motion. My understanding of the Motion - and I believe I am right because I talked to him - is that, for a long time, this country has not developed any mechanism through which the classification of certain information or material that may be available within the Government, Ministries or archives, is made available to the public either for research, publication or even for general information; or when certain parts are required, for example when a certain matter is being probed. That anomaly needs to be addressed. It is clear that in other countries, whether it is the United States of America (USA), Canada, Europe, Australia and others, there are clear mechanisms through which classified details can be made available and brought into public domain. I believe that the old laws may have failed in the sense that, those that relate to the media and broadcasting may have a bearing on the broad principle. But we should not lose sight of the principle that Dr. Kituyi is trying to bring forward. I do support the Motion because we have been having a lot of cases where, because there are no clear-cut mechanisms, we are subjected to a lot of speculation through the media.

At this stage, we cannot blame the media entirely. They have to try and make do with whatever little they can get; whether through hearsay or small bits and pieces of information; which can be interpreted in a slanted way, if the other side of the story is not there. I think it is important to develop the Freedom of Information Bill, which can be used to provide proper guidelines, and which can now tackle this particular issue.

However, I would like to take this opportunity to raise a few points. First, I think it is important to note that the Institution of the Law Reform Commission will do a lot of good for this country, if we can now start seeing what the outcome of the results are. A lot of pressure that we are seeing, where individual private Members are coming forward to get the leave of the House, in order to produce some law to fill a vacuum, is a very disturbing trend. It is absolutely important that the agencies that are earmarked for helping us in evolving those laws become more pro-active. The question of producing a Bill is a very expensive exercise. Clearly, I know that the resources are limited; whether within the parliamentary set-up or even within the realm of the individual Member of Parliament, who comes up with a Bill. It can be a very expensive exercise for a Member to keep on producing Bills by the leave of the House. So, it is important for the agencies and support mechanisms that are there, and the institutional capacity that is available within the Government, to be more pro-active to assist, so that we do not have to lump the burden to the individual Members of Parliament. We could draw from their ideas, but we should get those institutions working. They should be more pro-active.

The other area that I would like to touch on is this: Indeed, there are several laws that govern the media broadly. Some of them have been touched here. For instance, we have the Books and Newspapers Act which deals largely with the print media. We also have the Copyrights Act. We now have the Communications Commission of Kenya (CCK) Act. We are proposing here to have the Freedom of Information Bill. All those, in one way or another, could create a situation where there could be confusion in the broad aspect of handling information in totality. I would, therefore, seek that, when Dr. Kituyi works on his Bill, he should liaise with me very closely, so that we could have some harmonisation and deal with some of the areas that we believe are better handled in different areas, rather than having a Bill that, at the end of the day, will be quite confusing! I say so because I know that Dr. Ochuodho gave us an ultimatum of about five to six months, on the issue of the media. I can confirm that we are very close to coming to this House with a better policy in terms of the Media Bill, Broadcasting Bill and Electronics Media Bill, so that we could have an opportunity to discuss and provide a framework that can be understood by all parties. It is true that, at the moment, the licensing mechanism for radios and televisions is not clear-cut. That is left largely to the discretion of the individual who sits as the Minister responsible for information at any one time. This, of course, may not be a very objective way of handling that particular exercise. So, it is important that a clear-cut legal mechanism is put in place. I would like to assure the House that we were working very closely, hurriedly but meticulously, in order to bring something that will be reasonable and subject to debate and improvement by this House.

The other issue that I think needs to be brought out relates to the broadcasting in vernacular languages. It is something that will be broadly taken care of within the context of the overall broadcasting policy. I want to state very carefully and clearly that, it is clear to us that our vernacular languages are part of our culture. There is nothing we can do about that. We were born in different parts of the country. We speak different languages. But at the end of the day, we are all Kenyans. What is important and needs to be brought forth in the legislative process that we will look at, is to ensure that there are clear guidelines or parameters through which all those involved in broadcasting can broadcast. The excesses, as Dr. Kituyi put it, can be reined in. The excesses, whether from the KBC, Nation TV, Kenya Television Network (KTN) or Kameme Radio can be reined in so that, at the end of the day, we do not have any excesses within the broadcasting fraternity.

I think these are the issues that we should look at. We are now going to discuss the broadcasting policy and the licensing mechanism, we are putting it in proper perspective. I think it would be wrong for me to end my

contribution without making it clear, because the general impression has been that the Government is out to ban vernacular broadcasting stations. This is a wrong interpretation. I would like to correct that the Government is not out to ban vernacular stations, but we are out to seek a more friendly environment; an environment that would recognise the rights of the consumers and those who are the service providers. It is not necessarily a question of censorship per se, but it is a question of providing a framework, which I think is quite normal. It happens even in other countries to ensure that there is a clear framework in which these organisations operate. We also know that, for instance, within the electronic media, there are new aspects that have come in; we have the internet mechanism. As we speak right now, if you were to register any publication, you would only do it within the provisions of the Books and Newspapers Act, but there is no way you can recognise somebody who is a publisher within the internet. We also know that through the internet, somebody can distort a lot of information; somebody can actually take the book titled *Never Say Die*, which was, indeed, written by hon. Kihoro and through the internet, he can distort it and what would be read out would not be the book that at the end of the day, was published by hon. Kihoro. What do we do to safeguard such interests, because these are new issues that we have to face in the light of the technology that is coming in? So, it is within this context that I do say that we will seek the support of this House.

Mr. Temporary Deputy Speaker, Sir, with these remarks, I beg to---

**Dr. Ochuodho:** Mr. Temporary Deputy Speaker, Sir, he has given me permission before he finishes. My point is that I am smelling a rat.

**The Temporary Deputy Speaker** (Mr. Imanyara): Order! Order, Dr. Ochuodho! I think the Minister is concluding.

**Dr. Ochuodho:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I am smelling a rat. I hope that the Government will not make an attempt to control the internet because it has got a self-regulating mechanism.

**The Temporary Deputy Speaker** (Mr. Imanyara): What is your point of order, Dr. Ochuodho?

**Dr. Ochuodho:** Mr. Temporary Deputy Speaker, Sir, is the Minister in order to insinuate that the Government intends to control the internet, which is not controlled anywhere in the world, because it has got a self-regulating mechanism?

**The Minister for Information, Transport and Communications** (Mr. Mudavadi): Mr. Temporary Deputy Speaker, Sir, I did not say that and I know that the hon. Member knows that I did not say that.

*(Laughter)*

I was not speaking vernacular! However, in view of the need to support this Bill, I would like to conclude by saying that we support hon. Kituyi's Motion and I would ask that when he works on it, we consult appropriately, so that at the end of the day, we can bring to this House a Bill that would be readily acceptable by both parties.

Thank you very much, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Mr. Imanyara): It is now time for the Mover to reply.

**Dr. Kituyi:** Mr. Temporary Deputy Speaker, Sir, I beg to donate the first two minutes to hon. Mwakiringo.

**Mr. Mwakiringo:** Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to support this important Motion because information is the "oxygen" of democracy and, therefore, the Government should set-up a machinery to ensure that information flows to the people.

Bad governance needs secrecy to survive, which we do not need at the moment. So, the Government should come out openly and give free information to the people. Information is not just a necessity for the people, but it is an essential part of good governance. Therefore, we would not like to see the political rallies which the Opposition holds all over the country being denied to the people, because we are giving information to the people. We are giving civil education to the people. We are reaching people and we are giving accurate information. Some hon. Members have complained that information is not reaching them. So, when we are holding our rallies in these towns, we should be left free to hold them. There has never been a substantial famine in a country with a democratic form of governance and relatively free Press. So, we should have a free Press. However, the Press should report accurately and give proper information, if it has to assist the Government in enlightening people of their rights.

Mr. Temporary Deputy Speaker, Sir, information also allows people to scrutinise Government actions. We would not want to see a situation where the Government treats official information as its property rather than something which it holds and maintains on behalf of the people.

With those few remarks, I beg to support.

**Dr. Kituyi:** Mr. Temporary Deputy Speaker, Sir, I want to give another two minutes to hon. Wamae.

**Mr. Wamae:** Thank you, Dr. Kituyi, for giving me two minutes and I think they will be enough for me to say the following.

Flow of information is very important and competition is what we need. We should let the customers, who are the listeners and the viewers, decide what they want to hear and see. On the basis of that, they will reflect on the popularity of each of the stations. But we want the Government to be fair. It should license national television and radio stations throughout the country. There is no reason why the Government has kept some applicants for television and radio stations for ten years without licensing them to broadcast countrywide. These stations should be allowed to compete with the Kenya Broadcasting Corporation (KBC) equally and I know that KBC, unless it changes its operation, will not succeed and will lose revenue from advertisements.

I would also like to support the vernacular broadcasting radio and television stations. This is a people's right and if a vernacular radio or television station can survive within the overall area of responsible journalism, let it survive. So, we do not want anybody to threaten Kameme FM Radio Station. I listen to it regularly and it is very entertaining. It is very useful and it is giving a very good service to the people. If anybody wants to establish a Luhya FM, Kalenjin FM or Maasai FM Station, he should feel free to do so, but he should not attack somebody who has started his own station. That is envy and jealousy which can destroy this country. Everybody is free to start a vernacular station which caters for the needs of his people, and if there are enough listeners who can sustain it commercially, let it be and nobody should interfere with it.

With those few remarks, I support the Motion.

**Dr. Kituyi:** Thank you very much, Mr. Temporary Deputy Speaker, Sir. I wish to thank all hon. Members of this House for the encouragement they have given and for supporting this Motion.

There are just two things that I want to say at the end. If something is right, sometimes it can be abused, but that does not stop it from being right. In the 1930s a major critique of journalism coined an expression in referring to the British Press, that it exercised the prerogative of a harlot. It had privilege, exercised the privilege, but did not exercise the responsibility that went with that privilege. In many ways, we can say the same about sections of Kenya's Press. Every hon. Member of this House knows how reporters in some places where he goes, whether in his constituency or elsewhere, can deliberately falsify what he says. Reporters can give a certain assent to certain views, which are not necessarily correct or what happened on the ground. I was with hon. Orengo in my constituency three weeks ago. I spoke before him and the next day the Press stated that I echoed what hon. Orengo had said. I did not know how the echo came before the speech. We are getting used to seeing that.

Mr. Temporary Deputy Speaker, Sir, the Monday after we had had a rally in Nakuru, there was a commentary on KBC television, which stated that in Nakuru we had launched a "*vuguvugu la wabakaji, waporaji na wezi wa mifuko*". It said that we had launched a movement of rapists, looters and pickpockets. This was announced through a Government television station during the 7.00 o'clock news, on Monday, 25th September, 2000. The fact that somebody can so arrogantly abuse a facility like that does not make the exercise of that facility a crime itself. It is right to have a radio station or television station. Even once in a while, the privilege of access can be abused even criminally.

Mr. Temporary Deputy Speaker, Sir, there is this talk about the Yellow Press. It is not even worth calling it a Press. But at the end of the day what happens is that, the Penal Code provides sufficient safeguards against the excesses that are being exercised by the gutter press. It is not being used, but it exists. Secondly, it is members of the political class themselves who are sponsoring factions of those yellow press to pour insults at their colleagues as part of their competition. So, if we have not cultured ourselves in the use of the privilege of high office and access to resources, we reflect the perversion of the information age.

There is something which has not been mentioned here, which is a threat to the development of an informed society. The phenomenon called, "the disappearance of files". We have taken it for granted that you can go to the Registrar of Societies to look up a file of a certain registered company and you are told that, that file has disappeared and you walk away. If we do not have the mechanism of expressing outrage, if we do not have the culture of making it a demand that somebody must lose their job if a file "walks" away without having legs, then we will continue having this discretionary exercise of duty. How can a file disappear? How do files disappear in the court registry?

Mr. Temporary Deputy Speaker, Sir, in 1994, I was here when hon. Muite laid on the Table of the House a large file on the Goldenberg scandal. Those of us who were interested in following the contents of that file found that, that file disappeared before it reached the registry of Parliament. A file has been tabled in this House over Goldenberg and it does not exist in the annals of Parliament. If we are allowing the culture of disappearance of files to even infiltrate Parliament without expressing any protest, how can we be the custodians of information development in our country?

I want to make an undertaking that I am not in any way interested in creating an Opposition Bill. I am not interested in an Opposition law. I know how costly it is as an individual to prepare and present before Parliament a Bill for an Act of Parliament. So, I welcome the assurances and suggestions of the hon. Minister that the skeleton of the Bill which is already under preparation will be availed for any person willing to make a contribution. At the end of the day what drives us is not so much the desire to say we brought the law, but the desire that there is a mechanism which

energises the process of creating an informed society. That there is a law which reduces some of the lacunas that have been exploited by the enemies of an informed society.

With those few remarks, I beg to move.

*(Question put and agreed to)*

#### ABOLITION OF CAPITAL PUNISHMENT

**Mr. Murungi:** Mr. Temporary Deputy Speaker, Sir, I beg to move the following Motion:-  
THAT, in order to enhance the protection of the right to life; this House urges the Government to introduce the necessary legislation to abolish capital punishment in Kenya.

*(Applause)*

Mr. Temporary Deputy Speaker, Sir, this is the second time in six years that this House is being called upon to abolish capital punishment. When we moved a similar Motion on the 30th November, 1994, that Motion was defeated by a narrow margin. We believe the Eighth Parliament is more enlightened than the Seventh Parliament, and that this Motion is now going to be passed by an overwhelming majority.

Mr. Temporary Deputy Speaker, Sir, we are worried about the recent tragedy at King'ong'o Prison; what hon. Wanyiri Kihoro was calling the "King'ong'o Six, Seven or Eight". The King'ong'o tragedy has brought into focus, once again, the need to protect the right to life in this country. It has also given us an insight into how much we have devalued human life as a society in this country.

Mr. Temporary Deputy Speaker, Sir, the King'ong'o tragedy is only comparable to the horror massacres in which prisoners were killed by warders during the struggle for Independence, in the 1950s. When I was in London last week with hon. Jimmy Angwenyi, I met an old lady called Babara Castle, and this lady is the only one who spoke about the horror massacre in the 1960s, in British Parliaments and condemned it as a brutal and barbaric act.

The King'ong'o massacre shows us how far we have gone as a nation. It is only the other day that we killed a man of God, Father Kaiser, in cold blood. If you read in the newspapers, we are now killing innocent children in Kayole and in other estates here in Nairobi. Where are we going as a nation?

Mr. Temporary Deputy Speaker, Sir, another thing that the King'ong'o tragedy has done is to reveal, in a very dramatic way, the appalling, dehumanizing and brutal conditions in which the condemned prisoners live in this country. It is not only the condemned prisoners who have been dehumanised and brutalised by these appalling conditions. The warders themselves have been dehumanised, they have been relegated to animal existence and that is why they could break skulls of the prisoners in that senseless, cruel and inhuman manner.

Mr. Temporary Deputy Speaker, Sir, I think life seems to have lost meaning to many Kenyans and that inherent dignity and worth of the human person is no longer respected in this country. People are becoming mere things or objects and, if there is a way that they can be sold, I believe there are some Kenyans who would be selling them. Slavery would be very easy to re-introduce in this country in the current climate.

It is in this context that we are calling upon this Parliament to stand up for human rights at this critical time in our history. Kenya has signed various international treaties for protection of human rights, including the UN Convention Against Torture (CAT). There is no greater torture than a mental anguish that a person goes through, as he is waiting for his death.

What we saw at King'ong'o is that the prisoners who were massacred were trying to run away from very appalling conditions, mental anguish and torture because they had been waiting for death [**Mr. Murungi**] for so many years.

Mr. Temporary Deputy Speaker, Sir, when we debated a similar Motion on 30th November, 1994, the hon. Attorney-General, Amos Wako, at page 926 of the HANSARD Report, said that:-

"As a Christian, I believe that only God gives the right to life and that only God can take it away".

What was he saying? What Mr. Amos Wako was saying is that he does not support capital punishment. However, in his characteristic style, he did not have the courage to say so bluntly and to properly advise the Government as the chief advisor of the Government on the various philosophical and legal implications of this penalty. So, I think it is with this in mind that when President Moi visited Meru the other day, I hear he said that the hon. Gitabu Imanyara who is on the Chair might be considered for this post of the Attorney-General.

*(Laughter)*

Mr. Temporary Deputy Speaker, Sir, we need an Attorney-General who can properly advise the Government and stand firm in the impartial advice which he gives the Government. This "wishy-washy" style of the Attorney-General has landed this country into a lot of mess.

**An hon. Member:** It is his hands which are tied!

**Mr. Murungi:** Mr. Temporary Deputy Speaker, Sir, my colleague says that it is his hands which are tied, but I think it is the mind, the hands and the legs of the Attorney-General which have been tied and something has to be done about it.

Mr. Temporary Deputy Speaker, Sir, the Attorney-General said that the Government has no views on the death penalty and that it would be the people who will decide. We have no forum for a referendum in this country and so how will the people decide? I think he is playing Pontius Pilate who, when Jesus was brought before him, said that he does not find him guilty but he asked the people: "What do you want?" The crowd shouted that they wanted the thief, Barabas and so Pontius Pilate released Barabas. We cannot run this country on that kind of premise.

**The Assistant Minister for Tourism, Trade and Industry** (Mr. Ekirapa): On a point of order, Mr. Temporary Deputy Speaker, Sir. I was just consulting. Is the Member in order to put the Chair in a very awkward situation by implying that the Head of State was considering you to become the next Attorney-General? Is it in order also to cast aspersions on the Attorney-General?

**The Temporary Deputy Speaker** (Mr. Imanyara): Order! That is not a point of order. Continue, Mr. Murungi.

**Mr. Murungi:** Thank you, Mr. Temporary Deputy Speaker, Sir. I think Members should learn what points of order are.

(Laughter)

Although death penalty has been in the statute books of Kenya---

**The Assistant Minister for Tourism, Trade and Industry** (Mr. Ekirapa): On a point of order, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Mr. Imanyara): Mr. Ekirapa, it must be a point of order. Proceed!

**The Assistant Minister for Tourism, Trade and Industry** (Mr. Ekirapa): Mr. Temporary Deputy Speaker, Sir, I raised the issue of whether it is in order for the Member to actually imply here that the Attorney-General is not doing his job properly? Is he in order?

**Hon. Members:** That is his point of view!

**The Temporary Deputy Speaker** (Mr. Imanyara): That is not a point of order.

Continue, Mr. Murungi!

**Mr. Murungi:** Thank you, Mr. Temporary Deputy Speaker, Sir. As I was saying, although the death penalty is in our statute books, *de facto*, as a matter of practice, we are no longer as a country executing people. Death penalty does not exist in practice in this country. The last people to be hanged in Kamiti Prison were Hezekiah Ochuka and Pancreas Okumu way back in July, 1985 and those are the last death warrants that President Moi signed. As we are talking today, over 1,000 people are waiting for death in various prisons in Kenya and the President does not feel like signing those death warrants.

**A hon. Member:** He does not want to kill!

**Mr. Murungi:** So, we are calling for the amendment of the law so that it is in line with this practice. All those people who are now waiting for death in various prisons in Kenya should have their sentences commuted to life imprisonment. This will save the President the anguish of having to spend sleepless nights after signing the death warrant for a particular Kenyan.

Mr. Temporary Deputy Speaker, Sir, the horror of waiting for death is the worst form of torture that a person can ever undergo. Under the provisions of our Constitution, there are no exceptions to torture. This death penalty should be removed so that we can remove this mental suffering from our people.

Mr. Temporary Deputy Speaker, Sir, in Zimbabwe, since 1993, the High Court has commuted all death sentences to life imprisonment because it holds that the death penalty is inherently cruel, inhuman and degrading. We are asking the Government of Kenya to commute all death sentences to life imprisonment on the same basis that it is inherently a violation of the right to protection against torture.

Mr. Temporary Deputy Speaker, Sir, the greatest argument cited in support of the death penalty is that of deterrence; that it frightens would-be criminals and that it will influence other people from committing murder, armed robbery and other related offences. I have read several books on death penalty and there is no empirical evidence to support that argument. A recent survey done in Nigeria, which has capital punishment for murder and armed robberies

like in this country, showed that murders and armed robberies have been on the rise in Nigeria despite the existence of the death penalty in their statute books.

Mr. Temporary Deputy Speaker, Sir, a more recent study was carried out by Prof. Roger Hood of Oxford University Centre for Criminology Research. He reviewed evidence from all the countries with death penalty around the world. He came to the conclusion that there is no evidence to show that the existence of death penalty in the statute books of any country leads to the reduction of murder or other offences punishable by capital punishment. Here in Kenya, we have not done comprehensive research on this matter. I know that Amnesty International has gathered a lot of information, but we have not done a serious and a detailed research. It is quite obvious from what we read in the Press that both armed robberies, carjackings and murder have been on the increase in this country despite the existence of the death penalty in our statute books. The death penalty in Kenya is merely a symbol of savagery and primitive colonial past. I think it is time we got rid of those meaningless symbols.

Mr. Temporary Deputy Speaker, Sir, the other argument advanced in support of capital punishment is that of retribution. It is said that we need to do justice to the family of the person who has been killed by killing the murderer. But this old-fashioned notion of justice, like the law of Moses which advocated a tooth for a tooth, is no longer in consonance with the current development in criminal justice. The argument itself is fundamentally flawed. If it were to be extended, then we would be saying, let the rapists also be raped or that we steal from the thieves. So, it does not make sense to kill merely because somebody has killed another person.

Mr. Temporary Deputy Speaker, Sir, the principle objective of criminal justice today is reform, rehabilitation of offenders and their eventual reintegration into society. Capital punishment poses great complexities because once you have killed a person, you remove that possibility of reforming, rehabilitation and reintegration to society. That defeats the very object of criminal justice, not only in this country but all over the world.

#### ADJOURNMENT

**The Temporary Deputy Speaker** (Mr. Manyara): Order, hon. Members! It is now time for the interruption of business. The House is, therefore, adjourned until this afternoon, at 2.30 p.m.

The House rose at 12.30 p.m.